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**Police Powers and  
Responsibilities and Another  
Act Amendment Bill 2002:  
Confronting bad and nuisance  
road behaviour**

*The Police Powers and Responsibilities and Another Act Amendment Bill 2002 (Qld) is primarily aimed at clamping down on loutish behaviour involving motor vehicles on public roads. Behaviour such as burnouts, street racing and using loud sound systems is specifically targeted.*

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## **1 INTRODUCTION**

The Police Powers and Responsibilities and Another Act Amendment Bill 2002 was introduced into the Queensland Legislative Assembly on 8<sup>th</sup> May 2002.<sup>1</sup>

The intention is to grant greater powers to police to deal with deliberate driving behaviour that is annoying and perhaps dangerous to other road users and/or nearby residents.

The Bill's introduction follows an announcement on 12 April 2002 by the Minister for Police that he would be seeking Cabinet approval for proposed legislation that would contain provisions for the forfeiture of motor vehicles to the Crown of persons found to have persistently offended against particular provisions of the Bill.<sup>2</sup>

A spokesperson for the Royal Automobile Club of Queensland, whilst acknowledging that there were some areas of the State that were experiencing problems with outlandish driver behaviour, stated a concern that the proposed legislation might contain penalties that were greater than the offences warranted.

This criticism was echoed by a spokesperson from the Council of Civil Liberties who argued that existing legislation was sufficiently strong enough to deal with such behaviour. A spokesperson for the peak representative body, Youth Affairs Network of Queensland, criticised the proposed legislation on the grounds that it would unfairly discriminate against young people.<sup>3</sup>

## **2 THE FLAMBOYANT MANOEUVRES OF SOME CAR ENTHUSIASTS**

Recent media reports have highlighted the suburbs of Sunnybank/Robertson in Brisbane and parts of Gold Coast City as suffering from the antics of some drivers.

A local councillor for the Sunnybank/Robertson area described the problem in this way:

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<sup>1</sup> Hon T McGrady MP, Minister for Police and Corrective Services and Minister Assisting the Premier on the Carpentaria Minerals Province, Police Powers and Responsibilities and Another Act Amendment Bill 2002, Second Reading Speech, *Queensland Parliamentary Debates*, 8 May 2002, pp 1293-97.

<sup>2</sup> Chris Jones, 'Plan for hoons to lose vehicles', *Courier-Mail*, 12 April 2002, p 1.

<sup>3</sup> Chris Jones, p 1.

*If these kids were just getting together to look at the cars, there would not be an issue. The problem is the danger involved in doing spin-outs, doughnuts and the rest of the sideshow.<sup>4</sup>*

The Councillor went on to point out that this type of driver behaviour only surfaced at such gatherings before police arrived and after they left. He was sceptical that the behaviour would ever be eradicated but felt that it was necessary to take preventative measures.

A journalist described the scene in Sunnybank in mid-January 2002 where police descended on a large gathering of car enthusiasts and issued 24 defective vehicle notices. The weekly gatherings were reported to involve up to 300 vehicles and 500 people.

At the time (January 2002), one Sunnybank resident said that the gathering had been occurring on a weekly basis for about 6 months:

*They park on both sides of the street and in every available parking space. They slowly rev up and down the street for hours. Not only is it highly dangerous, but it is very intimidating, they are all leaning against the cars, alarms are going off, car horns are going, and engines are revving.*

*They appear to have a system in place that warns of any imminent arrival of police.*

*It would be wonderful if they took it in turns to meet outside their own homes and completely disrupt the neighbourhood with noise.<sup>5</sup>*

The resident reportedly went on to say that she would support an area designated for hoons where they could annoy each other and not the general public.

This latter approach has been tried by Gold Coast City police when they were involved in the establishment of the Broadwater Car Club in March 2000. The 1999-2000 *Annual Report of the Police Service* reported that the Club had arranged a suitable environment for enthusiasts to meet and display their vehicles and had a positive relationship with police. The establishment of the Club had been identified as leading to a significant drop in the number of complaints received by police from local residents about driver behaviour.<sup>6</sup>

However, there have, in recent times, been claims that Club activities at the Broadwater car park at Southport have also attracted those who want to do more than show their

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<sup>4</sup> Natalie Newell, 'Curb the hooning', *Southern Star*, 23 January 2002, p 1.

<sup>5</sup> Natalie Newell, 'Hoards of hoons hound Robertson', *Southern Star*, 23 January 2002, p 5.

<sup>6</sup> Queensland. Department of Police, *Annual Report 1999-2000*, p 46.

vehicles to other enthusiasts.<sup>7</sup> The depth of the problem can be seen in the web site established by a Brisbane devotee:

*I saw the guy in the white Commodore again. We both nailed the throttle at about 20km/h, managed to get it just right and the car took off, changed into second and got smoke for about a second. Got into third gear and was a mile ahead this time. We pulled up at the lights next to each other and he leaned out the window and said "what the ... are you packing under that thing now?!" That just made my day. I went out and 'practised' my second-gear burnouts the next day.<sup>8</sup>*

Driver behaviour that causes a motor vehicle to lose sustained traction with the road surface is commonly known as a 'burnout'. It is primarily caused by engine power being applied quickly beyond a point where one or both of the rear wheels loses traction with the road due to axle tramp. The result is excess engine and tyre noise and smoke from burning rubber.

In vehicles that are not fitted with rear suspension to counteract axle tramp caused by the fast acceleration, the vehicle will almost remain stationary until the accelerated power drops sufficiently to allow traction to resume. In vehicles whose rear suspension is strong enough to exert traction control ensuring that equal power is delivered to both rear wheels, the vehicle may leave a trail of burning rubber from both tyres in a snake-like fashion as the vehicle moves forward.

In either case, it is generally caused by deliberate driver behaviour and represents a loss of control of the vehicle whilst it is taking place.

### **3 THE USE OF IMPOUNDING AND FORFEITURE AS A PENALTY AGAINST REPEATED OFFENDERS**

Recent legislation passed in New South Wales and the Australian Capital Territory now authorises the courts in those jurisdictions to issue orders for the impounding or forfeiture of motor vehicles to the Crown when they have been used to commit particular offences for which a person has been found guilty.

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<sup>7</sup> Peter Gleeson, 'Impound their cars: Nats pledge tough line on hoons', *Gold Coast Bulletin*, 6 March 2002, p 6.

<sup>8</sup> 'The Archives' [http://members.optushome.com.au/turbo202/MyCars/VC/Mods\\_Arc.html#December99](http://members.optushome.com.au/turbo202/MyCars/VC/Mods_Arc.html#December99) Downloaded 10 April 2002.

### 3.1 THE LAW OF FORFEITURE

The legal meaning of 'forfeiture' is to lose and from its very nature it implies the taking away of an existing right from a person. In the case of the forfeiture of property, that forfeiture is backed up by a legal process where a person loses a lawful legal entitlement to personal property such as a motor vehicle or real property.

Forfeiture of property that is imposed as a consequence of conviction for a particular offence is regarded as forming part of the sentence of the court.<sup>9</sup>

Generally, there are three circumstances under which the courts may order forfeiture of property and these are:

- (i) forfeiture may be ordered where the property in question has been possessed illegally (ie. as proceeds of crime);
- (ii) forfeiture may be ordered where the property concerned is illegally possessed and is used in the commission of an offence or intended to be so used, and
- (iii) forfeiture may be ordered where the property concerned is legally possessed and is used in the commission of an offence or is intended to be so used.<sup>10</sup>

The set of circumstances described in (iii) above represent the circumstances relating to the prescribed offences of the Police Powers and Responsibilities and Another Act Amendment Bill 2002.

#### 3.1.1 Mandatory forfeiture or discretionary forfeiture

The two forms of forfeiture law that are prevalent in Australia are:

- (i) mandatory forfeiture which occurs only after conviction, and
- (ii) forfeiture ordered by a court following conviction.

