

I hereby certify that this PUBLIC BILL has finally passed the
Legislative Assembly of Queensland.



Legislative Assembly Chamber,
Brisbane,

[Signature]
The Clerk of the Parliament.

29 April 2013

In the name and on behalf of the Queen, I assent to this Bill.

[Signature]

Government House,

Brisbane, *29th April,* 2013



Queensland

No. 15 of 2013

A BILL for

**An Act to amend the Police Powers and Responsibilities Act 2000 and the
Corrective Services Act 2006 for particular purposes, and to make
consequential amendments of the Act mentioned in the schedule**



Queensland

Police Powers and Responsibilities (Motor Vehicle Impoundment) and Other Legislation Amendment Bill 2013

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2013

A Bill

for

An Act to amend the *Police Powers and Responsibilities Act 2000* and the *Corrective Services Act 2006* for particular purposes, and to make consequential amendments of the Act mentioned in the schedule

The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Police Powers and Responsibilities (Motor Vehicle Impoundment) and Other Legislation Amendment Act 2013*.

2 Commencement

Part 2 commences on a day to be fixed by proclamation.

Part 2 Amendment of Police Powers and Responsibilities Act 2000

3 Act amended

This part amends the *Police Powers and Responsibilities Act 2000*.

Note—

See also the amendments in the schedule.

4 Amendment of ch 4, hdg (Motor vehicle impounding powers for prescribed offences and motorbike noise direction offences)

Chapter 4, heading, ‘Motor vehicle impounding powers’—
omit, insert—

‘**Motor vehicle impounding and immobilising powers**’.

5 Amendment of s 69 (Definitions for ch 4)

(1) Section 69, definitions *burn out*, *forfeiture order*, *impounding order* and *relevant period*—

omit.

(2) Section 69—

insert—

‘burn out, for a motor vehicle, means wilfully drive the motor vehicle in a way that causes a sustained loss of traction of one or more of the wheels with the road surface.

Examples—

- driving a motor vehicle in a way that causes a sustained loss of traction of one or more of the drive wheels with a road surface so that the tyres or a substance poured onto the road surface smokes
- driving a motor vehicle in a way that causes a sustained loss of traction of one or more of the drive wheels with a wet or gravelled road surface, regardless of whether or not the tyres smoke because of the loss of traction

forfeiture order, for a motorbike noise order offence, see section 91(2).

immobilise, for a motor vehicle, includes restrict the use of the motor vehicle by way of an immobilising device or the removal and confiscation of the motor vehicle’s number plates.

immobilising device, for a motor vehicle, includes a wheel clamp.

immobilising notice, for a vehicle related offence, see section 78(2).

impounding order, for a motorbike noise order offence, see section 86(2).

initiating immobilisation, of a motor vehicle, means the immobilisation of the motor vehicle for the initiating immobilisation offence.

initiating immobilisation offence means the vehicle related offence for which a motor vehicle is immobilised under this chapter.

number plate means a plate or other device designed to be attached to a motor vehicle to identify the motor vehicle.

number plate confiscation notice see section 74H(2).

number plate confiscation period see section 74H(3).

prescribed impoundment period, for a motor vehicle, means—

- (a) a period prescribed under this Act to be the period of impoundment for the motor vehicle starting when the motor vehicle is impounded; or

Example for paragraph (a)—

A motor vehicle is impounded at 3p.m. on 1 August. If the period of impoundment prescribed under this Act is 7 days, the prescribed impoundment period ends at 3p.m. on 8 August.

- (b) if the period prescribed ends at any time other than between 8a.m. and 5p.m. on a business day, a period starting when the motor vehicle is impounded and ending at 8a.m. next occurring on a business day after the period prescribed ends.

Examples for paragraph (b)—

1 A motor vehicle is impounded at 3a.m. on Wednesday, 1 August. If the period of impoundment prescribed under this Act is 7 days, the period of 7 days ends at 3a.m. on Wednesday, 8 August. However, the prescribed impoundment period ends at 8a.m. on Wednesday, 8 August.

2 A motor vehicle is impounded at 7p.m. on Sunday, 1 April. If the period of impoundment prescribed under this Act is 90 days, the period of 90 days ends at 7p.m. on Saturday, 30 June. However, the prescribed impoundment period ends at 8a.m. on Monday, 2 July.

relevant period, in relation to a motor vehicle impounded or immobilised for a type 1 vehicle related offence or a type 2 vehicle related offence, means the period of not more than 5

years before the initiating impoundment or initiating immobilisation for the motor vehicle.

vehicle production notice see section 74K(2).'

- (3) Section 69, definition *impounding notice*, paragraph (b), 'section 79(2)'—

omit, insert—

'section 81(2).'

- (4) Section 69, definition *prescribed impoundment information*, 'motor vehicle'—

omit, insert—

'motorbike'.

6 **Amendment of s 69A (Meaning of *type 1* and *type 2* vehicle related offences)**

- (1) Section 69A(1)—

omit, insert—

'(1) A *type 1 vehicle related offence* means—

- (a) any of the following offences committed in circumstances that involve a speed trial, a race between motor vehicles, or a burn out—

(i) an offence against the Criminal Code, section 328A committed on a road or in a public place;

(ii) an offence against the Road Use Management Act, section 83;

(iii) an offence against the Road Use Management Act, section 85;

(iv) an offence against the Road Use Management Act involving wilfully starting a motor vehicle, or driving a motor vehicle, in a way that makes unnecessary noise or smoke; or

- (b) an offence against section 754(2).

Notes—

Under the *Acts Interpretation Act 1954*, section 7(1) a reference to a law includes a reference to statutory instruments made or in force under the law.

At the enactment of this definition, a relevant offence for paragraph (a)(iv), for example, is an offence against the *Transport Operations (Road Use Management—Road Rules) Regulation 2009*, section 291(1)(b).’.

(2) Section 69A(2)—

insert—

‘(f) an offence against the Road Use Management Act involving a driver of a motor vehicle in circumstances in which the driver exceeds a speed limit, applying to the driver for the length of road where the driver is driving, by more than 40km/h.

Example of relevant offence for paragraph (f)—

an offence against the *Transport Operations (Road Use Management—Road Rules) Regulation 2009*, section 20.’.

(3) Section 69A—

insert—

‘(3A) A reference in subsection (2)(e) to an offence involving a motor vehicle being driven on a road includes an offence involving modifying a vehicle if the modified vehicle is driven on a road.’.

(4) Section 69A(4), after ‘section 80’—

insert—

‘of the Road Use Management Act’.

7 Omission of s 70A (References to type 2 vehicle related offences including the same kind)

Section 70A—

omit.

8 Amendment of s 71 (When a person is charged for this chapter in relation to a prescribed offence if a proceeding for the offence is started by notice to appear or arrest)

(1) Section 71, heading, from ‘if’ to ‘arrest’—
omit.

(2) Section 71—
insert—

‘(1A) This section also applies for this chapter if a police officer serves an infringement notice on a person for an infringement notice offence that is a vehicle related offence.’.

(3) Section 71—
insert—

‘(4) If a person is served with an infringement notice, the person is taken to be charged with having committed the offence when the infringement notice is served on the person.

Note—

See the *State Penalties Enforcement Act 1999*, sections 13 (Service of infringement notices—generally) and 14 (Service of infringement notices for infringement notice offences involving vehicles).’.

(4) Section 71(1A) to (4)—
renumber as section 71(2) to (5).

9 Insertion of new s 71A

After section 71—
insert—

‘71A When a charge for an offence for this chapter is taken to not be decided if a proceeding for the offence is started by infringement notice

‘(1) This section applies for this chapter if a police officer serves an infringement notice on a person for an infringement notice offence that is a vehicle related offence.

‘(2) The charge for the offence is taken to not be decided if—

- (a) there has been no payment of a penalty, in full or by instalments, under the *State Penalties Enforcement Act 1999*; and
- (b) the registrar under the *State Penalties Enforcement Act 1999* has not registered a default certificate for the infringement notice under that Act; and
- (c) the person has not otherwise been found guilty of the offence.’.

10 Amendment of s 72 (Punishment under this chapter is in addition to other punishment for the same offence)

Section 72, after ‘impounding’—

insert—

‘, immobilisation’.

11 Omission of ch 4, pt 1, div 3 (Application of chapter 4 to type 2 vehicle related offences)

Chapter 4, part 1, division 3—

omit.

12 Replacement of ch 4, pt 2, hdg (Impounding motor vehicles)

Chapter 4, part 2, heading—

omit, insert—

‘Part 2 Impounding and immobilising motor vehicles and forfeiture of motor vehicles’.

13 Replacement of ch 4, pt 2, div 1, hdg (Impounding powers and duties after impounding)

Chapter 4, part 2, div 1, heading—

omit, insert—

**‘Division 1 Impounding powers for type 1
vehicle related offences and
forfeiture of motor vehicles in
particular circumstances’.**

14 Replacement of s 74 (Impounding motor vehicles)

Section 74—

omit, insert—

**‘74 Impounding motor vehicles for first type 1 vehicle related
offence**

- ‘(1) A police officer may impound a motor vehicle if the driver of the motor vehicle is charged with having committed a type 1 vehicle related offence in relation to the motor vehicle.

Note—

For when a person is charged with an offence, see section 71.

