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Police Powers and Responsibilities (Motor Vehicle Impoundment) Amendment Bill 2011 (Qld)

The **Police Powers and Responsibilities (Motor Vehicle Impoundment) Amendment Bill 2011 (Qld)** proposes to amend the Vehicle Impoundment Schemes for 'type 1' and 'type 2' motor vehicle related offences in Chapter 4 of the **Police Powers and Responsibilities Act 2000 (Qld)**. The provisions enable police officers and the court to impound or confiscate a motor vehicle depending on the type of offence and number of repeat offences.

Among other proposed amendments the Bill seeks to:

- increase the length of the initial impoundment period for the first type 1 and second type 2 offence from 48 hours to 7 days;
- allow the police to automatically impound a vehicle for 28 days for specified repeat offences;
- remove the need for a repeat type 2 offence to be of the same kind as the preceding type 2 offence for the impoundment scheme to apply;
- amend the definition of 'burnout' and include high end speeding as a type 2 offence;
- extend the timeframe for the police to apply for an impounding or a forfeiture order from 48 hours to 7 days.

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Readers may also wish to refer to the report on the Bill by the relevant portfolio committee (or other committee nominated when the Bill was presented) and the Parliament's Record of Proceedings (Hansard).

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Key Points

1. The [Police Powers and Responsibilities \(Motor Vehicle Impoundment\) Amendment Bill 2011 \(Qld\)](#) (the Bill) was introduced on 15 November 2011 with the main objective being to amend and improve the Vehicle Impoundment Schemes for Prescribed Offences (type 1 and type 2 motor vehicle related offences (popularly known as ‘hooning’) and motorbike noise offences) in **Chapter 4** of the [Police Powers and Responsibilities Act 2000 \(Qld\)](#) (PPR Act). The provisions enable police officers and the court to impound or confiscate a vehicle depending on the type of offence and number of repeat offences.
2. The Bill is the outcome of a Queensland Police Service (QPS) evaluation of the impoundment scheme and resulting recommendations designed to improve the scheme.

The Motor Vehicle Impoundment Framework in Queensland

3. The Bill seeks to amend Chapter 4 of the PPR Act to introduce new measures for police to automatically impound vehicles in specified circumstances and to improve the impoundment scheme through amendments to other provisions (Section 2 of this Research Brief).

Offences Attracting Application of the Scheme

4. The offences to which the impoundment and forfeiture scheme apply are type 1 and type 2 vehicle related offences (s 69A).

Type 1 vehicle related offences

Any of the following in circumstances involving a speed trial, race or burnout is a type 1 offence (see Section 3.1):

- dangerous operation of a vehicle;
- careless driving;
- participation in speed trials or races;
- starting or driving a vehicle making unnecessary noise or smoke.

The Bill seeks to amend the definition of ‘**burnout**’ so that an offence is committed where there is a loss of traction by one or more of the drive wheels, regardless of whether or not smoke is produced.

Type 2 vehicle related offences

Any of the following is a type 2 offence (Section 3.2):

- driving an uninsured/unregistered vehicle;
- certain unlicensed/disqualified driving;
- driving with a BAC above 0.15%; or failing to provide a specimen of breath etc. and driving under related suspensions;
- driving an illegally modified vehicle.

The Bill seeks to introduce a further type 2 offence (**new s 69A(2)(f)**) – driving a vehicle in excess of the applicable speed limit by more than 40 kph.

The Bill also proposes to **omit s 70A** so that a driver committing any repeat type 2 offence is subject to the impoundment scheme even if the repeat offence is not of the same kind.

Impounding Motor Vehicles for the Initial Impoundment Period

5. A police officer may **impound** a vehicle for the **initial impoundment period** if the driver is charged (in addition to charging a person by serving a notice to appear or by arrest, the Bill seeks to enable proceedings to commence when the driver is given a **traffic infringement notice (new s 71A)**) with:

- a **first type 1** offence; or
- a **second type 2** offence within 3 years of being charged with, or found guilty of, another type 2 offence.

Currently, the **initial impoundment period** is **48 hours** (s 69) but the Bill seeks to increase this to a period of **7 days** (see Section 4.1-4.2)

6. The **Impounding notice** given to specified persons (s 78) will no longer need to be given to a registered security interest holder of a vehicle impounded for the initial impoundment period (proposed amendment to s 78(2)) (see Section 4.3-4.4)

Impounding Motor Vehicles for the Automatic Impoundment Period

7. Currently, only the **court** can **impound** a vehicle where the driver has been found guilty of a second type 1 offence or a third type 2 offence. The impoundment may be for **up to 3 months** (Section 5.1)

8. The Bill proposes to introduce measures to enable a **police officer** to **automatically impound** vehicles for **28 days** (see s 69 (new definition)) without needing to seek a court order where a driver has committed (**new ss 74A-74B**):

- a **second type 1** offence within a 3 year period; or
- a **third type 2** offence within a 3 year period.

Instead of requiring that a police officer apply to the court for an impoundment order after charging the driver with the aforementioned repeat offence, the Bill proposes (through amendments to ss 85(2) and 85A(2)) to give the **police a discretion** whether or not to seek a **court order to impound** the vehicle for a longer period (i.e. **up to 3 months**) than the 28 day automatic impoundment period (Section 5.2).

9. The Bill seeks to provide a mechanism for the return of vehicles subject to **automatic impoundment** where the Police Commissioner is satisfied (on the basis of specified evidence) that certain persons will suffer **severe financial or physical hardship** or where the relevant offence happened **without the knowledge or consent** of the owner. An **appeal** to a Magistrates Court is provided (**new ss 84A-84L**) (Section 5.3).

Where the court is considering an impoundment order (see above), if it is satisfied that impoundment will cause severe financial or physical hardship to an owner or usual driver, the vehicle can be released to the owner. The vehicle can also be released if the offence occurred without the owner's knowledge or consent. The driver can be ordered to perform up to 240 hours of community service (due to proposed amendments to s 102).

Forfeiture Orders

10. if a vehicle has been impounded:

- for a **third type 1** offence within a 3 year period; or
- for a **fourth type 2** offence within a 3 year period

a police officer has 48 hours after charging the person within which he or she must apply to the court for a **forfeiture order** (ss 90, 90A). Pursuant to proposed amendments by the Bill, a police officer will have **7 days** (up from **48 hours**) within which to apply for such an order.

Qualifications of severe financial or physical hardship and no knowledge or consent of the owner apply to forfeiture orders also. If either is made out, the court can order the offending driver to perform up to 240 hours of community service (Section 6).

Effectiveness of Impoundment and for Forfeiture Schemes

11. There has been little research and few evaluations on the effectiveness of impoundment and forfeiture laws as a deterrent to hoon behaviour. However, a 2010 [thesis for CARRS-Q](#) (discussed in section 7 of this Research Brief) sought to examine hooning risks, the characteristics of offenders, and the effectiveness of current impoundment and forfeiture schemes. The results need to be viewed in light of acknowledged limitations in the studies and the fact they cover only traditional hooning type behaviour (e.g. street racing, burnouts) not other high risk driving offences (e.g. drink driving) now covered by Queensland's type 2 offence provisions.
12. Essentially, the results suggest that drivers, mainly male, who engage in hooning represent a significant road safety concern over and above the general young male driver problem (sections 7.1-7.2). Overall, the results indicated that there was a small but significant decrease in hooning offences and other traffic infringements by offenders whose cars were impounded compared with the comparison group. However, more research was needed to determine if impoundment was itself a deterrent or whether the decrease in offending was due to factors such as the offenders not having access to a vehicle post-impoundment because of licence suspension or the owner not permitting access, or because offenders changed the location of their hooning behaviour to avoid detection (section 7.4).

Impoundment and Forfeiture in Other Jurisdictions

13. The impoundment and forfeiture laws of other states and territories vary in terms of the various qualifications, exceptions and offences covered, making direct comparisons of the severity of such schemes difficult. Jurisdictions with the toughest laws include **New South Wales** where a vehicle can be impounded or clamped by the police following a hooning offence until the offence is dealt with by the court. If the driver is the vehicle owner, the vehicle can be impounded by the court for 3 months on finding the driver guilty of a first offence. The vehicle can then be forfeited for a second offence. In **Victoria**, a wide number of hooning offences can attract a 30 day impoundment or clamping which can be extended to up to 3 months on a finding of guilt by the court (Section 8 and Appendix to this Research Brief).

For further clarification and analysis of the relevant issues, the reader should consult the Research Brief and refer to the Explanatory Notes to the Bill as well as to the Bill itself.

