

ROAD TRAFFIC LEGISLATION AMENDMENT BILL 2014

Council's Amendments — Consideration in Detail

[Quorum formed.]

The following amendments made by the Council now considered —

No 1

New Clause 17, page 7, after line 26 — To insert —

17. Section 21 replaced

Delete section 21 and insert:

21. Section 78A amended

- (1) In section 78A in the definition of *impounding offence (driver's licence)* delete paragraph (b) and insert:
 - (b) an offence against the *Road Traffic (Authorisation to Drive) Act 2008* section 38(1)(a); or
- (2) In section 78A in the definition of *senior police officer* delete “person appointed under the *Police Act 1892* Part I to be a member of the Police Force of Western Australia” and insert:

police officer

No 2

New Clause 18, page 7, after line 26 — To insert —

18. Section 37 amended

In section 37 in the Table in the 4th row delete “s.59B(3)(c)”.

No 3

New Clause 19, page 7, after line 26 — To insert —

19. Section 232 amended

In section 232 in the Table in the 2nd row delete “s.12(1) def. of *permit*”.

No 4

New Part 7, page 7, after line 26 — To insert —

Part 7 — Road Traffic (Miscellaneous Amendments) Act 2012 amended

20. Act amended

This Part amends the *Road Traffic (Miscellaneous Amendments) Act 2012*.

21. Section 12 amended

In section 12 delete “49AB(1)(c), 53(1) and (2A), 60(1c)(a)(i)” and insert —
49AB(1)(c)

Mrs L.M. HARVEY: I move —

That amendment 1 made by the Council be agreed to.

Mrs M.H. ROBERTS: I think the simplest way for us to make good progress would be for the minister to explain each of the four amendments. Could the minister explain the import of amendment 1, how it originated and why it is before us tonight?

Mrs L.M. HARVEY: I am pleased to do so. I will give the member some background on proposed new clause 17, “Section 21 replaced”. In the second quarter of this year, it was proposed that a suite of road traffic legislation known as the compliance and enforcement—C&E—legislation would be proclaimed to come into effect. The C&E legislation will see the current road traffic legislation separated into four primary acts, being the Road Traffic Act 1974, the Road Traffic (Vehicles) Act 2012, the Road Traffic (Authorisation to Drive) Act 2008 and the Road Traffic (Administration) Act 2008.

However, during preparations for the implementation of the C&E legislation, it was discovered that several drafting omissions had been made. The Road Traffic Legislation Amendment Bill 2014 already contained a number of small amendments designed to account for these changes as a result of the C&E legislation and in addition to amendments allowing for increases to regulatory offence penalties. Some consultation occurred with

WA Police, the Department of Transport, the Office of Road Safety and Parliamentary Counsel's Office, and it was concluded that the best solution was for these amendments to be made in committee, and the Legislative Council has now passed those amendments, resulting in the message currently before the house.

Mrs M.H. Roberts: Just on that, is the minister confirming that that is a government-initiated amendment?

Mrs L.M. HARVEY: Yes, it is, and these are somewhat technical amendments to a degree.

With respect to proposed new clause 17, when a person drives contrary to the time, purpose or locality conditions of their extraordinary driver's licence, they are liable for an offence under section 77(1)(a) of the Road Traffic Act 1974—RTA—and their vehicle may be immediately impounded for 28 days. Once the C&E legislation is proclaimed to come into effect, the offence of driving contrary to the time, purpose or locality conditions on the extraordinary licence will no longer be contained in section 77(1) of the RTA but, instead, will be an offence under section 38(1)(a) of the Road Traffic (Authorisation to Drive) Act 2008. Section 78A of the RTA provides the definition of "impounding offence (driver's licence)".

This definition includes the mentioned offence of driving contrary to the time, purpose or locality conditions of an extraordinary licence created by section 77(1)(a). As no corresponding amendment is being made to the definition in section 78A in the C&E legislation, the effect will be that this offence no longer falls within the definition of an impounding offence (driver's licence). Consequently, it would be unlawful for the vehicle to be impounded at the roadside, which was not the policy intent. This clause amends section 21 of the Road Traffic Legislation Amendment Act 2012 to rectify the definition of "impounding offence (driver's licence)" in section 78A of the Road Traffic Act to include reference to the offence of driving contrary to the time, purpose or locality conditions of an extraordinary licence created by section 38(1)(a) of the Road Traffic (Authorisation to Drive) Act 2008. This will allow for roadside impoundment to continue in situations in which a person has driven contrary to the time, purpose or locality conditions of an extraordinary licence.