The first form will generally not provide the court with a discretion as to forfeiture of property whereas the second form will do so. The forfeiture of the proceeds of crime falls within the first category and is catered for in legislation such as the *Crimes (Confiscation) Act 1989* (Qld) and equivalent legislation in other Australian jurisdictions.

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<sup>9</sup> *R v Menocal* (1979) 2 All ER 510 at 510.

<sup>10</sup> *A Concise Dictionary of Law*, Oxford University Press, p 153.



The second category provides the courts with discretion with respect to forfeiture. For example, the *Road Transport (Safety and Traffic Management) Act 1999* (ACT) contains s 10A(2) which is included in **Appendix A** to this Research Brief. The Police Powers and Responsibilities and Another Act Amendment Bill 2002 (Qld) also provides discretion to the courts in relation to forfeiture.

### **3.1.2 Arguments in favour of forfeiture as part of the punishment regime**

- The threat of vehicle forfeiture would be more influential to repeat offenders than any other penalty that is available.
- Forfeiture of property does not concern the expansion of police powers; it is concerned with an expansion of the powers of the court to deal with the property of offenders who fall within a specific category such as a repeat offender.
- Forfeiture of property that is used to repeatedly commit an offence is justifiable when other prescribed penalties have obviously failed to work.
- Forfeiture provisions are only aimed at penalising the guilty, not the innocent, and as such, they enjoy wide public support.
- Provisions that authorise courts to issue forfeiture orders do not devolve unaccountable power to police. When the courts are authorised in this regard, any police action of impoundment then becomes accountable to the courts.
- Forfeiture provisions concerning property used in the commission of offences may offend against personal property rights but the wider public interest has to be considered in relation to the harm or possible harm that repeat offenders have caused or may cause.
- The courts are in a position to decide upon forfeiture after hearing all the circumstances surrounding the offence, thereby ensuring that the consequences of forfeiture do not exceed that which is warranted by the gravity of the offence. For example, in 1989, the Queensland Court of Criminal Appeal set aside an order for the forfeiture of a motor vehicle that was used in the commission of a criminal offence under the *Drugs Misuse Act 1986*. The Court of Criminal Appeal used its discretion to set aside the forfeiture order partly on the grounds that the offenders would suffer hardship if their vehicles which were, for the greatest part, used for legitimate purposes were forfeited to the Crown.<sup>11</sup>
- Correctly drafted, property forfeiture provisions allow bona fide property owners to recover their property if it can be shown that the property concerned was used

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<sup>11</sup> *R v Ward, Marles and Graham* (1989) 1 Qd R 194 at 200 per Carter J.

in the commission of an offence without their knowledge or despite reasonable efforts on their part to prevent this from occurring.

### 3.1.3 Arguments against forfeiture as part of the punishment regime

- Generally, forfeiture is not favoured in law and when such a provision is provided for, it must be strictly construed by the courts because of the severity of the consequences that may flow from that forfeiture.
- Forfeiture can result in harsh consequences and it is not universally accepted that an order for forfeiture of property can be justified within the traditional objectives of punishment, particularly rehabilitation. Such orders tend to operate on a ‘all or nothing basis’ with the result that a valuable asset may be forfeited over and above what is really deserved in the circumstances when the nature of the offence is considered. Forfeiture of property could be disproportionate to the gravity of the offence.
- There has also been comment in the past from the judiciary that forfeiture provisions in legislation have not always been easy for the courts to interpret, particularly when the property to be forfeited is subject only to a part interest by the offender and there is an expectation that the courts ensure that innocent people are not detrimentally affected by attempts to penalise offenders.<sup>12</sup> In many cases, the motor vehicles of young persons are subject to consumer mortgage contracts or perhaps subject to personal informal financial arrangements with a parent or family member. In these circumstances, opponents of forfeiture argue that any forfeiture provisions must be drafted in a manner that protects the legitimate interests of third parties who were not involved in committing the offence.
- Provisions that provide for forfeiture of property should authorise the courts to, in the first instance, make forfeiture orders that can be moulded so as to protect the interest of an innocent party without that innocent party having to make application to the court for their interest to be protected.<sup>13</sup>
- There is no rational connection that can be made between a wrong that requires a remedy and the forfeiture of property that facilitated the perpetration of the wrong. Forfeiture on the basis of facilitation cannot be remedial because it does not take into consideration the measure of the offence that gave rise to it.

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<sup>12</sup> *R v Bolger* (1989) 16 NSWLR 115 at 119.

<sup>13</sup> *R v Bolger* (1989) 16 NSWLR 115 at 122.

- If forfeiture provisions are not drafted correctly, the way to injustice is left open. For instance, in the State of Michigan, a woman failed in a bid to be compensated when she lost her half interest in the family car when the car was forfeited under a State nuisance statute after her husband used it to solicit in a red light district. Under the relevant legislative provisions, the court ruled that there was no legal barrier to its seizure.<sup>14</sup>
- Forfeiture provisions for property that is used in the commission of an offence is not the same as the forfeiture of property that has been identified as a benefit obtained from committing an offence. In the former case, property that is lawfully owned may be forfeited to the Crown whilst, in the latter case, property that has been obtained unlawfully is subject to forfeiture.
- Forfeiture of property lawfully obtained simply because it was used in the commission of an offence only increases the penalty imposed and if this is the intention of the legislation, then the penalty itself should be increased. Forfeiture should not be used as an ‘auxiliary’ penalty.

## **4 CURRENT PROVISIONS IN QUEENSLAND**

### **4.1 TRANSPORT OPERATIONS (ROAD USE MANAGEMENT) ACT 1995**

**Section 83** of the *Transport Operations (Road Use Management) Act 1995* (previously s17 of the now repealed *Traffic Act 1949*)<sup>15</sup> provides for the offence of careless driving of a motor vehicle. As with traffic legislation in other Australian jurisdictions, the offence centres on driving without due care and attention or in a manner that lacks reasonable consideration for other road users. This offence attracts a maximum monetary penalty of 40 penalty units (ie currently \$3,000) or a maximum term of imprisonment not exceeding 6 months.

The maximum monetary penalties for a similar offence in Victoria and South Australia are not as high as in Queensland. Additionally, the offence in Victoria and South Australia does not attract a possible term of imprisonment.

Whilst **s 83** (previously s 17 of the *Traffic Act 1949*) could be used by police to prosecute drivers ‘hooning’ around, there are court decisions that suggest that the

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<sup>14</sup> ‘Civil Asset Forfeiture – The End of the Rule of Law’ [http://serendipity.magnet.ch/wod/civ\\_forf.html](http://serendipity.magnet.ch/wod/civ_forf.html) Downloaded 11 April 2002.

<sup>15</sup> The *Traffic Act 1949* (Qld) was repealed by the *Road Transport Reform Act 1999* (Qld), s 55.

provision is not specifically suited for confronting such driver behaviour. Section 17 of the Traffic Act 1949 (now re-located as s 83 of the Transport Operations (Road Use Management) Act) has been held to contain two separate offences, firstly the offence of driving without due care and attention and secondly the offence of driving without reasonable consideration for other persons using the road.

In a 1958 decision of the Full Court of the Supreme Court of Queensland, it was held:

*... 'due care and attention' mean that degree of care and attention that a reasonable and prudent driver would exercise in the circumstances, which circumstances are in part created by the defendant driver. Lack of due care and attention need not amount to negligence toward another person but may be a failure to exercise that degree of care and attention that a reasonable and prudent driver would exercise in looking after his own safety.*

The Court went on to say that the condition of the vehicle that was being driven was a relevant circumstance to be taken into consideration on a charge of driving without due care and attention.<sup>16</sup>

In an earlier appeal in the Full Court of the Supreme Court against conviction for the second offence of driving without reasonable consideration for others using the road, the Senior Judge remarked:

*...It seems to me that when a man drives a vehicle along a public road, in a township at midday, lunchtime, when persons are using the road...and he drives with the windshield in such a filthy condition that he can have little clear perception of a large area of road surface ahead of his vehicle or of any person using that road surface, he might fairly be said to be driving without reasonable consideration for the persons using the road...<sup>17</sup>*

These decisions show that s 17 of the Traffic Act (now re-located as s **83** of the *Transport Operations (Road Use Management) Act 1995*) can cover driving behaviour that is 'minor' in scope and unintentional.