1 Introduction

The [Police Powers and Responsibilities \(Motor Vehicle Impoundment\) Amendment Bill 2011 \(Qld\)](#) (the Bill) was introduced into the Queensland Legislative Assembly by the Minister for Police, Corrective Services and Emergency Services, the Hon Neil Roberts MP, on 15 November 2011. The Bill was referred to the Legal Affairs, Police, Corrective Services and Emergency Services Committee for detailed consideration and report by 19 March 2012.¹

1.1 Key Objective of the Bill

The main **objective** of the Bill is to amend the Vehicle Impoundment Schemes for Prescribed Offences (type 1 and type 2 motor vehicle related offences (popularly known as ‘hooning’) and motorbike noise offences) in Chapter 4 of the [Police Powers and Responsibilities Act 2000 \(Qld\)](#) (PPR Act). The provisions enable police officers and the court to impound or confiscate a motor vehicle depending on the type of offence and number of repeat offences. Hooning covers not just street racing² and burnouts³ (which form part of the type 1 more serious offences) but also a range of irresponsible and dangerous behaviours in public places (e.g. drink driving) which form the type 2 offences.⁴

1.2 Impetus for the Bill

The Bill is the **outcome** of a Queensland Police Service (QPS) evaluation of the impoundment scheme and resulting recommendations designed to improve the scheme. Other proposed changes are those identified by the QPS to improve efficiencies and enhance consistency with other jurisdictions.⁵

1.3 Main Proposed Amendments

Among other proposed amendments to Chapter 4 of the PPR Act, the Bill seeks to:

¹ This Research Brief builds upon, and was assisted by, Client Information Briefs prepared by Maggie Lilith, Research Officer in the Commissioned Research Team of the Queensland Parliamentary Library.

² Street racing can be organised races among participants usually staged at night in mainly industrial areas over a marked distance of around less than quarter of a mile, or can be spontaneous races between drivers who ‘meet’ at traffic lights: see Centre for Accident Research & Road Safety – Queensland, [CARRS-Q, State of the Road: Hooning Fact Sheet](#), updated November 2011, p 1.

³ ‘Burnout’ is defined in the PPR Act but is generally where the rear tyres of a vehicle are spun until they heat and smoke. A ‘donut’ is where the driver turns the front tyres until the steering is locked so that the vehicle rotates leaving a donut pattern of tread marks: CARRS-Q, Hooning Fact Sheet, p 1.

⁴ CARRS-Q, Hooning Fact Sheet, p 1, citing AT Gee Kee, GR Palk & DA Steinhardt, *Hoon driving behaviour: Prevalence, associated characteristics and crashes*, October 2007 Australasian Road Safety Research, Policing and Education Conference, Melbourne.

⁵ See [Explanatory Notes](#) for the Police Powers and Responsibilities (Motor Vehicle Impoundment) Amendment Bill 2011 (Qld), p 1.

- increase the length of the initial impoundment period for the first type 1 offence and second type 2 offence from 48 hours to 7 days;
- introduce new measures to allow police to automatically impound a vehicle for 28 days for specified repeat offences without needing to seek a court order but to also give the police a discretion whether or not to seek a court order to impound the vehicle for a longer period (i.e. up to 3 months) than the 28 day automatic impoundment period;
- amend the definition of 'burnout' and include high end speeding as a type 2 offence;
- remove the need for repeat type 2 vehicle related offences to be of the same kind as the preceding type 2 offence for the impoundment scheme to apply;
- extend the timeframe for the police to apply for an impounding or a forfeiture order from 48 hours to 7 days.

2 The Motor Vehicle Impoundment Framework (MVIF) in Queensland

Chapter 4 of the [Police Powers and Responsibilities Act 2000 \(Qld\)](#) (PPR Act) provides for **motor vehicle impoundment** and **forfeiture** for certain motor vehicle and motorbike offences in Queensland. Motorbike impoundment will not be considered in detail in this Research Brief. The laws were first introduced into the PPR Act in 2002.⁶

2.1 Impoundment and Forfeiture Statistics

The QPS' [2010-2011 Annual Statistical Review](#) (p 145) reveals that in 2010-2011, there were 616 Type 1 vehicle impoundments (down 15% on 2009-2010) and 6,970 Type 2 impoundments (a 12% decrease on 2009-2010). Type 1 impoundments are for driving offences of a more serious type such as dangerous driving, road racing, speed trials and burnouts. The QPS' [2010-2011 Annual Report](#) (p 43) notes that 2,794 of the 7,586 vehicles that were impounded in 2010-2011 were eligible for a court order for a 3 month impoundment or forfeiture.

The Minister for Police, the Hon Neil Roberts MP, has [said](#) that since type 1 offences were introduced in November 2002 and type 2 offences in July 2007,⁷ almost 28,000 vehicles have been impounded for 48 hours. Since July 2007, around 4,000 of those vehicles have been the subject of an application to the court for further sanction. Mr Roberts said that of the approximately 3,000 finalised court matters, over 330 vehicles have been forfeited.⁸

The news media reported that, every month during 2011, around 800 drivers were charged with driving an unregistered vehicle; 350 drivers were charged with drink driving and around 550 were caught driving while disqualified (these offences being type 2 offences).⁹

Although a common belief is that hooning offences occur in vehicles that are modified 'street machines', a study by the Centre for Accident Research & Road Safety – Queensland (CARRS –

⁶ Wayne Jarred, [Police Powers and Responsibilities and Another Act Amendment Bill 2002: Confronting bad and nuisance road behaviour](#) (RBR 2002/18).

⁷ See Part 2 of the [Police Powers and Responsibilities and Other Legislation Amendment Act 2006 \(Qld\)](#),

⁸ Hon Anna Bligh MP, Premier and Minister for Reconstruction & Hon Neil Roberts MP, Minister for Police, Corrective Services and Emergency Services, ['Government to Implement Tough New Vehicle Impoundment Laws'](#), *Media Statement*, 18 July 2011.

⁹ Brooke Baskin, ['Extra grant for hoon-buster laws - Vehicles off road for week'](#), *Courier Mail*, 13 December 2011, p 10.

Q) in 2007 found that over 80% of vehicles involved in hooning offences were cars or station wagons (around 64% of hooning offences involved Holdens or Fords). Approximately half of the vehicles involved were 10 to 20 years old.¹⁰

2.2 Government and Police Comments Regarding Proposed Changes to the MVIF

The Bill seeks to implement recommendations arising from the abovementioned QPS evaluation of the MVIF.

The **Police Minister** said that while the proposed changes to the PPR Act would make the impoundment scheme 'even tougher', it seemed that offenders were already being deterred by its measures with statistics showing that only around 30% of first offenders became liable to further sanction after the first offence.¹¹

Superintendent Andy Morrow of the **State Traffic Support Branch** is reported as saying that impounding vehicles was an 'obvious deterrent' to hoon behaviour and that the '*initial seizure periods that were introduced were seen to be more effective if they were extended*'.¹²

3 MVIF: Offences Attracting Impoundment and Forfeiture

The types of offences to which the impoundment provisions apply are referred to as **type 1** and **type 2 vehicle related offences**.

In addition to impoundment, depending on the nature of the offence, drivers face sanctions such as fines and imprisonment as well as licence suspension and driver disqualification. For example, street racing attracts a fine of up to \$4,000 or up to 6 months imprisonment.¹³

3.1 Type 1 Vehicle Related Offences

Type 1 offences are defined in **s 69A(1)** of the PPR Act.

3.1.1 Current Law

A **type 1** vehicle related offence means any of the following offences committed in circumstances that involve a speed trial,¹⁴ a race, or a burnout:

- dangerous operation of a vehicle on a road or in a public place ([Criminal Code](#), s 328A);
- careless driving ([Transport Operations \(Road Use Management\) Act 1995 \(Qld\)](#) (TORUM Act) s 83);
- participation in speed trials or races on roads (TORUM Act, s 85);
- willfully starting or driving a vehicle making unnecessary noise or smoke.

¹⁰ [CARRS-Q, Hooning Fact Sheet](#), p 2, citing NL Leal et al., 'Hooning offences: Who and what are we dealing with?' in Australasian Road Safety Research, Policing and Education Conference, 2007, Melbourne.

¹¹ '[Government to Implement Tough New Vehicle Impoundment Laws](#)'.

¹² Alison Sandy & Rob Kidd, '[Police urged to put brakes on hoons – calls to seize cars and licences to reduce toll](#)', *Courier Mail*, 12 December 2011, p 4.

¹³ See s 85 of the [Transport Operations \(Road Use Management\) Act 1995 \(Qld\)](#).

¹⁴ Defined in Sch 6 (Dictionary) to include attempts to establish or break vehicle speed records; or trials of speed; trials to test driver or vehicle skill etc.

3.1.2 Proposed Changes

A 'burnout' is currently defined in s 69 as to '*wilfully drive the motor vehicle in a way that causes the tyres or a substance poured onto the road surface, or both, to smoke when the drive wheels lose traction ...*'.

The Bill (cl 4) seeks to amend the definition to cover behaviour that the Explanatory Notes (p 7) state would otherwise be considered hooning behaviour – there is a loss of traction – but is not caught because no smoke is produced (e.g. on a wet or gravel road).

