

POLICE MISCELLANEOUS AMENDMENTS BILL 2009

POLICE OFFENCES (CONFISCATION OF VEHICLES) REGULATIONS 2009

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CLAUSE NOTES

Background:

The Bill and regulations introduce legislation to accord with the Tasmania *Together* Community Goal, 'to have confident, friendly and safe communities', and to address emerging community issues and concerns.

POLICE MISCELLANEOUS AMENDMENTS BILL 2009

PART 1 – PRELIMINARY MATTERS

Clause 1: Short title

Specifies the name of the proposed Act.

Clause 2: Commencement

Specifies this Act commences on a day to be proclaimed.

PART 2 – POLICE OFFENCES ACT 1935 AMENDED

Clause 3: Principal Act

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

Clause 4: Section 3 amended (Interpretation)

Section 3 is amended by inserting the following definitions:

“motor vehicle” has the same meaning as in the *Vehicle and Traffic Act 1999*;

“public street” has the same meaning as in the *Traffic Act 1925*;

“trailer” has the same meaning as in the *Vehicle and Traffic Act 1999*.

Clause 5: Section 25 amended (Consumption of liquor in streets, &c.)

This clause removes the definitions of “motor vehicle” and “public street” from section 25, as they are being included within the Interpretation section of the Act, section 3.

Clause 6: Section 37A amended (Interpretation)

Section 37A is amended by inserting the definition of “owner”:

“owner”, when used in reference to a motor vehicle or trailer, means –

(a) a person registered in the record of motor vehicles and trailers kept in accordance with section 41 of the *Vehicle and Traffic Act 1999* as the owner of the vehicle or trailer; or

(b) a person who is a joint owner or part owner of the vehicle or trailer –

and includes any other person –

(c) who has the use of the vehicle or trailer under a lease or hire purchase agreement; or

(d) to whom the vehicle or trailer has been sold or otherwise disposed of by a previous registered owner who has complied with the relevant provisions of the *Vehicle and Traffic Act 1999*; or

(e) whom a police officer reasonably believes is the owner of the motor vehicle or trailer.

Clause 7: Sections 37G, 37GA and 37GB inserted

Section 37G Requirement to provide details of owner or registered operator

This clause provides that where a person is alleged to have committed an offence against any State or Commonwealth legislation, as the driver or occupant of a vehicle, the owner or registered operator, on demand by a police officer, must give to the officer all information the officer requires as to the identity and whereabouts of the driver or occupant of the vehicle at any time relevant to the charge. The penalty for not providing all such known details is a fine not exceeding 50 penalty units.

A police officer may make this demand orally or by serving a notice of demand on the owner or registered operator. If the officer makes the demand orally, the police officer is to ensure that a notice of demand is served on the owner or registered operator as soon as is reasonably practicable.

Where an owner or registered operator has been served with a notice of demand and does not know the details of the driver or the occupant, they are to take all reasonable steps to obtain the details of the driver or occupant, and must report the steps taken to a police officer within 7 days of receiving a demand. The penalty for not complying with this section is a fine not exceeding 50 penalty units.

The owner or registered operator must also provide any details which may lead to the identification of the driver or occupant of the vehicle. The penalty for failing to provide such details is a fine not exceeding 50 penalty units.

Section 37GA Notice of Demand

This section provides that where a police officer is satisfied that the driver or an occupant of a vehicle has committed an offence, the police officer may serve a notice of demand on the owner or registered operator of that vehicle.

The clause stipulates that a notice of demand must indicate the offence to which it relates, the registration number of the vehicle that was involved, and that the owner or registered operator has 7 days to respond to the notice of demand.

A response to a notice of demand is to be provided in the form of a statutory declaration and provide details of the name, address, and if known the date of birth and licence number of the driver or occupant of the vehicle at the time of the offence.

Where the owner or registered operator does not know the driver or occupant details, they are to provide a statutory declaration stating any information that may lead to the identification of the driver or occupant of the vehicle, or provide details of the reasonable steps taken by them to obtain the driver or occupant details.

An owner or registered operator must comply with a notice of demand. The penalty for not complying with a notice of demand is a fine not exceeding 50 penalty units.

Section 37GB Statutory declaration naming driver or occupant of vehicle

This section provides that a statutory declaration, made by an owner or registered operator, naming the driver or occupant of the vehicle at the time of an offence is *prima facie* evidence that the person named was the driver or occupant of the vehicle at that time.

Clause 8: Section 37K amended (Interpretation of Division)

This clause amends section 37K by omitting the definition of “prescribed offence” and replacing it with:

“prescribed offence” means an offence –

- (a) against section 14B involving the use of a vehicle, vessel or aircraft; or
- (b) against section 15B involving the use of a motor vehicle; or
- (c) against section 37J; or
- (d) against section 48; or
- (e) against section 32 of the *Traffic Act 1925*; or
- (f) against section 11A of the *Police Powers (Vehicle Interception) Act 2000*; or
- (g) that is prescribed by the regulations for the purposes of this Division.

This clause adds the offences of reckless or dangerous driving, and the new offence of evading police to the ‘prescribed offences’ for which a motor vehicle may be confiscated. The clause also adds a confiscation authority for any offence that is prescribed by regulation.

The offences of reckless and dangerous driving, contained in section 32 of the *Traffic Act 1925*, do not result in immediate licence disqualification or the issue of an

infringement notice and are usually dealt with before a court some time after the actual event. This clause will now allow a motor vehicle involved in such an offence to be confiscated immediately.