**Section 85** of the *Transport Operations (Road Use Management) Act 1995* provides for the offence of unlawfully organising, promoting or participating in any race, speed record attempt or speed trial on a road. The maximum monetary penalty these offences attract is 40 penalty units (ie currently \$3,000) or a maximum term of imprisonment not exceeding 6 months. This provision, originally inserted into the now repealed Traffic Act (s 19) and subsequently re-located to the Transport Operations (Road Use

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<sup>16</sup> *Johannesen v Zeller, Ex parte Zeller* (1958) St R Qd 366 (see the Headnote to the case).

<sup>17</sup> *Holliday v Bird, Ex parte Bird* (1951) unreported, quoted in *Johannesen v Zeller, Ex parte Zeller* (1958) St R Qd 366 at 370.

Management) Act, does target more specifically the type of driver behaviour commonly known as ‘hooning’. The penalty for this offence in Queensland is greater than in the Australian Capital Territory where a maximum penalty is a \$2,000 fine.

## **5 KEY PROVISIONS OF THE POLICE POWERS AND RESPONSIBILITIES AND ANOTHER ACT AMENDMENT BILL 2002 (QLD)**

### **5.1 AMENDMENTS TO THE POLICE POWERS AND RESPONSIBILITIES ACT 2000**

**Clause 6** inserts **proposed new ss 59A-59X** into the Act relating to the powers of police to impound vehicles that have been used for prescribed offences. **Proposed new s 59A(1)** authorises police to exercise their powers under the new sections on the basis of a reasonable suspicion that a person using a vehicle is committing or has used a vehicle to commit a prescribed offence.

Proposed new **s 59A(3)** acknowledges the principal rights of a credit provider to repossess a vehicle under the authority of the *Consumer Credit Code* despite the exercise of police powers under **proposed new ss 59A-59X**.

For a prescribed offence, the police powers of impounding or forfeiture and the issuing of community service orders by a court are to be regarded as additional penalties to any other penalty that may be imposed (**proposed new s 59B**).

#### **5.1.1 Prescribed offences**

**Clause 13** amends Schedule 4 (Dictionary) of the Act by inserting a definition of the term ‘prescribed offence’ which refers to the following offences:

- (a) the dangerous operation of a vehicle on a road or in a public place as provided for in s 328A *Criminal Code 1899*.
- (b) the careless driving of a motor vehicle as provided for in s 83 *Transport Operations (Road Use Management) Act 1995*.
- (c) racing or the conducting of speed trials on a road as provided for in s 85 *Transport Operations (Road Use Management) Act 1995*.

- (d) the wilful starting or driving of a vehicle that produces unnecessary noise or smoke as provided for in s 291(1)(b) of the *Transport Operations (Road Use Management – Road Rules) Regulation 1999*.

with any of these offences being committed in circumstances that involve a speed trial, or a race between vehicles, or a burn out.

### 5.1.2 Police powers concerning prescribed offences

**Proposed new s 59C** provides police with the authority to stop and impound the vehicle. For the purpose of impounding the vehicle, police may take possession of the keys from the driver of the vehicle, enter the vehicle, or do anything else reasonably necessary. Generally, any impounding is to last for a period of 48 hours: **proposed new s 59C(4)**.

Under **proposed new s 59C(5)**, police are obliged to ensure that any impounded vehicle is moved, in a manner considered appropriate, to a designated holding yard for storage.

Any vehicle that is impounded and is subsequently found to have been stolen or unlawfully used or found to be a rental vehicle is not to remain impounded or be subject to a forfeiture application by police and must be returned to its rightful owner (**proposed new s 59C(6)**).

**Proposed new s 59E** obliges police to furnish a notice of impoundment to the person operating the vehicle and the owner or owners of the vehicle if the operator is not the owner.

**Proposed new s 59F** is an important provision which obliges police to inform the owners of impounded vehicles (via a notice of impoundment) as to how they can recover their motor vehicles. A notice of impoundment will, in effect, be a statement of the rights of owners as to their personal interest in the vehicles concerned.

A notice of impoundment must state:

- That the vehicle has been impounded for a period of 48 hours; and
- How the owner may recover the vehicle; and
- That satisfactory evidence of ownership may be required to be produced before the vehicle will be released; and
- That the operator of the vehicle will be required to pay any costs associated with impounding and storage if found guilty of a prescribed offence; and
- That any unlawful removal of the vehicle from the holding yard is an offence which may attract a maximum penalty of \$3,000.

Under **proposed new s 59G**, where the person in control of the impounded vehicle has been convicted previously of a prescribed offence within 3 years before the day the vehicle is impounded, the impoundment notice must state:

- That an application will be made to a court for an order that the vehicle be impounded for a period of up to 3 months where one previous offence has been committed within the previous 3 years; or
- That an application will be made to a court for an order that the vehicle be forfeited to the State where two or more previous offences have been committed within the previous 3 years.

The notice must also inform the person charged with the offence or the owner if they are not the same person that he or she can make application to the court to have the vehicle returned until the application for impoundment or forfeiture is determined by the court.

**Proposed new s 59H** sets out procedures to be followed by a police officer who impounds a vehicle, the driver of which has been found guilty of a prescribed offence in the previous three years. Under **proposed new s 59H** any application that is made for either an impoundment or forfeiture order must be made within 48 hours of the initial impoundment period commencing.

Police will be obliged to give written notice to the person in control of the vehicle or the owner of the vehicle if they are not the same person as to the date, time and place set for any hearing of an application for impoundment or forfeiture (**proposed new s 59K**).

In considering an application for impoundment or forfeiture, the court may exercise a discretion not to impound or forfeit the vehicle on the grounds that severe financial or physical hardship will be caused to the owner or the usual driver of the vehicle if either impounding or forfeiture were ordered. In exercising its discretion, the court may order that the vehicle be returned to its owner or usual driver and order that the person in control of the vehicle at the time the prescribed offence was committed perform not more than 240 hours of community service (**proposed new s 59L(2)**).

An order of community service may be appealed against as a sentence imposed on the person, and an appeal may be commenced within 28 days against any other order made under the prescribed offence provisions from the Magistrates Court to the District Court. On appeal, the appellant will have the right to apply for the appeal to be heard by way of a full re-hearing (**proposed new s 59N**).

Liability for the payment of impounding and storage will lie with a person found guilty of committing a prescribed offence. Liability for such costs will fall on the State where a person charged is found not guilty or the charge is withdrawn. In circumstances where the owner of a vehicle is entitled to recover his or her vehicle after the initial impoundment period of 48 hours but does not do so, liability for costs of storage after that time will fall

upon the owner. Any unpaid costs by a person found guilty of a prescribed offence will be a debt payable to the State and may be registered by the Police Commissioner with the registrar under the *State Penalties Enforcement Act 1999* (**proposed new s 59P**).

Police acting in good faith and without negligence will not be liable for any damage, loss or depreciation caused to an impounded vehicle (**proposed new s 59S**). The Commissioner of Police may dispose (generally by way of auction) of any impounded vehicle that has not been recovered within 2 months of its impounding period ending. Any such proposed disposal must be communicated in writing to the owner of the vehicle (**proposed new s 59T**).

The proceeds of impounded vehicles that are not reclaimed and vehicles that are forfeited to the State are to be used to satisfy the following order of priority interests:

- Payment of the expenses incurred as a result of the sale.
- Payment of the expenses incurred as a consequence of impounding and storage of the vehicle and the searching of registers for the purpose of giving notice of the vehicle's impounding.
- Payment for the satisfaction of any security interest registered under the *Motor Vehicles Securities Act 1986*.
- Payment to the owner if the vehicle was disposed of after being impounded.
- Payment to the consolidated fund if the vehicle was disposed of after forfeiture (**proposed new s 59W**).

