

## CLAUSE NOTES

### *Police Powers and Related Legislation (Evasion) Bill 2017*

#### PART I – PRELIMINARY

**Clause 1: Short title**

Specifies the name of the proposed Act.

**Clause 2: Commencement**

Specifies that the Act commences on the day to be proclaimed.

**Clause 3: Repeal of Act**

This clause provides that the *Police Powers (Vehicle Interception) Amendment Act 2017* is repealed on the three hundred and sixty fifth day from the day on which it commences

#### PART 2 – POLICE POWERS (VEHICLE INTERCEPTION) ACT 2000 AMENDED

**Clause 4: Principal Act**

Specifies that the *Police Powers (Vehicle Interception) Act 2000* is referred to as the Principal Act.

**Clause 5: Section 11A amended (Evading police)**

This clause increases the penalties for drivers, aged 17 years and over, who evade police. Currently the penalty for evading police is a fine not exceeding 50 penalty units and/or imprisonment for a period not exceeding 12 months. The proposed penalty provisions provide an incremented range for the monetary penalty and term of imprisonment according to the number of prior evading police offences the offender has committed.

|                                |   |   |
|--------------------------------|---|---|
| First offence                  | Min. 10 penalty units –<br>Max. 100 penalty units | A period of not more than 2<br>years imprisonment |
| Second offence                 | Min. 20 penalty units –<br>Max. 100 penalty units | A period of not more than 2<br>years imprisonment |
| Third or subsequent<br>offence | Min. 10 penalty units –<br>Max. 100 penalty units | Min. 6 months – max. 2<br>years imprisonment      |

Clause 5 also inserts a new offence of evading police with aggravated circumstances, where there is an increased risk to public safety or the offence is in conjunction with other certain offending. Where the evading police offence is in conjunction with the following, the new provisions will apply:

- The vehicle being driven is stolen;
- The driver is driving the vehicle recklessly or negligently;
- The driver has alcohol present in his or her breath or blood in contravention of section 6 of the *Road Safety (Alcohol and Drugs) Act 1970*;
- The driver has an illicit drug present in his or her breath or blood in contravention of section 6A 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 Appendix B crime per the *Criminal Code Act 1924*, breaching a Police or Family Violence Order or contravening a bail order.

The clause sets the incremented penalty provisions according to the number of prior aggravated evading police offences the offender has committed.

|                                 |   |  |
|---------------------------------|---|--|
| First Offence                   | Min. 20 penalty units –<br>Max. 100 penalty units | Min. 3 months – max. 2<br>years imprisonment |
| Second or<br>subsequent offence | Min. 20 penalty units –<br>Max. 100 penalty units | Min. 6 months – max. 2<br>years imprisonment |

Clause 5 amends the current arrest provisions by extending the power for arrest to include where a police officer has reasonable grounds for believing a person has committed the offence of evading police.

In respect to the new aggravated evading police offence, when determining proceedings, Clause 5 permits the court, as an alternative, to find a person charged with this offence guilty of an ordinary evade police offence. This clause also permits the court to take into account, for the purpose of sentencing for evading police offences, any conviction for the offence of evading police (aggravated) as being an evade police offence.

Clause 5 requires 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 is required to impose a separate sentence in respect to the evading police offence/s.

Finally, Clause 5 prescribes that a period of driver licence disqualification be imposed for persons, who have attained the age of 17 years, convicted of evading police offences.

#### *Evading police*

|                             |  |
|-----------------------------|--|
| First offence               | Min. 6 month – max. 3 years<br>driver licence disqualification   |
| Second offence              | Min. 12 months – max. 5 years<br>driver licence disqualification |
| Third or subsequent offence | Min. 2 years – max. 5 years<br>driver licence disqualification   |

*Evading police (aggravated)*

|              |  |
|--------------|--|
| All offences | Min. 2 years – max. 5 years<br>driver licence disqualification |
|--------------|--|

A court that convicts a person for the offence of evading police, who has not attained the age of 17 years, may disqualify the person from driving.

Finally, the clause adds that section 46 of the *Youth Justice Act 1997* applies to a youth who has not obtained the age of 17. Section 46 states that mandatory fines and imprisonment do not apply to youths.

**PART 3 – POLICE OFFENCES ACT 1935 AMENDED**

**Clause 6: Principal Act**

Specifies that the *Police Offences Act 1935* is referred to as the Principal Act.

