NEW ZEALAND
LAW SOCIETY

Land Transport Amendment Bill

27/10/2016

Submission on the Land Transport Amendment Bill

Introduction and summary

1. The New Zealand Law Society welcomes the opportunity to comment on the Land Transport Amendment Bill (Bill).

2. The Law Society's submission:

   2.1 notes that the imposition of mandatory alcohol interlock sentences gives rise to some legislative anomalies, and recommends minor amendments to enhance the utility of alcohol interlock sentences (Subpart 1) in line with the Bill's objective of improving road safety;

   2.2 recommends minor amendments to the new penalty regime for fleeing drivers, to address an anomaly in relation to the offence of failing to stop (Subpart 3); and

   2.2 supports the minor amendment recommended by the Attorney-General to address Bill of Rights Act implications of one aspect of the proposed regime for fleeing drivers.

<u>Part 1: Amendments to the Land Transport Act 1998</u>

Alcohol interlock sentences (Subpart 1)

3. The Explanatory Note to the Bill notes that alcohol interlocks are a highly effective tool for reducing the incidence of recidivist drink-driving to improve road safety.[1] Currently, section 65A of the Land Transport Act 1998 (Act) enables a discretionary alcohol interlock licence disqualification sentence to be imposed for a number of qualifying offences.

4. Subpart 1 of the Bill proposes to make alcohol interlock sentences mandatory for these qualifying offences, with limited exceptions. Making alcohol interlocks mandatory is a response to the low rate of imposition of these sentences under the current discretionary regime. It is likely to dramatically increase the number of interlock sentences imposed.

Minor amendments to the Bill to better align with policy objectives

Qualifying offences

9. The Law Society recommends that minor amendments be made to the penalty provisions to address an inconsistency caused by the drafting of alcohol interlock provisions in section 65A. The provisions fail to recognise the mandatory penalties set out in the qualifying offences in subsection 65A(1)(a).

10. Currently, a first offender who has a breath alcohol concentration in excess of 800µg/litre of breath or a blood alcohol concentration in excess of 160mg/100ml of blood is subject to a mandatory 28-day suspension of driver licence under section 95. If the court imposes an interlock sentence following conviction for a qualifying offence, the offender can apply for an alcohol interlock licence which remains in place for 12 months. The offender is then subject to a zero alcohol licence for 3 years. The

[1] Explanatory Note, page 2.

offender would otherwise be disqualified from holding a driver licence for a mandatory minimum period of 6 months as part of the penalty for the conviction of the qualifying offence.[2]

11. By comparison, an offender who commits a third or subsequent offence (and who also has two convictions in 5 years) is subject to the same regime, despite the mandatory minimum disqualification period for the qualifying offence being 1 year.

12. The Law Society recommends that the regime be amended to provide for a shorter interlock sentence and zero alcohol licence period for first offenders than for repeat offenders, to better align with the scheme of the Act which provides for higher penalties for egregious or recidivist offending.

Retention of discretionary interlock sentences for non-qualifying offences

13. The Law Society recommends that a discretionary interlock sentence be retained for non-qualifying offences, coupled with the abolition of limited licences for drink/drug-related driving. This would address the anomaly explained below, that drivers with a lower level of breath or blood alcohol are disqualified from driving while those with a higher breath alcohol concentration are able to drive (subject to use of an interlock).

14. Currently, a driver with a breath alcohol concentration of 790µg/litre of breath (and therefore under the 800µg/litre of breath threshold for an alcohol interlock sentence) will be disqualified from holding a driver licence for a minimum of 6 months. After a mandatory 28-day suspension of licence, the offender can apply for a limited licence to alleviate extreme hardship under section 103. But this is a relatively expensive process and the Law Society considers that the RIS estimate of legal costs of $1,000 for this step is underestimated.

15. A discretionary interlock sentence could be applied for a shorter period than a mandatory sentence. It would provide greater flexibility to drive than a limited licence and legal aid would be available for the discretionary interlock application (it is not currently available for limited licences).

16. Retaining discretionary interlock sentences for non-qualifying sentences would be consistent with the scheme of the Act which provides for higher penalties for egregious or recidivist offending. It would also be consistent with the vehicle confiscation provisions under sections 128 and 129 of the Sentencing Act 2002 (in that it would be mandatory for qualifying offences and discretionary for non-qualifying offences).