### 5.1.3 The operation of audio accessories

**Clause 8(3)** provides for an amendment to **s 358** of the Act by inserting a **proposed new sub-section (2)** allowing for the offence of causing environmental nuisance by the operation of inboard electronic appliances producing or amplifying music or other sounds. This applies to accessories such as radios, CD players, amplifiers and the like.

**Clause 9** amends **s 359** by inserting **proposed new sub-section (3)** which provides for police action to be taken in relation to excessive noise being emitted from a motor vehicle without the need for a complaint from a member of the public. The Explanatory Notes accompanying the Bill indicate that the new sub-section is intended to allow police to act in circumstances where the environmental nuisance is being emitted from a moving vehicle or a vehicle parked in a public place.<sup>18</sup>

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<sup>18</sup> Police Powers and Responsibilities and Another Act Amendment Bill 2002 (Qld), *Explanatory Notes*, p 13.



In line with the non complaint status established by the amendment to s 359, the insertion of **proposed new sub-section (2)** into s 360 by **Clause 10** also provides for police action without complaint for environmental noise being emitted from a vehicle on a road or in a public place. The insertion of **proposed new sub-section (4)** into s 360 will allow police to act when they regard the interference or annoyance that is occurring to persons in the vicinity of the road or public place to be excessive. As the example included under the proposed sub-section in the Bill indicates, the interference or annoyance being caused need not be incessant but can be spasmodic.

## **6 LEGISLATION IN OTHER AUSTRALIAN JURISDICTIONS**

### **6.1 NEW SOUTH WALES**

The principal piece of legislation in New South Wales is the *Road Transport (Safety and Management) Act 1999*. This Act provides for the offences of:

- promoting, organising or taking part in unauthorised racing or speed trials on any road or related area;
- burnouts where the vehicle loses sustained loss of traction with the road surface; and
- driving that is negligent, furious, reckless or menacing.

The *Road Transport (General) Act 1999* further provides the authorities with powers of:

- removal and impounding of motor vehicles used in such offences;
- impounding or forfeiture of motor vehicles on finding of guilt or admission;
- search warrants for the search of motor vehicles used in authorised racing, speed trials, burnouts or any like offences;
- suspension of licence by the Commissioner of Police for a period of 14 days; and
- immediate suspension of licence in certain circumstances by police; and
- suspension of driving privilege in New South Wales of a person who does not hold a New South Wales licence.

#### **6.1.1 Road Transport (Safety and Traffic Management) Act 1999**

Contravention of s 40 by organising, promoting or taking part in any unauthorised street race, speed record attempt or speed trial on a road or related area attracts a maximum penalty of \$2,200. Additionally, any person convicted by a court of offending against s 40 will automatically be disqualified from holding a driver's licence for a period of 12

months. The court does have the authority to order either a shorter or longer term than the 12 months automatic disqualification if the court believes that in the circumstances such an order is warranted.

Under s **41(1)** 'burnouts' attract a maximum monetary penalty of \$550. **Section 41(2)** provides for a greater maximum monetary penalty of \$770 if the driver was aware that a flammable liquid such as oil, petrol or diesel fuel was on the road or was placed on the road or under the wheels of the vehicle deliberately. This type of behaviour creates a more dangerous situation.

Under s **41(3)** it is open for a driver defending such a charge to show that the vehicle was not deliberately operated in the manner that offended against the section.

The most severe penalty attaches to the driving of a motor vehicle in a manner determined to be negligent, furious or reckless. A first offence of driving negligently resulting in death attracts a maximum monetary penalty of \$3,300 or a maximum prison term of 18 months or both. For any subsequent offence, the maximum monetary penalty is \$5,500 or a maximum prison term of 2 years or both (s **42(1)(a)**).

Negligent driving that causes grievous bodily harm attracts a maximum monetary penalty of \$2,200 or a maximum prison term of 9 months or both as a first offence whilst subsequent offences attract \$3,300 or 12 months or both (s **42(1)(b)**).

Where neither death nor grievous bodily harm is caused, the offence of negligent driving attracts a maximum monetary penalty of \$1,100 (s **42(1)(c)**).

Driving behaviour that is determined to be furious or reckless or at a speed or in a manner that is dangerous to the public will, as a first offence, attract a maximum monetary penalty of \$2,200 or a maximum term of 9 months imprisonment or both. A second or subsequent offence attracts a penalty of \$3,300 or 12 months, or both (s **42(2)**).

Driving behaviour that is intentionally menacing to another person attracts a maximum monetary penalty of \$3,300 or a maximum term of imprisonment of 18 months or both as a first offence and \$5,500 or 2 years or both for a second or subsequent offence (s **43(1)**).

There is also the offence of deliberate driving behaviour that might result in another person being menaced where the driver ought to have known that the other person might be menaced. The offence attracts a maximum monetary penalty of \$2,200 or a maximum term of imprisonment of 12 months or both for a first offence. Any subsequent offence attracts a maximum monetary penalty of \$3,300 or a maximum term of 18 months imprisonment, or both (s **43(2)**). Menacing of a person may be manifested in a threat to personal injury or a threat to damage of property whether or not that person is on a road or road related area (s **43(3)**).

### **6.1.2 Road Transport (General) Act 1999**

**Section 39(1)** authorises police to seize, take charge and remove a motor vehicle when it is reasonably believed that the motor vehicle has been used within the previous 10 days in committing offences covered by **ss 40-41** *Road Transport (Safety and Traffic Management) Act 1999*.

Any vehicle removed to a place may be impounded by police at that place or another place (**s 39(4)**). Any cost of removal that is incurred is to be paid by the responsible person for, or the driver of, the motor vehicle. Any amount that is not paid may be recovered by police as a debt due to the Crown (**s 39(7)**).

**Section 40(1)** authorises any court finding against a person for an offence covered by **ss 40-41** *Transport (Safety and Traffic Management) Act 1999* to order that any motor vehicle used in connection with the commission of an offence under those sections be impounded for a period of three months. **Section 40(2)** authorises a court, upon convicting a person for a second or subsequent time of offending against **ss 40-41**, to order that any such motor vehicle be forfeited to the Crown.

**Section 40(3)** does however provide a court with a discretion to reduce or dispense with the 3 month impounding or, in the case of forfeiture, dispense with such an order.

**Section 41** authorises a court, on application based on reasonable grounds, to issue a search warrant to police to search for a motor vehicle that has been operated in the commission of an offence covered by **ss 40-41** *Transport (Safety and Traffic Management) Act 1999*.

### **6.1.3 Assessment of the New South Wales Provisions**

The New South Wales Parliamentary Staysafe Committee was required under the sunset provisions of the *Traffic Amendment (Street and Illegal Drag Racing) Act 1996* to review the operation and application of the Act.

The New South Wales Police Service gave evidence to the Parliamentary Committee suggesting that the enforcement of the Act's provisions directly led to a reduction of regular large gatherings of car enthusiasts engaging in behaviour prohibited by the Act.

The Committee recommended that the Roads and Traffic Authority conduct research into the use of motor vehicle impoundment, confiscation and forfeiture as sanctions for illegal road behaviour.

Between 21 December 1996 and 30 March 1997, a total of 384 offences were detected by police. From these offences, 136 motor vehicles were impounded. The Parliamentary Committee reported the following impoundment statistics:

- 38% of the vehicles were released to their owners after the 3 month period of impoundment had expired.
- 23% of the vehicles impounded were released to their owners after the granting of a court order for release.
- 38% of the vehicles were released to their owners after a successful application to the Police Commissioner or Local Patrol Commander.<sup>19</sup>

Whilst no specific statistics were given, the Committee reported that most of the vehicles released were owned by persons who were not the actual street racing offenders.

The Committee concluded from evidence taken that the legislation enjoyed broad acceptance among drag racing and club interest groups.

