

## Legislative Council

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### **SUMMARY OFFENCES (PRESCRIBED MOTOR VEHICLES) AMENDMENT BILL**

**The Hon. A. BRESSINGTON** (17:14):

I rise to speak to the Summary Offences (Prescribed Motor Vehicles) Amendment Bill 2010, which was introduced in another place by the Attorney-General on 14 September last year. As stated by the Attorney-General when introducing the bill, it seeks to reduce the incidence of offences involving unregistrable miniature motorcycles known as 'monkey bikes' or, as was coined by the former minister for consumer affairs in 2006, 'pocket rockets'.

It was, in fact, 2009 when this government, through the former attorney-general, made the commitment to introduce tough legislation to address miniature motorcycles, legislation it promised 'to rush through parliament'. As with any populist government, it did so in response to public angst at the risks taken by and general nuisance of those who ride monkey bikes on roads and footpaths. However, as so often seems to happen, the government soon moved on to another headline, and it is only now in 2011 that we are being asked to give effect to that commitment. The bill before us seeks to insert a new section 55 into the Summary Offences Act 1953 to make it an offence to drive (or, in this case, ride or stand) certain motor vehicles on a road.

The bill defines 'road' to also include road-related areas, such as median strips, footpaths, car parks, cycling trails and other areas declared by the Minister for Transport as road-related areas. Relying on the definition of such in the Motor Vehicles Act 1959 means those looking to ascertain the law will have to consult a separate act from that in which the offence resides to learn that the term 'road' does not simply mean what one naturally presumes: that it is an area designated for driving motor vehicles, but rather also includes the aforementioned areas.

While I have decided not to amend the bill to provide clarification, I nevertheless indicate that I would have preferred the definition of 'road-related area' to be included in the proposed section 55(9) rather than having to refer to another act. The offence for driving a monkey bike on the road will be expiable with a \$315 fine or, if prosecuted, a fine of up to \$5,000 can be imposed. Additionally, those who commit this offence will have their monkey bike confiscated and, upon finalisation of proceedings, whether by guilty verdict or payment of the expiation, forfeited to the crown.

Owners of the motor vehicle, as distinguished from riders, will also be subject to the same penalties. The bill does so by assuming that an owner of a monkey bike has permitted the rider to ride it on the road. There is, however, the defence of not being in control of the motor vehicle due to an unlawful act available to the owner, the obvious example being where the bike was ridden by a thief unlucky enough to be spotted while fleeing the owner, presumably on the monkey bike. Given the noise they emit and their limited speed, the thought is somewhat laughable, but stranger things do happen, and the owner in such circumstances is covered.

What is less clear is a situation where a bike is ridden without the direct consent of the owner, say, by a guest at a party. While there is, of course, the separate offence provided by section 86A of the Criminal Law Consolidation Act 1935 of driving the motor vehicle without first obtaining the consent of the owner, it is my understanding that to utilise this offence in defence for the purposes of this bill the owner will be required to exclude the possibility that

the rider was not under an honest but mistaken belief on reasonable grounds that they had consent to ride the bike.

As cases prosecuted under section 86A have demonstrated, consent can be implied. Unlike the example of theft, where the owner will presumably be happy to assist the prosecution of the thief for both this offence and section 134 of the Criminal Law Consolidation Act, this cannot be so easily presumed for cases where the bike was ridden without consent, meaning that the owner may not be able to rely upon the outcome of the prosecution under section 86A to prove the factual elements required of the defence.

The availability of this defence becomes even more blurred in an example where the owner did consent to the bike being ridden, but stated specifically for it not to be ridden on a road or road-related area. It is my understanding from the reading of section 86A of the Criminal Law Consolidation Act that in this example no offence has been committed, for consent to use the vehicle had been granted. This would mean that the defence provided by section 4, which requires an unlawful act to have been committed, would not apply, and hence the owner would potentially face a \$5,000 fine for an act which they specifically stated they did not permit.

It is for these reasons that I will be moving an amendment to insert a new subsection 55(3)(a), which inserts a new defence to an offence against subsection (2), if it can be shown that the owner, first, did not consent to the vehicle being driven on the road and, secondly, and had taken reasonable steps to ensure the person lawfully entitled to use the vehicle was aware that the defendant did not consent to the vehicle being driven on the road. As this defence will be in addition to the general defence currently provided by the bill, it does nothing to detract from the bill. It clarifies the protection available to owners and closes the potential loophole where an owner consented to the vehicle being ridden, but not on a road or road-related area.

As members who have read the debates of this bill in another place would be aware, my office also identified early that the bill, in its haste to forfeit monkey bikes used in contravention of this section, created a situation where an owner who played no part in the commission of the offence, whether the bike was stolen or ridden without consent, had no opportunity to intervene in the forfeiture to make this known and subsequently would have their property forfeited with no recourse.

One can imagine a situation where an owner's monkey bike is stolen, the thief is then caught riding it on the road, the bike is confiscated by the police, but instead of being returned to the owner it is then crushed. Farcical it may be, but that was what the bill provided until I raised it in a briefing provided by the Attorney-General, who clearly, upon reflection, has moved to amend the bill in another place. I commend the Attorney-General for correcting what was a significant oversight in the bill and for acknowledging my involvement in that in the other place.

Another amendment moved in the other place at my instigation was to require the list of prescribed vehicles to be prescribed by regulation instead of by gazette. While we are assured that the bill before us is to address miniature bikes, there is nothing in the bill itself to restrict it to this class. It was my concern that in an attempt to broadly capture monkey bikes the definition may inadvertently capture agricultural bikes, trikes or four-wheelers used by farmers to travel around their properties as well as in herding stock, etc.

Many such bikes are not registered, nor, it is my understanding, could they be, at least not without significant modification. Such farmers, especially on large properties that are intercepted by roads, may need to ride across a road or along a road-related area, and if the definition used was broad enough it was my fear that they may be inadvertently captured by

this section. I again advocated in the briefing that what is to be a prescribed motor vehicle should be subject to parliamentary oversight and disallowable in the form of regulation. This too was agreed to by the Attorney-General, who, with further input from the Liberal Party, amended the bill accordingly, and again, I thank him for doing so.

I also indicate to members that I will no longer be moving the other amendments that I had drafted and circulated to make the forfeiture process more equitable and flexible to the owner's circumstances and involvement. Instead, I will be supporting the shadow attorney-general the Hon. Stephen Wade's sensible amendments to bring the process in line with that used in the hoon legislation. In closing, I indicate that I support the bill on condition of amendment and I look forward to the committee stage.

Debate adjourned on motion of Hon. R.P. Wortley.