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20 October 2010

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

**LAND TRANSPORT (ROAD SAFETY AND OTHER MATTERS) BILL 2010**

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.

**Search warrants in relation to offences against section 79T or 79U of the Land Transport Act 1998**

4. Clause 44 of the Bill would insert a new section 79V in the Land Transport Act providing that search warrants may be issued under the Summary Proceedings

Act 1957 in relation to offences committed under sections 79T and 79U of the Land Transport Act, even though those offences are not punishable by imprisonment. This would be an exception to the general rule that non-imprisonable offences do not justify an intrusive search power.

5. Sections 79T and 79U are “chain of responsibility” offences, meaning that persons who cause or require a driver to breach speed limits, maximum work time, rest time requirements or maximum gross weight limits commit an offence. New section 79V would allow a court to issue a warrant in relation to these offences if a member of the Police:
  - (a) Has charged a driver with breaching any applicable speed limit, maximum work time, rest time requirement, or maximum gross weight limit; and
  - (b) Believes on reasonable grounds that another person has knowingly contributed to the driver’s breach or breaches.
6. The Committee understands that the policy intent is to enable the gathering of evidence of a “chain of responsibility” offence so that persons other than the driver (such as an employer or a customer) who have required or caused a driver to breach the relevant limit are held accountable for the breach of road safety limits.
7. However, the Committee considers that there is a problem with the structure of new section 79V. Essentially, new section 79V imposes a second and slightly differently worded test for issuing the warrant, in addition to the one in section 198 itself. Under section 198, the prospective search must relate to a particular place and to any offence punishable by imprisonment. The court must have reasonable grounds to believe the thing or things to be searched for are those upon or in respect of which the offence has been or is suspected of having been committed, or that there is a reasonable ground to believe the thing or things will be evidence of such an offence, or are intended to be used for the purpose of committing the offence.
8. New section 79V adds a further layer by requiring that, as well as having charged a driver with breaching a relevant limit, a member of the Police have reasonable grounds to believe that another person has, by an act or omission, knowingly contributed to the driver’s breach or breaches. This is worded differently than the offences in sections 79T and 79U, which refer to the person, by act or omission, directly or indirectly causing or requiring the driver to breach the limit.
9. We consider that it would be preferable for new section 79V to simply state that a search warrant may be issued under section 198 of the Summary Proceedings Act 1957 in respect of an offence which has been or is suspected to have been committed against sections 79T or 79U, or which is believed to be intended to be committed, even though the offence is not punishable by imprisonment.
10. The Committee notes that such a change would remove the requirement for the driver to have been charged with breaching a relevant limit and would simply rely on the court have reasonable grounds to believe an offence under sections

79T or 79U. However, if the policy intention is to ensure that chain of responsibility offences are enforced in the interests of road safety, it is irrelevant whether the driver has been charged or not. In any event the driver will have to have breached the relevant limit as that is an element of the offences contained in sections 79T and 79U.

### **Powers of parking wardens**

11. Clause 128E provides for the powers of parking wardens. These powers are currently contained in the Transport Act 1962, which is to be repealed by the Bill. Clause 128E(1)(c)(i) states that, in relation of the enforcement of specified provisions, a parking warden may require a person who is on the road and in charge of or in a vehicle to furnish his or her name and any other particulars as to his or her identity. This is in addition to requiring the person to give any information that may lead to the identification of the driver or person in charge of the vehicle.
12. While the latter information is directly connected to the enforcement of road rules, it is less obvious why a parking warden should be able to require information about any person in the vehicle. The Committee acknowledges that the words "in relation enforcing the [specified] sections" may act to confine this power to require information. However, the extent to which this is the case is not entirely clear.
13. We note that the situations in which even Police officers may require people to provide identity details and other information are very limited. Accordingly, it would be preferable if the power of parking wardens to require information about passengers in a vehicle should be limited to situations where this is clearly necessary for the purposes of enforcing road rules.
14. Thank you for consideration of this submission. The Committee do not wish to be heard in support of it.



Sir Geoffrey Palmer  
Chair, Legislation Advisory Committee