- ‘(2) A motor vehicle may be impounded under subsection (1) for the prescribed impoundment period.

Note—

See section 117 about the release of a motor vehicle if the driver of the motor vehicle is found not guilty of the prescribed offence or the proceeding is discontinued.

- ‘(3) The prescribed impoundment period for a motor vehicle impounded under subsection (1) is 90 days.’

15 Insertion of new ss 74A and 74B

After section 74—

insert—

‘74A Impounding motor vehicles for second or subsequent type 1 vehicle related offence

- ‘(1) A police officer may impound a motor vehicle if the driver of the motor vehicle is charged with having committed a type 1 vehicle related offence in relation to the motor vehicle and—
- (a) the driver of the motor vehicle has been charged with having committed a type 1 vehicle related offence on 1 previous occasion within the relevant period and the charge has not been decided; or
 - (b) the driver of the motor vehicle has previously been found guilty of a type 1 vehicle related offence committed on 1 previous occasion within the relevant period.

Notes—

- 1 For when a person is charged with an offence, see section 71.
- 2 For when a charge for an offence is taken to be not decided if the proceeding for the offence is started by the service of an infringement notice, see section 71A.

- ‘(2) A motor vehicle impounded under subsection (1) may be impounded until the end of proceedings for all charges under this section.

Note—

See section 117 about the release of a motor vehicle if the driver of the motor vehicle is found not guilty of the prescribed offence or the proceeding is discontinued.

- ‘(3) This section applies subject to division 2.

Note—

Division 2 contains provisions relating to applications for release of impounded or immobilised motor vehicles.

‘74B Forfeiture of motor vehicles if driver found guilty of second or subsequent type 1 vehicle related offence

- ‘(1) This section applies in relation to a motor vehicle impounded under section 74A if the driver of the motor vehicle—

- (a) has been found guilty of a type 1 vehicle related offence committed on 1 previous occasion within the relevant period; and
 - (b) is found guilty of a second or subsequent type 1 vehicle related offence mentioned in section 74A(1).
- ‘(2) On the driver being found guilty—
- (a) the motor vehicle becomes the property of the State; and
 - (b) any right of a person to enforce a security interest under the *Personal Property Securities Act 2009* (Cwlth) against a person other than the State by taking possession of the vehicle is extinguished.
- ‘(3) This section applies subject to division 2.
- Note—*
- Under division 2 the commissioner may grant an application for the release of an impounded or immobilised motor vehicle.
- ‘(4) However, subsection (5) applies if—
- (a) before the driver of the motor vehicle is found guilty of the offence mentioned in subsection (1)(b), the motor vehicle is released under section 79D, 79F or 79H with a condition; and
 - (b) the motor vehicle is later impounded or immobilised under section 79P because of a breach of the condition.
- ‘(5) Subsection (2) applies in relation to the motor vehicle as if the motor vehicle had not been released under section 79D, 79F or 79H.’.

16 Insertion of new ch 4, pt 2, divs 1A, 1B and 1C

After section 74B—

insert—

‘Division 1A Impounding powers for type 2 vehicle related offences and forfeiture of motor vehicles in particular circumstances

‘74C Impounding motor vehicles for second or subsequent type 2 vehicle related offence

- ‘(1) A police officer may impound a motor vehicle if the driver of the motor vehicle is charged with having committed a type 2 vehicle related offence in relation to the motor vehicle and—
- (a) the driver of the motor vehicle has been charged with having committed a type 2 vehicle related offence on 1 previous occasion within the relevant period and the charge has not been decided before the initiating impoundment; or
 - (b) the driver of the motor vehicle has previously been found guilty of a type 2 vehicle related offence committed on 1 previous occasion within the relevant period.

Note—

For when a person is charged with an offence, see section 71.

- ‘(2) A motor vehicle may be impounded under subsection (1) for the prescribed impoundment period.

Note—

See section 117 about the release of a motor vehicle if the driver of the motor vehicle is found not guilty of the prescribed offence or the proceeding is discontinued.

- ‘(3) The prescribed impoundment period for a motor vehicle impounded under subsection (1) is 7 days.

‘74D Impounding motor vehicles for third or subsequent type 2 vehicle related offence

- ‘(1) A police officer may impound a motor vehicle if the driver of the motor vehicle is charged with having committed a type 2 vehicle related offence and—

-
- (a) the driver of the motor vehicle has been charged with having committed type 2 vehicle related offences on 2 previous occasions within the relevant period and the charges have not been decided before the initiating impoundment; or
 - (b) the driver of the motor vehicle has previously been found guilty of type 2 vehicle related offences committed on 2 previous occasions within the relevant period; or
 - (c) the driver of the motor vehicle—
 - (i) has previously been found guilty of having committed a type 2 vehicle related offence on 1 previous occasion within the relevant period; and
 - (ii) has been charged with having committed a type 2 vehicle related offence on 1 previous occasion within the relevant period and the charge has not been decided before the initiating impoundment.

Notes—

- 1 For when a person is charged with an offence, see section 71.
- 2 For when a charge for an offence is taken to be not decided if the proceeding for the offence is started by the service of an infringement notice, see section 71A.

- ‘(2) A motor vehicle may be impounded under subsection (1) for the prescribed impoundment period.

Note—

See section 117 about the release of a motor vehicle if the driver of the motor vehicle is found not guilty of the prescribed offence or the proceeding is discontinued.

- ‘(3) The prescribed impoundment period for a motor vehicle impounded under subsection (1) is 90 days.

‘74E Impounding motor vehicles for fourth or subsequent type 2 vehicle related offence

- ‘(1) A police officer may impound a motor vehicle if—

- (a) the driver of the motor vehicle is charged with having committed a type 2 vehicle related offence; and
- (b) the driver of the motor vehicle has been charged with having committed type 2 vehicle related offences on 3 previous occasions within the relevant period; and
- (c) for each of the charges mentioned in paragraph (b)—
 - (i) the charge has not been decided; or
 - (ii) the driver has been found guilty.

Notes—

- 1 For when a person is charged with an offence, see section 71.
- 2 For when a charge for an offence is taken to be not decided if the proceeding for the offence is started by the service of an infringement notice, see section 71A.

- ‘(2) A motor vehicle impounded under subsection (1) may be impounded until the end of proceedings for all charges under this section.

Note—

See section 117 about the release of a motor vehicle if the driver of the motor vehicle is found not guilty of the prescribed offence or the proceeding is discontinued.

- ‘(3) This section applies subject to division 2.

Note—

Division 2 contains provisions relating to applications for release of impounded or immobilised motor vehicles.

‘74F Forfeiture of motor vehicles if driver found guilty of fourth or subsequent type 2 vehicle related offence

- ‘(1) This section applies in relation to a motor vehicle impounded under section 74E if the driver of the motor vehicle—
- (a) has been found guilty of 3 type 2 vehicle related offences committed within the relevant period; and
 - (b) is found guilty of the fourth or subsequent type 2 vehicle related offence mentioned in section 74E(1).

- ‘(2) On the driver being found guilty—
- (a) the motor vehicle becomes the property of the State; and
 - (b) any right of a person to enforce a security interest under the *Personal Property Securities Act 2009* (Cwlth) against a person other than the State by taking possession of the vehicle is extinguished.
- ‘(3) This section applies subject to division 2.
- Note—*
- Under division 2 the commissioner may grant an application for the release of an impounded or immobilised motor vehicle.
- ‘(4) However, subsection (5) applies if—
- (a) before the driver of the motor vehicle is found guilty of the offence mentioned in subsection (1)(b), the motor vehicle is released under section 79D, 79F or 79H with a condition; and
 - (b) the motor vehicle is later impounded or immobilised under section 79P because of a breach of the condition.
- ‘(5) Subsection (2) applies in relation to the motor vehicle as if the motor vehicle had not been released under section 79D, 79F or 79H.’.

‘Division 1B Immobilising powers for type 1 and type 2 vehicle related offences

‘Subdivision 1 Preliminary

‘74G Purpose of div 1B

‘The purpose of this division is to provide another way for keeping a motor vehicle, that may be impounded under division 1 or 1A, at a place other than a holding yard.

‘Subdivision 2 Removal and confiscation of number plate powers

‘74H Power to remove and confiscate number plates

- ‘(1) This section applies if—
- (a) a police officer may impound a motor vehicle under division 1 or 1A; and
 - (b) the police officer decides that it is appropriate in the circumstances for the motor vehicle to be kept at a place other than a holding yard for the impoundment period.
- ‘(2) The police officer may remove and confiscate the number plates attached to the motor vehicle and attach a notice (a ***number plate confiscation notice***) to the motor vehicle.
- ‘(3) Except as provided under this chapter, a motor vehicle to which a number plate confiscation notice is attached under this section is prohibited from being operated for the period stated in the notice (the ***number plate confiscation period***) for which the vehicle would have been kept in a holding yard and commencing on the day the notice is attached to the vehicle.

Note—

See sections 105B and 105C for number plate offences.

‘74I Moving motor vehicle to which number plate confiscation notice is attached

‘A motor vehicle to which a number plate confiscation notice is attached under section 74H may be moved (for example, by being driven or towed) to a place authorised by a police officer where the motor vehicle may lawfully stand.