It is proposed that a 'burnout' will mean to '*wilfully drive the motor vehicle in a way that causes a sustained loss of traction of one or more of the drive wheels with the road surface*' regardless of whether or not smoke is produced. It also reflects the meaning of 'burnout' in other jurisdictions (see Explanatory Notes, p 7).

3.2 Type 2 Vehicle Related Offences

3.2.1 Current Law

A **type 2** vehicle related offence means any of the following (s 69A(2)):

- driving an uninsured vehicle at the same time as offending against the TORUM Act involving use of a vehicle that is not lawfully registered;
- certain unlicensed/disqualified driving (TORUM Act, s 78);
- driving with a blood alcohol concentration (BAC) above the high alcohol limit (0.15%) (TORUM Act, s 79, s 79A);
- not providing a specimen of breath, blood, saliva etc. when required (s 80(5A); (11); or driving while suspended in relation to providing a specimen (s 88(2D)).
- a prescribed offence involving driving an illegally modified vehicle.¹⁵

The QPS' [2010-2011 Annual Report](#) (p 43) notes that unlicensed or disqualified driving accounts for 80% of repeat offences under the laws and that, during 2010-2011, around 9% of road fatalities involved unlicensed drivers or riders.

3.2.2 Proposed Changes

High End Speeding Offence

Clause 5 of the Bill seeks to introduce a further type 2 offence (**new s 69A(2)(f)**) to include driving a vehicle in excess of the applicable speed limit by more than 40 kph. The Explanatory Notes (p 5) indicate that the inclusion of 'high end' speeding is consistent with various other jurisdictions. It is also seen as providing another potential deterrent to repeat offenders (p 8).

Under the **transitional provision proposed new s 873** (see **cl 27**) a high end speeding offence committed before commencement of the new s 69A(2)(f) is not considered a type 2 offence.

¹⁵ See, *Police Powers and Responsibilities Regulation 2000* (Qld), s 10B which prescribes the various offences. **Clause 5** of the Bill also seeks to insert a **new s 69A(3A)** to clarify that a prescribed offence includes an offence involving modifying a vehicle if it is driven on a road.

What Amounts to a Repeat Type 2 Offence?

Currently, for a type 2 offence to trigger the impoundment provisions, it has to be a repeat offence of the same kind as the previous type 2 offence, unlike other jurisdictions which do not have a similar restriction and allow the subsequent commission of any type 2 offence to be targeted (see Explanatory Notes, p 3). **Clause 6** of the Bill seeks to remove this restriction by omitting s 70A of the PPR Act. A driver committing *any* type 2 offence having committed a type 2 offence within the relevant period will be subject to the impoundment scheme.¹⁶

3.3 MVIF: When is a Person Charged with a Vehicle Related Offence?

At present, a person is taken to be charged with a vehicle related offence for the purposes of the impoundment provisions when a person is served with a notice to appear or is arrested (s 71).

According to the Explanatory Notes (pp 1, 2-3), efficiencies of the impoundment scheme are sought to be increased by the Bill proposing to allow proceedings to commence by a traffic infringement notice (TIN) for a 'pre-impoundment offence' (i.e. the first type 2 offence) rather than needing to proceed by way of notice or arrest (**cl 7** inserting a **new s 71A**). This would enable the offender to avoid a court appearance and achieve savings to the courts and the QPS.¹⁷ The first type 2 offence is a 'pre-impoundment offence' because it does not immediately result in impoundment of the vehicle but it triggers the start of the scheme where impoundment may occur if further type 2 offences continue. Thus, a further way a person is 'charged' is through service of a TIN.

4 MVIF: Impounding Motor Vehicles for the Initial Impoundment Period

Chapter 4, Parts 2 and 3 of the PPR Act covers the circumstances in which the police can impound a vehicle and the requirements and duties associated with impoundment. Part 2 also deals with initial impoundment of motorbikes for 48 hours¹⁸ for noise order or noise direction offences (i.e. breaches of orders or directions to abate off road motorbike noise) but the focus of this Research Brief is on motor vehicles.

4.1 Current Position

Pursuant to **s 74** (unchanged by the Bill, apart from the heading)¹⁹ a police officer may impound a vehicle if the driver is charged (see above for when a person is 'charged') with:

- a **first type 1 offence**; or

¹⁶ See **cl 27** inserting **transitional provision proposed new s 871** and Explanatory Notes (p 18) regarding not counting different type 2 offences committed before commencement of the proposed amendments.

¹⁷ The Explanatory Notes (p 7) comment that the QPS will issue information notices along with the TINs to appraise offenders of all the relevant facts.

¹⁸ The initial impoundment period for motorbikes is unchanged under the Bill.

¹⁹ The heading to s 74 is sought to be amended (**cl 9**) to make it clear that s 74 allows vehicles to be impounded for the **initial impoundment period**.

- a **second type 2 offence** within 3 years²⁰ of being charged with, or found guilty of, another type 2 offence.

Currently, the initial impoundment period for the vehicle is **48 hours** (see s 69).

4.2 Proposed Changes

The Bill (cl 4) seeks to increase this **initial impoundment period** to a period of **7 days**. The Explanatory Notes (pp 6-7) comment that Queensland University of Technology researchers have speculated that the deterrent effect of current 48 hour initial impoundment period lies in making an offender eligible for harsher sanctions for repeat offences. However, the QPS believes that the initial impoundment period should, in itself, act as a deterrent from offending in the first place.

4.3 Impounding Notice – Current Position

If a vehicle is impounded, an **impounding notice** must be given to the driver and vehicle owner(s) as soon as reasonably practicable (s 78). The notice must set out information specified in s 80 (for a first type 1 offence) or in s 81A (for a second type 2 offence). This information includes prescribed matters (see s 69) such as how the owner can recover an impounded vehicle, impounding costs etc..²¹

4.4 Impounding Notice – Proposed Changes

The Bill seeks (see cl 12) to **remove** the requirement in **s 78(2)(b)** for notice to be given to a **registered security interest holder** of a vehicle impounded for the initial impoundment period. The intention appears to be to release policing resources from these information requirements (Explanatory Notes (p 3)). The QPS considers that registered security holders' needs will be met by the continuation of the present requirement for police officers to notify owners and security interest holders of a proposed sale/disposal of a vehicle not recovered within 30 days of the impoundment period ending.²²

5 MVIF: Impounding Vehicles for the Automatic Impoundment Period

The Bill seeks to introduce powers for the police to automatically impound vehicles for repeat vehicle related offences for 28 days without having to apply for a court order.

5.1 Current Position – Impoundment Order from the Court

Under Chapter 4, Part 3 of the PPR Act, if a vehicle has been impounded:

²⁰ Section 74(2) employs the concept of the 'relevant period', defined in s 69 as being 3 years before the initiating impoundment.

²¹ Sections 79, 82-84 apply to impoundment notices for motorbike noise offences.

²² The QPS has also undertaken to develop administrative arrangements to allow for prompt notification of registered security interest holders when vehicles have not been collected after the impounding ends.

- for a **second type 1** offence (i.e. the driver has previously been found guilty of, or been charged with, a type 1 offence) within the past 3 years; or
- for a **third type 2** offence (i.e. the driver has previously been found guilty of, or has been charged with, two type 2 offences) within the past 3 years

a police officer must, within 48 hours of charging the person with the offence, apply for a **court order to impound** the vehicle for up to **3 months** (s 85(1), (2); s 85A(1), (2)).²³

Under ss 96(1) and 96A(1), the court must hear and decide the application as soon as practicable after the person has been found guilty of:

- two type 1 offences committed on 2 occasions within the past 3 years and any additional period up to the day on which the application is decided (the 'prescribed period' (s 69 definition)); or
- three type 2 offences committed on 3 occasions within the prescribed period.²⁴

On hearing the application, the court may make an order impounding the vehicle for **up to 3 months**, subject to the considerations below (ss 98,99A).

5.1.1 Hardship Provisions

A challenge for impoundment legislation is the fact that, in around 65% of hooning cases, the driver does not own the vehicle. This means that impoundment and forfeiture may not be a significant deterrent and other sanctions need to be considered.²⁵ For instance, in a number of jurisdictions, including Queensland, the court can impose a period of community service on the driver where he or she is not the owner or in circumstances of severe hardship.

Under **s 102**, if the court is satisfied that impoundment of a vehicle will cause severe financial or physical hardship to an owner or usual driver, the court may, instead, order the driver to perform a period of **community service** of up to **240 hours** and (see ss 98(3) and 99A(4)) order that the vehicle be released to the owner.

5.1.2 Defence of No Knowledge or Consent of Owner

Section 107 provides a defence to the impoundment of a vehicle if the owner can prove that the offence happened without his or her knowledge or consent. If the court is satisfied the defence is made out, it may order release of the vehicle to the owner (ss 98(4), 99A(4)).

Under a proposed amendment to **s 102** (by **cl 21**), if s 107 applies and the driver is not the owner, the court may order the driver to perform up to **240 hours** of **community service**.

