



26 February 2010

C62, 67.2
RM;rp

The Honourable Iain Evans MP
Member for Davenport
Box 445
BLACKWOOD SA 5051

Dear Iain

Criminal Law (Clamping, Impounding and Forfeiture of Vehicles) (Miscellaneous) Bill 2009

I refer to your letter of 16 July 2009, addressed to my predecessor, and thank you for inviting the Society's comments in relation to the above Bill. I apologise for the delay in responding to you.

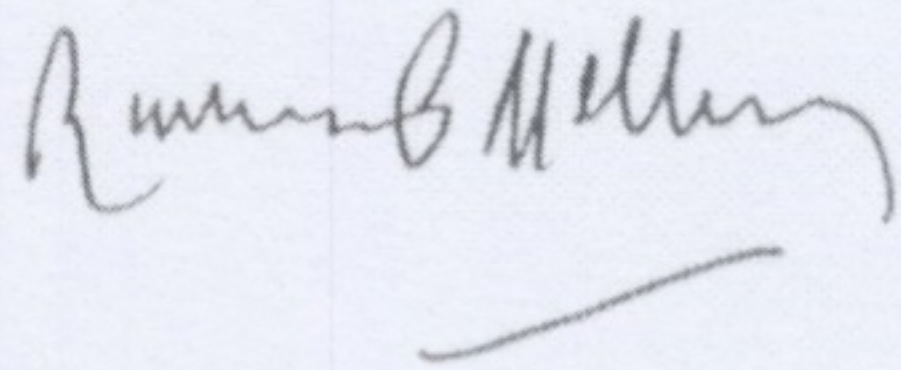
The Bill was provided to the Society's Criminal Law Committee for consideration. We provide the following comments in relation to particular clauses

- cl 8(2) – proposed s8(2a)(b): We consider that the word “severe” should be deleted from the second line. It is too uncertain a test to require the Police to be satisfied of “severe” financial hardship before they remove the clamp / release the vehicle. Parliament's objects will be satisfied if it's left as “financial or physical hardship”. That, in itself, is uncertain enough, but at least it removes the greater uncertainty caused by the addition of an extra layer of “severe”;
- Any decision by the Commissioner should be reviewable by a court (if it is not otherwise provided for by the Act). The consequences are too great for the person whose vehicle is clamped or impounded for a decision by the Commissioner to be left unreviewable;
- delete s8(2)(2c). An alleged offender, or someone on his/her behalf, should be able to make an application under s8(2)(2a). The alleged offender is, as noted in (2c), only *alleged* to be an offender. In any event, that person should have the right to apply in the event of financial or physical hardship. Such a fundamental right for the State's actions not to cause hardship to an individual should be accessible by all – particularly in circumstances where the crime is not proven;
- cl 10(1) – proposed s12(1)(a) & (b): The penalties to apply appear draconian. A car can be a very expensive item. Quite apart from the penalty for the offence, a person stands to lose thousands of dollars. Section 12(1)(a)(iii) & (b) in particular are very harsh. Ten years is a very long period. Forfeiture for three offences in 10 years is too disproportional. So too is impounding for two offences in 10 years;
- cl 11(6) – proposed s20(5)(c): This should be deleted or amended to narrow the basis upon which the Commissioner can act. The Commissioner appears to have been given an unfettered & unreviewable

discretion to destroy or dispose of a vehicle. The only grounds expressed are "as the Commissioner thinks fit". It is inappropriate for the Commissioner to have such a wide power AND for the decision not to be the subject of review by a court. It is the type of power that lends this State to the criticism of being a "police State".

I trust this response is of assistance to you.

Yours sincerely

A handwritten signature in cursive script, appearing to read "Richard Mellows", with a horizontal line underneath it.

Richard Mellows
PRESIDENT