‘Subdivision 3 Immobilising device powers

‘74J Power to attach immobilising device

- ‘(1) This section applies if—
 - (a) a police officer may impound a motor vehicle under division 1 or 1A; and
 - (b) the police officer decides that it is appropriate in the circumstances for the motor vehicle to be kept at a place other than a holding yard for the impoundment period.
- ‘(2) The police officer may attach an immobilising device, or arrange for an immobilising device to be attached, to the motor vehicle.
- ‘(3) Except as provided under this chapter, a motor vehicle to which an immobilising device is attached under this section is prohibited from being operated for the period for which the vehicle would have been kept in a holding yard commencing on the day the device is attached to the vehicle.

Note—

See sections 105D and 105E for immobilising device offences.

‘Division 1C Vehicle production notices

‘74K Power to require motor vehicle to be produced

- ‘(1) This section applies if a police officer may—
 - (a) impound a motor vehicle under division 1 or 1A; or
 - (b) immobilise a motor vehicle under division 1B.
- ‘(2) The police officer may require the owner or driver by notice in the approved form (a *vehicle production notice*) to produce the vehicle at a stated place and stated time for impoundment or immobilisation.
- ‘(3) The time or place stated in the notice must be reasonable in the circumstances.

- ‘(4) If for any reason it is not practicable to give a vehicle production notice, the requirement may be made orally and confirmed by a vehicle production notice as soon as practicable.

‘74L Period of impoundment or immobilisation starts only when motor vehicle produced

- ‘(1) This section applies to a motor vehicle in relation to which a vehicle production notice has been given under section 74K.
- ‘(2) The period for which the motor vehicle is impounded under division 1 or 1A, or immobilised under this division, starts only when the motor vehicle is produced at the place stated in the notice.

‘74M Vehicle production notices generally

- ‘(1) The date stated in a vehicle production notice for production of a motor vehicle must be a date that is no later than the first business day occurring 5 days after the notice is given.
- ‘(2) The disposal of a motor vehicle within the period of 5 days after a vehicle production notice is given in relation to the motor vehicle does not affect the requirement to produce the motor vehicle in accordance with the notice, except as provided by subsection (3).
- ‘(3) A vehicle production notice ceases to have effect in relation to a motor vehicle if it is withdrawn by the commissioner by notice in writing given to—
- (a) the owner of the motor vehicle; or
 - (b) a person who purchased the motor vehicle after the production notice was given who satisfies the commissioner that the purchase was made in good faith for value and without notice, at the time of the purchase, of the production notice.’

17 Insertion of new ch 4, pt 2, div hdg

Before section 75—

insert—

**‘Division 1D General provisions relating to
impounding and immobilising
motor vehicles’.**

**18 Amendment of s 75 (Particular powers for impounding
motor vehicles)**

(1) Section 75, heading, after ‘impounding’—

insert—

‘or immobilising’.

(2) Section 75(1), ‘section 74’—

omit, insert—

‘divisions 1, 1A or part 2A, division 1, or to immobilise a motor vehicle under division 1B’.

(3) Section 75(1)(d), after ‘impound’—

insert—

‘or immobilise’.

(4) Section 75(1)(f), after ‘impounding’—

insert—

‘or immobilising’.

(5) Section 75(2), after ‘impounding’—

insert—

‘or immobilising’.

(6) Section 75—

insert—

‘(2A) After impounding a motor vehicle, a police officer may move the motor vehicle, or arrange for the motor vehicle to be

moved, to a holding yard in the way the police officer considers appropriate.

Example of ways of moving a motor vehicle after it is impounded—

driving, pushing, towing or transporting the motor vehicle’.

- (7) Section 75(4), after ‘impounded’—

insert—

‘or immobilised’.

19 Amendment of s 76 (Duties of police officer after impounding motor vehicle)

- (1) Section 76, heading—

omit, insert—

‘76 Release of motor vehicle in particular circumstances’.

- (2) Section 76(1)—

omit.

- (3) Section 76(2), ‘However, if the motor vehicle’—

omit, insert—

‘If a motor vehicle that is impounded or immobilised’.

- (4) Section 76(2) and (3)—

renumber as section 76(1) and (2).

20 Amendment of s 77 (Police officer may authorise tow)

- (1) Section 77(1)—

omit, insert—

- ‘(1) This section applies if a police officer—

(a) arranges for an impounded motor vehicle to be towed to a holding yard; or

(b) arranges for an immobilised motor vehicle to be towed to a place.’.

(2) Section 77(2), after ‘impounded’—

insert—

‘or immobilised’.

(3) Section 77(3), after ‘impounded’—

insert—

‘or immobilised’.

(4) Section 77(3)(a)—

omit, insert—

‘(a) if the police officer directs the driver to tow the motor vehicle to a particular holding yard or place—the holding yard or the place; or’.

21 Replacement of s 78 (Impounding notice for vehicle related offence)

Section 78—

omit, insert—

‘78 Impounding notice or immobilising notice for vehicle related offence

‘(1) This section applies if a motor vehicle is impounded or immobilised for a vehicle related offence.

‘(2) As soon as reasonably practicable, a police officer must give written notice in the approved form (*impounding notice*) of the impounding, or written notice in the approved form (*immobilising notice*) of the immobilising, to—

(a) the driver of the motor vehicle; and

(b) if the driver is not the owner or not the only owner of the motor vehicle—the owner or each other owner of the motor vehicle.

‘(3) If the driver is a child, the impounding notice or the immobilising notice must also be given to the child’s parent or guardian if it is reasonably practicable to do so, unless the parent or guardian is given notice under subsection (2).

- ‘(4) The impounding notice or the immobilising notice must state—
- (a) the period that the motor vehicle is impounded or immobilised for; and
 - (b) information about how the owner of a motor vehicle impounded or immobilised under this chapter may recover the motor vehicle; and
 - (c) any other information prescribed under a regulation.
- ‘(5) When giving an impounding notice or immobilising notice under this section to a child or the child’s parent or guardian, the police officer giving the notice must also give the person an explanation of the matters stated in the impounding notice or immobilising notice.
- ‘(6) The police officer may give the explanation by giving the person a statement, in the approved form, containing the explanation if it is appropriate in the circumstances to do so.
- ‘(7) An impounding notice or immobilising notice given to a driver under subsection (2)(a) must be given personally to the driver.
- ‘(8) If the name of an owner of the motor vehicle is not known, an impounding notice or immobilising notice required to be given to the owner under subsection (2)(b) may be given by making the information required to be included on the impounding notice or immobilising notice, other than the owner’s name and address, available on the police service internet website.’.

22 Omission of s 79 (Impounding notice for motorbike noise direction offence or motorbike noise order offence)

Section 79—

omit.

23 Omission of ch 4, pt 2, divs 2 and 2A

Chapter 4, part 2, divisions 2 and 2A—

omit.

24 Insertion of new ch 4, pt 2, div 2

After section 78—

insert—

‘Division 2 Other provisions relating to impounded or immobilised motor vehicles

‘Subdivision 1 Preliminary

‘79 Definitions for div 2

‘In this division—

eligible person, for a motor vehicle, means an owner or usual driver of the motor vehicle.

information notice, for a decision of the commissioner under this division, means a notice stating—

- (a) the decision; and
- (b) the reasons for the decision; and
- (c) that the person to whom the notice is given may appeal against the decision within 28 days after the person receives the notice; and
- (d) how the person may appeal against the decision.

vehicle release notice, for a motor vehicle, means a notice stating—

- (a) the decision of the commissioner made under this division; and
- (b) the time and date when the impoundment, or immobilisation, of the vehicle ends; and

- (c) any conditions to which the release of the motor vehicle is subject.

‘Subdivision 2 Application for release of impounded or immobilised motor vehicle

‘79A Application for release of impounded or immobilised motor vehicle on basis of severe hardship

- ‘(1) An eligible person may apply to the commissioner for the release of a motor vehicle impounded under division 1 or 1A, or immobilised under division 1B, on the basis that the person would suffer severe hardship if the motor vehicle was not released.
- ‘(2) The application must be—
 - (a) made in the approved form; and
 - (b) supported by enough information to enable the commissioner to decide the application.

Note—

See section 79B(4) and (5) for particular information the applicant must give to the commissioner.

- ‘(3) An application may be made under this section regardless of whether the motor vehicle may be liable to forfeiture.

‘79B Decision on application for release of impounded or immobilised motor vehicle on basis of severe hardship

- ‘(1) The commissioner must consider an application for the release of a motor vehicle under section 79A after receiving all necessary information relevant to the application and either—
 - (a) grant the application; or
 - (b) refuse to grant the application.

- ‘(2) The commissioner must, if reasonably practicable, decide the application within 5 business days of receiving the application and other documents required under this subdivision.
- ‘(3) The commissioner may grant the application only if the commissioner is satisfied a refusal to grant the application would—
 - (a) cause severe financial hardship to the applicant or the applicant’s family by depriving the applicant of the applicant’s means of earning a living; or
 - (b) cause severe physical hardship to the applicant or the applicant’s family.
- ‘(4) For subsection (3)(a), the applicant must give the following to the commissioner—
 - (a) a statement made by the applicant outlining how a refusal to grant the application would cause severe financial hardship to the applicant or the applicant’s family;
 - (b) if the applicant is not self-employed—a statement made by the applicant’s employer confirming the applicant would be deprived of the applicant’s means of earning a living if the application is refused.
- ‘(5) For subsection (3)(b), the applicant must give the commissioner a statement made by the applicant that—
 - (a) outlines how a refusal to grant the application would cause severe physical hardship to the applicant or the applicant’s family; and
 - (b) has attached to it statutory declarations from persons other than the applicant, other documentary evidence, or certified copies of documentary evidence, in support of each matter stated in the statement.
- ‘(6) If the commissioner decides to grant the application, the commissioner must give the applicant a vehicle release notice for the motor vehicle.