Mrs M.H. ROBERTS: This amendment deletes section 21 and proposed new section 21(2) states —

In section 78A in the definition of *senior police officer* delete "person appointed under the *Police Act 1892* Part I to be a member of the Police Force of Western Australia" and insert:

police officer

Why has it been determined that it should be amended to "police officer" as opposed to "senior police officer"? How did that part of the amendment originate?

Mrs L.M. HARVEY: That is actually consistent with changes to the definitions. Previously, where there were references to "person appointed under the Police Act 1892 Part I to be a member of the Police Force of Western Australia", we have been replacing that definition with the definition "senior police officer".

Mrs M.H. ROBERTS: Just very quickly further on that, it would appear that it is it being amended to just "police officer" rather than "senior police officer". Could the definition of "police officer" also include auxiliary officers, so that rather than a senior police officer performing this function, it could well be an auxiliary officer?

Mrs L.M. HARVEY: That is because the definition of "police officer" was changed under the Interpretation Act, which occurred along the way. "Police officer" does in fact replace the term "senior police officer" in the terminology I previously referred to.

Mrs M.H. ROBERTS: Does that definition of "police officer" include auxiliary or limited power officers?

Mrs L.M. HARVEY: I would have to check the Interpretation Act, and I do not have that available to me at present. I am not quite sure how the member would like to handle this; would she like to hold this amendment in abeyance while we check the definition under the Interpretation Act and move on to the second amendment?

Mrs M.H. ROBERTS: I do think this is a very important issue. As the minister is aware, auxiliary officers have very limited powers and I am not sure whether these powers would really be appropriately exercised by auxiliary officers. As such, I would like to have that information; I think it would be worthwhile. I am quite happy to go on if the minister wants to hold this amendment in abeyance.

Mrs L.M. HARVEY: My advisers are going to check the Interpretation Act. However, my expectation is that, in this instance, given that it is in respect of a driver's licence impounding offence, it would in fact be a police officer rather than an auxiliary officer, but we will check the definition under the Interpretation Act.

Mrs M.H. ROBERTS: The issue is that I fully expect that the Commissioner of Police or whoever is delegated by the Commissioner of Police to allocate the person would be highly unlikely to appoint an auxiliary officer to that power. However, if that is the case, I do not think the legislation should permit it.

Mrs L.M. HARVEY: Just to clarify, under the Interpretation Act, a “police officer” means a person appointed under part I of the Police Act 1892 to be a member of the police force of Western Australia.

Mrs M.H. ROBERTS: The point the minister has not clarified is whether that includes auxiliary officers. Can the minister confirm that or not?

Mrs L.M. HARVEY: No, police auxiliary officers are appointed under a different section of the Police Act, so that would not include police auxiliary officers.

Question put and passed; the Council’s amendment agreed to.

Mrs L.M. HARVEY: I move —

That amendment 2 made by the Council be agreed to.

What this amendment does is detailed on the notice paper. To give some background, prior to 2012, section 59B(3) of the Road Traffic Act provided circumstances of aggravation for the offences of dangerous driving causing death, grievous bodily harm or bodily harm in sections 59 and 59A of the RTA. The section was deleted and replaced in 2012 with equivalent provisions in section 49AB of the RTA by the Road Traffic (Miscellaneous Amendments) Act 2012. The amendment widened the application of circumstances of aggravation to include pursuit-related offences under RTA section 53(2)(a). Section 37 of the Road Traffic Legislation Amendment Act 2012 amends numerous provisions within the RTA to update the term “member of the police force”, replacing it with the term “police officer”. The term “police officer” is defined in section 5 of the Interpretation Act 1984. One of the sections to be amended by section 37 is the deleted RTA section 59B(3)(c). It is not possible to amend a deleted section and accordingly, this clause will remove the amendment.

Question put and passed; the Council’s amendment agreed to.

Mrs L.M. HARVEY: I move —

That amendment 3 made by the Council be agreed to.

This amendment reads —

New Clause 19, page 7, after line 26 — To insert —

19. Section 232 amended

In section 232 in the Table in the 2nd row delete “s.12(1) def. of *permit*”.