**Clause 7: Section 37G amended (Requirement of owner or registered operator to provide details)**

This Clause increases the penalties for the owner or registered operator of a vehicle who, in respect to an offence, fails to comply with the requirement of a driver demand, namely, providing the police the identity and whereabouts of a driver or occupant of their vehicle. The current penalty is a fine not exceeding 50 penalty units. The proposed penalty is a fine not exceeding 100 penalty units and/or imprisonment for a term not exceeding 12 months.

Clause 7 also reverses the onus of the owner or registered operator. The proposed amendment to this section will 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.

**Clause 8: Section 37N amended (Clamping and confiscation of vehicles)**

This section of the Act stipulates the processes and time frames allowed for police to locate a vehicle of the purpose of clamping or confiscation. This clause changes to number of days allowed to find a vehicle from 14 days following the time of the offence to 28 days.

**Clause 9: Section 37O amended (Period of clamping or confiscation for first prescribed offence)**

This section prescribes the period for which a vehicle may be clamped or confiscated for a first prescribed offence. This clause amends that section by including the 6 month clamping or confiscation period for a vehicle used in connection with an aggravated evade police offence.

**Clause 10: Section 37P amended (Period of clamping or confiscation for second prescribed offence)**

This section prescribes the period for which a vehicle may be clamped or confiscated for a second prescribed offence. This clause amends that section by including the 12 month clamping or confiscation period for a vehicle used in connection with an aggravated evade police offence.

**Clause 11: Section 37Q amended (Period of clamping or confiscation for third or subsequent prescribed offence)**

This section prescribes the period for which a vehicle may be clamped or confiscated for a third or subsequent prescribed offence. Currently, a vehicle may be clamped or confiscated until the resolution of the charges for the offence/s and until the determination of any forfeiture order made to the court. This clause amends that section whereby the vehicle is automatically forfeited on conviction for the third or subsequent evading police (including aggravated) offence.

Clause 11 also authorises the Commissioner to sell or dispose of the vehicle in any way he or she considers appropriate.

**Clause 12: Sections 37QA and 37QB inserted**

*37QA. Period of clamping or confiscation for evasion vehicle*

This clause inserts a section for the clamping or confiscation of a vehicle involved in an 'evasion offence', where the driver is not known or has not been identified. The new provisions will allow for the continued clamping or confiscation until the driver of the vehicle, at the time of the evading offence, is identified or until a forfeiture application (new section 37QB) is determined. Police may make an application to the court for forfeiture of the vehicle after a period of 6 months has lapsed however, the vehicle must be unclamped/returned after 9 months where no such application is made.

Clause 12 also permits the use of existing sections relating to clamping and confiscation where a driver has been identified after this section has been applied.

*37QB. Evasion vehicle may be forfeited*

This Clause outlines the pre requisites and processes for applying to the Court for a forfeiture order under this section, that is, where the driver of the vehicle at the time of the offence has not been identified and a period of 6 months has lapsed.

Clause 12 also outlines the orders a court may make and provides for the owner or registered operator of the vehicle to make a submission to the court that the vehicle should not be forfeited.

**Clause 13: Section 37T amended (Notice of clamping or confiscation to be given)**

This section relates to the written notice that is provided to persons when a vehicle is clamped or confiscated and specifies the information to be contained within that notice. This amendment includes the provisions for a notice where an evasion vehicle is clamped (per the new section 37QA).

**Clause 14: Sections 37VA inserted (Content of notice for evasion offence)**

Section 37VA outlines the requirements of a notice where an evasion vehicle is clamped (per the new section 37QA). In addition to the requirements for notices issued in respect to other clamping and confiscation provisions, notices under this section make reference to the new forfeiture applications where the driver has not been identified.

**Clause 15: Section 37ZC amended (Unclamping or recovery of vehicle clamped or confiscated for prescribed offence)**

This section relates to the process for unclamping or recovery of a vehicle and is amended to include the notice provided for under the new section 37VA – evasion offence.

**PART 4 – YOUTH JUSTICE ACT 1997 AMENDED**

**Clause 16: Principal Act**

Specifies that the *Youth Justice Act 1997* is referred to as the Principal Act.

**Clause 17: Section 3 amended (Interpretation)**

Section 3 of the Act refers to 'prescribed offences' in respect to youths of certain ages. This Clause amends that section to include the offence of evading police as a 'prescribed offence' for a youth who is 14 - 17 years old.