

Road Safety Amendment (Hoon Driving) Bill 2010

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| Introduced | 1 September 2010 |
| Second Reading Speech | 2 September 2010 |
| House | Legislative Assembly |
| Member introducing Bill | Hon. Tim Pallas MLA |
| Portfolio responsibility | Minister for Roads and Ports |

Purpose and Background

The Bill amends the *Road Safety Act 1986* (the 'Act') to –

1. extend the vehicle impoundment, immobilisation and forfeiture scheme in Part 6A of the Act to the following offences –
 - (a) driving with a blood or breath alcohol content of 0.10 or higher for the second or subsequent time.
 - (b) driving with drugs present in blood or oral fluid, for the second or subsequent time.
 - (c) unlicensed driving for the second or subsequent time, except in circumstances where the person merely failed to renew their driver licence or permit. **[4 and 5]**
2. strengthen the way the motor vehicle impoundment, immobilisation and forfeiture scheme in Part 6A of the Act operates with respect to the following offences –
 - (a) disqualified driving for a second offence will attract impoundment and a third offence may attract forfeiture (not a fourth offence as currently).
 - (b) driving at 70 kilometres per hour or more over the applicable speed limit or 170 kilometres per hour or more where the speed limit is 110 kilometres per hour. 3 month impoundment will apply for a first offence and forfeiture for a second offence.
 - (c) dangerous driving in circumstances where a vehicle is driven at 70 kilometres per hour or more over the applicable speed limit or 170 kilometres per hour or more if the speed limit is 110 kilometres per hour. **[4 and 5]**

Extracts from the Second Reading Speech in respect to paragraphs 1 and 2 above –

... That review [Arrive Alive 2008-2010] has determined that penalties for drink and drug driving are currently inadequate and that the vehicle impoundment scheme should be extended to recidivist drink-driving and drug-driving offenders.

The Bill therefore provides that vehicle impoundment sanctions will be available in those cases where a driver is detected with a blood or breath alcohol concentration of 0.10 or higher for a second or subsequent time or where a driver is detected with drugs present in his or her system for a second or subsequent time. The offence of driving unlicensed for a second or subsequent time will also become subject to the vehicle impoundment scheme.

... That review has determined that tougher sanctions are required for extreme speeding offences. The Bill therefore provides that where a driver is detected driving at 70 kilometres per hour or more over the applicable speed limit or at a speed of 170 kilometres per hour in a 110-kilometres-per-hour speed zone, that driver will face vehicle impoundment or immobilisation sanctions for up to three months for a first offence. ... Also, for a second extreme speeding offence, the court will be empowered to order the forfeiture of the vehicle.

... Accordingly, the Bill will toughen the vehicle impoundment and forfeiture sanctions for disqualified driving offences. It provides that a second offence may result in up to three months vehicle impoundment or immobilisation and a third offence may result in forfeiture of the vehicle.

... The Bill provides that this initial impoundment or immobilisation period [currently 48 hours] will be increased across the board to seven days. This change will apply to all offences to which the vehicle impoundment scheme applies.

... the Bill provides that in all cases where a person appears before the court for an offence for which a three-month impoundment or immobilisation sanction may be imposed, the court will be required, upon a finding of guilt and upon the application of the police, to impose a vehicle impoundment or immobilisation sanction for at least 28 days.

3. enable police under Part 6A of the Act to immediately immobilise or impound a motor vehicle for 7 days upon detection of a tier 1 relevant offence or a tier 2 relevant offence. (Refer to Charter report) **[41)(a)]**
4. provide that, under Part 6A of the Act, on a finding of guilt for a second or subsequent tier 2 relevant offence or any tier 1 relevant offence the court must, on the application of the police, order immobilisation or impoundment of the relevant motor vehicle for 28 days. **[16]**
5. facilitate the use of steering wheel locks as a new method of motor vehicle immobilisation with the benefit of allowing immobilised vehicles to be towed to an alternative location. Police will have power to enter a vehicle to install such devices. **[10 to 12, 14 and 15]**
6. provide police with additional limited powers to search premises without a warrant for the purposes of locating and accessing a motor vehicle that is to be impounded, immobilised or forfeited under the Act. **[6 to 8]**
7. provide that when an impoundment or immobilisation order or a forfeiture order is sought with respect to a motor vehicle, the police may concurrently apply for a search warrant to facilitate access to the vehicle. **[26 and 27]**
8. provide police with power to question adult persons as to the whereabouts of a motor vehicle to facilitate the impoundment, immobilisation or forfeiture of that vehicle. **[6 and 8]**
9. facilitate the sale or disposal of forfeited motor vehicles and uncollected impounded motor vehicles by extinguishing third party interests. **[18, 20, 28-35, 37 and 38]**

Note: From the Statement of Compatibility – ... *although security interests will be extinguished, the persons holding those interests will, where the vehicle is fit for sale, still be eligible to have their interests paid out when the proceeds of sale are distributed according to the current priority order set out in section 84ZS of the Road Safety Act 1986.*
10. ensure that applications for 'exceptional hardship' to avoid or vary orders for the immobilisation, impoundment or forfeiture of a motor vehicle are granted only in appropriate cases. The court must not decline to make a disposal order where the person is under a disqualification or suspension. The Bill clarifies the circumstances in which arguments relating to travelling for employment purposes can satisfy the 'exceptional hardship' test. **[13, 23, 24, 25, 36]**