5.2 Proposed Changes – Automatic Impoundment by Police and Court Ordered Impoundment

If a driver has committed:

- a **second type 1** offence within the past 3 years; or

²³ Section 86 relates to applications for impounding orders for motorbikes.

²⁴ Sections 87-87A cover orders the court can make if a driver has not yet been found guilty of the applicable type 1 or type 2 offence (e.g. if the driver is guilty of at least one type 1 offence, the court can order impoundment of the vehicle for up to 3 months to stop a further offence being committed). Sections 88, 97, 100) relate to motorbike noise order offences.

²⁵ [CARRS-Q, Hooning Fact Sheet](#), p 2 and fn 2, p 3.

- a **third type 2** offence within the past 3 years

a police officer may impound the vehicle for the **automatic impoundment period**, a new concept defined in s 69 (as amended by the Bill) to mean a period of **28 days** (proposed **new ss 74A-74B** (see **cl 10**)).

Further, a police officer **may** (instead of the current 'must') within **7 days** of charging the person with the offence (rather than within 48 hours) apply to the **court** for an **impounding order** for up to **3 months**.²⁶

The Explanatory Notes (pp 3-4) comment that the proposal gives the police more flexibility in appropriately dealing with a vehicle by providing a discretion (rather than a requirement) regarding whether or not to apply to a court for an impoundment order for up to 3 months for a repeat offence if it is considered that the 28 day automatic impoundment period is not enough. It also relieves the difficulty of meeting the 48 hour timeframe by now allowing 7 days for making the application.

The abovementioned hardship provision and defence of no knowledge and consent continue to apply to court ordered impoundment.

5.3 Other Proposed Provisions Relating to Automatic Impoundment

A new **Chapter 4, Part 2, Division 5** is proposed to be inserted by the Bill (see **cl 15**) to provide a mechanism for the return of vehicles impounded by the police for the automatic impoundment period in certain cases. The measures appear to provide a safeguard in those situations.

5.3.1 Severe Hardship

The proposed **new s 84B** provides that an owner or usual driver of a vehicle ('eligible person' (see **new s 84A**)) may apply to the Police Commissioner for the release of a vehicle impounded for the automatic impoundment period under ss 74A or 74B on the basis of **severe hardship** if the vehicle was not released.

The proposed **new s 84C** requires the Commissioner to consider the application and decide to grant or refuse²⁷ it within 5 business days. The application can be granted²⁸ only if the Commissioner is satisfied that a refusal would cause:

- severe financial hardship to the applicant or the applicant's family by depriving the applicant of his or her means of earning a living (which the applicant must support through relevant documentation such as a confirming statement from the employer); or
- severe physical hardship to the applicant or his or her family, other than by depriving the applicant of the means of earning a living (which claim must be supported by a statement outlining how a refusal would cause severe physical hardship and relevant documentary evidence).

²⁶ See **new s 85(2)** and **s 85A(2)** sought to be inserted by **cls 16, 17** of the Bill.

²⁷ If the application is refused, the applicant must be given an information notice setting out reasons and rights of appeal (new ss 84C(7), 84A).

²⁸ If the application is granted, the impoundment ends (**new s 84F**). The applicant must be given a release notice stating the time and date the impoundment ends (**new ss 84C(6), 84A**).

5.3.2 Offence Occurring without Owner's Knowledge and Consent

A **proposed new s 84D** will enable an owner of a vehicle impounded for the automatic impoundment period to apply to the Commissioner for release of the vehicle on the basis that the offence happened **without the owner's knowledge and consent**.

The proposed **new s 84E** requires the Commissioner to consider the application and decide to grant or refuse²⁹ it within 5 business days. The application can be granted³⁰ only if the Commissioner is satisfied the relevant offence (because of which the impoundment happened) occurred without the owner's knowledge and consent.

5.3.3 Appeals

The proposed **new ss 84G-84H** allow a person who is aggrieved by the Commissioner's decision to refuse to release the vehicle under ss 84C or 84E to appeal to a Magistrates Court within 28 days of receiving an information notice.³¹ The appeal will be decided on the evidence before the Commissioner but the court can order an appeal to be heard afresh, in whole or part (proposed **new s 84K**). The court may confirm the decision or set it aside and substitute its own decision (proposed **new s 84L**).

5.4 Powers and Duties Relating to Initial or Automatic Impoundment – Current and Proposed

A police officer has various powers under s 75 (see also s 77) for impounding a vehicle for the 7 day initial or the 28 day automatic impoundment period, as the case may be (e.g. stopping the vehicle, moving it to a holding yard). However, if the vehicle was unlawfully used or stolen or is a rental, the officer has a duty, under s 76, to release the vehicle to the owner as soon as practicable.

As with initial impoundment, an impounding notice must be given to the driver and owner(s) of the vehicle as soon as reasonably practicable (s 78). As discussed above, the notice must contain the specified information in s 81 (relating to automatic impoundment for type 1 offences) and in s 81B (relating to type 2 offences).³²

5.4.1 Release of Impounded Vehicle

If a vehicle has been impounded for the initial period under s 74 or automatically impounded under the proposed new ss 74A or 74B and the owner has (unless s 111(2) applies) paid the impoundment costs, the owner can recover the vehicle when the impoundment period ends (**s 116** as sought to be amended by **cl 25**).

If a driver is found not guilty of the offence or the proceeding is discontinued, the vehicle must be released to the owner as soon as reasonably practicable (s 117). Under a proposed

²⁹ If the application is refused, the applicant must be given an information notice (**new s 84E(5)**).

³⁰ If the application is granted, the impoundment ends (**new s 84F**) and the applicant must be given a release notice (**new s 84E(4)**).

³¹ The appeal period can be extended. The Commissioner has a right to appear and be heard (**new s 84J**). See also, proposed **new s 84I** regarding stay of operation of the Commissioner's decision.

³² This information includes prescribed matters (see s 69). The Bill (in **cls 13** and **14**) seeks to amend **ss 81** and **81B** regarding the content of the notice.

amendment to insert a new **s 117(2)** (by **cl 26**), the withdrawal of a TIN is also to be seen as a finding of not guilty.

5.4.2 Sale and Disposal of Impounded Vehicles

if an owner does not recover a vehicle (or the owner cannot be found) within 30 days after the impoundment period ends, the Police Commissioner may sell the vehicle by public auction or dispose of it in a way considered appropriate (s 118). It has been argued that impounding old vehicles – given that around half of the vehicles involved in a hooning offence are 10-20 years old and may have a low market value – may not provide much of a deterrent, particularly if the impoundment costs are more than a vehicle's value.³³

6 MVIF: Forfeiture Orders

Chapter 4, Parts 4 and 5 concern **forfeiture orders**.³⁴

If a vehicle has been impounded:

- for a **third type 1** offence (i.e. the driver has previously been charged with, or found guilty of, at least two type 1 offences) within the past 3 years; or
- for a **fourth type 2** offence (i.e. the driver has previously been charged with, or found guilty, of at least three type 2 offences) within the past 3 years

within **48 hours** after charging the person a police officer must³⁵ apply to the court for a **forfeiture order** (ss 90, 90A). The Bill (**cls 18 and 19** replacing **s 90(2)** and **s 90A(2)**) proposes to increase this 48 hour period to a period of **7 days**.³⁶

6.1 Hearing and Consideration by the Court

Sections 96(2) and 96A(2)) require the court to hear and decide the application as soon as practicable after the person has been found guilty of:³⁷

- three type 1 offences committed on 3 occasions within the prescribed period; or
- four type 2 offences committed on 4 occasions within the prescribed period.³⁸

The court may order that the vehicle be **forfeited** or **impounded** for up to **3 months** (ss 99(1), 99B(1)), subject to the considerations below.

The forfeited vehicle becomes State property and any rights of security interest holders are thereby extinguished.³⁹ The Police Commissioner may sell the vehicle or dispose of it in a way considered appropriate (s 120).

³³ CARRS-Q, Hooning Fact Sheet, p 3, citing NL Leal et al.

³⁴ Sections 91 & 101 cover forfeiture regarding motorbike noise order offences.

³⁵ Unlike impoundment, there is no discretion regarding application for forfeiture orders.

³⁶ Sections 92-93 cover orders the court can make if a driver has not yet been found guilty of the applicable offence.

³⁷ If a person is found not guilty of an earlier type 1 or type 2 offence and no vehicle has been impounded, the current application is dealt with as if it were an application for an impounding order (ss 96(3), 96A(3)).

³⁸ Section 97 covers when motorbike forfeiture applications must be heard.

³⁹ See also, s 123 regarding protection of third parties.

6.1.1 Hardship Provisions

Grounds of severe financial or physical hardship apply to forfeiture orders also. As noted above, under **s 102** the court can order the driver to perform up to **240 hours** of **community service** and order that the vehicle be released to the owner (see ss 99(4), 99B(4) and s 102).

