

DRAFT

17 August 2009

The Chair
Transport and Industrial Relations Committee
Parliament Buildings
P O Box 18041
Wellington 6160

VEHICLE CONFISCATION AND SEIZURE BILL

- 1 This submission is made by the Legislation Advisory Committee (LAC).
- 2 The LAC was established to provide advice to the Government on good legislative practice, legislative proposals, and public law issues. The LAC has produced and updates the *Legislation Advisory Committee Guidelines: Guidelines on the Process and Content of Legislation* (LAC Guidelines) as appropriate benchmarks for legislation. The LAC Guidelines have been adopted by Cabinet.
- 3 The terms of reference of the LAC include:
 - (a) to scrutinise and make submissions to the appropriate body on aspects of Bills introduced into Parliament that affect public law or raise public law issues:
 - (b) to help improve the quality of law-making by attempting to ensure that legislation gives clear effect to government policy, ensuring that legislative proposals conform with the LAC Guidelines, and discouraging the promotion of unnecessary legislation.
- 4 The Bill provides for substitutes for offenders (being persons other than the offender who own or have an interest in the vehicle used by the offender to commit illegal street racing offences) to be subject to vehicle confiscation and destruction powers under the Sentencing Act, and confiscation of vehicles under the Summary Proceedings Act where the offender has defaulted on payment of a fine.
- 5 It is highly unusual for a person to be subject to sanctions as a result of another person's criminal offending, or to be liable to actions related to the enforcement

of such a sanction. There are two aspects to this which the LAC has concerns about.

Imposition of a sanction against a substitute in response to illegal street racing

- 6 Furthermore, while the Bill does provide some protections for substitutes for offenders, the provisions authorising the making of orders and appeals from orders essentially put the onus on such persons to establish they did not know of the offending and/or took all reasonable steps to prevent it from occurring. This is in contrast the normal criminal process where the Crown bears the onus of establishing all of the elements of the crime. In other words, the Bill imposes sanctions for criminal behaviour without the person subject to those sanctions having the usual protections inherent in the criminal law.
- 7 This approach to imposing liability also lacks transparency. The LAC Guidelines in addressing the purposes of the criminal law note that one purpose is to tell citizens that certain behaviour is wrong (paragraph 12.1.2). As no offence by the person against whom the penalty of confiscation or confiscation and destruction imposed has been created here there is no clear signal that the behaviour in question is not acceptable even though a sanction may be imposed.
- 8 The LAC considers that a more principled approach might be to create an offence of permitting a vehicle to be used for illegal street racing offences with the Crown bearing the burden of establishing the mental element (knowledge, recklessness, or possibly even negligence). An appropriate sanction could then be imposed in relation to those found guilty of such an offence, which might include confiscation and destruction of the vehicle in question if that approach achieved the policy objectives.

Enforcement of fines against a substitute

- 9 As the LAC Guidelines note (at paragraph 12.1.2), the criminal law is concerned with the punishment of wrongdoers. The Bill would permit the confiscation of a car from a substitute where the offender has not paid fines imposed for traffic offences. "Traffic offence" is defined broadly so that it includes offences against the Transport Act 1962, the Road User Charges Act 1977, the Transport (Vehicle and Driver Registration and Licensing Act 1986, or the Land Transport Act 1998, or any regulation or bylaw made under those Acts. It also includes any offence against any regulation or bylaw made under another Act if the offence relates to the use of motor vehicles or parking places or transport stations.
- 10 By permitting the enforcement of fines against a substitute, the Bill undermines the principle of personal responsibility that underpins the criminal law.
- 11 While there are protections for substitutes built into the Bill, it is noteworthy that

a person becomes a substitute when a defendant commits just 2 traffic offences involving the substitute's vehicle within 4 years.

- 12 Finally, the LAC is concerned that the effect of Part 2 of the Bill may not be apparent on the face of the Bill. In particular, the explanatory note is arguably not clear regarding the potential impact of the Bill on substitutes.
- 13 The LAC does not seek to be heard on this submission.

G E Tanner QC
Acting Chair Legislation Advisory Committee