Although evidence received supported the removal of the provisions whereby police could confiscate a motor vehicle on the basis that there was sufficient evidence that an offence had been committed, the Committee decided to recommend that the legislation remain unchanged in this regard. It was thought that the ability of police to impound or confiscate motor vehicles without having directly witnessed an offence was a strong enforcement measure that should remain in the Act.<sup>20</sup>

Evidence was taken by the Committee critical of the impost imposed by forfeiture for what is seen as a nuisance activity as opposed to the much more serious repeat drink driving offender where such a measure is not applied. The Committee had earlier in 1993 recommended to the New South Wales Parliament that impounding, confiscation and forfeiture be used as penalties against repeated drink driver offenders. Although no Australian jurisdiction has encompassed such an approach, it is not unknown in international jurisdictions. For instance, since 1 January 2000, Florida in the United States has used motor vehicle forfeiture as a penalty within its drink driving legislative regime.<sup>21</sup>

Despite its stated preference that the forfeiture provisions were appropriate and being applied consistently, the Committee stated its intention to review the relevant provisions

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<sup>19</sup> New South Wales, Staysafe Committee of the Parliament, *The Traffic Amendment (Street and Illegal Drag Racing) Act 1996 – A Report relating to the Sunset Provision*, Report 8/51, May 1997, p 9.

<sup>20</sup> New South Wales, Staysafe Committee of the Parliament, Report 8/51, p 11.

<sup>21</sup> 'Florida's Drunk Driving Vehicle Forfeitures: Do Costs Outweigh Taxpayer Benefits?' *Stetson Law Review*, <http://www.law.stetson.edu/lawforum/current/robson.htm#IIIA> Downloaded 1 May 2002, p 1.

within its annual reporting process and to report specifically to the Parliament on the issue at some future time as case law became available.<sup>22</sup>

## **6.2 VICTORIA AND SOUTH AUSTRALIA**

Unlike New South Wales, neither Victoria or South Australia have passed specific legislation (aside from long standing traffic legislation) aimed at deliberate driver behaviour that is negligent or reckless to a point that it is dangerous or a nuisance to other persons.

Both Victoria and South Australia have adopted the *Australian Road Rules* as part of a national scheme but in both jurisdictions there was existing traffic legislation covering virtually all that is contained in the *Australian Road Rules*. Rule 291 of the *Rules* refers to the starting or driving of a motor vehicle in such a manner that unnecessary noise or smoke is generated. In both jurisdictions, Rule 291 is enforceable. The rule is focused on driver behaviour rather than the condition of the vehicle, which is covered by various traffic provisions.

### **6.2.1 South Australia<sup>23</sup>**

**Sections 45 & 46** of the *Road Traffic Act 1961* are provisions concerned with careless driving and reckless and dangerous driving respectively. Careless driving is driving without due care or attention or without reasonable consideration for other persons using the road. Offenders are liable to a maximum fine of \$1,250 and a loss of 3 points from their licence.

This provision can cover a wide range of behaviour such as leaning over whilst driving to wind up or down the passenger side window with the result that less attention is paid to driving which, in turn, could precipitate a dangerous situation. At the other end of the scale, under the right circumstances, it would also cover driver behaviour such as ‘burnouts’ because of a lack of reasonable consideration for other road users.

Reckless and dangerous driving covered by **s 46** would also apply to ‘hoon’ driver behaviour conducted in a manner that was dangerous to the public. A first offence attracts a minimum monetary penalty of \$300 and a maximum of \$600. The court is obliged to disqualify the offender from holding a driver’s licence for a minimum of 6

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<sup>22</sup> New South Wales, Staysafe Committee of the Parliament, Report 8/51, pp 18-19.

<sup>23</sup> Information about the relevant South Australian legislation is based upon research undertaken by Renee Easten, Parliamentary Research Officer, Research and Reference Section, Queensland Parliamentary Library.

months. Any subsequent offence attracts no greater monetary penalty but the court may order that the offender serve a maximum term of 3 months imprisonment or both. Licence disqualification must be for a minimum of 3 years.

### ***Enforcement of traffic legislation in South Australia***

Police are empowered to deal with examples of 'hoonish' driving behaviour that breaches traffic laws in that State. Only the police can deal with breaches of **ss 45 & 46 Road Traffic Act 1961** and this also applies to any breaches of **Rule 291 Australian Road Rules**. Breaches of vehicle standards under the **Road Traffic Regulations 1999** are enforceable by both police and vehicle inspectors with the latter being employed by Transport South Australia. Breaches of the *Regulations* attract varying monetary penalties depending on the *Regulation* that is transgressed. Demerit points are not applicable to offences relating to vehicle standards.

Police and vehicle inspectors have authority to inspect motor vehicles and issue defect notices where a vehicle has been found to have been illegally or inadequately modified in breach of vehicle standards and roadworthiness requirements. However, the distinction is drawn between police authority to target vehicle standards and driver behaviour as against the powers of vehicle inspectors who are limited to vehicle standards only.

### **6.2.2 Victoria<sup>24</sup>**

Under **s 65 Road Safety Act 1986** any person who drives a motor vehicle in a careless manner is liable to a maximum monetary penalty of \$1,200 for a first offence and to a maximum monetary penalty of \$2,500 for any subsequent offence. **Section 64** provides for the offence of dangerous driving which is determined on the circumstances by the speed of the vehicle and the manner of driving. This offence attracts a maximum monetary penalty of \$24,000 and/or a term of imprisonment of not more than 2 years, or both, and disqualification from holding a driver's licence for a minimum period of 6 months.

### ***Road Safety (Vehicles) Regulations 1999***

As in South Australia, **Rule 291 Australian Road Rules** through **Road Rules Victoria** can be invoked against drivers who start or drive their motor vehicles in such a manner so

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<sup>24</sup> Information about the relevant Victorian legislation is based upon research undertaken by Joanna Fear, Parliamentary Research Officer, Research and Reference Section, Queensland Parliamentary Library.

as to produce unnecessary noise or smoke. This offence attracts a maximum monetary penalty of \$200. A similar offence is provided for under Regulation 807 *Road Safety (Vehicles) Regulation 1999* where any person uses, causes to be used or permits a motor vehicle to be used on a road whilst emitting undue noise. This offence attracts a maximum monetary penalty of \$500.

Neither the *Road Rules* nor the *Regulations* define what is meant by undue or unnecessary noise; consequently, the interpretation is subjective.

Under Regulation 819 it is also an offence to drive on a road a motor vehicle that has been modified unless the modification has the approval of the motor vehicle registration authority, or complies with its guidelines.<sup>25</sup> The maximum penalty that this offence attracts is a fine of \$500. Regulation 819 is motor vehicle specific and not driver specific but the types of alterations that are covered by that regulation include ground clearance, axels, suspension and steering, steering wheels, wheels and tyres, brakes, engine components, exhaust and fuel systems, bonnet scoops and additional lighting. Whilst a number of these alterations can be done legally, they do tend to be done by car owners who are attracted by improved performance with some not being backward in showing what the car can do in this regard.

Those found offending against provisions of the *Road Safety Act 1986* are prosecuted primarily by police. However, under s 77 they may also be prosecuted by officers of municipal councils who have council authorisation as well as authorised officers of Vic Roads and even protective services officers appointed under the *Police Regulation Act 1958* in circumstances where the offence concerned occurs on land that is protected by the officer and is a place of public importance.

Offences concerning driver behaviour such as dangerous driving, careless driving and driving in a manner that creates undue noise require that the actual driver be prosecuted. However, for offences that are motor vehicle specific, liability lies with the vehicle's owner because such offences relate to causing or permitting the vehicle not to comply with prescribed standards.

### ***Environment Protection Act 1970***

Regulations concerning vehicle standards under the *Road Safety (Vehicles) Regulations 1999* are supported by prescribed noise standards under the *Environment Protection Act 1970*, particularly s 48B. The standards are set out in Regulations 13 and 14 of the

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<sup>25</sup> For the purpose of this Regulation, VicRoads issued a *Guide to Modifications for Motor Vehicles* in January 2000.