6.1.2 Defence of No Knowledge or Consent of Owner

The **s 107** defence – that the offence happened without the knowledge or consent of the owner – applies to forfeiture orders (ss 99(5), 99B(5)). Under the proposed amendments to **s 102** the driver can be ordered to perform up to **240 hours** of **community service**.

7 Effectiveness of Impoundment and Forfeiture Schemes

A 2010 thesis for the Centre for Accident Research & Road Safety – Queensland (CARRS – Q), , sought to examine the risks associated with illegal street racing and other hooning behaviours, the characteristics of offenders, and to consider the effectiveness of current impoundment and forfeiture schemes to deal with the issue.⁴⁰ The author observed that, to date,⁴¹ there had been little published research and few evaluations regarding the effectiveness of impoundment and forfeiture laws as a deterrent to hoon behaviour. The studies conducted for the purposes of the thesis cover only the traditional hooning type behaviour (e.g. street racing, burnouts) not other high risk driving offences (e.g. drink driving).⁴² This point needs to be kept in mind when considering findings from the studies about the low number of crashes resulting from hooning as this does not account for drink driving and other dangerous driving now encompassed by the type 2 offence provisions.

Essentially, the results of the thesis do suggest that drivers, mainly male drivers, who engage in hooning represent a significant road safety concern over and above the general young male driver problem.⁴³

The research findings are summarised under the headings which follow.

7.1 Who Engages in Hooning and What Factors Contribute to Such Behaviours?

The findings of the research for CARRS – Q include (see pp vi-viii and additional specified pages):

- evidence suggests that drivers likely to engage in hooning are young males who are also a known at-risk group involved in road crashes. This makes it difficult to determine whether any risks associated with hooning are due to the behaviours *per se* or the drivers engaging in them (p 59);

⁴⁰ NL Leal, '[Illegal street racing and associating \(hooning\) behaviours](#)', PhD thesis, CARRS – Q, Queensland University of Technology, October 2010.

⁴¹ The thesis was submitted in October 2010.

⁴² NL Leal, p 3. **Study 1** involved qualitative and quantitative research with Queensland drivers admitting to hooning; **Study 2** involved a systematic profile of a large sample of drivers punished for hooning and compared their driving and crash histories with a random sample of Queensland drivers of the same age and gender; **Study 3** considered the post-impoundment driving behaviour of Study 2 offenders to examine the impact of impoundment on driving behaviour (pp v-vi).

⁴³ NL Leal, pp 234-235.

- the results suggest that a legal approach alone was unlikely to deter a complex group of people motivated by many different legal, social and psychological factors (e.g. thrill seeking, admiration from peers) from engaging in a variable range of hooning behaviours (p 162).⁴⁴

7.2 Road Safety Risks

The findings include (see pp vi-viii and other specified pages):

- the road safety risks of hooning behaviours appear to be low as only a small proportion of the hooning offences studied in **Study 2** resulted in a crash. These tended to be single vehicle crashes where the driver lost control of the vehicle and hit an object. However, **Study 1** (involving qualitative and quantitative research with drivers admitting to hooning behaviour)⁴⁵ found that hoon related crashes were less likely to be reported than other crashes and higher frequencies of hooning were associated with hooning related crashes;
- around 20% of drivers in **Study 1** reported being involved in a hooning related crash in the previous 3 years which is comparable to general crash involvement among Queensland drivers generally. Thus, it seems that there are risks associated with hooning that are not apparent from the official data which may underestimate the true involvement of hooning in crashes (p 229);
- that drivers with an illegal street racing or associated hooning offence represent a significant road safety problem over and above the young driver problem (pp 203, 204).⁴⁶

7.3 Do Hoon Drivers also Engage in Other Risky Driving Behaviours?

The results of **Study 2** suggest that hooning drivers are likely to undertake other risky driving activities – particularly speeding or driving defective or illegally modified vehicles – and have more traffic infringements, licence sanctions and crashes than male drivers of a similar age. The results also indicate that hooning behaviours warrant specific attention (p 230).

7.4 How Effective are Vehicle Impoundment and Forfeiture Programs in Reducing Hooning?

The author noted growing evidence in the USA and Canada that impoundment is an effective deterrent to recidivism among drink drivers and drivers who drive while suspended or disqualified. However, it has been unclear if impoundment is effective in the Australian context or for hooning offenders (p 59).

Study 3, an observational examination of official data to determine the effectiveness of impoundment on post-impoundment driver behaviour, found that there was a small but

⁴⁴ See also, Parts 3.3.3-3.3.6 and 4.5.

⁴⁵ The author noted that while the qualitative methodology involved only a small sample size of 22 drivers, the approach elicited information to inform a better understanding of hooning from a driver perspective, particularly effectiveness of impoundment (p 99). The participants in the quantitative part of Study 1 were recent ‘hooners’ – i.e. people who were not deterred by the existence of the law (p 100).

⁴⁶ The author also (p 205) describes some of the limitations of the study against which the results need to be interpreted.

significant decrease in hooning offences and other general traffic infringements (pp 219-220) and an increase in the time between hooning infringements.⁴⁷

While the reduction could be attributed to impoundment being a specific deterrent to hooning, it is also possible that it could be due, instead, to offenders becoming better at avoiding detection. There was also a possibility that offenders may have been denied access to a vehicle post-impoundment (e.g. due to a licence sanction or the owner not allowing the offender to drive the vehicle). As the study was observational, it was not possible to control for such extraneous variables. It was suggested that, due to this limitation and the small effect sizes, further research was needed (pp 221, 232) to determine the deterrent effect of impoundment.

Nevertheless, it was also noted that the hooning offenders did not have an increase in traffic offences in the post-impoundment period whereas there was an increase in infringements for the comparison group (pp 221, 232).

Focus group discussions and self reported data from **Study 1** indicate that drivers who engage in hooning are critical of the impoundment and forfeiture laws as being an overreaction to behaviour that is of little risk. While the laws were seen as being severe – mainly for the second and subsequent offences – the main impact on drivers' behaviour was to go to quieter, less populated places to avoid detection, not reduce hooning (p 231).

The author believed that evaluations were needed of the costs of impoundment and forfeiture laws compared to road safety benefits (with the available limited data suggesting low crash risks involved with hooning) to ensure that policing resources were appropriately allocated and that such severe sanctions were warranted. It was suggested that it might be more appropriate for such laws to be applied to drivers who indicate a pattern of persistent risky driving behaviour (demonstrated through large numbers of traffic infringements and licence sanctions etc.) rather than to drivers who commit a particular offence such as hooning.⁴⁸

The author considered that it is possible, however, that hooning offences are a way of identifying high risk drivers and impoundment is a means of reducing or limiting opportunities to offend (p 204).

A major issue, identified by other CARRS-Q research,⁴⁹ is that more police presence in problem areas may be needed so offenders know that they risk detection and punishment. At present, there may well be a feeling among hoon drivers that they will not be caught.

⁴⁷ Study 3 also had some limitations (see p 222), one being that while there was a comparison group of a random sample of drivers, there was no group of drivers who committed a hooning offence but did not lose their vehicles against which to compare post impoundment driving behaviour of drivers whose vehicles were impounded. This was because only 10 of the drivers in the sample did not lose their vehicles as a result of the hooning offence.

⁴⁸ NL Leal, pp vii, 235.

⁴⁹ CARRS-Q, Hooning Fact Sheet, p 3, citing AT Gee Kee, DA Steinhardt & G Palk, *Hoon driving: predicting willingness to be involved from social learning and deterrence perspectives*, , Australasian Road Safety: Research, Policing and Education Conference, Melbourne, October 2007.

8 Interjurisdictional Comparison: Maximum Impoundment Periods & Liability to Forfeiture

As pointed out in the [Explanatory Notes](#) (p 9), there is no Australia wide uniform scheme for vehicle impoundments and schemes vary considerably across jurisdictions.

The impoundment and forfeiture laws of other states and territories vary in terms of qualifications and hardship exceptions and the types of offences designated as 'hooning', making direct comparisons of the severity of such schemes difficult.

The table below (adapted and updated from the abovementioned CARRS-Q thesis (p 30)) provides a very basic picture of impoundment and forfeiture schemes across jurisdictions. Some states and territories, like Queensland, split the types of offences into categories with the severity of the impoundment or forfeiture sanction depending on the typology of the offence (hooning offences such as street racing and burnouts tending to be treated more harshly than other dangerous driving offences). Further, in a number of jurisdictions there are differences in how a vehicle is treated for driver/owners (more severely) compared with non-owner/drivers. The following table sets out maximum impoundment and forfeiture sanctions for each jurisdiction which, for jurisdictions differentiating between types of offences, will pertain to the more serious type. The specified sanctions relate – where relevant – to owner/driver situations. There are instances, for some jurisdictions, where the 'prescribed period' within which a repeat offence must occur for the sanctions to apply differ according to the type of offence, an example being Western Australia where the prescribed period is 5 years for a more serious 'driving offence' and 3 years for a second licence offence.

More detail on anti-hooning measures generally for each jurisdiction is provided in the **Appendix** to this Research Brief which also specifies the relevant legislative provisions.