- ‘(7) If the commissioner decides to refuse to grant the application, the commissioner must as soon as practicable give the applicant an information notice for the decision.
- ‘(8) The commissioner may grant the application with or without conditions.

Examples of conditions—

- 1 a condition that the owner of the motor vehicle does not allow the person who committed, or is alleged to have committed, the offence for which the motor vehicle was impounded to use the motor vehicle
 - 2 a condition that the owner of the motor vehicle who committed, or is alleged to have committed, the offence for which the motor vehicle was impounded, is to only use the motor vehicle for work related purposes
- ‘(9) A condition made by the commissioner under this section expires on the earlier of the following—
- (a) if the driver is found not guilty of the prescribed offence for which the motor vehicle was impounded or immobilised or the proceeding for the offence is discontinued—the day the driver is found not guilty or the proceeding is discontinued;
 - (b) when the period of impoundment or immobilisation that would have applied to the motor vehicle had it not been released by way of a decision of the commissioner under this section ends.
- ‘(10) In this section—

certified copy, of documentary evidence, means certified by a justice of the peace or commissioner for declarations in writing to be a true copy of the documentary evidence.

‘79C Application for release of impounded or immobilised motor vehicle on basis prescribed offence happened without owner’s consent

- ‘(1) The owner of a motor vehicle impounded under division 1 or 1A, or immobilised under division 1B, may apply to the

commissioner for the release of the motor vehicle on the basis that the offence happened without the consent of the person.

- ‘(2) The application must be—
 - (a) made in the approved form; and
 - (b) supported by enough information to enable the commissioner to decide the application.
- ‘(3) An application may be made under this section regardless of whether the motor vehicle may be liable to forfeiture.

‘79D Decision on application for release of impounded or immobilised motor vehicle on basis prescribed offence happened without owner’s consent

- ‘(1) The commissioner must consider an application for the release of a motor vehicle under section 79C after receiving all necessary information relevant to the application and either—
 - (a) grant the application; or
 - (b) refuse to grant the application.
- ‘(2) The commissioner must, if reasonably practicable, decide the application within 5 business days of receiving the application and other documents required under this subdivision.
- ‘(3) The commissioner may grant the application only if the commissioner is satisfied the relevant prescribed offence happened without the consent of the owner.
- ‘(4) If the commissioner decides to grant the application, the commissioner must give the applicant a vehicle release notice for the motor vehicle.
- ‘(5) If the commissioner decides to refuse to grant the application, the commissioner must as soon as practicable give the applicant an information notice for the decision.
- ‘(6) The commissioner may grant the application with or without conditions.

Examples of conditions—

- 1 a condition that the owner of the motor vehicle does not allow the person who committed, or is alleged to have committed, the offence for which the motor vehicle was impounded to use the motor vehicle
 - 2 a condition that the owner of the motor vehicle who committed, or is alleged to have committed, the offence for which the motor vehicle was impounded, is to only use the motor vehicle for work related purposes
- ‘(7) A condition made by the commissioner under this section expires on the earlier of the following—
- (a) if the driver is found not guilty of the prescribed offence for which the motor vehicle was impounded or immobilised or the proceeding for the offence is discontinued—the day the driver is found not guilty or the proceeding is discontinued;
 - (b) when the period of impoundment or immobilisation that would have applied to the motor vehicle had it not been released by way of a decision of the commissioner under this section ends.
- ‘(8) In this section—
- relevant prescribed offence* means the prescribed offence because of which the impoundment or immobilisation has happened.

‘79E Application for release of impounded or immobilised motor vehicle on basis that circumstances giving rise to offence have been rectified

- ‘(1) This section applies if a motor vehicle is impounded under division 1 or 1A, or immobilised under division 1B, because of the commission of a relevant type 2 vehicle related offence.
- ‘(2) An eligible person may apply to the commissioner for the release of the motor vehicle on the basis that the circumstances giving rise to the offence have been rectified.
- ‘(3) The application must be—
- (a) made in the approved form; and

-
- (b) supported by enough information to enable the commissioner to decide the application.

Examples for paragraph (b)—

a receipt issued by the department within which the Road Use Management Act is administered indicating the payment of vehicle registration fees for an impounded motor vehicle or a copy of a license issued by that department

- ‘(4) In this section—

relevant type 2 vehicle related offence means—

- (a) an offence against the Road Use Management Act involving the use on a road of a vehicle that is not registered as required under that Act; or
- (b) an offence against the Road Use Management Act, section 78(1).

‘79F Decision on application for release of impounded or immobilised motor vehicle on basis that circumstances giving rise to offence have been rectified

- ‘(1) The commissioner must consider an application for the release of a motor vehicle under section 79E after receiving all necessary information relevant to the application and either—
- (a) grant the application; or
- (b) refuse to grant the application.
- ‘(2) The commissioner must, if reasonably practicable, decide the application within 5 business days of receiving the application and other documents required under this subdivision.
- ‘(3) The commissioner may grant the application if the commissioner is satisfied the circumstances giving rise to the offence have been rectified.
- ‘(4) If the commissioner decides to grant the application, the commissioner must give the applicant a vehicle release notice for the motor vehicle.

‘(5) If the commissioner decides to refuse to grant the application, the commissioner must as soon as practicable give the applicant an information notice for the decision.

‘(6) The commissioner may grant the application with or without conditions.

Examples of conditions—

1 a condition that the owner of the motor vehicle does not allow the person who committed, or is alleged to have committed, the offence for which the motor vehicle was impounded to use the motor vehicle

2 a condition that the owner of the motor vehicle who committed, or is alleged to have committed, the offence for which the motor vehicle was impounded, is to only use the motor vehicle for work related purposes

‘(7) A condition made by the commissioner under this section expires on the earlier of the following—

(a) if the driver is found not guilty of the prescribed offence for which the motor vehicle was impounded or immobilised or the proceeding for the offence is discontinued—the day the driver is found not guilty or the proceeding is discontinued;

(b) when the period of impoundment or immobilisation that would have applied to the motor vehicle had it not been released by way of a decision of the commissioner under this section ends.

‘79G Application for release of impounded or immobilised motor vehicle on basis that grounds for impoundment or immobilisation unreasonable

‘(1) An eligible person may apply to the commissioner for the release of a motor vehicle impounded under division 1 or 1A, or immobilised under division 1B, on the basis that there were not reasonable grounds to impound or immobilise the motor vehicle.

‘(2) The application must be—

(a) made in the approved form; and

- (b) supported by enough information to enable the commissioner to decide the application.

‘79H Decision on application for release of impounded or immobilised motor vehicle on basis that grounds for impoundment or immobilisation unreasonable

- ‘(1) The commissioner must consider an application for the release of a motor vehicle under section 79G after receiving all necessary information relevant to the application and either—
 - (a) grant the application; or
 - (b) refuse to grant the application.
- ‘(2) The commissioner must, if reasonably practicable, decide the application within 5 business days of receiving the application and other documents required under this subdivision.
- ‘(3) The commissioner may grant the application if the commissioner is not satisfied that there were reasonable grounds to impound or immobilise the motor vehicle.
- ‘(4) If the commissioner decides to grant the application, the commissioner must give the applicant a vehicle release notice for the motor vehicle.
- ‘(5) If the commissioner decides to refuse to grant the application, the commissioner must as soon as practicable give the applicant an information notice for the decision.
- ‘(6) The commissioner may grant the application with or without conditions.

Examples of conditions—

- 1 a condition that the owner of the motor vehicle does not allow the person who committed, or is alleged to have committed, the offence for which the motor vehicle was impounded to use the motor vehicle
- 2 a condition that the owner of the motor vehicle who committed, or is alleged to have committed, the offence for which the motor vehicle was impounded, is to only use the motor vehicle for work related purposes

- ‘(7) A condition made by the commissioner under this section expires on the earlier of the following—
- (a) if the driver is found not guilty of the prescribed offence for which the motor vehicle was impounded or immobilised or the proceeding for the offence is discontinued—the day the driver is found not guilty or the proceeding is discontinued;
 - (b) when the period of impoundment or immobilisation that would have applied to the motor vehicle had it not been released by way of a decision of the commissioner under this section ends.

‘79I Impoundment or immobilisation ends if application for release of motor vehicle granted

- ‘(1) If the commissioner grants an application for the release of a motor vehicle under this division, the impoundment of the motor vehicle under division 1 or 1A, or the immobilisation of the motor vehicle under division 1B, ends.
- ‘(2) This section applies subject to section 79P.

‘Subdivision 3 Appeals

‘79J Who may appeal

- ‘(1) A person who is aggrieved by a decision of the commissioner under section 79B, 79D, 79F or 79H may appeal against the decision.
- ‘(2) In this section—
- decision* includes a condition made by the commissioner under section 79B, 79D, 79F or 79H in relation to granting an application for the release of a motor vehicle.

