

FACT SHEET

Police Offences Amendment (Miscellaneous) Bill 2010

The Government has introduced legislation into Parliament to amend the *Police Offences Act 1935*.

The Bill introduces legislation to clarify matters concerning the clamping and confiscation of vehicles for prescribed offences and to provide an exemption for police officers to possess and use body armour whilst in the performance of their duties.

The ***Police Offences Amendment (Miscellaneous) Bill 2010*** amends the *Police Offences Act 1935* to:

- provide an exemption for police officers to possess and use body armour under section 15E of the Act, whilst acting in the performance of their duties.
- provide that the special compulsory penalty provided under section 37MA only applies to prescribed offences where the vehicle has been confiscated or clamped;
- provide that an application, under section 37ZD, can be made by the owner or registered operator to the court for the unclamping or return of a vehicle confiscated for the first prescribed offence;

Section 15E – Body Armour

In 2009 amendments were made to the Act to prohibit the manufacture, distribution, supply, sale or possession of body armour unless an exemption is provided by the Commissioner of Police. To obtain an exemption under this section an application is required to be made to the Commissioner of Police, who may issue a permit to allow a person to manufacture, distribute, supply, sell or possess body armour.

At the commencement of operational shifts, police officers are issued with ballistic vests as part of their equipment for performing their duties. Ballistic vests fall within the definition of body armour. Whilst section 15E currently allows a permit to be issued to any person by the Commissioner of Police to possess, manufacture, distribute, supply or sell body armour, it is considered that a specific legislative exemption should be provided for police officers.

The Bill provides an exemption for police officers to possess and use the body armour whilst acting in the performance of their duties. The Bill also allows the Commissioner of Police to exclude, in writing, a person, or group of persons from the application of subsection 15E(1).

Section 37MA – special compulsory penalty

In August 2010 the Chief Magistrate, Mr Michal Hill, raised an issue with the Attorney-General concerning section 37MA of the Act. This section was added to the Act in 2009 and relates to the special compulsory penalty for offenders convicted of committing prescribed offences under section 37K of the Act.

The current wording of the section 37MA(1) states:

- (1) A court that convicts a person of a prescribed offence must order the person to pay a special compulsory penalty.

It was the intent of the Parliament that the special penalty would only apply to convictions for prescribed offences where a vehicle was confiscated or clamped. This intent is clearly stated in the second reading speech and the previous Cabinet Minute that amended the Act. However, the current wording of the Act does not limit the special penalty to situations where clamping or confiscation occur. This effectively means that a person who is convicted of any prescribed offence, such as speeding at or in excess of 45km/h or disqualified driving (2nd occasion) must have the mandatory penalty of \$600 imposed where the vehicle is not confiscated or clamped.

The Bill amends this section to ensure that the special penalty provision only applies to convictions for prescribed offences where a vehicle is confiscated or clamped. The special penalty was requested and approved to provide funding to resource the clamping and confiscation process.

Section 37ZD – application for return or unclamping of vehicle

Section 37ZD relates to unclamping or recovery of a vehicle clamped or confiscated for a second or subsequent offence. Under this section a registered operator or owner may apply to the court for the unclamping or return of a vehicle. The court may order that the vehicle be returned or unclamped if satisfied that the clamping or confiscation will cause severe hardship.

When the original amendments were made to the Act in 2004, to provide for the confiscation of vehicles, a first offence only attracted a first confiscation period of 48 hours. The first offence was not included in section 37ZD at this time because, by the time the court received an application, the 48 hour confiscation period would have already expired and the owner would have their vehicle returned. The confiscation period was extended to 7 days in 2007, with the external review process not allowed for, again due to the return of the car before an application could be made to a court on most occasions.

In 2009 the confiscation, and now clamping, period for a first offence was extended from 7 days to 28 days for most prescribed offences. This occurred during the Parliamentary process for amendments to the *Police Offences Act 1935*, but failed to allow for the external review process that was in place for second and third confiscation periods.

The Bill amends this section to allow a person who has their vehicle clamped or confiscated for 28 days to apply to the court for the unclamping or return of their vehicle in line with the present wording of the section.