Maximum length of vehicle impoundment period	Qld	Qld	NSW	Vic	ACT	Tas	NT	SA	WA
	current	Proposed							
First hooning offence within prescribed period	48 hrs	7 days	3 months	30 days	3 months	28 days	48 hrs	28 days (can be extended to up to 3 months if clamping). Forfeit if 1 st forfeiture offence	28 days
Second hooning offence within prescribed period	Court can impound for up to 3 months	28 day automatic then can apply for up to 3 months	Forfeit	3 months	Forfeit	3 months	6 months	Forfeit or 6 months	3 months
Third hooning offence within prescribed period	Forfeit	Forfeit	Forfeit	Forfeit	Forfeit	Forfeit	Forfeit	Forfeit	6 months or forfeit
Subsequent hooning offence within prescribed period	Forfeit	Forfeit	Forfeit	Forfeit	Forfeit	Forfeit	Forfeit	Forfeit	6 months or forfeit
Prescribed period for repeat offences	3 yrs	3 yrs	5 yrs	3 yrs (6 yrs when recent legislative amdts commence)	5 yrs	None stated	2 yrs	12 months/10 yrs	3 yrs/5 yrs

NL Leal, '[Illegal street racing and associating \(hooning\) behaviours](#)', PhD thesis, CARRS – Q, Queensland University of Technology, October 2010, p 30, Table 2.1, 'Maximum length of vehicle impoundment period' and 'Prescribed period for repeat offences' updated by Maggie Lilith and Nicolee Dixon.

Appendix⁵⁰

New South Wales

Legislation	Road Transport (General) Act 2005 (NSW) (Part 5.5, Div 2). The most recent amendments to combat 'hooning behaviour' were made by the Road Transport Legislation Amendment (Car Hoons) Act 2008 (NSW) (effective 6 June 2008). ⁵¹
Types of hooning offences	Offences under ss 40 (street racing) and 41 (burnouts) of the Road Transport (Safety and Traffic Management) Act 1999 (RT (STM) Act) (s 41(2) creates an 'aggravated burnout' offence where burnout is deliberate).
First hooning offence	<p>A police officer reasonably believing there has been commission of a street racing or burnout offence under ss 40 or 41 of the RT (STM) Act can clamp vehicle; seize it, or require driver or registered operator to produce vehicle at a stated place within 10 days. Vehicle's registration can be suspended for up to 3 months for failure to produce the vehicle (s 218).⁵² Impoundment/clamping ends when offence dealt with by court or by offender (s 221).</p> <p>If found guilty of a first street racing offence (s 40 of the RT (STM) Act) or aggravated burnout offence (s 41(2) of the RT (STM) Act):</p> <ul style="list-style-type: none"> • where driver is vehicle's registered operator (person responsible for the vehicle (s 3) usually would be the 'owner') – 3 months clamping or impoundment, subject to extreme hardship provisions (s 219); • If the driver is not the owner, the owner is given a suspension warning notice (SWN) advising of offence and that a vehicle registration suspension or 3 months clamping or impoundment may result from any further such offence within a 5 year period (ss 219A(2), 219B).
Second hooning offence	<p>For a second or subsequent offence under s 40 or 41(2) RT (STM) Act:</p> <ul style="list-style-type: none"> • where driver is the owner – forfeiture of vehicle, subject to extreme hardship provisions (s 219). Forfeited vehicle can be sold, otherwise disposed of and can also be used for crash testing and driver education program (s 227). • If the driver is not the vehicle owner, and the owner has been given a SWN, and the second offence is committed by the driver within the aforementioned 5 year period, the vehicle's registration can be suspended for up to 3 months (s 219A(3)).⁵³
Third and subsequent hooning offence	<p>For third offence:</p> <ul style="list-style-type: none"> • where driver is the owner – forfeiture (see above); • If the driver is not the owner and the owner has been given a SWN, and a third or subsequent offence is committed within the aforementioned 5 year period - forfeiture (see above (ss 219A(4)). Forfeited vehicle can be sold etc. (see above).

⁵⁰ Although the information in the tables in this Appendix is more detailed than the table in the main text of this Research Brief, not every exception, qualification or aspect can be covered and readers should consult the relevant legislation for more particulars.

⁵¹ See also, NSW Government Transport Roads & Maritime Services, [Street racing and burnout offences](#), updated 3 November 2011.

⁵² Unless followed by 'RT (STM) Act', the section numbers specified relate to the [Road Transport \(General\) Act 2005 \(NSW\)](#).

⁵³ The vehicle can be clamped or impounded where it is unregistered, or where registration has been suspended or is about to expire.

Prescribed period for repeat offences	5 years where driver is not the owner and the owner is given a SWN.
Hardship provisions	<p>Where driver is the owner (s 219(5)-(6)):</p> <ul style="list-style-type: none"> • court has limited discretion to reduce forfeiture to clamping or impoundment or dispense with clamping or impoundment if such would cause extreme hardship to the offender/any other person. Difficulty in carrying out employment or in travelling to and from work or place of education, training or study is NOT extreme hardship. <p>Where driver is not the owner (s 219A(5)):</p> <ul style="list-style-type: none"> • court may direct forfeiture to be dispensed with or reduced to clamping or impounding if forfeiture would cause extreme hardship to the offending driver/any other person.
Other Sanctions	<ul style="list-style-type: none"> • Includes fines of up to \$3,300 for first street racing or aggravated burnout offence and/or 9 months imprisonment for second/subsequent offences; 12 month disqualification. Various other sanctions apply depending on offence.

Victoria

Legislation	Road Safety Act 1986 (Vic) , Part 6A. ⁵⁴
Types of hooning offences	<p>Tier 1 offences: the most serious driving offences (s 84C):</p> <ul style="list-style-type: none"> second or subsequent unlicensed or disqualified driving (s 18(1)) second or subsequent drink driving offence involving BAC of 0.10 or more (s 30(1)) second or subsequent drug driving offence (s 49) driving at 70 kph over speed limit or at a speed of 170 kph in 110 kph zone (ss 65B, 64(1)). <p>Tier 2 offences (s 84C):</p> <ul style="list-style-type: none"> dangerous driving involving improper use of vehicle, or driving at speeds of between 45 kph and 70 kph over speed limit, or driving at a speed of between 145 kph and 170 kph in a 110 kph zone (s 64(1))⁵⁵ continuing to drive after being directed to stop by police (s 64A) careless driving involving improper use of a vehicle (s 65(1)) dangerous driving causing the vehicle to undergo loss of traction by one or more wheels (s 65A(1)) speed trials/racing, including organising (s 68(1), (2)) deliberately or recklessly entering level crossing when train or tram approaching etc. (s 68B) deliberately causing unnecessary noise and smoke in circumstances involving improper use of vehicle (e.g. causing wheels to spin and lose traction) (Road Safety Rules 2009, r 291) improper control of vehicle involving improper use (Road Rules, r 297) driving with too many passengers where not enough seats or seatbelts (Road Rules 2009, rr 265, 266, 268). <p>Tier 1 and Tier 2 offences are collectively referred to as 'hooning offences'.</p>
First hooning offence	<p>A police officer having reasonable grounds for believing a driver has committed hooning-offence can seize the vehicle and impound or immobilise (e.g. clamp, steering lock) it for a designated period (under s 84C, this is 30 days) (s 84I) (irrelevant if driver is or is not also the registered operator⁵⁶).</p> <p>Impoundment/immobilisation must be reviewed by a senior police officer within 48 hours (s 84M). Appeal rights on basis of exceptional hardship in certain circumstances</p>

⁵⁴ The latest amendments (by the [Road Safety Amendment \(Hoon Driving and Other Matters\) Act 2011](#)) came into effect on 1 July 2011. See also, Legal Aid Victoria, [Changes to hoon driving](#); Hon Terry Mulder MP, Minister for Public Transport Minister for Roads, ' [Hoons on notice as tough new laws start tomorrow](#) ', *Media Release*, 30 June 2011.

⁵⁵ See also, s 84C(1) 'tier 2 relevant offence'(g) and Road Rules, [r 20](#).

⁵⁶ Victorian Government, [Cameras save lives](#).