*Environment Protection (Vehicle Emissions) Regulations 1992*. Contravention attracts a maximum monetary penalty of \$3,000.

Regulation 28 of the *Environment Protection (Vehicle Emissions) Regulations 1992* makes it an offence to modify, install or remove noise reducing equipment with the result that the motor vehicle is unable to meet the prescribed noise level standards. This offence attracts the maximum monetary penalty of \$800.

### 6.3 AUSTRALIAN CAPITAL TERRITORY<sup>26</sup>

The legislation passed in the Australian Capital Territory is largely identical to that passed in New South Wales. The *Road Transport (Safety and Traffic Management) Act 1999* adopted the *National Road Rules* for the Australian Capital Territory and provided for offences such as negligent driving, furious, reckless or dangerous driving and menacing driving. The *Road Transport (Safety and Traffic Management) Act 1999* was soon amended by the introduction of a Private Member's Bill, which inserted provisions for racing, speed trials and records, burnouts and for the seizure, impounding and forfeiture of motor vehicles in certain circumstances.

**Section 5A** provides for the offence of organising, promoting or taking part in an unauthorised race, attempt to break a vehicle speed record or a trial of the maximum speed or acceleration of a vehicle. This offence attracts a maximum monetary penalty of \$2,000.

**Section 5B** provides a maximum monetary penalty of \$2,000 for the offence of a driver causing a burnout. When a substance such as oil, petrol, diesel fuel or any other flammable liquid is deliberately placed on the roadway, then a maximum penalty of \$3,000 applies.

Negligent driving is catered for in **s 6** where a maximum penalty of \$2,000 applies. Negligent driving causing death is a circumstance of aggravation which attracts a higher maximum monetary penalty of \$20,000 or a maximum term of imprisonment not exceeding 2 years, or both. Causing grievous bodily harm as a circumstance of aggravation attracts a maximum monetary penalty of \$10,000 or a maximum term of imprisonment not exceeding 12 months, or both.

**Section 7** provides for the offences of furious or reckless driving, or driving at a speed or in a manner that is dangerous to the public. These offences attract a maximum monetary

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<sup>26</sup> Information about the relevant ACT legislation is based upon research undertaken by Robyn Moore, Parliamentary Research Officer, Research and Reference Section, Queensland Parliamentary Library.



penalty of \$10,000 or a maximum term of imprisonment not exceeding 12 months, or both.

The offence of menacing driving is provided for in **s 8**. The essential element of the offence is that the driver must have had an intention to menace another person (s 8(1)) or ought to have known that the other person might be menaced (s 8(2)). In either circumstance, the maximum monetary penalty is \$10,000 or a maximum term of imprisonment not exceeding 12 months, or both.

### **6.3.1 Powers of seizure, impounding and forfeiture**

Unlike the New South Wales legislation, where the power of seizure, impounding or forfeiture of motor vehicles is provided for in a separate Act, the Australian Capital Territory legislation provides for these powers within the one Act.

Under **s 10B** the courts have the power to impound the motor vehicle of an offender who has been found guilty of offending against **s 5A** or **s 5B**. For a first offence, the vehicle is to be impounded for up to 3 months whilst for any subsequent offence the vehicle is to be forfeited to the Crown. As with the New South Wales legislation, the courts have the discretion to shorten or dispense with the period of impounding or commute a forfeiture to a period of impounding if not to do so would cause excessive hardship or injustice to anyone. Under **s 10B(10)** an offender who has been previously convicted within the last 5 years is deemed to be a subsequent offender.

**Section 10C** authorises police to seize and impound motor vehicles that are suspected on reasonable grounds to have been used for the commission of any offence under **s 5A** or **s 5B**. Any impounding that occurs under the authority of **s 10C** will remain in force for a period of 28 days or the end of court proceedings if such proceedings are commenced within the 28 day period (**s 10E**).

Under **s 10K** police may cause an impounded or forfeited vehicle to be sold by way of public auction or public tender. The circumstances of this are to be laid down in regulations to the Act. Another means of disposal may be adopted if the value of the vehicle is such that the cost associated with public auction would not be covered.

## **7 CONCLUSION**

The provisions of the Police Powers and Responsibilities and Another Act Amendment Bill 2002 (Qld) will result in legislation that is similar to existing legislation in New South Wales. However, whilst the New South Wales legislation specifically provides for the suspension of driving licences, the proposed legislation for Queensland does not.



**APPENDIX A**

**Road Transport (Safety and Traffic Management) Act 1999 (ACT)  
as amended by the  
Road Transport Legislation Amendment (No 2) Act 1999 (ACT)**

**Division 2.3 – Seizure, impounding and forfeiture of vehicles for  
certain offences**

**10A Impounding or forfeiture of vehicles used in committing certain  
offences**

- (1) If a court convicts a person, or finds a person guilty, of an offence against section 5A (Races, attempts on speed records, speed trials etc) or 5B (Burnouts and other prohibited conduct), the motor vehicle used by the person committing the offence is –
  - (a) for a first offender – to be impounded for 3 months, unless the court otherwise orders under subsection(2); or
  - (b) for a repeat offender – forfeited to the Territory, unless the court otherwise orders under subsection (2).
- (2) The court may, by order, specify a shorter period of impounding, dispense with the period of impounding or commute a forfeiture to a period of impounding to avoid excessive hardship or other injustice to anyone.
- (3) In deciding whether to make an order under subsection (2), the court –
  - (a) must have regard to the circumstances of the offence, including the risk to the safety of road users; and
  - (b) may seek evidence from the prosecution about the circumstances of the offence.

## APPENDIX B – MINISTERIAL MEDIA STATEMENTS

### **Hon Tony McGrady MP, Minister for Police, Corrective Services & assisting on the Carpentaria Minerals Province**

**8 May 2002**

#### **Tough new laws proposed to deter 'hooning'**

The Beattie Government will introduce tough new measures to allow for vehicle confiscation against motorists who participate in illegal drag racing and/or drive dangerously.

Minister for Police, Tony McGrady, today introduced the proposed laws in State Parliament through the Police Powers and Responsibilities Amendment Bill 2002.

The new provisions will empower police officers to confiscate vehicles used for hooning for a period of 48 hours, automatically upon the commencement of proceedings against the driver.

In instances of repeat offenders, the new provisions will enable courts to make orders to allow for:

- Impoundment of a vehicle for up to 3 months after a second offence.
- Possible forfeiture of a vehicle to the State after a third or subsequent offence.

Mr McGrady said the new laws would also allow police to issue directions to the driver of a vehicle to cease using sound equipment for 12 hours where the noise created is considered excessive. A failure to comply with the direction could result in the equipment being confiscated for 24 hours and prosecution for failure to comply with the direction.

He said he had spent nine months developing the tough but balanced laws and during this time input had been sought from a range of bodies including the RACQ, the Law Society and the Council for Civil Liberties.

"I have also spoken with many every day Queenslanders about the issue and with colleagues in other jurisdictions," Mr McGrady said.

"The reality is that illegal drag racing and dangerous driving pose significant risks to the community. It affects other road users and the public at large, not to mention the risks it poses to the actual motorists and their passengers.

"At the heart of these new measures is a desire to do what we can to make our roads safer.

"Undue noise created by this 'hoonish' behaviour is also an issue that many people have raised with me. It seems to be a particular problem in the Sunshine and Gold Coast regions.

"I observed this first hand when I spent an evening at the esplanade at Mooloolaba during CHOGM, which convinced me that the Government had to take tough action.

"These new laws will aid in the preservation of public safety and place reasonable checks on noisy vehicles which disturb the peace," Mr McGrady said.

Mr McGrady said the consultation process had impressed upon him the importance of a tough but workable approach.

"If an offender is found guilty then they will be required to pay all the costs associated with towing and impoundment. Police will incur the cost of impounding a vehicle for the first 48-hour period until the outcome of the offender's court proceedings is known.

"This will ensure a tough but fair system is in operation.