Clause 9: Section 37N amended (Confiscation of vehicles)

This clause amends section 37N of the Act, by increasing the number of days permitted, after the occurrence of a prescribed offence, for a police officer to locate and confiscate a motor vehicle. The increase is from 10 days to 14 days.

The *Police Offences Regulations 2009* prescribes the offence of speeding, where the prescribed speed limit is exceeded by 45km/h or more, as an offence which will allow a police officer to confiscate a motor vehicle under Division 2 of Part IVA of the Act. This will also authorise the confiscation of a motor vehicle detected by a photographic detection device. This clause will allow time for the processing of photographs from photographic detection devices, which is required before a vehicle can be identified as having committed the prescribed speeding offence.

Clause 10: Section 37U amended (Content of notice for first offence)

This clause amends section 37U by omitting “48 hours” and substituting “7 days”. This amendment ensures that all sections within Part IVA are consistent in detailing that a vehicle is confiscated for a period of 7 days on the commission of a first prescribed offence.

Clause 11: Section 37ZC amended (Recovery of vehicle confiscated for first prescribed offence)

This clause amends section 37ZC by omitting “48 hours” and substituting “7 days”. This amendment ensures that all sections within Part IVA are consistent in detailing that a vehicle is confiscated for a period of 7 days on the commission of a first prescribed offence.

Clause 12: Section 47 amended (Interpretation)

This clause omits the definition of “motor vehicle” from this section. The definition is now provided within section 3 of the Act.

PART 3 – POLICE POWERS (VEHICLE INTERCEPTION) ACT 2000 AMENDED

Clause 13: Principal Act

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

Clause 14: Section 3 amended (Interpretation)

Section 3 is amended by inserting the definition of “owner”:

“owner”, when used in reference to a motor vehicle or trailer, means –

(a) a person registered in the record of motor vehicles and trailers kept in accordance with section 41 of the *Vehicle and Traffic Act 1999* as the owner of the vehicle or trailer; or

(b) a person who is a joint owner or part owner of the vehicle or trailer –

and includes any other person –

(c) who has the use of the vehicle or trailer under a lease or hire purchase agreement; or

(d) to whom the vehicle or trailer has been sold or otherwise disposed of by a previous registered owner who has complied with the relevant provisions of the *Vehicle and Traffic Act 1999*; or

(e) whom a police officer reasonably believes is the owner of the motor vehicle or trailer.

Clause 15: Section 11A inserted

This amendment provides for the new offence of evading police. It provides that a driver must not take action to avoid apprehension or interception by a police officer who is exercising his or her powers or performing his or her functions under any Act.

The penalty for this offence is a fine not exceeding 50 penalty units or imprisonment for a period not exceeding 12 months, or both. In addition to this penalty, the amendment also provides that, where a person is convicted of the offence of evading police, the court may disqualify the offender from driving for a period not exceeding 2 years.

The clause also provides a power of arrest, without warrant, for any person found offending.

POLICE OFFENCES (CONFISCATION OF VEHICLES) REGULATIONS 2009

PRELIMINARY MATTERS

Clause 1: Short title

Specifies that these regulations may be cited as the *Police Offences (Vehicle Confiscation) Regulations 2009*.

Clause 2: Commencement

Specifies that these regulations take effect on the day on which the *Police Miscellaneous Amendments Act 2009* commences.

Clause 3: Interpretation

Specifies that in these regulations:

“Act” means the *Police Offences Act 1935*;

“photographic detection device” has the same meaning as in the *Vehicle and Traffic Act 1999*;

“speeding offence” has the same meaning as in the *Vehicle and Traffic Act 1999*.

Clause 4: Prescribed offences

This clause prescribes, for the purpose of Division 2 of Part IVA of the Act, the offence of speeding where the prescribed speed limit is exceeded by 45km/h or more.

The clause also provides that a police officer may find a person committing such a speeding offence as a result of the examination of a photograph from a photographic detection device.

This clause authorises police to confiscate vehicles that are detected speeding (whether by photographic detection device or other means), where the prescribed speed limit is exceeded by 45km/h or more.

POLICE OFFENCES (CONFISCATION OF VEHICLES) AMENDMENT REGULATIONS 2009

PRELIMINARY MATTERS

Clause 1: Short title

Specifies that these regulations may be cited as the *Police Offences (Confiscation of Vehicles) Amendment Regulations 2009*.

Clause 2: Commencement

Specifies that these regulations take effect on the day on which their making is notified in the Gazette.

Clause 3: Principal Regulations

This clause specifies that the *Police Offences (Confiscation of Vehicles) Regulations 2009* are referred to as the Principal Regulations.

Clause 4: Regulation 4 amended (Prescribed offences)

This clause amends Regulation 4 of the Principal Regulations. The amendment includes the addition of prescribed offences for the purposes of Division 2 of Part IVA of the Act. It provides that where an offender commits the offence of drive while disqualified, under the *Road Safety (Alcohol and Drugs) Act 1970* or the *Vehicle and Traffic Act 1999*, and has been charged on at least one previous occasion with an offence of drive while disqualified, the authorities provided under Division 2 of Part IVA of the Act apply.

This clause will provide police with the authority to confiscate the vehicle used in the offence of drive while disqualified when the offender is apprehended on the second occasion.