	(s 84O).
Second hooning offence (first Tier 1 offence treated as a second offence)	If driver is found guilty of (s 84S): <ul style="list-style-type: none"> • a first Tier 1 offence; or • a second Tier 2 offence within 3 years (soon to become 6 years⁵⁷) of a first Tier 1 or 2 offence: <p>court ordered impoundment for 45 days and can be up to 3 months, subject to exceptional hardship etc. (see below) (s 84Z).</p>
Third hooning offence	If driver found guilty of (s 84T): <ul style="list-style-type: none"> • a Tier 1 offence within 3 years (soon to become 6 years) of one or more Tier 1 offences or two or more Tier 2 offences; or • a Tier 2 offence within 3 years (soon to become 6 years) of two or more Tier 1 or 2 offences <ul style="list-style-type: none"> ○ court ordered forfeiture, subject to s 84Z; or ○ court must order impoundment/immobilisation for 45 days or up to 3 months if s 84Z applies to prevent a forfeiture order <p>Vehicles can be sold or otherwise disposed of: Part 6A, Division 5.</p>
Prescribed period for repeat offences	When the relevant amendment to the Road Safety Act 1986 is proclaimed, the prescribed period will be 6 years rather than the current 3 years.
Hardship provisions	Court can decline to order impoundment/immobilisation or forfeiture if satisfied exceptional hardship would be caused to any person (will not apply if the driver is disqualified or licence is suspended for more than 3 months) (s 84Z).
Other Sanctions	Fine of up to \$29,376 and/or up to 2 years imprisonment depending on type of offence and whether a repeat offender. ⁵⁸

In a media release announcing the changes to the hooning laws from 1 July 2011, the Victorian Police noted that since 'hoon laws' were introduced (in 2006), police had impounded in excess of 14,500 vehicles with the most common hooning offence being excessive speed, followed by improper use of a vehicle.⁵⁹

⁵⁷ The [Road Safety Amendment \(Hoon Driving and Other Matters\) Act 2011](#) (s 12) changed the relevant period from 3 years to 6 years. Section 12 comes into effect on a day to be proclaimed, otherwise, 1 July 2012 (see s 2(6), (7)). See also the Commencement Tables for Victorian legislation which can be found [here](#) (the 2011 Amending Act is No. 32 of 2011).

⁵⁸ Victorian Government, [Cameras save lives](#).

⁵⁹ Victoria Police, [Police welcome new hoon laws](#), 1 July 2011.

Australian Capital Territory

Legislation	<u>Road Transport (Safety and Traffic Management) Act 1999 (ACT)</u> (Part 2)
Types of hooning offences	<ul style="list-style-type: none"> • road racing, speed trials etc (s 5A) • burnouts (s 5B) • menacing driving (s 8).
First hooning offence	<p>A police officer believing on reasonable grounds that:</p> <ul style="list-style-type: none"> • a person has committed a menacing driving offence <p>may apply to the court for an impoundment order even if no charges laid.</p> <p>Court must impound vehicle for 3 months if satisfied, on balance of probabilities, an offence has been committed (subject to excessive hardship/injustice provisions) (s 10A). This provision does not apply if person convicted (s 10B will apply).</p> <p>A police officer believing on reasonable grounds that a vehicle (s 10C):</p> <ul style="list-style-type: none"> • is being or has been used in a street racing or burnout offence <p>may seize and impound the vehicle for up to 3 months or a specified earlier time under s 10E (e.g. offender dealt with by court; or after 28 days if no prosecution started).</p> <p>If a person is guilty of a first road racing etc offence, burnout offence or menacing driving, the vehicle is impounded for 3 months (subject to excessive hardship/injustice provisions) (s 10B).</p>
Second hooning offence	<p>If found guilty of a second or subsequent road racing etc offence, burnout offence or menacing driving within 5 years, the vehicle is forfeited (subject to excessive hardship/injustice provisions) (s 10B).</p> <p>Forfeited vehicle can be sold or disposed of (s 10K).</p>
Third and subsequent hooning offence	Forfeiture (see above).
Prescribed period for repeat offences	5 years
Hardship provisions	Court may specify a shorter impoundment period, dispense with impoundment or impound instead of forfeit to avoid excessive hardship or other injustice to anyone having regard to all the circumstances, including safety risk (s 10B(2)-(4)).
Other Sanctions	Includes: fine of up to \$2,200 for street racing etc. and burnouts (up to \$3,300 for burnouts where a prohibited substance is placed on the road). Menacing driving attracts a fine of up to \$11,000 and/or 1 year's imprisonment.

Tasmania

Legislation	Police Offences Act 1935 (Tas) , Part IVA, Divs 1 & 2 Police Offences (Confiscation of Vehicles) Regulations 2009 (Tas) ⁶⁰
Types of hooning offences	The 'prescribed offences' include (s 37K): <ul style="list-style-type: none"> • emitting unnecessary and unreasonable noise; burnouts/loss of traction; street racing • racing and time trials • reckless driving • evading police • speeding where prescribed speed limit exceeded by 45 kph or more • a second or subsequent offence of driving while disqualified • trespassing on property using a vehicle • refusing to leave/returning to a place after being directed to leave by police.
First hooning offence	A police officer finding a person committing a first prescribed offence may clamp vehicle (e.g. wheel or steering clamp, electronic immobilising device) or impound it for 28 days (ss 37N, 37O). ⁶¹ For the purposes of clamping, confiscation and forfeiture (see below), it is irrelevant that the driver is not the vehicle owner or registered operator.
Second hooning offence	A police officer finding a person committing a second prescribed offence may clamp or impound vehicle for 3 months (s 37P). Owner, registered operator or driver can apply to the court for unclamping or return of vehicle if can show severe hardship (s 37ZF).
Third and subsequent hooning offence	A police officer finding a person committing a third or subsequent prescribed offence may clamp or impound vehicle until charges resolved (s 37Q). Upon conviction of the driver for third or subsequent offence , a police officer may apply to the court for a forfeiture order (s 37Y). Severe hardship provision (s 37ZF) applies. Forfeited vehicle may be sold or otherwise disposed of (s 37ZI).
Prescribed period for repeat offences	No period stated
Hardship provisions	If the court is satisfied about severe hardship to a person, it may order unclamping or return of vehicle and order offender to perform up to 240 hours of community service (s 37ZF).
Other Sanctions	These include: <ul style="list-style-type: none"> • a fine of a special compulsory penalty⁶² where person convicted of a prescribed offence and vehicle is clamped or impounded (s 37MA) • varying amounts of fines depending upon type of offence (e.g. \$2,600 and/or imprisonment for up to 3 months, up to 2 years driver disqualification for street racing, burnouts) (s 37J).

⁶⁰ See also, Tasmania Police, [Vehicle Clamping and Confiscation Laws](#).

⁶¹ If the prescribed offence involves trespass or returning to a place when directed to leave, the applicable period is 7 days.

Northern Territory

Legislation	Traffic Act (NT) , Part VA.
Types of hooning offences	A hooning offence is '(prescribed driving offence' under Traffic Regulations (NT), r 91A): <ul style="list-style-type: none"> • participating in unauthorised street races and speed trials • burnouts • damaging the surface of a road or public place.
First hooning offence	A police officer reasonably believing a vehicle was used in committing a hooning offence may impound it for up to 48 hours (the impoundment decision must be reviewed by a senior police officer) (ss 29AD-29AE).
Second hooning offence	If found guilty of a second hooning offence within a 2 year period, the court can impound vehicle for a further 3-6 months , subject to severe hardship provisions etc. (s 29AH).
Third and subsequent hooning offence	If found guilty of a third or subsequent hooning offence , the court can order forfeiture . If hardship grounds apply (see below), court can instead impound vehicle for 3-6 months (s 29AI). Forfeited vehicle can be sold or otherwise disposed of (s 29AS).
Prescribed period for repeat offences	2 years (see s 29AG)
Hardship provisions	Court may decline to impound or forfeit vehicle if doing so will cause severe financial or physical hardship to a person with an interest in the vehicle appearing at the hearing.
Other Sanctions	The Northern Territory Government's New anti-hooning legislation webpage advises that offender can also be fined up to \$2,200 or serve 12 months imprisonment for a second or subsequent offence.

South Australia

Relevant legislation	Criminal Law (Clamping, Impounding and Forfeiture of Vehicles) Act 2007 (SA) (Act) Criminal Law (Clamping, Impounding and Forfeiture of Vehicles) Regulations 2007 (SA) (Regulation)
Types of hooning offences	<p>The 'prescribed offences' (only those relating to driving mentioned here)⁶³ are (s 4 of the Regulation):</p> <ul style="list-style-type: none"> • under <i>Summary Offences Act 1953</i> (SA) - <ul style="list-style-type: none"> ○ misuse of a motor vehicle on private land (s 17AA) ○ excessive noise from vehicle by amplified sound equipment etc. (s 54) • under Road Traffic Act 1961 (SA): <ul style="list-style-type: none"> ○ misuse of a vehicle (sustained wheel spin; excessive engine/tyre noise etc.) (s 44B) ○ aggravated offence of careless driving (s 45) ○ driving at 45 kph or more above speed limit (s 45A) ○ reckless and dangerous driving (s 46) ○ driving under the influence of an intoxicating liquor or drug so as to be incapable of exercising effective control (s 47) or while having 0.05g BAC (s 47B) or with a prescribed drug in oral fluid or blood (s 47BA) • under the <i>Motor Vehicles Act 1959</i> (SA): <ul style="list-style-type: none"> ○ unauthorised driving or driving while disqualified following serious drink driving offence; driving while disqualified (ss 74, 91) ○ second or subsequent offence of driving an unregistered or uninsured vehicle (ss 9, 102). <p>The 'forfeiture offences' are (s 3A of the Regulation prescribing indictable offences against Part 3, Div 6 of the Criminal Law Consolidation Act 1935 (SA)):</p> <ul style="list-style-type: none"> • dangerous driving causing death or injury • dangerous driving to evade police • participation in a street race
First hooning offence	<p>If a person is to be or has been reported or has been charged/arrested for a prescribed offence, a police officer/relevant authority may (Part 2 of the Act):</p> <ul style="list-style-type: none"> • before proceedings for prescribed offence are finalised, clamp or impound the vehicle used in committing the offence or any other vehicle owned by the person for 28 days (earlier release if s 8 applies which includes severe financial or physical hardship to a person other than offender); • if vehicle is to be clamped, apply to the court to extend the clamping period for up to 3 months. Court must consider matters in s 7(5) including evidence of financial or physical hardship to any person.
Second hooning offence or if forfeiture offence	<p>On application to the court upon conviction of a driver for a prescribed offence, the court must order that the vehicle be forfeited if (Part 3 of the Act):</p> <ul style="list-style-type: none"> • the offence is a forfeiture offence; or • the offence is a second or subsequent prescribed offence within a 12 month period. <p>On application to the court upon conviction of a driver for a second prescribed offence within a 10 year period, the court must order vehicle be impounded for up to 6 months.</p> <p>Order can be declined in various circumstances under s 13 including severe financial</p>