"We will be working with the tow truck industry to try and cap fees, under a similar arrangement to that with the Brisbane City Council for impoundment of vehicles parked illegally.

"As a further protection, the Government has committed that these new provisions will be subject to review after a two year period.

"We want laws that will work and I am confident our proposals will achieve what we are hoping for," Mr McGrady said.

PLEASE SEE THE ATTACHED FACT SHEET FOR FURTHER DETAIL OF THE NEW LAWS

Media contact: 3239 0199

#### INFORMATION ON THE STATE GOVERNMENT'S PROPOSED LAWS TO DETER HOONING

##### The issue

In recent times community attention has focused on the actions of persons driving motor vehicles in a 'hoonish', if not dangerous, manner. Predominantly, this has involved groups of youths racing their vehicles in speed "drag" contests or being involved in "burn out" displays.

A further type of hoonish behaviour the subject of constant complaints to police is referred to as "lapping". Lapping involves vehicles being driven at a very slow speed repeatedly around a number of predetermined streets. The predominate source of complaint is the volume at which the stereo systems in the vehicles are operated during lapping.

##### Summary of the new laws

Existing laws allow for a range of action to be taken against an offender involved in drag racing or 'burn outs', from the issue of a Traffic Infringement Notice for creating undue noise, to a charge of dangerous driving. In the case of lapping, a Traffic Infringement Notice can be issued for undue noise created by a stereo system.

However, these offences seem to do little to deter persons involved in drag contests, burn outs or lapping. Therefore, it is proposed that the Police Powers and Responsibilities Act 2000 be amended to allow a police officer to impound a vehicle used in the commission of a "prescribed offence" for a period of 48 hours for a first offence, or with the authority of a court, a period of up to 3 months for a second offence, and forfeiture to the State for a third or subsequent offence.

Impoundment of a vehicle will not occur for an offence related to lapping. Lapping is considered more of a nuisance offence rather than a potentially life threatening offence as is the case with those offences defined as "prescribed offences". However, lapping will be subject to noise abatement directions where the level of noise emitted from a sound system installed in a vehicle is excessive.

A further prescribed offence must be committed within three years of a previous offence before the latter offence may be considered a second or subsequent offence. Consequently, should three years lapse between a first and second offence, the second offence will be dealt with as a first offence.

How will car owners affected be notified?

The Bill requires that an owner be given written notice of the impounding of a vehicle for a first prescribed offence. The Bill stipulates the contents of the notice. The Bill requires

that an owner be given written notice of the impounding of a vehicle for a second or subsequent prescribed offence. The section also sets out the contents of the notice which includes informing the owner of the fact that the owner may make an application for the return of the vehicle pending the hearing of the application for impoundment or forfeiture. Additionally, the definition of "owner" has been altered to ensure that persons who have a registered interest in a vehicle by virtue of the Register of Incumbent Vehicles, are notified of an application for impoundment or forfeiture.

#### The process for impoundment

The new laws will require that proceedings by way of arrest or notice to appear must be first commenced before a vehicle can be impounded for a prescribed offence.

If the court is satisfied the offence has been committed, it may order the confiscation of the vehicle for a period up to three months (for a second offence) and may order that the vehicle be forfeited to the Crown (for a third or subsequent offence).

What if an offender does not own the vehicle in which the offence is committed?

In addition to confiscation and impoundment/ forfeiture, the existing usual penalties for the specified offences will apply. This will ensure that in instances where the driver of the vehicle is not the owner of the vehicle, the driver does not escape punishment and the owner is not the only person punished (also note provisions relating to avoiding impoundment).

When can impoundment be avoided?

Impoundment/ forfeiture may be avoided in two instances:

1. Where the impoundment/forfeiture would cause severe financial or physical hardship to the owner of the vehicle; or
2. Where a defence is raised that the offence occurred in circumstances whereby an innocent owner of the vehicle had not given permission for the offending activity to take place with his/ her vehicle.

In all such cases alternative penalties may be ascribed against the offending driver.

Should a Court find that impoundment should not take place for one of these reasons, the Court can, as an alternative, order that the offending driver serve a period of up to 240 hours of community service in accordance with the Penalties and Sentences Act 1995. This would be in addition to any penalties an offender may incur as a result of being found guilty of an existing offence (such as dangerous driving etc...).

In the case of a Court finding that forfeiture should not occur, based on the hardship grounds, the Court can as an alternative order a period of impoundment not exceeding 3 months.

These provisions will not apply in the case of a stolen vehicle or a hire vehicle.

Who will pay the costs of impoundment?

Costs for impoundment will be borne by offenders. However, Police will incur the costs for impounding a car for the initial 48 hours, pending the outcome of the offender's court proceedings. If found guilty, the offender will be required to meet all costs and this will be administered through the SPER system under the authority of a court order.

To ensure that the costs incurred in towing and storing impounded vehicles are capped to a reasonable rate, the Department of Police and the Department of Transport will be working together to develop a regulation under the Tow Truck Act 1973 in conjunction with the tow truck industry. To allow for the development of that regulation, suitable amendments have been made to the Tow Truck Act 1973 by the Bill. Additionally, the Department of Police will investigate the feasibility of entering into agreements with the tow truck industry to voluntarily cap towing and storage fees for impounded vehicles. This practice is currently undertaken by the Brisbane City Council with regards to the

towing of illegally parked vehicles. Further, the new laws will require that the costs of towing and storage of a vehicle be met by the State should a driver be found not guilty of a prescribed offence or not proceeded against.

Instruments which cause undue noise

These new laws will allow a police officer to issue a direction to the driver of a vehicle to cease use of sound equipment for a period of 12 hours where its use is excessive in the circumstances having regard to the degree of interference or annoyance the noise is causing. A failure to comply with the direction may result in the equipment being removed from the vehicle for a period of 24 hours and the driver being prosecuted for disobeying a direction. These new laws merely extend the current excessive noise laws relating to vehicles 'off road' to those that are on a road or in a public place. However, the extension does not require a police officer to receive a complaint from a member of the public before the police officer can take action to abate the noise nuisance. This is because the activity in question is taking place in a public place, and the source of the nuisance is not static.

What if the value of the vehicle is less than towing/impoundment costs?

Provision will be made in the Bill to allow for the voluntary transfer of ownership of a vehicle to the State where the owner of the vehicle is concerned that the costs of impoundment of the vehicle will outweigh the value of the vehicle. The vehicle can then be disposed of and the proceeds used to defray all costs. Any residual is returned to the owner of the vehicle.

Who can hear an application for an impoundment order?

Provision has been made that impoundment orders can be made by the Court hearing the prescribed offence, regardless of the value of the vehicle. Orders of impoundment or forfeiture are appealable, and the appeal court will consider the matter by way of rehearing.

What happens to vehicles still subject to credit?

The Bill allows for the operation of the Consumer Credit (Queensland) Act 1994, so that the provider of finance for the purchase of a vehicle, eg a hire purchase company, does not stand to lose the vehicle where the provider would otherwise be entitled to repossess the vehicle. Similarly, forfeiture provisions under the Bill seek to mirror those in the Crimes (Confiscation) Act 1989 to protect the interests of third parties that may have a charge over the vehicle. Consultation with the Finance Industry will be ongoing.

**Hon Tony McGrady MP, Minister for Police, Corrective Services & assisting on the Carpentaria Minerals Province**

**13 February 2002**

**Legislative options under consideration to deal with hoons**

The Beattie Labor Government is determined to put the brakes on the illegal activities of hoons in Queensland, with a number of new legislative measures under examination, including car confiscation.

Minister for Police Tony McGrady said legislative options including possible changes to penalties and licence suspension were being examined and a proposal would be taken to cabinet this year.

"A detailed strategy is being developed in consultation with the Minister for Transport. The more substantive proposals require legislative responses which therefore will take time," Mr McGrady said.

"I have met with officials in New South Wales to discuss car impounding and they have detailed for me the positives of this approach, while also outlining the administrative requirements of the scheme.

