

Legal Torque

Land Transport Amendment Bill

- Suspension notices and vehicle impoundment -

- Michael Jamieson-

The Land Transport Amendment Bill 2004 has received much interest from transport operators as it works its way through Parliament. The Bill is currently before the Select Committee and their report is due out on 17 January 2005.

As the Bill edges its way towards being passed as law, there are still concerns as to how much the Bill, if passed, may impact on transport operators.

We have previously looked at the proposed changes to driving hours and logbook systems. In this issue we look at the changes relating to the service of suspension notices and new powers to seize and impound vehicles.

Suspension notices

As you may be aware any person who incurs more than 100 demerit points within a two year period will have their driver's licence suspended for three months. The Director of the Land Transport Safety Authority ("LTSA") prepares a Notice of Suspension, suspending the person's licence for three months. Once processed, the notice is sent to a document process server contracted to the LTSA. The suspension will commence on the day the person is served with the suspension notice by the process server.

The Bill proposes changes to the suspension process whereby the Police are able to stop drivers at routine checks and suspend them immediately if they are over their demerit points.

A constant problem for the LTSA is with the service of the suspension notice. Many notices are not able to be served for reasons which include the address information on the driver's licence register being out of date or people actively avoiding document service or, particularly with professional drivers, simply not being at home. In these situations, some people can go on to incur hundreds of demerit points without being served. This has resulted in a large backlog of un-served suspension notices.



Lately the Police have been more vigilant in serving demerit point suspension notices on drivers where the LTSA has been unable to serve the person. Under existing legislation the Police can serve the suspension notice at the roadside, or at any other routine checkpoint. However the process is complicated. The Police have to have the suspension letter with them at the time or arrange to have it faxed through before they can suspend a licence. There is no ability for the Police to disqualify a driver without the LTSA suspension notice.

The Bill proposes changes to this process whereby the Police are able to stop drivers at routine checks and suspend them immediately if they are over their demerit points.

The Bill, if passed, will enable Police to serve a suspension notice via a form completed at the scene. The Police will no longer need to obtain a copy of the LTSA suspension notice. When carrying out their routine checks at the roadside, the Police will check to see whether the person is wanted for any reason. If the LTSA has been

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unable to serve a person with a suspension notice, a “wanted for service” message will be displayed on the system. If this occurs the Police will have the authority to prepare a suspension notice and suspend the driver’s licence there and then. However, a driver will not be logged onto the LTSA system as “wanted for service” until the document server has exhausted attempts to locate the person and has returned the file to the LTSA.

If a driver is served on the roadside with a suspension notice they will not be stranded there if alternative travel arrangements are not possible in order to get to their destination. The Police may authorise the driver to drive to a more convenient location before the suspension comes into effect.

The rationale behind this change is to ensure that suspension notices are served more efficiently and making it more difficult to evade service.

Vehicle Impoundment for Transport Service Operators

The Bill proposes to give enforcement officers the power to seize and impound for 28 days any motor vehicle that is being used in a transport service where:

- (a) The transport service operator was disqualified from holding a transport service licence; or
- (b) The transport service operator’s licence was suspended or revoked; or
- (c) The transport service operator does not hold a transport service licence and has previously been forbidden to operate a transport service.

The provision only enables enforcement officers

to impound trucks; their powers do not extend to impounding trailers.

Operators who carry on a transport service without the appropriate licence will be liable on conviction to a fine not exceeding \$10,000. Second or subsequent offenders will be subject to a fine not exceeding \$25,000 and the Court may, if it thinks appropriate, order any or every vehicle used under the transport service to be immediately impounded and held for up to 90 days.

If an operator applies for a transport service licence while disqualified from holding or obtaining a transport service licence, they will, if convicted, be liable to a term of imprisonment (not exceeding three months) or a fine of up to \$4,500 and they will be disqualified from holding or obtaining a transport service licence for a minimum of six months.

The purpose of this change is to align the transport operators with general drivers in terms of roadside sanctions. Currently the driver of a motor vehicle will have their vehicle seized and impounded if they drive the vehicle while disqualified or if their licence has been suspended or revoked. The change to the Bill now allows for seizure and impoundment where the transport operator does not have a current transport service licence.

The changes in the Bill is in response to calls from the transport industry to ensure that only those operators who are fit and proper are allowed to operate a transport service. There are a number of operators who do not have a transport service licence and the intention behind the change is to send a clear message to anyone who attempts to operate a transport service without the necessary licence that they will be subject to a speedy and severe sanction at the roadside.

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