

ROAD TRAFFIC LEGISLATION AMENDMENT (DISQUALIFICATION BY NOTICE) BILL 2010

Committee

Resumed from an earlier stage of the sitting. The Chairman of Committees (Hon Matt Benson-Lidholm) in the chair; Hon Simon O'Brien (Minister for Transport) in charge of the bill.

Clause 7: Section 66 amended —

Committee was interrupted after the clause had been partly considered.

Hon ALISON XAMON: I have a couple of questions on clause 7. The first one I want to ask is whether any figure is available to indicate the percentage or number of people who immediately opt for a blood test, for whatever reason. I articulated earlier that there could be three reasons, two of which we would consider legitimate and one of which perhaps we would not consider legitimate, for trying to opt for a blood test. Is any information available on the percentage or number of people who decline a breathalyser and request instead a blood test? I want an indication of how much of a problem this issue currently is.

Hon SIMON O'BRIEN: No, I cannot provide figures on that; they are simply not kept. We do know—this figure has been used before—that about 413 blood tests were done out of a massive 210 000 or so preliminary tests. Of the 413 blood tests, though, it is not possible to work out what they were all for or whether they were initiated by the person having the test. That figure also includes, as I understand it, tests done on people injured in accidents to see what their blood alcohol total was. We would therefore be purely guessing. One thing I might indicate, which might help the member, is that regular expressions of frustration come in from officers in the field about the adequacy of the current legislation. They are frustrated in hospital situations when the four-hour time limit expires while they are waiting to get a blood test done, so that it all comes to nought and everyone has wasted their time. But I have nothing more than that, sorry.

Hon ALISON XAMON: The minister might be pleased to know that he did answer my question because I was not asking for a breakdown of the reasons why people opted for a blood test.

Hon Simon O'Brien: Right; good.

Hon ALISON XAMON: I was interested to just get an idea of how many opted for a blood test. Clearly the data is not available to indicate why people opt out of a breathalyser. Whether it be because of disability or because people try to illegitimately avoid detection is neither here nor there. The minister therefore did answer my question, although it was interesting to hear that the figure cited also includes passengers in vehicles.

Hon Simon O'Brien: No, it is drivers. Some being tested might be traffic accident victims.

Hon ALISON XAMON: I thank the minister for that.

Hon Simon O'Brien: It is not that they have opted for a blood test; it is just what else do they do?

Hon ALISON XAMON: I thank the minister for clarifying that. I suppose this issue will probably arise in future clauses as well. Although the Greens are happy to support this clause because, on the face of it, there is sound reasoning behind it, anecdotal evidence is always a concerning factor by which to ordinarily look at changes of law. In this instance it would seem that the change is sound on its own terms, but this is something that certainly will arise in debate on future clauses, particularly when we talk about extraordinary drivers' licences.

Mr Chair, if I can please raise another issue as well; that is, the issue raised in the second reading speech about any potential concerns that may arise as a result of *Clarke v Smoothy*. This was brought to my attention by a lawyer who works extensively defending matters around drink-driving. He did not make a clear statement that in his opinion there would be a conflict, but he was certainly concerned that potentially there could be. Is it foreseen that there is the potential for an issue in the future if there happens to be a breathalyser test and a blood test, or is the purpose of this proposed change to ensure that there is only ever one test that can be relied on, whether it be a breath test or whether it be a blood test? Can I have some comment on that, please?

Hon SIMON O'BRIEN: Mr Chairman, the member probably does not need to concern herself with this particular provision by reference to *Clarke v Smoothy*. On that occasion I am advised that the defence failed because the defendant tendered a sample but did not tender any evidence to persuade the court that the breath analysis was wrong. The evidence of the blood analysis result should have been preferred. That was why the court rejected that—not because there is a presumption that only one source can provide evidence but that any evidence provided from either side has to be tendered in the proper way. If in this case, say, the defence were to assert that its sample should be taken ahead of the official one, the defence should also demonstrate why the official one should have been inadequate for the purposes of the court. Be that as it may, because that is

historical, the member can take some comfort in section 70(4), which is already in the act, of course, in the following terms —

Nothing in this section shall be construed as precluding or restricting the introduction of any competent evidence, whether in addition to, or independent of, any evidence for which provision is made by this section, bearing on the question of whether a person was or was not guilty of an offence against this or any other Act.

In so far as the member's question related to whether sample evidence can come from only one source, the answer is no; it can come from multiple sources.

Clause put and passed.

Clauses 8 and 9 put and passed.

Clause 10: Section 67 amended —

Hon ALISON XAMON: My understanding is that clause 10 is the provision that gives effect to the capacity for arrest for refusal to undertake a breath test. Can the minister confirm that that is the nature of that clause?

Hon Simon O'Brien: Yes.

Hon ALISON XAMON: I want to express some concerns about this provision. As I said in my second reading contribution, there are some fundamental differences between the provisions in clause 6 and clause 10 in that issuing an arrest for someone who has a breath alcohol reading that indicates that person is a drink-driver is very different from arresting someone who refuses to undertake a test. I am interested to hear the rationale on why it is deemed that that is an appropriate way to deal with that matter. It certainly seems a harsh response to a refusal to undertake a breath test.

Hon SIMON O'BRIEN: I note that we have already dealt with clause 6, which amends section 64 of the Road Traffic Act, as the member pointed out, to deal with what I might call the active offence of drink-driving. Clause 10 proposes to amend section 67 to make a similar provision, but in this case for the offence of refusing to comply with the requirement to provide a breath, blood or urine sample. There are similar relationships between offences elsewhere in existing provisions of the Road Traffic Act, such as the offence of driving with an alcohol reading of .08 and the offence of refusing to take a test, which provides for a similar penalty. The basis of that is the presumption that failure to be tested for the first offence is just as serious as committing the first offence. The link is that it is presumed that people would refuse to be tested because they know that they are guilty and if they submit to the test, they will be found out. Section 67 of the Road Traffic Act provides for this offence for which we now propose the power to arrest without warrant and relates, in the sense that I have just described, to section 63. That section, as it stands currently, provides for arrest without warrant for driving under the influence of alcohol or drugs et cetera. That power is already there. It is not dissimilar to an existing provision and this new provision brings it in line with the equivalent that is already in another section of the act.

Progress reported and leave granted to sit again, pursuant to temporary orders.