‘79K How to start appeal

- ‘(1) The appeal is started by filing a notice of appeal with the clerk of a Magistrates Court.
- ‘(2) The appellant must serve a copy of the notice on—
 - (a) the other persons entitled to appeal against the decision; and
 - (b) the commissioner.
- ‘(3) Despite subsection (2), the clerk of the court may ask the commissioner to serve a copy of the notice on a person mentioned in subsection (2)(a) whom the appellant is unable to serve.
- ‘(4) The notice of appeal must be filed within 28 days after the person is given an information notice for the decision.
- ‘(5) The court may at any time extend the period for filing the notice of appeal.
- ‘(6) The notice of appeal must state fully the grounds of the appeal and the facts relied on.

‘79L Effect of appeal on decision

- ‘(1) The start of an appeal against a decision of the commissioner does not affect the operation of the decision or prevent the taking of action to implement the decision.
- ‘(2) However, the court may make an order staying the operation of the decision being appealed against until the appeal is finally decided.
- ‘(3) The court may act under subsection (2) on the application of the appellant or on its own initiative.

‘79M Commissioner has right of appearance

‘The commissioner has a right to appear and be heard before the court on an appeal under this subdivision.

‘79N Hearing procedures

- ‘(1) An appeal must be decided on the evidence before the commissioner.
- ‘(2) However, the court may order that the appeal be heard afresh, in whole or part.

‘79O Powers of Magistrates Court

‘In deciding an appeal, the court may—

- (a) confirm the decision appealed against; or
- (b) set aside the decision and substitute another decision that it considers appropriate.

‘Subdivision 4 Miscellaneous

‘79P Power to take certain action if breach of condition

- ‘(1) This section applies if—
 - (a) the commissioner grants an application under this division for the release of an impounded or immobilised motor vehicle with a condition; and
 - (b) the condition is breached.
- ‘(2) A police officer may impound or immobilise the motor vehicle for the remainder of the period for which the vehicle would have been impounded or immobilised.
- ‘(3) For impounding or immobilising a motor vehicle under this section, a police officer may exercise any of the powers under section 75 if the police officer reasonably considers the exercise of the power may be effective for the purpose.

‘79Q Delegation—commissioner

‘The commissioner may delegate any of the commissioner’s powers under this division including, for example,

considering an application for the release of an impounded or immobilised vehicle under subdivision 2 and making a decision about the application, to a police officer of at least the rank of inspector.’

25 Insertion of new ch 4, pt 2A

After section 79Q—

insert—

‘Part 2A Impounding motorbikes for motorbike noise direction offences or motorbike noise order offences

‘Division 1 Impounding powers for motorbike noise direction offences or motorbike noise order offences

‘80 Impounding motorbike for motorbike noise direction offence or motorbike noise order offence

- ‘(1) A police officer may impound a motorbike if—
- (a) the driver of the motorbike is charged with having committed—
 - (i) a motorbike noise direction offence; or
 - (ii) a motorbike noise order offence; or
 - (b) the driver of the motorbike is a child and the police officer reasonably suspects the child has committed—
 - (i) a motorbike noise direction offence; or
 - (ii) a motorbike noise order offence.

Note—

For when a person is charged with an offence, see section 71.

- ‘(2) A motorbike impounded under subsection (1) may be impounded for the initial impoundment period.

‘81 Impounding notice for motorbike noise direction offence or motorbike noise order offence

- ‘(1) This section applies if a motorbike is impounded for a motorbike noise direction offence or a motorbike noise order offence.
- ‘(2) As soon as reasonably practicable, a police officer must give written notice in the approved form (*impounding notice*) of the impounding to—
- (a) the driver of the motorbike; and
 - (b) if the driver is not the owner or not the only owner of the motorbike—the owner or each other owner of the motorbike.
- ‘(3) If the driver is a child, the impounding notice must also be given to the child’s parent or guardian if it is reasonably practicable to do so, unless the parent or guardian is given notice under subsection (2).
- ‘(4) If the motorbike is impounded for a motorbike noise direction offence, the impounding notice must include the information required under section 82.
- ‘(5) If the motorbike is impounded for a motorbike noise order offence, the impounding notice must include the information required under section 83 or 84.
- ‘(6) When giving an impounding notice under this section to a child or the child’s parent or guardian, the police officer giving the impounding notice must also give the person an explanation of the matters stated in the notice.
- ‘(7) The police officer may give the explanation by giving the person a statement, in the approved form, containing the explanation if it is appropriate in the circumstances to do so.
- ‘(8) An impounding notice given to a driver under subsection (2)(a) must be given personally to the driver.

‘(9) Also, if the name of the owner of the motorbike is not known, an impounding notice required to be given to the owner under subsection (2)(b) may be given by making the information required to be included on the impounding notice, other than the owner’s name and address, available on the police service internet website.’.

26 Replacement of ch 4, pt 2A, div 3, hdg (Notice requirements for motorbikes impounded for motorbike noise direction offences)

Chapter 4, part 2A, division 3, heading—

omit, insert—

‘Division 2 Notice requirements for motorbikes impounded for motorbike noise direction offences or motorbike noise order offences’.

27 Omission of ch 4, pt 2A, div 4, hdg (Notice requirements for motorbikes impounded for motorbike noise order offences)

Chapter 4, part 2A, division 4, heading—

omit.

28 Amendment of ch 4, pt 3, hdg (Obtaining impounding orders)

Chapter 4, part 3, heading, ‘orders’—

omit, insert—

‘orders for motorbike noise order offences’.

29 Omission of ch 4, pt 3, div 1, hdg (Impounding order application provisions)

Chapter 4, part 3, division 1, heading—

omit.

30 Omission of ss 85 and 85A

Sections 85 and 85A—

omit.

31 Omission of ch 4, pt 3, div 2, hdg (Orders if offence not decided)

Chapter 4, part 3, division 2, heading—

omit.

32 Omission of ss 87 and 87A

Sections 87 and 87A—

omit.

33 Omission of ch 4, pt 3, div 3, hdg (Advice of date of hearing)

Chapter 4, part 3, division 3, heading—

omit.

34 Amendment of s 89 (Advice to owner of date of hearing)

(1) Section 89, heading, after ‘owner’—

insert—

‘of motorbike’.

(2) Section 89(1), ‘motor vehicle’—

omit, insert—

‘motorbike’.

- 35 Amendment of ch 4, pt 4, hdg (Obtaining forfeiture orders)**
Chapter 4, part 4, heading, ‘orders’—
omit, insert—
‘orders for motorbike noise order offences’.
- 36 Omission of ch 4, pt 4, div 1, hdg (Forfeiture order application provisions)**
Chapter 4, part 4, division 1, heading—
omit.
- 37 Omission of ss 90 and 90A**
Sections 90 and 90A—
omit.
- 38 Omission of ch 4, pt 4, div 2, hdg (Orders if offence not decided)**
Chapter 4, part 4, division 2, heading—
omit.
- 39 Omission of ss 92 and 92A**
Sections 92 and 92A—
omit.
- 40 Omission of ch 4, pt 4, div 3, hdg (Advice of date of hearing)**
Chapter 4, part 4, division 3, heading—
omit.
-

41 Amendment of s 94 (Advice to owner of date of hearing)

(1) Section 94, heading, after ‘owner’—

insert—

‘**of motorbike**’.

(2) Section 94(1), ‘motor vehicle’—

omit, insert—

‘motorbike’.

42 Amendment of s 95 (Where application is to be decided)

Section 95, after ‘forfeiture order’—

insert—

‘for a motorbike noise order offence’.

43 Omission of ss 96 and 96A

Sections 96 and 96A—

omit.

44 Omission of ch 4, pt 5, divs 2 and 2A

Chapter 4, part 5, divisions 2 and 2A—

omit.

45 Renumbering of ch 4, pt 5, div 3, hdg (Consideration of application if made for motorbike noise order offence)

Chapter 4, part 5, division 3, heading—

renumber as chapter 4, part 5, division 2.

46 Replacement of ch 4, pt 5, div 4, hdg (Other provisions about applications and orders)

Chapter 4, part 5, division 4, heading—

omit, insert—

**‘Division 3 Community service orders in
relation to motorbike noise
direction offences or motorbike
noise order offences’.**

**47 Omission of ch 4, pt 5, div 3, sdiv 1, hdg (Community
service orders)**

Chapter 4, part 5, division 3, as renumbered, subdivision 1,
heading—

omit.

**48 Amendment of s 102 (Community service instead of
impounding or forfeiture order)**

Section 102(1)(a) and (2), ‘motor vehicle’—

omit, insert—

‘motorbike’.

49 Insertion of new ch 4, pt 5A, hdg

After section 102—

insert—

**‘Part 5A Other provisions about
applications and orders’.**

**50 Replacement of ch 4, pt 5A, sdiv 2, hdg (Costs orders for
child drivers)**

Chapter 4, part 5A, subdivision 2, heading—

omit, insert—

‘Division 1 Costs orders for child drivers’.

51 Amendment of s 103 (Costs order for child drivers)

(1) Section 103(1)—

omit, insert—

‘(1) This section applies if—

(a) all of the following apply—

(i) a court finds a person guilty of a prescribed offence;

(ii) the person was a child when he or she committed the offence;

(iii) the motor vehicle to which the offence relates is impounded or immobilised; or

(b) a relevant court makes an impounding order or a forfeiture order for a motorbike noise order offence and the driver of the motorbike was a child when he or she committed the last offence in relation to which the order is made.’.