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The scheme also captures graffiti offences.

	<p>or physical hardship (see below), order would prejudice innocent third parties etc.</p> <p>Forfeited vehicles can be sold or otherwise disposed of (s 20).</p>
Third and subsequent hooning offence	<p>On application to the court upon conviction of a driver for a prescribed offence, the court must order that the vehicle be forfeited if (Part 3):</p> <ul style="list-style-type: none"> the offence is a third or subsequent prescribed offence within a 10 year period. <p>Forfeiture order can be declined in various circumstances under s 13 (see above).</p>
Prescribed period for repeat offences	<p>For forfeiture: 12 months for a second prescribed offence; 10 years for third or subsequent prescribed offences.</p> <p>For impoundment: 10 years for second prescribed offence.</p>
Hardship provisions	<p>Court may decline to make an order in the event of severe financial or physical hardship. The driver may be ordered to do up to 240 hours of community service (s 13).</p>
Other Sanctions	<p>Additional penalties for hooning and unsafe driving include fines of up to \$1,250 or imprisonment, depending on the type of offence and whether it is a repeat offence.⁶⁴</p>

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Western Australia

Relevant legislation	Road Traffic Act 1974 (WA) , Part V, Div 4. ⁶⁵
Types of hooning offences	<p>'Impounding (driving) offences' ('driving offences') include (s 78A):</p> <ul style="list-style-type: none"> reckless driving (s 60(1)) driving at a speed of 155 kph or more (s 60(1a)) driving at a speed exceeding the speed limit by 45 kph (s 60(1b)) driving to cause burnout (excessive noise or smoke from one or more tyres or substance on the road) (s 62A). <p>Impounding (driver's licence) offences ('licence offences') include:</p> <ul style="list-style-type: none"> unauthorised or unlicensed driving or breaching a condition of an extraordinary licence (issued in certain circumstances to a disqualified driver)
First hooning offence	<p>A police officer reasonably suspecting that a driver has committed (ss 79(1), (2), 79A):</p> <ul style="list-style-type: none"> a driving offence; or a licence offence <p>must impound the vehicle for up to 28 days.</p> <p>A senior police officer must review the decision to ensure there are reasonable grounds for the impoundment (s 79C).</p> <p>The vehicle can be released before the impoundment period ends in various circumstances in s 79D including exceptional hardship.</p>
Second hooning offence	<p>A police officer reasonably suspecting that a driver has committed a second driving offence (i.e. has been convicted of or charged with a previous driving offence ('previous offender')) must impound the vehicle for 3 months (s 79(3A)).</p> <p>Again, a senior police officer must review the decision to impound. Early release pursuant to grounds in s 79D also apply.</p> <p>A court convicting a person of a second licence offence within the past 3 years may impound vehicle for up to 3 months (s 80B). Only applies if the driver is also the responsible person for vehicle (usually the owner) (see s 80GA).</p>
Third and subsequent hooning offence	<p>A court convicting a person of a third driving offence within the past 5 years may order forfeiture (s 80A(1)), subject to severe hardship provisions. If the vehicle was a lent vehicle, the court can instead impound vehicle for up to 6 months (s 80FA).</p> <p>A court convicting a person of a third licence offence within the past 5 years may order forfeiture (s 80C).⁶⁶ Only applies if the driver is also the responsible person for vehicle. Alternatively, the court can impound vehicle for up to 6 months (s 80FA).</p> <p>Forfeited vehicle can be sold or otherwise disposed of.</p>
Prescribed period for repeat offences	<p>5 years for forfeiture for a driving offence.</p> <p>3 years for a second licence offence and 5 years for a third licence offence.</p>

⁶⁵ See also, WA Police, [Hoon Legislation](#).

⁶⁶ A court can also **impound** a vehicle for **up to 6 months** or order **forfeiture** of a vehicle for a road rage offence (ss 80CA, 80CB).

<p>Hardship provisions</p>	<p>Vehicle can be released from police impoundment if senior police officer satisfied exceptional hardship will occur (s 79D(2)).</p> <p>The court must order forfeiture for a third driving offence unless satisfied severe financial or physical hardship would be caused to a person with an interest in the vehicle or the usual driver (s 80G(6A)).</p> <p>For other orders, the court must consider whether any severe financial or physical hardship to aforementioned persons (s 80G(5)).</p>
<p>Other Sanctions</p>	<p>For burnouts etc., a \$600 fine applies (s 5 states that a penalty unit is \$50).</p> <p>A person convicted of a dangerous driving/excessive speeding offence is liable:</p> <ul style="list-style-type: none"> • for a first offence, to a fine of \$2,000 or imprisonment for 9 months; and disqualified for not less than 6 months; • for a first offence, to a fine of \$3,000 or imprisonment for 9 months; and disqualified for not less than 12 months; • for a third or subsequent offence, to a fine of \$4,000 or imprisonment for 12 months; and, permanent driver disqualification.

Key Documents and Links

Bill and Accompanying Material

- [Police Powers and Responsibilities \(Motor Vehicle Impoundment\) Amendment Bill 2011 \(Qld\)](#); [Explanatory Notes](#); [Introduction and Referral](#) (pp 3629-3631).

Act Amended

- [Police Powers and Responsibilities Act 2000 \(Qld\)](#)

Referral Committee:

- [Legal Affairs, Police Corrective Services and Emergency Services Committee](#)

Related Queensland Parliamentary Library Publications

- Wayne Jarred, [Police Powers and Responsibilities and Another Act Amendment Bill 2002: Confronting bad and nuisance road behaviour](#) (RBR 2002/18)
- Nicolee Dixon, [Excessive Speed and 'Hooning' – Amendments to the Transport Operations \(Road Use Management\) Act 1995 \(Qld\) by the Transport and Legislation Amendment Bill 2005 \(Qld\)](#), Hot Topic No 2005/18

Ministerial Media Statements

- Hon Anna Bligh MP, Premier and Minister for Reconstruction & Hon Neil Roberts MP, Minister for Police, Corrective Services and Emergency Services, [Government To Implement Tough New Vehicle Impoundment Laws](#), 18 July 2011

Reports

- NL Leal, '[Illegal street racing and associating \(hooning\) behaviours](#)', PhD thesis, Centre for Accident Research & Road Safety – Queensland (CARRS – Q), Queensland University of Technology October 2010
- [CARRS-Q, State of the Road: Hooning Fact Sheet](#), 2011 (Updated: November 2011)

Queensland Police Website

- [Hooning Hotline – 13Hoon](#)

Newspaper Articles

- '[Extra grunt for hoon-buster laws - Vehicles off road for week](#)', *Courier Mail*, 13 December 2011, p 10
- '[Enthusiasts call for dedicated racing area](#)', *Courier Mail*, 13 December 2011, p 11
- '[Police urged to put brakes on hoons – calls to seize cars and licences to reduce toll](#)', *Courier Mail*, 12 December 2011, p 4
- '[Hundreds caught: Hoons fail to heed the law](#)', *Townsville Bulletin*, 3 October 2011
- '[Law to apply the brake on hoons](#)', *Courier Mail*, 19 July 200, p 7;
- '[Anti-hoon laws to get more bite](#)', *brisbanetimes.com.au*, 18 July 2011
- '[Lock up hoons' cars longer: expert](#)', *Sunshine Coast Daily*, 13 April 2011

Queensland Parliamentary Library Research Publications - 2012

No.	Title	Date
RBR 2012/01	Police Powers and Responsibilities (Motor Vehicle Impoundment) Amendment Bill 2011 (Qld)	Jan 2012