The Bill also amends the *Melbourne City Link Act 1995* to provide the Minister administering that Act with power to revoke, in whole or in part, a road declaration made under that Act so that the relevant land may be used for other non-road purposes. The Minister must cause a notice of revocation to be published in the Government Gazette. **[41 and 42]**

Content and Committee comment

Part 6A of the Act deals with impoundment, immobilisation and forfeiture of motor vehicles. Division 1 of Part 6A provides for definitions to be used in the Part and Division 2 deals with powers exercised by Victoria police whilst Division 3 sets out provisions that apply upon a court order. The Bill amends the definition of 'designated period' in section 84C for the purposes of sections 84G and 84H (Seizure and surrender of vehicle by Victoria Police under Division 2) so that it refers to 7 days rather than 48 hours. The amendments will therefore allow a vehicle to be impounded or immobilised by a member of the police force without court order for up to 7 days. **[4]** (Refer to Charter report below).

Charter report

Presumption of innocence – Immediate negative consequences for people believed by the police to have committed dangerous driving behaviour

Summary: Clause 4(1)(a)'s purpose is to impose 'immediate negative consequences' on people who police believe have committed dangerous driving behaviour. The Committee considers that it may limit the Charter right of criminal defendants to be presumed innocent until proved guilty according to law

The Committee notes that clause 4(1)(a) extends the 'designated period' for the purposes of existing s. 84F(1)(b) from 48 hours to seven days. Section 84F(1)(b) permits a police officer who 'believes on reasonable grounds that a motor vehicle is being, or has been used in the commission of a relevant offence' to 'impound or immobilise the motor vehicle for the designated period'.

The Second Reading speech remarks:

Increasing the initial impoundment or immobilisation sanction to seven days is expected to further deter dangerous driving behaviour as the immediate negative consequences of that behaviour mount up. In addition, offenders are less likely to [sic] able to conceal the sanction (and need to make alternative transport arrangements) from their families and friends who have the potential to intervene and so reduce further offending.

Clause 4(1)(a)'s purpose is therefore, not merely to reduce the risk of a continuation of a particular incident of dangerous driving, but rather to impose 'immediate negative consequences' on people who police believe have committed dangerous driving behaviour. The Committee considers that clause 4(1)(a) may limit the Charter right of criminal defendants to be presumed innocent until proved guilty according to law.⁴

The Statement of Compatibility remarks:

The imposition of vehicle impoundment or immobilisation for 7 days upon detection... by police allows for the immediate removal of an unsafe driver from the road and also provides significant deterrent to that person and other drivers from engaging in unsafe driving behaviour.

The limitation of the right to be presumed innocent is constrained by a number of safeguards. Firstly, section 84M of the act provides that any decision to impose a 7 day impoundment or immobilisation must be reviewed by a senior police officer within 48 hours of the impoundment or immobilisation being imposed.

Secondly, appeals rights exist under section 84O of the act where a person substantially affected by the 7 day impoundment or immobilisation sanction can seek the release of the vehicle on exceptional hardship grounds....

Thirdly, section 84R of the act provides that in the event that a person is found not guilty... or where charges are not proceeded with, the Crown is liable to refund any designated costs... and the motor vehicle... must be immediately released...

It would be possible to factor in some delay period before the impoundment or immobilisation could take effect... However this would reduce the effectiveness of the legislation in deterring unsafe driving practices. It is important that persons that disregard public safety by committing serious traffic offences are removed from the roads as quickly as possible.

The Committee observes that clause 4(1)(a) will impose irreversible negative consequences, not only on actual dangerous drivers, but also people who police mistakenly believe to be dangerous drivers but who are subsequently cleared by the police or the court.

⁴ Charter s. 25(1).

In a case on the Charter right to be presumed innocent, the Court of Appeal has remarked:⁵

There may be circumstances where the justification for interfering with a human right – and for doing so by the particular means chosen – is self-evident, but they are likely to be exceptional. The government party seeking to make good a justification case under s 7(2) will ordinarily be expected to demonstrate, by evidence, how the public interest is served by the rights-infringing provision.

That case involved a provision requiring a defendant to prove their innocence in court. The Committee considers that the need for evidence may be stronger in the case of clause 4(1)(a), which provides for defendants to be punished before their case ever reaches a court.

The Committee therefore considers that clause 4(1)(a) may be incompatible with the Charter's right to be presumed innocent.

The Committee refers to Parliament for its consideration the question of whether or not clause 4(1)(a), by extending the period where a motor vehicle may be impounded or immobilised by a police officer in order to provide immediate negative consequences for suspected offenders, is a reasonable limit on the Charter right of criminal defendants to be presumed innocent until proved guilty according to law.

The Committee makes no further comment.

⁵ *R v Momcilovic* [2010] VSCA 50, [146].