(2) Section 103(2), ‘relevant court’—

omit, insert—

‘court’.

(3) Section 103(2), ‘removing and keeping’—

omit, insert—

‘removing or keeping’.

(4) Section 103(3), ‘relevant court’—

omit, insert—

‘court’.

(5) Section 103(4), ‘relevant court’—

omit, insert—

‘court’.

(6) Section 103(4), ‘removing and keeping’—

omit, insert—

‘removing or keeping’.

52 Amendment of s 104 (Application of applied sections for s 103)

(1) Section 104(2)(b)(i) and (ii)—

omit, insert—

- ‘(i) to compensation were a reference to the costs of removing or keeping a motor vehicle impounded or immobilised under this chapter; and
- (ii) to the prosecution were a reference to—
 - (A) the applicant for the impounding order or forfeiture order; or
 - (B) otherwise—the prosecution for the prescribed offence.’.

(2) Section 104(3)(a)(i) and (ii)—

omit, insert—

- ‘(i) to compensation were a reference to the costs of removing or keeping a motor vehicle impounded or immobilised under this chapter; and
- (ii) to the prosecution were a reference to—
 - (A) the applicant for the impounding order or forfeiture order; or
 - (B) otherwise—the prosecution for the prescribed offence; and’.

(3) Section 104(3)(b) from ‘removing’ to ‘impounded’—

omit, insert—

‘removing or keeping a motor vehicle impounded or immobilised’.

(4) Section 104(3)(d) from ‘removing’ to ‘impounded’—

omit, insert—

‘removing or keeping a motor vehicle impounded or immobilised’.

53 Amendment of ch 4, pt 5A, sdiv 3, hdg (Offences)

Chapter 4, part 5A, subdivision 3, heading—

omit, insert—

‘Division 2 Offences’.

54 Insertion of new ss 105A to 105F

After section 105—

insert—

‘105A Failure to comply with requirement to produce motor vehicle

‘A person must comply with a requirement under section 74K, unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

‘105B Offence to operate vehicle during number plate confiscation period

‘A person must not operate a motor vehicle during a number plate confiscation period applying to the vehicle without reasonable excuse or unless the motor vehicle is moved under section 74I.

Maximum penalty—40 penalty units.

‘105C Offence to remove, tamper with or modify number plate confiscation notice

‘A person must not, without reasonable excuse, remove, tamper with, or modify a number plate confiscation notice that has been attached to a motor vehicle under section 74H.

Maximum penalty—40 penalty units.

‘105D Offence to tamper with, remove or modify immobilising device

‘A person must not, without reasonable excuse, tamper with, remove or modify an immobilising device attached to a motor vehicle.

Maximum penalty—40 penalty units.

‘105E Offence to operate motor vehicle if immobilising device unlawfully removed, tampered with or modified

‘A person must not, without reasonable excuse, operate a motor vehicle if an immobilising device attached to the motor vehicle has been unlawfully removed, tampered with or modified.

Maximum penalty—40 penalty units.

‘105F Offence to breach condition made on release of motor vehicle

‘A person must not contravene a condition made on the release of a motor vehicle by the commissioner under part 2, division 2 unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.’.

55 Amendment of s 106 (Offence to modify, sell or dispose of motor vehicle before application decided)

Section 106, ‘motor vehicle’—

omit, insert—

‘motorbike’.

56 Insertion of new s 106A

After section 106—

insert—

**‘106A Offence to modify, sell or dispose of motor vehicle
subject to vehicle production notice**

- ‘(1) This section applies if a motor vehicle is the subject of an
vehicle production notice given under section 74K.
- ‘(2) The owner of the motor vehicle must not, without reasonable
excuse, modify or sell or otherwise dispose of the motor
vehicle while the motor vehicle is the subject of the vehicle
production notice.

Maximum penalty for subsection (2)—40 penalty units.’.

57 Replacement of s 107 (Defence)

Section 107—

omit, insert—

‘107 Defence in relation to motorbike noise order offences

‘In a proceeding for an impounding order or a forfeiture order
in relation to a motorbike, it is a defence for an owner of the
motorbike to prove that a motorbike noise order offence
happened without the knowledge and consent of the owner.

Example—

A parent lends a motorbike to his or her child to visit friends and the
child commits a motorbike noise order offence on the motorbike. If the
Magistrates Court is satisfied, on evidence tendered or submissions
made by the parent, that the child committed the offence without the
knowledge and consent of the parent, the Magistrates Court may order
the motorbike’s return to the parent.’.

58 Amendment of s 108 (Counting the occasions—general)

- (1) Section 108(1), from ‘81’ to ‘99B’—

omit, insert—

‘74A, 74B, 74C, 74D, 74E, 74F’.

- (2) Section 108(1), note—

omit.

59 Amendment of s 108A (References to previous occasions in ss 81, 81B, 84, 85, 85A, 90, 90A and 91)

(1) Section 108A, heading, ‘81’ to ‘90A’—

omit, insert—

‘74A, 74B, 74C, 74D, 74E, 74F’.

(2) Section 108A, ‘81’ to ‘90A’—

omit, insert—

‘74A, 74B, 74C, 74D, 74E, 74F’.

(3) Section 108A, note—

omit.

60 Amendment of s 108B (Matters for decisions under ss 85, 85A, 87, 87A, 90–93 and 96–99B and 101)

(1) Section 108B, heading, ‘85’ to ‘99B’—

omit, insert—

‘74A, 74B, 74C, 74D, 74E, 74F’.

(2) Section 108B(1), ‘85’ to ‘99B’—

omit, insert—

‘74A, 74B, 74C, 74D, 74E, 74F’.

(3) Section 108B(1), example, ‘subsection (1)’—

omit, insert—

‘this subsection’.

(4) Section 108B(1), note—

omit.

(5) Section 108B(2), ‘98, 99,’—

omit.

61 Amendment of s 110 (Powers for enforcing court order)

Section 110(1) and (2), ‘motor vehicle’—

omit, insert—

‘motorbike’.

62 Amendment of ch 4, pt 6, div 1, hdg (Liability for cost of impounding)

Chapter 4, part 6, division 1, heading, after ‘impounding’—

insert—

‘**or immobilisation**’.

63 Amendment of s 111 (State’s liability to pay costs of impounding)

(1) Section 111, heading, after ‘impounding’—

insert—

‘**or immobilisation**’.

(2) Section 111(1), from ‘under’ to ‘period’—

omit, insert—

‘or immobilised under this chapter and keeping it for the period for which it is impounded or immobilised’.

(3) Section 111(2), after ‘impounded’—

insert—

‘or immobilised’.

64 Amendment of s 112 (Liability to pay costs of impounding—adult driver)

(1) Section 112, heading, after ‘impounding’—

insert—

‘**or immobilisation**’.

(2) Section 112(1), after ‘impounded’—

insert—

‘or immobilised’.

(3) Section 112(2), ‘removing and keeping’—

omit, insert—

‘removing or keeping’.

65 Replacement of s 113 (Liability to pay costs of impounding—child driver)

Section 113—

omit, insert—

‘113 Liability to pay costs of impounding or immobilisation—child driver

‘(1) This section applies in relation to a motor vehicle impounded or immobilised because of a prescribed offence or a motorbike noise direction offence if the driver of the motor vehicle was a child when he or she committed the offence for which it was impounded or immobilised.

‘(2) If the child is found guilty by a court of a prescribed offence or motorbike noise direction offence in relation to the motor vehicle—

(a) the child is liable to pay the costs of removing or keeping the motor vehicle if the court orders under section 103 that the child pay the costs; or

(b) if the court orders, under that section, the child’s parent to pay the costs of removing or keeping the motor vehicle under applied section 259, the child’s parent is liable to pay the costs of removing or keeping the motor vehicle.

‘(3) If the court orders the child to pay the costs of removing or keeping the motor vehicle, any costs paid by the State under section 111(2) become a debt payable to the State by the child.

‘(4) If the court orders the child’s parent or guardian to pay the costs of removing or keeping the motor vehicle, any costs paid

by the State under section 111(2) become a debt payable to the State by the child's parent or guardian.'

66 Amendment of ch 4, pt 6, div 2, hdg (Release of impounded vehicle)

Chapter 4, part 6, division 2, heading, after 'impounded'—

insert—

'or immobilised'.

67 Amendment of s 116 (Release of motor vehicle impounded under s 74)

(1) Section 116, heading, 'under s 74'—

omit, insert—

'or immobilised under this chapter'.

(2) Section 116(1)—

omit, insert—

'(1) This section applies if—

(a) an impounding notice or immobilising notice under section 78 was given to a person; or

(b) an impounding notice under section 81 was given to a person.'

(3) Section 116—

insert—

'(2A) Also, if the owner of the motor vehicle is liable to pay the costs of removing the motor vehicle to, and keeping it at, a place at which it is kept, the owner is entitled, when the period for which the motor vehicle is immobilised ends, and on payment of the costs, to recover the motor vehicle from the place.'

