

DRAFT SECOND READING SPEECH

HON. M. T. (RENE) HIDDING MP

Police Powers and Related Legislation (Evasion) Bill 2017

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Madam Speaker,

I move that the Bill now be read a second time.

The Bill contains amendments to the *Police Powers (Vehicle Interception) Act 2000*, the *Police Offences Act 1935* and the *Youth Justice Act 1997*. The amendments are a key Government priority and will enhance existing provisions for dealing with drivers and vehicles that evade police. Evading police has emerged as a significant safety problem for Tasmania Police and the whole Tasmanian community. Last year, the Government ordered a review of the evading police provisions as the law in this area had not been reviewed since the legislation was enacted in 2009. This resulting Bill will mitigate the incidences and inherent dangers posed by motorists driving recklessly or dangerously to avoid the police.

Madam Speaker, the offence of evading police was inserted into the *Police Powers (Vehicle Interception) Act 2000* in 2009. It prescribes that the driver of a vehicle must not take action to avoid apprehension or interception by a police officer exercising his or her powers or function under any Act. The penalty for the offence is a fine not exceeding 50 penalty units and/or imprisonment for a period not exceeding 12 months.

Madam Speaker, there is a significant disparity in penalties for a driver who evades police and is apprehended later, compared to a driver who stops and faces the immediate consequences of their behaviour.

In many cases, in Tasmania, penalties issued by the courts have historically been well below the statutory maximum penalties. Consequently, drivers who stop and face the consequences of their actions receive a higher penalty than drivers who evade police. It appears that the 'gap' between the two is encouragement for drivers to evade police. There needs to be a more significant deterrent, as drivers should not see any advantage in evading police, and repeat offenders should be discouraged from undertaking a cost benefit analysis of not stopping.

The Bill provides for an increase to the penalties for drivers, aged 17 years and over, who evade police in the form of an incremented (minimum and maximum) range of monetary penalties, term of imprisonment and driver licence disqualification. The penalty applied will correspond to the number of evading police offences the offender has committed.

A driver convicted of evading police on the first occasion will receive a fine ranging from 10 penalty units to 100 penalty units or up to two years imprisonment and driver licence disqualification for a period of 6 months to 3 years.

Where a driver is convicted for evading police on a second occasion, he or she will receive a fine ranging from 20 penalty units to 100 penalty units or up to two years

imprisonment, and driver licence disqualification for a period between 12 months and 5 years.

A driver who is convicted of evading police on a third or subsequent occasion faces a fine ranging from 20 penalty units to 100 penalty units or a period of imprisonment ranging between 6 months and 2 years, and driver licence disqualification for a period of 12 months to 5 years.

Drivers who evade police are often highly impulsive risk takers, who intentionally drive in a dangerous manner and pose a significant risk to the public.

In many cases when drivers evade police, the high risk driving behaviour begins immediately, by crossing to the incorrect side of the roadway, travelling at high speeds, even driving through red traffic lights. High risk driving behaviour is becoming an increasingly common occurrence in the group of drivers who choose to evade police.

Madam Speaker, in acknowledgement of the risks this particular driving poses to the community, this Bill will create a new offence and associated penalties for evading police where aggravated circumstances exist. This new offence will apply where there is an increased risk to public safety or the offence is in conjunction with other certain types of offending such as –

- The vehicle being driven is stolen;
- The vehicle is driven recklessly or negligently;
- The driver has alcohol or an illicit drug present in their breath or blood, in contravention of the *Road Safety (Alcohol and Drugs) Act 1970*;
- The driver has his or her driver licence suspended, cancelled or they were disqualified from driving; or
- The driver is taking action to avoid police as a result of committing an Appendix A or B crime under *Criminal Code Act 1924*, has breached a Police or Family Violence Order or is contravening a bail order.

Madam Speaker, the new offence of evading police with aggravated circumstances will remain a summary matter, however, it would attract firmer penalties than those proposed for evading police. For a first offence, a driver convicted of an aggravated evading police will receive a fine ranging from 20 penalty units to 100 penalty units, or a period of imprisonment ranging between 3 months, and 2 years and driver licence disqualification for a period of 2 to 5 years.

For a second offence or subsequent offence where aggravating circumstances exist, the driver would receive a fine and driver licence disqualification in the range provided for the first offence however the period of imprisonment will range between 6 months and 2 years.

In relation to the penalties imposed for evading police generally, the review also found that for the majority of evading police offences, penalties were incorporated with other offending and dealt with on a global basis. Where this occurred, the penalties for evading police were difficult to delineate and generally, did not attract a penalty commensurate with the general deterrent factor this type of offending requires. Determining evading police offences on an individual basis will provide sentence transparency, allow for accurate penalty appraisal and where appropriate, review and

appeal. To that extent, this Bill will require that where a person is convicted of an offence of evading police, the court is not to include the sentence for that offence as part of a general, or mixed sentence. Where a person is being sentenced for more than one offence, the court will be required to impose a separate sentence in respect to the evading police offence or offences.