Complexity of the penalty regime

17. The alcohol interlock licence disqualification sentence is part of a complex penalty regime for driving offences involving drink and drugs. A review of the legislation, with the aim of simplifying the penalty provisions, would be desirable as it would improve the clarity of regulation and transparency for drivers and contribute to a more efficient and safe land transport system. However, the Law Society acknowledges that such a review is outside the scope of this Bill.

Fleeing drivers (Subpart 3)

Dangerous and reckless driving

18. The new penalty regime for fleeing drivers provided in Subpart 3 of the Bill is designed to act as a deterrent. But it fails to recognise that in almost every case, the lead offence is one of dangerous or

[2] See offences under sections 56 or 58.

reckless driving, and that the failing to stop charge is added in order to achieve a cumulative disqualification.

19. The Bill proposes increasing the mandatory, cumulative disqualifications so that they are at the highest level under the Act, while the substantive penalty for the same offence remains at the lowest end (a fine or 3 month's imprisonment). This seems to be an anomaly. The Explanatory Note states (at page 2) that the Bill seeks to send a clear signal that failing to stop is a serious criminal act, yet the maximum penalty is still one of the lowest in the Act.

20. Since 2009, failing to stop has been treated as an aggravating factor of reckless or dangerous driving (section 36AB), but this is not particularly transparent to the public and is therefore a limited deterrent.

21. The RIS also notes (at paragraph 15) that often only a reckless/dangerous driving charge is laid by Police because of the low penalties for failing to stop and, therefore, the tiered system of cumulative disqualifications would not be triggered.

22. The Law Society suggests that it may be a more effective means of achieving the policy intent of the Bill to increase the penalty and disqualification period; provide that the penalty must be cumulative; and revoke the aggravating factor provision in section 36AB.

New Zealand Bill of Rights Act 1990

23. Clause 35(1AB)(a) of the Bill allows a vehicle to be seized and impounded for 28 days where Police believe on reasonable grounds that the person driving the vehicle has failed to stop. The Attorney-General in his report under section 7 of the New Zealand Bill of Rights Act 1990 (Bill of Rights Act) concluded that this provision is reasonable.[3] The Law Society agrees.

24. The Law Society further agrees with the Attorney-General that the proposed new power to seize and impound a vehicle for failure or refusal to provide information about the identity of a person who has failed to stop (clause 35(1AB)(b)) is inconsistent with the right to be secure against unreasonable search and seizure affirmed in section 21 of the Bill of Rights Act.[4] The Attorney-General said:[5]

> *… I consider the power to impound a vehicle for 28 days in relation to a refusal or failure to provide information is not rationally connected to the primary purpose of ensuring road safety. … I also consider the power is disproportionate and, consequently, unreasonable.*

25. The Law Society therefore supports the amendment proposed in paragraph 24.1 of the Attorney-General's report that clause 35(1AB)(b) be removed:

> *New s 96(1AB)(b) could be removed. Section 96(1AB) already confers on Police the ability to impound a vehicle if they believe, on reasonable grounds, that it was involved in a fleeing driver incident. New s 96(1AB)(b) therefore only serves the purpose of additional coercion for a person to provide information to identify the person who failed to stop. As discussed above, this is a disproportionate use of executive power and is not rationally connected to the objective of road safety.*

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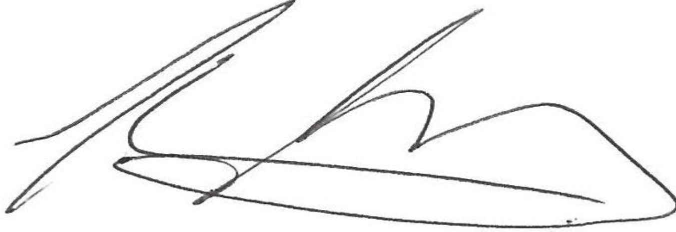
3 Report of the Attorney-General under the New Zealand Bill of Rights Act 1990 on the Land Transport Amendment Bill, 12 September 2016, at [11].

4 Note 4, at [15] – [23].

5 At [23].

Conclusion

25. The Law Society does not wish to appear in support of this submission, but is available to meet with the Committee or officials advising if that would be of assistance.



Kathryn Beck
President
27 October 2016