(4) Section 116(3)—

omit, insert—

-
- ‘(3) If, under section 111(2), the State is liable to pay the costs of removing the motor vehicle to, and keeping it at, the holding yard or place at which it is kept, the owner is entitled, when the impoundment period for which the motor vehicle is impounded ends, or the period for which the motor vehicle is immobilised ends, to recover the motor vehicle from the holding yard or place, whether or not the State has paid the costs.’.
- (5) Section 116(4), after ‘subsection (2)’—
insert—
‘or (2A)’.

68 **Amendment of s 117 (Release of motor vehicle if driver found not guilty etc.)**

Section 117—

insert—

- ‘(2) However, a motor vehicle may not be released under subsection (1) if the driver has been charged with having committed another prescribed offence for which the motor vehicle may be impounded or immobilised.
- ‘(3) If subsection (2) applies to the motor vehicle, the motor vehicle may be impounded or immobilised for the prescribed impoundment period that would have applied if the offence mentioned in subsection (1) had not happened.

Examples of operation of subsections (2) and (3)—

- 1 A driver is charged with having committed a type 1 vehicle related offence (the *first offence*) while driving motor vehicle A. Motor vehicle A is impounded for a prescribed impoundment period of 90 days under section 74. A week later, the driver is charged with having committed another type 1 vehicle related offence while driving motor vehicle B. Motor vehicle B is impounded under section 74A. On the next day, the charge for the first offence is withdrawn. Motor vehicle A must be released under this section. However, motor vehicle B may be impounded until the prescribed impoundment period of 90 days ends as if it had been impounded under section 74.

- 2 A driver is charged with having committed a second type 2 vehicle related offence while driving motor vehicle A (the *second offence*). Motor vehicle A is impounded for a prescribed impoundment period of 7 days under section 74C. Motor vehicle A is then returned to the driver. A week later the driver is charged during the relevant period with having committed a third type 2 vehicle related offence while driving motor vehicle A. The charge for second offence has not been decided at that time. Motor vehicle A is impounded for a prescribed impoundment period of 90 days under section 79D. Thirty days after motor vehicle A is impounded, the charge for the second offence is withdrawn. Motor vehicle A must be released under this section as the prescribed impoundment period of 7 days under section 74C would have already ended.
- ‘(4) A reference in subsection (1) to a proceeding being discontinued includes, for a prescribed offence that is a vehicle related offence for which an infringement notice has been served under section 71, the withdrawal of the infringement notice under the *State Penalties Enforcement Act 1999*.’.

69 Amendment of ch 4, pt 6, div 3, hdg (Sale, transfer or disposal of impounded or forfeited motor vehicle)

Chapter 4, part 6, division 3, heading, after ‘impounded’—
insert—
‘, immobilised’.

70 Insertion of new s 118A

After section 118—
insert—

‘118A Sale of impounded motor vehicle if driver fails to appear

- ‘(1) This section applies in relation to a motor vehicle impounded under section 74A if—
- (a) the motor vehicle is impounded until the end of proceedings under section 74A(2); and
 - (b) a court orders that a warrant issue for the arrest of the driver of the motor vehicle to be brought before the

court to be dealt with according to law because the driver fails to appear before the court in relation to the charge for the second or subsequent type 1 vehicle related offence mentioned in section 74A(1).

- ‘(2) This section also applies in relation to a motor vehicle impounded under section 74E if—
- (a) the motor vehicle is impounded until the end of proceedings under section 74E(2); and
 - (b) a court orders that a warrant issue for the arrest of the driver of the motor vehicle to be brought before the court to be dealt with according to law because the driver fails to appear before the court in relation to the charge for the fourth or subsequent type 2 vehicle related offence mentioned in section 74E(1).
- ‘(3) On the warrant being issued the motor vehicle is taken to have been forfeited to the State.
- ‘(4) The commissioner may sell the motor vehicle and anything in or on it by public auction or dispose of it in the way the commissioner considers appropriate.
- ‘(5) Notice of the proposed sale or disposal must be given by advertisement in a newspaper circulating in the locality where the vehicle was impounded but may, if the owner is not known, be given by using the police service internet website.
- ‘(6) Also, the commissioner must give written notice of the proposed sale or disposal of the motor vehicle to the owner, if the owner is known.
- ‘(7) However, if the name of the owner of the motor vehicle is not known or the owner can not be located, the notice mentioned in subsection (6) may be given by making the information about the proposed sale of the motor vehicle, but not the owner’s name and address, available on the police service internet website.
- ‘(8) If notice as required under subsection (6) is given as mentioned in subsection (7), the owner is taken, for this section, to have been given notice of the proposed sale of the motor vehicle.’
-

71 Amendment of s 119 (Voluntary transfer of ownership of motor vehicle to State)

- (1) Section 119, heading, ‘motor vehicle’—
omit, insert—
‘motorbike’.
- (2) Section 119(1), note, ‘motor vehicle’—
omit, insert—
‘motorbike’.
- (3) Section 119(1), note, ‘vehicle’, second mention—
omit, insert—
‘motorbike’.
- (4) Section 119(2) and (4), ‘motor vehicle’—
omit, insert—
‘motorbike’.

72 Amendment of s 121 (Application of proceeds of sale)

- (1) Section 121(1), after ‘118’—
insert—
‘, 118A’.
- (2) Section 121(2)(b), after ‘impounding’—
insert—
‘or immobilisation’.
- (3) Section 121(2)—
insert—
‘(da) if the motor vehicle is sold under section 118A—
 - (i) if the owner was not the subject of a warrant mentioned in section 118A(1)(b) or (2)(b)—in payment of any balance to the owner; or**
 - (ii) otherwise—in payment to the consolidated fund;’.**

73 Insertion of new s 121A

After section 121—

insert—

‘121A Compensation for disposal of motor vehicle if driver found not guilty etc.

- ‘(1) This section applies if—
- (a) a driver is found not guilty of a prescribed offence or the proceeding for the offence is discontinued; and
 - (b) the commissioner has before the happening of the event mentioned in paragraph (a) received the motor vehicle to which the offence relates under this chapter; and
 - (c) the commissioner has—
 - (i) sold the motor vehicle; or
 - (ii) otherwise disposed of the vehicle.
- ‘(2) Compensation is payable by the State to the person whose motor vehicle is sold or otherwise disposed of.
- ‘(3) The Minister is to decide the amount of the compensation.
- ‘(4) A person who is dissatisfied with the Minister’s decision under subsection (3) may apply to a court, within 28 days, for compensation under this section.
- ‘(5) If the person applies under subsection (4), the court may decide the amount of the compensation.’.

74 Amendment of s 122 (Protection from liability)

(1) Section 122(1)—

omit, insert—

- ‘(1) A police officer acting in good faith and without negligence is not liable for any damage, loss or depreciation to a motor vehicle, including the motor vehicle’s number plates, during the impounding or immobilisation of the motor vehicle.’.
- (2) Section 122(3), after ‘vehicle’, last mention—

insert—

‘or immobilised at a place’.

75 Amendment of s 123 (Third party protection from forfeiture order)

(1) Section 123, heading, ‘from forfeiture order’—

omit, insert—

‘relating to forfeiture’.

(2) Section 123(1)—

omit, insert—

‘(1) This section applies in relation to—

- (a) a person, other than the defendant, who has an interest in a motor vehicle forfeited to the State under part 2, division 1 or 1A; or
- (b) a person, other than the defendant, who did not appear at the hearing of an application for a forfeiture order and has an interest in the motor vehicle forfeited to the State under the order.

‘(1A) The person may apply to the determining court for an order under subsection (6).’.

(3) Section 123(2), ‘Subsection (1)’—

omit, insert—

‘Subsection (1A)’.

(4) Section 123(3)—

omit, insert—

‘(3) Unless the determining court gives leave, the application must be made—

- (a) for forfeiture under part 2, division 1 or 1A—before the end of the period of 6 months starting on the day the motor vehicle became the property of the State; or

(b) for a forfeiture order—before the end of the period of 6 months starting on the day the forfeiture order was made.’.

(5) Section 123(9)—

omit, insert—

‘(9) In this section—

defendant means the person found guilty of the prescribed offence because of which the forfeiture under part 2, division 1 or 1A happened or the forfeiture order was made.

determining court means—

(a) for forfeiture under part 2, division 1 or 1A—the Magistrates Court for the Magistrates Court district, or division of the district, in which the motor vehicle was impounded for the prescribed offence; or

(b) for a forfeiture order—the relevant court to which the application for the order was made.

relevant prescribed offence means the prescribed offence because of which the forfeiture under part 2, division 1 or 1A happened or the forfeiture order was made.’.

76 Replacement of s 752 (Interaction between ch 4 and this chapter)

Section 752—

omit, insert—

‘752 Interaction between ch 4 and this chapter

‘(1) This section applies if the driver of a motor vehicle commits an evasion offence.

‘(2) An application for an impounding order or a forfeiture order may be made under this chapter whether or not the motor vehicle may be impounded or immobilised under chapter 4.

‘(3) A motor vehicle may be impounded or immobilised under chapter 4 whether or not an application for an impounding order or a forfeiture order may be made under this chapter.’.

77 Amendment of s 809 (Regulation-making power)

Section 809(2)—

insert—

‘(c) notice requirements for impounding or immobilising motor vehicles under chapter 4.’

