

PARLIAMENT OF WESTERN AUSTRALIA

JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION

FOURTH REPORT

(July 1990)

**REPORT ON THE ROAD TRAFFIC CODE AMENDMENT
REGULATIONS 1990**

Laid on the Table July 1990

REPORT ON THE ROAD TRAFFIC CODE AMENDMENT REGULATIONS 1990

Regulation 204 of the Road Traffic Code 1975 exempts drivers of emergency and other special purpose vehicles from compliance with provisions of the Road Traffic Code. The regulation reads:

"204. (1) Notwithstanding anything to the contrary in these regulations the driver of an emergency vehicle may, in the course of his duties and when it is expedient to do so -

- (a) on reducing speed and sounding a warning device, proceed past a traffic-control signal displaying a red or amber signal or past a stop sign, without stopping or proceed contrary to the directions of a traffic sign;*
- (b) on sounding a warning device, drive in any direction on any part of a road or overtake or pass on either side of another vehicle;*
- (c) stop, stand or park the vehicle, at any place, at any time; or*
- (d) exceed the speeds prescribed by Part X of these regulations.*

(2) Notwithstanding anything to the contrary in these regulations, the driver of a special purpose vehicle may, in the course of his duties and when it is expedient and safe to do so -

- (a) stop, stand or park the vehicle at any place, at any time; or*
- (b) exceed the speeds prescribed by Part X of these regulations whilst engaged in speed zoning activities authorized by the Minister."*

The amendment published in the *Government Gazette* of March 3 1990 qualifies the circumstances when a driver may exercise this prerogative by expanding the existing phrase *"when it is expedient and safe to do so,"* with the words *"or when he honestly and reasonably believes that it is expedient and safe to do so"*.

Your Committee has considered this regulation in the light of the criteria laid down in its Terms of Reference, viz - [that the regulation]

- (a) appears not to be within power or not to be in accord with the objects of the Act pursuant to which it purports to be made;
- (b) unduly trespasses on individual rights, liberties and freedoms; and
- (c) contains matter which ought properly to be dealt with by an Act of Parliament.

The enabling section 111 of the *Road Traffic Act 1974* reads:

111(1) The Governor may make regulations for any purpose for which regulations are contemplated or required by this Act and may make all such other regulations as may, in his opinion, be necessary or convenient for giving full effect to the provisions of, and for the due administration of, this Act for the licensing, equipment and use of vehicles and for the regulation of traffic, generally.

(2) without limiting the generality of subsection (1) of this section, the Governor may make regulations -

-
(b) relating to the duties, obligations, conduct and behaviour of owners, persons in charge, drivers and passengers of vehicles or of any class of vehicle.

There is no provision of the *Road Traffic Act* which specifically gives authority for a regulation to exempt drivers of emergency or special purpose vehicles from compliance with traffic laws applied by the Act and Code. Even given the generality of the enabling section of the *Road Traffic Act*, it is unlikely that such immunity was intended.

Mr Justice Isaacs in the case of *Melbourne Corporation v. Barry* (1922) 31.CLR 179 ruled that relaxation of, and immunity from, prohibitions and regulations is a matter which stretches the authority conferred on a maker of subsidiary legislation such as the Governor.

Section 43(8)(d) of the *Interpretation Act 1984* would, however appear to moderate this view. The section reads -

"8. *Subsidiary legislation may be made -*

.....

(d) so as to provide, in a specified case or class of case for the exemption of persons or things or a class of persons or things from the provisions of the subsidiary legislation, whether unconditionally or on specified conditions or conditions additionally imposed and either wholly or to such an extent as is specified or otherwise determined."

To the extent that drivers of emergency and special purpose vehicles could be considered a class of persons, they could be validly exempted from the provisions of the Road Traffic Code.

Whether it is desirable or reasonable that an individual must possess a rudimentary knowledge of Administrative Law in order to establish the validity of a particular delegated authority is an issue which your Committee intends to pursue in its study of enabling clauses in primary legislation.

Having established, with reservation, that the regulation is within power, your Committee considered the subject matter of Regulation 204.

The regulation unquestionably trespasses on individual rights, freedoms and liberties. On the question of whether there is **undue** trespass the Committee is in agreement that there are extraordinary situations in which, given adequate safeguards, the ability to, for example, exceed the speed restriction or to ignore a red light may be a crucial factor in the survival of a victim of an accident.

Your Committee has no quarrel with the subject matter of the regulation *per se* but, given that there is trespass on individual rights, is of the opinion that such a topic merits the full attention of Parliament.

In general terms it is undesirable that the potential for the erosion of the law by special exemptions should be provided by subordinate legislation without the effective scrutiny of Parliament. This is particularly so in this instance when the exemption conferred may absolve the driver of an emergency vehicle acting in accordance with the amended regulation involved in an accident from what would otherwise be negligence at common law. Accordingly, your Committee makes the following recommendations:

- (i) that the provision for exemption from compliance with certain requirements of the Road Traffic Code for drivers of emergency and special purpose vehicles in certain special circumstances be enacted as part of the *Road Traffic Act 1974*; and
- (ii) that Regulation 204 of the Road Traffic Code be repealed.