



7 December 2011

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The Honourable Bob Such MP
Member for Fisher
Parliament House
North Terrace
ADELAIDE SA 5000

Dear Mr Such

Expiation of Offences (Speeding Offences) Amendment Bill 2011

I refer to your letter of 7 October 2011, forwarding an amended version of the above Bill to the Society for consideration.

The amended Bill has been considered by the Society's Criminal Law Committee. We provide the following comments.

Section 6(1a)(a) [clause 5]

This is the same provision the Society commented on in its letter of 15 August 2011. We repeat our concern that phrases such as "full particulars" and "sufficient to.....make an informed decision" are too ambiguous, particularly the latter phrase, which is unnecessary.

There are two possible approaches. One would be to create a prescribed form for speeding offences (refer s6(1)(b)) to ensure it includes all the necessary information and then mandate its use. If this occurred there would be no need for s6(1a). This approach would avoid any debate about the meaning of potentially ambiguous phrases.

The other would be for s6(1a) to require the expiation notice to set out full particulars but to also expressly provide that those particulars should include a non-exhaustive list of specific matters (such as s6(1a)(b)). The relationship between expiation notices for speeding offences (s6(1a)) and the general expiation notice provision (s6(1)) should be clarified.

Section 6(1a)(b) [clause 5]

See above – we recommend that the requirement to include this information be in the new prescribed form or in the non-exhaustive list of specific matters.

Section 6(1a)(c) [clause 5]

See above – we recommend that this can be accommodated in the new prescribed form.

Otherwise, if there is no prescribed form, the term “*information*” must be clarified. Typically, it should be made clear that it is the full particulars required by s6(1a)(a).

In any event, we recommend the deletion of the phrase “*and whether the alleged offender agreed with the information so recorded*”. The driver will never be in a position to agree with all the information recorded because some of that information will not ever be within his/her knowledge.

For this reason alone the phrase should be deleted. In addition, whether or not the driver agrees with the information should not be a factor in future proceedings unless there is an admission against interest. In this regard we consider that an admission against interest is more likely to occur if the driver can indicate whether he/she agreed with the information recorded, thus the provision may not be as protective of the driver's interests as it was intended to be.

If the provision seeks to limit an area of potential dispute between the driver and police in future proceedings then it should be worded differently. Even then, we do not support such a provision because we do not consider it to be of sufficient utility to warrant legislative prescription.

Section 6(1b) [clause 5]

We repeat the comments made concerning this provision in the Society's letter of 15 August.

I trust these comments are of assistance. Please do not hesitate to contact me, should you wish to discuss this matter.

Yours sincerely



Ralph Bönig
PRESIDENT