78 Insertion of new ch 24, pt 13

Chapter 24—

insert—

**‘Part 13 Transitional provisions for
Police Powers and
Responsibilities (Motor Vehicle
Impoundment) and Other
Legislation Amendment Act
2013**

‘870 Definitions for pt 13

‘In this part—

commencement means the commencement of this part.

post-amended Act means this Act as in force from the commencement.

pre-amended Act means this Act as in force immediately before the commencement.

‘871 Two type 1 vehicle related offences committed before commencement

‘(1) This section applies if before the commencement, the driver of a motor vehicle—

(a) either—

-
- (i) has been charged with having committed a type 1 vehicle related offence on at least 1 previous occasion and the charge has not been decided; or
 - (ii) has been found guilty of a type 1 vehicle related offence committed on 1 previous occasion; and
- (b) is charged with having committed a second or subsequent type 1 vehicle related offence and the charge has not been decided.
- ‘(2) Chapter 4 of the pre-amended Act continues to apply in relation to the charges as if the *Police Powers and Responsibilities (Motor Vehicle Impoundment) and Other Legislation Amendment Act 2013* had not been enacted.

‘872 One type 1 vehicle related offence committed before commencement and another type 1 vehicle related offence committed after commencement

- ‘(1) This section applies if—
- (a) before the commencement, and within the relevant period, the driver of a motor vehicle—
 - (i) has been charged with having committed a type 1 vehicle related offence on at least 1 previous occasion and the charge has not been decided; or
 - (ii) has been found guilty of a type 1 vehicle related offence committed on 1 previous occasion; and
 - (b) after the commencement, the driver is charged with having committed a type 1 vehicle related offence.
- ‘(2) A police officer may not impound the motor vehicle under section 74A of the post-amended Act on the basis that the driver has been charged with, or found guilty of, having committed a type 1 vehicle related offence mentioned in subsection (1)(a).
- ‘(3) In this section—
- relevant period*, for a person who has been charged with, or found guilty of, having committed a type 1 vehicle related

offence before the commencement, means the period of not more than 3 years before a type 1 vehicle related offence the person is charged with having committed after the commencement.

‘873 Different kinds of type 2 vehicle related offences committed before and after commencement

- ‘(1) This section applies if—
- (a) before the commencement, and within the relevant period, the driver of a motor vehicle—
 - (i) has been charged with having committed type 2 vehicle related offences of different kinds on 1 or more previous occasions within the relevant period; and
 - (ii) for each of the charges mentioned in subparagraph (i)—
 - (A) the charge has not been decided; or
 - (B) the driver has been found guilty; and
 - (b) after the commencement, the driver is charged with having committed a type 2 vehicle related offence of a different kind from a type 2 vehicle related offence mentioned in paragraph (a)(i).
- ‘(2) A police officer may not impound a motor vehicle under section 74C, 74D or 74E of the post-amended Act on the basis that the driver has been charged with, or found guilty of, having committed a type 2 offence mentioned in subsection (1)(a)(i).
- ‘(3) For this section, a type 2 vehicle related offence is of a different kind to another type 2 vehicle related offence if each offence is described in a different paragraph of the definition of *type 2 vehicle related offence* in section 69A(2).
- ‘(4) In this section—
- relevant period***, for a person who has been charged with, or found guilty of, having committed a type 2 vehicle related

offence before the commencement, means the period of not more than 3 years before a type 2 vehicle related offence the person is charged with having committed after the commencement.

‘874 Type 2 vehicle related offences of same kind committed before and after commencement

- ‘(1) This section applies if—
- (a) before the commencement, and within the relevant period, the driver of a motor vehicle—
 - (i) has been charged with having committed a type 2 vehicle related offence or type 2 vehicle related offences of the same kind on 2 or more previous occasions; and
 - (ii) for each of the charges mentioned in subparagraph (i)—
 - (A) the charge has not been decided; or
 - (B) the driver has been found guilty; and
 - (b) after the commencement, the driver is charged with having committed a type 2 vehicle related offence of the same kind as a type 2 vehicle related offence mentioned in paragraph (a)(i).
- ‘(2) To remove any doubt, it is declared that the provisions of the post-amended Act about the impoundment and forfeiture of a motor vehicle apply in relation to the type 2 offences committed before and after the commencement.
- ‘(3) For this section, a type 2 vehicle related offence is the same kind as another type 2 vehicle related offence if both offences are within the description of an offence covered by a paragraph of the definition of *type 2 vehicle related offence* in section 69A(2) of the pre-amended Act.
- ‘(4) In this section—

relevant period, for a person who has been charged with, or found guilty of, having committed a type 2 vehicle related offence before the commencement, means the period of—

- (a) not more than 5 years before a type 2 vehicle related offence of the same kind that the person is charged with having committed after the commencement; but
- (b) not more than 3 years before the commencement.

‘875 Existing applications for impounding order applications

- ‘(1) This section applies to an application under section 85 or 85A of the pre-amended Act for an impounding order that had not been decided immediately before the commencement.
- ‘(2) The application must be decided as if the following provisions of the pre-amended Act were still in force—
 - (a) chapter 4, part 3, divisions 1 to 3;
 - (b) chapter 4, part 5, divisions 1 to 2A and division 4.

‘876 Existing applications for forfeiture order applications

- ‘(1) This section applies to an application under section 90 or 90A of the pre-amended Act for a forfeiture order that had not been decided immediately before the commencement.
- ‘(2) The application must be decided as if the following provisions of the pre-amended Act were still in force—
 - (a) chapter 4, part 4, divisions 1 to 3;
 - (b) chapter 4, part 5, divisions 1 to 2A and division 4.’.

79 Amendment of sch 6 (Dictionary)

- (1) Schedule 6, definition *found guilty*—
omit.
- (2) Schedule 6—
insert—

‘commencement, for chapter 23, part 13, see section 870.

default certificate see the *State Penalties Enforcement Act 1999*, schedule 2.

eligible person, for chapter 4, part 2, division 2, see section 79.

found guilty, of an offence, means—

- (a) for a vehicle related offence for which an infringement notice has been served under section 71—
 - (i) there is payment of a penalty, in full or by instalments, under the *State Penalties Enforcement Act 1999*; or
 - (ii) a default certificate for the infringement notice given to the person has been registered by the registrar under the *State Penalties Enforcement Act 1999*; or
- (b) otherwise—there is a finding of guilt, or the acceptance of a plea of guilty, by a court, whether or not a conviction is recorded.

immobilise, for chapter 4, see section 69.

immobilising device, for chapter 4, see section 69.

immobilising notice, for chapter 4, see section 69.

information notice, for chapter 4, part 2, division 2, see section 79.

initiating immobilisation, for chapter 4, see section 69.

initiating immobilisation offence, for chapter 4, see section 69.

number plate, for chapter 4, see section 69.

number plate confiscation notice, for chapter 4, see section 69.

number plate confiscation period, for chapter 4, see section 69.

post-amended Act, for chapter 23, part 13, see section 870.

pre-amended Act, for chapter 23, part 13, see section 870.

vehicle production notice, for chapter 4, see section 69.

vehicle release notice, for chapter 4, part 2, division 2, see section 79.’.

80 Other amendments

The schedule amends the sections it mentions.

Part 3 Amendment of Corrective Services Act 2006

81 Act amended

This part amends the *Corrective Services Act 2006*.

82 Amendment of s 12 (Prisoner security classification)

Section 12—

insert—

‘(1A) However, when a prisoner is admitted to a corrective services facility for detention on remand for an offence and is not serving a term of imprisonment for another offence, the prisoner must only be classified into a security classification of—

(a) high; or

(b) if the chief executive decides—maximum.’.

83 Amendment of s 13 (Reviewing prisoner’s security classification)

Section 13—

insert—

-
- ‘(1A) However, the chief executive need not review the security classification of a prisoner with a high security classification if the prisoner—
- (a) is being detained on remand for an offence; and
 - (b) is not serving a term of imprisonment for another offence.’.

84 Insertion of new ch 7A, pt 6

After section 490A—

insert—

**‘Part 6 Transitional provision for
Police Powers and
Responsibilities (Motor Vehicle
Impoundment) and Other
Legislation Amendment Act
2013**

‘490B Application of amendment Act

- ‘(1) Section 13(1A) as inserted by the amendment Act applies to a prisoner with a high security classification—
- (a) who is being detained on remand for an offence; and
 - (b) is not serving a term of imprisonment for another offence; and
 - (c) regardless of whether the prisoner was admitted for detention before the commencement.

- ‘(2) In this section—

amendment Act means the *Police Powers and Responsibilities (Motor Vehicle Impoundment) and Other Legislation Amendment Act 2013*.

commencement means the commencement of this part.’.

Schedule **Consequential amendments of the Police Powers and Responsibilities Act 2000**

section 80

1 **Section 42(1)(c)(i), after ‘impounded’—**

insert—

‘or immobilised’.

2 **Section 60(3)(h), after ‘impound’—**

insert—

‘or immobilise’.

3 **Section 150(1)(c), after ‘impounded’—**

insert—

‘or immobilised’.

4 **Section 156(1)(b)(iv), after ‘impounded’—**

insert—

‘or immobilised’.

5 **Section 583(2)(b)(iv), ‘section 74’—**

omit, insert—

‘section 80’.

6 **Section 686(2)(a), after ‘impounded’—**

insert—

‘or immobilised’.

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