"At this stage we have not ruled anything in, nor anything out - we simply want to get the best possible solution to this growing problem."

He said a measured, considered response was needed to ensure that the Government achieved its aims in relation to reducing this type of activity.

"We must give any new laws careful and full consideration," Mr McGrady said.

"Many of our Labor members, in areas where hooning is rife, have been actively lobbying for a tougher stance to be taken on this issue because the dangerous and disruptive activities of hoons are affecting the quality of life for many Queenslanders.

"Hooning affects the safety of local streets and highways for the motoring public, as well as endangering the lives of drivers and their passengers.

"It can also be extremely irritating for local residents who must put up with squealing tyres and loud engines racing up and down streets at all hours of the day and night."

Mr McGrady said by the end of January the number of officers within the State Traffic Task Force would be increased by six as part of a special police team to tackle illegal motoring activities.

"Part of the brief of these new officers will be to crack down on offences relating to hooning right across Queensland, targeting the Gold Coast, Ipswich and the Sunshine Coast, where this has been an on-going problem.

"I'm advised that the new officers will not be the only police working on reducing hooning - the entire State Traffic Task Force will coordinate special operations to limit this problem. "

Media contact: Chris Woolley 3239 6218



## **APPENDIX C – OPPOSITION MEDIA STATEMENT**

### **Hon Vaughan Johnson MP, Shadow Minister for Transport and Main Roads and Hon Jeff Seeney MP, Shadow Minister for Police and Corrective Services**

**5 March 2002**

#### **Motorway plan will target hoons and crims**

The Queensland Nationals have proposed a three-pronged plan to combat "hooning" and free up police officers to target spiralling drug-related property crime on the Gold Coast.

Announcing the plan on the Gold Coast today, Shadow Minister for Transport Vaughan Johnson and Shadow Minister for Police Jeff Seeney said the Beattie Government was "fiddling while Rome burned" and a concerted new effort was needed to get hoons off the road and more police on the beat.

Under the plan, the Queensland Nationals have called for:

The introduction of 'SafetyCam' traffic cameras on the M1 Pacific Motorway;

An arrangement for speed cameras to be manned by Department of Transport officers, freeing uniformed police for regular patrols and response to priority crime; and

New laws targeting hoons, including licence suspensions and vehicle confiscation.

"The Gold Coast is Queensland's second largest city and shouldn't have to continue putting up with the growing increase in hooning and property crime," Mr Johnson said.

"The Beattie Government's lip service response to these problems is making no impact in stamping out this activity and only undermining the reputation of the Coast as one of the nation's premier tourist destinations.

"SafetyCam technology is already in use on New South Wales and involves the installation of fixed cameras linked directly to computer databases. It allows 24-hour vehicle identification, registration checks, speed management and fatigue management for the trucking industry.

"It is a proactive way of improving road safety while not tying up precious police resources," Mr Johnson said.

Mr Seeney said getting uniformed police out of speed camera vans and into mobile patrol cars would improve police response times to reports of hooning and burglaries, which currently range between 2 and 36 hours.

"Police Minister Tony McGrady inherited the hooning issue from the previous Minister Tom Barton 12 months ago and has been procrastinating ever since," Mr Seeney said.

"The use of police move-on powers is only sending the hoons to another part of town. To fix the problem, hoons have to be taken off the street – it's as simple as that. Mr McGrady can do that by introducing new laws to suspend their licences and seize their cars.

"That's part of the answer. There also has to be enough police on the beat to uphold the law.

"The Gold Coast is now the second most burgled area outside of Brisbane and yet its police numbers are well below what is needed. On the Gold Coast there is 1 officer for 636 people, while the State average is 1 officer for 466 people.

"As well as increasing police numbers, Mr McGrady must do more to make the most effective use of the police that are there.

"There is no need for uniformed police to be tied up for hours on end sitting in a police van behind a speed camera. Transferring that task to the Department of Transport would allow those officers to be better utilised in mobile patrols providing a visible deterrent to criminal activity and responding quickly to crimes that do occur."

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## APPENDIX D – NEWSPAPER ARTICLES

**Title**            **Car enthusiasts get hot under bonnet.**  
**Author**         **Greg Stolz**  
**Source**         **The Courier-Mail**  
**Date Issue**    **20/04/02**  
**Page**            **15**

Shane Wyrzynski and his wife Skye Haddow are revheads and proud of it.

Just don't call them hoons. Between them, the Gold Coast car enthusiasts own four high-powered, souped-up Commodores which are valued at much more than \$100,000.

Nearly all their spare time is spent working on their cars, showing them off at weekly rallies or attending "burn-out" meetings at raceways in the state's southeast.

"The engine in my VL Commodore is worth 14 grand alone," said a proud Mr Wyrzynski, a burly nightclub doorman and president of the Broadwater Car Club.

But right now, Mr Wyrzynski and Ms Haddow are not happy. Like fellow car enthusiasts, they are revved up over a State Government plan to confiscate cars from street-racers who terrorise the suburbs.

State Cabinet will soon consider proposed tough new "three strikes and you're out" laws to crack down on the growing hoon problem.

Under the plan, drivers caught hooning three times would have to forfeit their vehicles to the state.

Police would also have the power to seize and impound vehicles for 48 hours to stop drivers hooning in cars on public roads.

Casting an admiring eye over his blue and chrome pride and joy yesterday, Mr Wyrzynski said the confiscation plan had not worked in New South Wales and would not work here.

He warned that many hardcore hoons, whose hotted-up vehicles are worth as much as \$90,000, would try to outrun police.

"Some of the Jap cars really fly and you are going to see more high-speed chases and more high-speed crashes, putting innocent lives at risk," he said.

"Many guys aren't going to hand over the keys to their cars without a fight.

"Confiscation is not the answer."

Mr Wyrzynski believes the Gold Coast's car hoon problem could easily be solved if car enthusiasts had a permanent venue to display and race their cars.

Revheads used to attend the old Surfers Paradise raceway for monthly drag meetings run by police.

But developers have taken over the site.

**Title**            **Plan for hoons to lose vehicles.**

**Author**        **Chris Jones**

**Source**        **The Courier-Mail**

**Date Issue**   **12/04/02**

**Page**           **1**

Street-racing hoons who terrorise the suburbs are set to be targeted by tough new "three strikes and you're out" vehicle confiscation laws.

State Cabinet is expected to soon consider the proposed laws, under which drivers caught hooning three times by police officers would have their vehicles confiscated.

The laws would give individual police officers the discretion to stop drivers doing burn-outs, street racing or conducting "speed trials" on public roads and seize and impound their vehicles on-the-spot for 48 hours.

If the driver had been caught hooning before, police could apply to a magistrate to have the vehicle impounded for three months.

Hoons caught three times would forfeit their vehicle to the state.

Guilty drivers would also pay to tow their vehicle to an impoundment yard, under Police Minister Tony McGrady's proposed laws.

But offenders' parents would be protected if they could prove they were unaware of the offence.

The drastic measures were previously ruled out by the Beattie Government but resuscitated after Mr McGrady met with New South Wales police officials who have enjoyed some success with impounding and confiscation.

The State Government has been consulting with stakeholders about the laws in recent weeks.

Mr McGrady yesterday said his mind was made up and he would take a plan to Cabinet within days.

RACQ external affairs general manager Gary Fites said he knew hoons were making life a misery for residents of many suburbs across Queensland, but was concerned the legislation might be too tough.

Council for Civil Liberties spokesman Terry O'Gorman agreed the penalties were too harsh and he believed police already had the power under existing legislation to deal with hoons.

Youth Affairs Network director Bernice Smith slammed the laws as "severely punitive" and said they discriminated unfairly against young people.

Opposition police spokesman Jeff Seeney said the only effective way to control hooning was to give police the power to immediately act and confiscate the vehicle.

Liberal Party state leader Bob Quinn last night said repeat hooning offenders deserved to be punished and called for the mandatory penalties to cover other "serial offenders".

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