



3 November 2011

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Mr Mark Goldsworthy MP
Shadow Minister for Road Safety
Parliament House
North Terrace
ADELAIDE SA 5000

and via email: Kavel@parliament.sa.gov.au

Dear Shadow Minister

Statutes Amendment (Drug Driving) Bill 2011

I refer to an email of 27 October 2011 from your Assistant, Ms Kranixfeld, inviting the Society to consider the above Private Member's Bill.

As you will appreciate, the Society has not had very much time to prepare its response. The Bill was referred to the Criminal Law Committee and accordingly we provide the following comments.

Power to Search Vehicles: Section 68 Summary Offences Act 1953

The Bill proposes amendments to *Summary Offences Act 1953* to permit police to stop, search and detain a motor vehicle if police have reasonable cause to suspect that a drug driving offence is being committed.

We consider that the proposed inclusion of sub-ss68(1a), (1b) and (1c) are unnecessary because of the present law.

The principal provision which provides the powers that the amendment seeks to provide is s52(9) of the *Controlled Substances Act 1984*. This provision deals specifically with the subject matter of s68(1a)-(1c). It, alone, makes s68(1a)-(1c) unnecessary. There are also existing powers to effect stopping and searching of motor vehicles in respect of road traffic offences generally in ss40R & 40H of the *Road Traffic Act 1961*. Whilst these powers are of general application, they also make s68(1a)-(1c) unnecessary.

Increase Penalty Provisions

The Bill seeks to substantially increase penalties in respect of the offences concerned with drug driving. It effectively doubles mandatory fines and mandatory licence disqualification periods.

The Society considers that the proposal to increase penalties is somewhat premature. The legislation introducing the statutory regime for drug driving was introduced in 2005.

The reading speech refers to the prevalence of drug driving however it does not mention any statistics on accidents involving drug drivers. It is not apparent that there have been a significant increase in detection of such offences or that drug driving is necessarily a prevalent offence. It would be necessary to properly demonstrate a significant increase in the commission of such offences to warrant such an increase in penalties. We are not aware of any call for increases in penalties within the community or from road safety authorities generally.

In an ADELAIDE Now article and press release from Mr. Brokenshire in September this year the rate of drivers tested was said to have doubled for drug detection compared with alcohol detection. This was somewhat misleading in the sense that the percentage 3.1% of 40,000 people tested in respect to drugs compared to 1.6% of 500,000 people tested for alcohol does not lead to the conclusion that drug driving is double that of drink driving. Rather, the true comparison is about one-sixth.

Furthermore, the detection of drugs for vehicle drivers is on the basis of zero tolerance. The offence is not related to a level of a drug in the blood and therefore the level of intoxication. Indeed there may be a miniscule level of drug detected or there could not be any impairment of driving ability. The penalties are therefore already quite harsh given the mandatory minimum penalties.

The Bill seeks to raise penalties for the equivalent of Prescribed Concentration of Alcohol (PCA) at the 0.15% rate, which is the highest rate. PCA is divided into four groups, three of which attract penalties, as follows:

1. Up to 0.5%: no penalty;
2. 0.5% to less than 0.8%: three month loss of licence plus certain fine;
3. 0.8% to less than 0.15%: six month loss of licence plus certain fine;
4. 0.15% and above.

The statistics of drug drivers include those that have a trace in their system. It is entirely inappropriate for the minimum penalty for the drug equivalent of PCA to be equal to the **highest** level penalty for PCA. It will mean that those with a trace in their system will be liable to a minimum penalty of 12 months loss of licence (plus the same level fine). It is clearly inequitable for drug drivers to be penalised at such a high level when there is no evidence of impairment in their faculties or their driving.

In this regard it must be borne in mind that the drug "PCA" offence is one in which a driver is driving appropriately. The penalties that are in place are a warning to people not to drink/drug and drive. Just because the level of drugs in the system cannot be measured as it can with alcohol, it doesn't mean the mandatory minimum statutory penalty should be 12 months loss of licence and same level fine.

The offence of driving under the influence encompasses both alcohol and drugs: s47. There is no suggestion that this offence is not appropriately dealt with by the *Road Traffic Act*. Indeed, there is no mention of this offence in the reading speech. For context, we consider it should have been mentioned. It is not as if, for example, that there is not a provision criminalising and penalising drug drivers in the same way that drink drivers are punished. The minimum penalty for driving under the influence of alcohol OR drugs is 12 months loss of licence.

With regard to the specific provisions of the Bill, we do not support the increase penalties in the following provisions because they, in our view, inappropriately raise the penalties to the equivalent of the highest level for PCA (ie, 0.15% and above):

- Sections 70(3) and 72(10) *Harbors and Navigation Act 1993*; and
- Sub-sections 47BA(1) and (4)(a) *Road Traffic Act*.

There is no convincing evidence that greater penalties will cut the carnage on our roads.

The second reading speech, in apparent justification of the increase penalties, mentions the fact that the substance in the driver's system is illicit. Even assuming this is so (and it may not be), this cannot be proffered as a reason or in any way in support of an argument for increase penalties. The offence criminalises **driving** with drugs in your system (as it does with alcohol above a certain level). It does not, and cannot, penalise the person for having the drugs in their system. That would be an entirely different offence. If it is not charged, it cannot be penalised under the guise of a different offence

Power to Impose Immediate Disqualification / Application to Court to have Disqualification Lifted (Clauses 11 and 12 of the Bill).

We provide no comment on extension of the power to impose an immediate disqualification to a drug "PCA" offence (ie, s47BA(1)). There are arguments going both ways on this. However, if it is so extended, we would only support it on the basis that the minimum disqualification is three months, being the penalty we consider should remain as appropriate for drug "PCA" offences. Presently, the minimum penalty for the immediate disqualification is six months. That would have to change to accommodate a three month disqualification for a suspected s47BA offence.

It follows from the above that we do not support cl12 of the Bill which seeks to amend s47IAB(2)(b)(i) with the effect that the minimum disqualification is 12 months.

Harmonisation

Whilst harmonisation of laws and penalties is desirable, we question whether South Australia would wish to simply amend its laws or penalties in line with those in existence in other States without there being some joint consideration and agreement as to what the appropriate penalties should be. There is no point South Australia changing its penalties to the same as another State if that other State does not consider the impact of harmonisation when it next reviews its penalties.

I trust these comments are of assistance. Thank you for providing the Society with the opportunity to consider this matter.

Yours sincerely



Ralph Bönig
PRESIDENT

Cc Hon Robert Brockenshire MLC