

**ROAD TRAFFIC (MISCELLANEOUS AMENDMENTS) BILL 2012**

*Receipt and First Reading*

Bill received from the Assembly; and, on motion by **Hon Michael Mischin (Attorney General)**, read a first time.

*Second Reading*

**HON MICHAEL MISCHIN (North Metropolitan — Attorney General)** [10.21 pm]: I move —

That the bill be now read a second time.

The government is concerned about the behaviour of people seeking to evade pursuit by police on our roads. Since 2009, the number of recorded incidents of people evading police pursuit has more than doubled. In 2011–12 there were 327 such pursuits. There are a range of reasons why people fail to stop when called upon to do so by a police officer. They may be concerned that they will be apprehended for other serious criminal activity, they may be in possession of a stolen vehicle or simply engaged in thrill-seeking behaviour. Whatever the reason, when a person decides to evade a police officer in a motor vehicle, it is an extremely dangerous course of action that poses a significant risk to the police officers and to all other road users and bystanders who unwittingly find themselves in the path of the pursuit, as well as to the individuals evading police themselves. In 2011–12, there were six incidents of death or serious injury arising out of police pursuits.

Whenever a person fails to stop when called upon to do so by a police officer, police are placed in an extremely difficult position, in which they have to weigh up the increased risk to themselves and other road users if they do pursue, against the potential negative outcomes if they do not pursue, or break off a pursuit. These are extremely difficult decisions for police officers to make. Similar considerations apply to police officers whenever they are required to engage in emergency driving, for example, to respond to offences or to deal with any other situation where life or property may be in imminent danger.

This bill seeks to do two things in relation to pursuits and emergency driving. Firstly, it seeks to ensure that police officers who engage in pursuits and other forms of emergency driving have better legal protections than is presently the case. The government is conscious that only a limited and inconsistent protection from criminal liability is currently afforded to police officers who seek to pursue and apprehend individuals, or who are responding to a range of other situations that occur out on our roads and in our community. Currently, police officers responding to such situations have conditional protection from only the minor driving offences in the Road Traffic Code 2000 and limited protection from the offence of speed-related reckless driving under the Road Traffic Act 1974. However, in the event that an accident occurs while the officer is responding to a situation they may find themselves liable under the dangerous driving and reckless driving provisions of the Road Traffic Act 1974. This demonstrates a considerable disparity between the commitment expected of police officers to put themselves at risk to protect the community from danger and the protection afforded to them when doing so.

The Road Traffic (Miscellaneous Amendments) Bill inserts a new section into the Road Traffic Act 1974 that will provide an officer with a defence to prosecution for an offence against sections 59(1)(b), 59A(1)(b), 60(1) or 61(1). These sections of the Road Traffic Act 1974 relate to the offences of dangerous driving causing death or grievous bodily harm, dangerous driving causing bodily harm, dangerous driving and reckless driving. These are very serious offences, and, consequently, police officers may avail themselves of this defence only when specified circumstances apply. These include that the officer was driving whilst on duty, substantially complying with any policies, guidelines and directions issued by the Commissioner of Police in relation to the driving, and that in all the circumstances it was objectively reasonable and in the public interest that the officer drove in the relevant manner. The Commissioner of Police currently restricts the circumstances in which officers can engage in certain forms of risky driving, and issues directions in the form of policies and guidelines that ensure the risks attached to this driving are minimised. These include directions related to speed, the clearances and authorisations needed from senior officers, and the risk assessments that must be undertaken. These directions ensure that all officers balance the inherent risks of their driving against the public benefit and community expectations that police will provide a proportionate response in order to prevent crime and respond to emergencies.

The bill also amends the current protection given to police officers from the offence of speed-related reckless driving to reflect the same defence for sections 59(1)(b), 59A(1)(b), 60(1) or 61(1). This ensures that police officers are given a consistent defence throughout the legislation and allows officers to adequately respond to all situations that may occur on our roads, including determining the compliance of motorists with posted speed limits.

The second thing the bill seeks to do is ensure that the law appropriately recognises the gravity of offending behaviour on our roads, and the risks to other road users that result when people seek to evade a police pursuit. It

reflects the government's position that failing to stop when called upon to do so by a police officer is always a very serious matter, and that people who drive recklessly to evade police should be jailed, both in recognition of the wrongfulness of their actions and to ensure they cannot continue to put other road users at risk.

The bill inserts a new provision into the Road Traffic Act 1974 to create a circumstance of aggravation for the offences of reckless and dangerous driving and failing to stop, committed when a person is attempting to evade pursuit by police. Currently, a person who seeks to evade police pursuit but is not driving a stolen vehicle or does not cause death or injury can be charged with only the standard offences such as failing to stop or dangerous driving or reckless driving. These standard offences carry penalties that are not commensurate with the risk that the offender's actions have posed to the community. For this reason, mandatory minimum penalties have been inserted for these offences if they are committed when the person is attempting to evade pursuit by police. This includes a mandatory minimum penalty of \$5 000 and a licence disqualification for two years for failing to stop when called upon; 12 months' imprisonment for dangerous driving causing death or grievous bodily harm; six months' imprisonment for dangerous driving causing bodily harm; six months' imprisonment and two years' licence disqualification for a first and second offence of reckless driving; and six months' imprisonment and permanent licence disqualification for a third or subsequent offence of reckless driving.

Likewise, the bill will also impose increased maximum penalties for the offences committed when the person is evading police. This includes up to two years' imprisonment for failing to stop when called upon; up to three years' imprisonment or a fine of \$36 000 for dangerous driving; and up to five years' imprisonment for reckless driving. The bill also increases the maximum penalty applicable for the crime of dangerous driving causing bodily harm committed in circumstances of aggravation to 10 years' imprisonment in order to address a disparity with a like offence in the Criminal Code. The summary conviction penalty is also increased to three years' imprisonment or a fine of \$36 000. Finally, the fine penalties for the general offences of failing to stop and dangerous and reckless driving have been increased so as to better reflect contemporary standards and provide a realistic deterrent to such behaviour.

This bill demonstrates that the government recognises the value of the often dangerous work undertaken by police officers and affords them a reasonable degree of protection when carrying out what the community expects of them. It also ensures that individuals who have shown a willingness to put the lives of police officers and other road users at risk to further their own criminal behaviour are incapacitated in jail so they cannot continue to be a risk to the community. In doing so, it sends a strong message to the community that the actions of people who evade police are not acceptable and will not be tolerated.

Pursuant to standing order 126(1), I advise that this bill is not a uniform legislation bill. It does not ratify or give effect to an intergovernmental or multilateral agreement to which the government of the state is a party, nor does this bill, by reason of its subject matter, introduce a uniform scheme or uniform laws throughout the commonwealth.

I commend the bill to the house and table the explanatory memorandum.

[See paper 5331.]

Debate adjourned, pursuant to standing orders.

*House adjourned at 10.29 pm*

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