Section 12 of the Road Traffic Legislation (Administration) Act 2008 will be replaced by section 19 of the Road Traffic Legislation Amendment (Information) Act 2011 upon commencement of the chain of responsibility legislation. The amendment is consequential to amendments made in 2011 to the Road Traffic Act to facilitate road traffic information sharing between the Department of Transport and WA Police. The amendment brings the Road Traffic (Administration) Act 2008 into line with the equivalent provision that it will replace in the RTA. Section 232 of the Road Traffic Legislation Amendment Act 2012 seeks to amend various sections in the Road Traffic (Administration) Act 2008, including section 12.

The purpose of this amendment is to update references in the act to the Road Traffic (Vehicles) Act 2012. Currently, the act incorrectly references the “Road Traffic (Vehicles) Act 2008”. This is because at the time of passing the Road Traffic (Administration) Act 2008, all the chain of responsibility acts were expected to pass. However, the Road Traffic (Vehicles) Act 2012 did not pass until 2012. Therefore, the replacement of section 12 of the Road Traffic (Administration) Act 2008 no longer contains a definition of “permit” and section 232 of the Road Traffic Legislation Amendment Act 2012 seeks to amend the above matter. This clause will remove the amendment.

Mrs M.H. ROBERTS: I note the deletion of the definition of “permit”. What kind of permits are being referred to?

Mrs L.M. HARVEY: Any sort of permits, such as learner’s permits.

Question put and passed; the Council’s amendment agreed to.

Mrs L.M. HARVEY: I move —

That amendment 4 made by the Council be agreed to.

This is another consequential amendment to explain new clause 21. There is a new part 7, clause 20. This clause provides that the new part 7 amends the Road Traffic (Miscellaneous Amendments) Act 2012. As previously discussed, this is a consequential amendment of the title. New clause 21 deals with section 12 of the Road Traffic (Miscellaneous Amendments) Act 2012 and amends sections 49AB(1), 53(1)(c), and (2A), 60(1c)(a)(i) and 61A(1)(a) —

Mrs M.H. Roberts: Are they actually deleted not amended?

Mrs L.M. HARVEY: It amends them. It amends those sections of the Road Traffic Act to update the term “member of the police force” and replaces it with the term “police officer”. The term “police officer” is defined as previously mentioned in section 5 of the Interpretation Act 1984. Of the sections to be amended by this provision, two are affected by other amendments that are to commence concurrently. Section 53 of the Road Traffic Act is to be deleted by section 11 of the Road Traffic Legislation Amendment Act 2012 and the same amendment will be made to section 60(1c)(a)(i) of the Road Traffic Act by the Road Traffic Legislation Amendment Act 2012 in the tabled section 37. This clause removes the duplicate amendments in section 12 of the Road Traffic (Miscellaneous Amendments) Act 2012.

Mrs M.H. ROBERTS: The minister has said that she is amending all those numbers she read out—49AB(1)(c) 53(1), and (2A). The notice paper actually states that those sections will get deleted and replaced with 49AB(1)(c). I am a bit puzzled about that. The minister again said that this reaffirms the definition of “police officer” under, I think, section 5 of the Interpretation Act. Based on the minister’s earlier comments, it would again seem that the minister is claiming that auxiliary officers are not included within that definition under the Interpretation Act. I think that is contrary to other advice provided in this house on previous occasions. I wonder whether the minister can refer me to the evidence she has that the definition of “auxiliary officer” is not included in the definition of “police officer”. As members know, auxiliary officers are sworn officers under the Police Act.

Mrs L.M. HARVEY: Effectively, this amends an amendment due to duplication in other acts. We will check the section, but I believe we referred to the term “police officer” as defined in section 5 of the Interpretation Act, which is consistent with what I referred to earlier when we were considering amendment 1.

Mrs M.H. ROBERTS: Can the minister put on the record how it is defined in section 5 of the Interpretation Act?

Mrs L.M. HARVEY: It is referred to as officers “appointed under Part I of the Police Act 1892”.

Mrs M.H. ROBERTS: Under what part are auxiliaries appointed?

Mrs L.M. HARVEY: Auxiliary officers are referred to under part IIIB.

Question put and passed; the Council’s amendment agreed to.

The Council acquainted accordingly.

House adjourned at 8.54 pm