Madam Speaker, in its current form, the Act allows a police officer to arrest an offender only where they are found offending. That is, they must be caught in the act and arrested at the time. This Bill proposes to include a power for arrest where there are reasonable grounds to believe the person has committed the offence of evading police. This authority will improve the ability of police to adequately deal with offenders who have not stopped and successfully evaded police. This change will empower police to locate and apprehend an offender after the event as well as prevent the destruction or loss of evidence.

Madam Speaker, where circumstances do not exist for police to engage in pursuit a vehicle and the driver successfully evades police, there is significant difficulty in identifying the driver.

In most situations, the car is located some hours or days later and police are unable to ascertain who the driver was that put the public in such danger. In these situation, the vehicle can be confiscated or clamped whilst investigations are commenced, however, the *Police Offences Act 1935* prescribes set periods of confiscation, after which the vehicle is released, regardless of whether the driver at the time of the offence has come forth or been identified. In situations where the vehicle is released without an offender being identified, the vehicle is often the subject of further offending because the operator or offending driver has escaped any liability for the offence.

To address this Madam Speaker, this Bill will amend the *Police Offences Act 1935* to allow for the continued clamping or confiscation of a vehicle that has initially evaded police, until the driver is identified. Where there is no driver identified, and a period of 6 months has lapsed, police may make an application to the court for forfeiture of the vehicle. The court may then order forfeiture, or order return of the vehicle to the owner.

The Bill further amends the *Police Offences Act 1935* to assist in the investigation of offences where the offending driver's identity is unknown. Currently, police rely on the service of a notice to the owner or registered operator of the vehicle which requires that person to disclose the identity and whereabouts of the driver at the time the offence was committed. Where the owner or registered operator of the vehicle chooses to not comply with the notice, and are subsequently charged for that offence, police must prove that the owner failed to take all reasonable steps to obtain that information.

The amendments to the driver demand legislation contained within *Police Offences Act 1935*, would require the owner or registered operator to establish to the court that he or she has taken all reasonable steps to ascertain the information required in respect to a driver demand.

This 'reverse onus' provision will enhance the capability of police to properly investigate evading police offences, identify offending drivers and correctly balances reasonable law enforcement efforts with the rights of the owner.

Where a person refuses or fails to nominate the offending driver they currently face a fine of up to 50 penalty units. It is common for owners to choose to not nominate the driver as the penalties imposed by the courts are considerably below the maximum, and are usually far less than the penalties associated for the original driving offence. Madam Speaker, as it stands, there is little incentive for an owner to provide useful or credible information to help police identify an offending driver, especially if they are that driver.

As a result, the Bill proposes to raise the penalty for a person convicted of failing to comply with a driver demand from a maximum of 50 penalty units to 100 penalty units and/or imprisonment for a term not exceeding 12 months.

Madam Speaker, where the offending vehicle from an evade offence is not intercepted at the time, police only have a period of 14 days from the time of the offence to find and clamp or confiscate the vehicle. My advice is that this time frame is insufficient, particularly given the fact that an owner has seven days from time of receiving a driver demand to provide such details, and then the police may still have to locate the vehicle within what is left of this short time frame. An amendment to the *Police Offences Act 1935* to increase the clamping or confiscation of a vehicle from 14 days to 28 days would be sufficient to overcome the difficulties associated with this very narrow time frame.

The *Police Offences Act 1935* also prescribes for the periods of vehicle clamping, confiscation and associated processes for evading police offences. This Bill amends the Act by stipulating periods of vehicle clamping and confiscation, and provisions for forfeiture where evading police offences have been committed.

The Bill proposes that where a person is evading police with aggravating circumstances, on a first occasion, the vehicle is clamped or confiscated for a period of 6 months. For a second offence the period is 12 months and where a person is convicted for evading police, on a third or subsequent occasion, whether or not the offence is with aggravated circumstances, the vehicle is automatically forfeited to the Crown. The Bill states that where this occurs, the Commissioner has the authority to sell or dispose of the vehicle in a way he considers appropriate.

And finally Madam Speaker, the Bill addresses the issue of youths committing evading police offences. Young persons are well represented for these offences and in most cases, there are aggravating factors such as excessive speed associated with the driving behaviour, some of which have ended in tragic circumstances. Currently, for a 17 year old, most traffic offences and other serious criminal offences are already 'prescribed offences' under the *Youth Justice Act 1997* and therefore determined in the Magistrates or Supreme Court. This Bill seeks to amend the *Youth Justice Act 1997* to include evading police as an offence for which a 17 year old may be dealt with as an adult.

In addition to 17 year olds, the Bill includes evading police as a 'prescribed offence' for youths aged 14 – 16 years, however, the mandatory minimum fines, imprisonment and periods of driver licence disqualification will not apply to youths in this age group.

Madam Speaker, the Government has a responsibility, where possible, to protect the community from dangerous criminal activities. Drivers evading police are a significant problem, not only in Tasmania but for law enforcement agencies across Australia. Drivers who evade police represent a significant danger to the public and the police and preventing drivers from committing these offences is a priority for this Government.

Investigations into evading police offences are currently obstructed by the limitations imposed by legislation, and that penalties handed down by the courts do not reflect the seriousness of the offending or dangers involved. This Bill goes a long way in addressing those deficiencies.

The Bill will become law on a date it receives Royal Assent.

I commend the Bill to the House.