

## **LAW COMMISSION REPORT TO LAC**

### **Name of Bill**

Land Transport Amendment Bill (No 4) 164-1

### **Name of Advisor**

Janet November

### **Name of Commissioner**

Geoffrey Palmer

### **Report to LAC**

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### **Current Status of Bill**

Introduction 3 October; first reading

### **Nature & Size of Bill**

The Bill enhances the power of police to deal with drug-impaired drivers and inserts a new Part 17 that relates to the registration and licensing of motor vehicles.

62 clauses; 49 pages

## **LAC CHECKLIST**

### **1 Appropriate means of achieving the policy objective**

The legislative policy is to (a) enable police to prosecute a person driving under the influence of drugs successfully where driving is impaired and there is evidence of illegal drugs in the driver's blood, providing similar penalties to drink driving offences; (b) to establish a registration regime that permits use of register information that is consistent with the purposes of the motor vehicles register and certain other authorised purposes but also protects personal information on the register. (c) A further policy is to improve the quality of register information, particularly of current owners of vehicles.

These are both quite comprehensive amendments to the principal Act but seem quite clear. The drug-impaired driving offences involve amendments that are aligned to drink driving offences. The registration provisions involve significant changes in approach and in substance to the previous regime for the motor vehicles register. These are contained in a new Part 17 which replaces sections 18-20 of the Transport (Vehicle and Driver Registration and Licensing) Act 1986 (to be repealed by this legislation). Part 17 of the Land Transport Act seems an appropriate means of achieving the policy objective.

### **2 Understandable and accessible legislation**

The legislation seems clear and accessible

### **3 Basic principles of New Zealand's legal and constitutional system**

The legislation conforms with basic principles. However, there are a number of provisions which affect the rights of motor vehicle owners and the general public.

(a) Re the drug-impaired driving provisions, there is power for an enforcement officer to immobilise a vehicle where a person is incapable of having control of that vehicle (as now) or unable to complete a compulsory impairment test - which seems entirely reasonable in the interests of public safety.

(b) Re the new Part 17: the previous law gave the public a right to a certificate of particulars of persons recorded in the motor vehicles register, except where a person had successfully applied for a registrar to decline a certificate on grounds of security, defence of New Zealand, maintenance of the law, privacy or personal safety of any person.

The new Part 17 removes this general right of access and replaces it with provisions that are protective of the privacy and personal safety of persons recorded on the register, by linking access to information about such persons to the stated purposes of the register unless access to names and addresses of persons on the register has been otherwise authorised.

The conflict between freedom of information rights of the general public and privacy interests of persons recorded on the register has been resolved in favour of protection of privacy, but permitting disclosure of information for public interest purposes.

(c) Under clause 249, an enforcement officer may give warning, affixed to a motor vehicle that is not registered, directing the vehicle be removed from the road and not driven until the vehicle is registered in the name of the current owner. If an enforcement officer reasonably believes that a person has driven the vehicle on a road while the notice was in force (ie while the vehicle was unregistered) the officer may seize and impound the vehicle and must issue the driver with a notice to this effect (cl 250).

Safeguards for owners include: personal property items can be claimed, and the vehicle must be released from storage as soon as practicable after evidence of registration in the name of the current owner is produced. The vehicle must not be damaged in storage and can only be disposed of if not released within 10 working days of its impoundment. The affected person can appeal to the District Court against the decision of the enforcement officer under cl 250 (see cl 268) see 15, below.

#### **4 Statutory interpretation**

No issues identified

#### **5 New Zealand Bill of Rights Act 1990**

Bill of Rights vet due shortly - seizure and detention of m/v - s 21?

#### **6 Human Rights Act 1993**

There are no prohibited grounds of discrimination in the amendments

#### **7 Principles of the Treaty of Waitangi**

Not applicable

#### **8 International obligations and standards**

The new part 17 insofar as it is protective of privacy, complies with New Zealand's obligations under the International Covenant on Civil and Political Rights, signed in 1968, ratified in 1978; art 17 provides that "no-one shall be subjected to arbitrary or unlawful interference with his privacy" . . . and "Everyone has the right to protection of the law against such interference".

Part 17 also complies with the OECD guidelines for the Protection of Privacy and Transborder flow of Personal Data, especially the use limitation principle - disclosure of personal data.

#### **9 Relationship to existing law**

The legislation repeals the Transport (Vehicle and Driver Registration and Licensing) Act 1986 and (a) amends the Land Transport Act 1998 by amending s 2, inserting a new s 11A, and 57A,

amending ss 59, 62 and 64, inserting a new s 71A, amending s 72, inserting a new s 73A, amending ss 79, 120, 121, 167 and inserting a new s 209A. (b) A new part 17 (ss 233-270) is inserted.

Amendments under (a) above modify and expand existing very similar criminal offences and impose the same penalties; under (b) the registration provisions relate to the subject matter of the Act (land transport).

### **10 Creation of a new public power**

Enforcement officers are given additional power to immobilise vehicles where a driver is incapable of completing a compulsory impairment test.

Enforcement officers are also given power to seize and impound (or authorise seizure and impoundment of) a motor vehicle not registered in the name and current address of the owner. But the driver or owner must have been first directed by notice given to him or her or affixed to the relevant vehicle, to remove the vehicle from the road immediately and not allow it to be driven on a road until registered in the name and current address of the owner. See 3 above for more details. So, there is protection for the owner in that the power to seize and impound can only be used if a warning has been issued. The power is justified in the interests of the effective enforcement of traffic law and the integrity & quality of the motor vehicles register.

### **11 Creation of a new public body**

No issues

### **12 Delegation of legislative power**

No issues

### **13 Remedies**

See 15, below

### **14 Criminal offences**

No issues raised.

### **15 Appeal and review**

Appeal to the District Court against the decision of the enforcement officer under s 250 (see above) and against the decision of a registrar under s 266 (surrender of registration plates in certain circumstances (generally of unlawful use): see cl 268.

### **16 Powers of entry and search**

Power to seize and impound unregistered motor vehicle - see 3 and 10, above.

### **17 Cross-border issues**

Not applicable.

### **18 Alternative Dispute Resolution**

Not applicable

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