

POLICE POWERS AND RESPONSIBILITIES AND ANOTHER ACT AMENDMENT BILL 2002

EXPLANATORY NOTES

GENERAL OUTLINE

Objective of the Legislation

The *Police Powers and Responsibilities and Another Act Amendment Bill 2002* ("the Bill") allows for the seizure and impoundment or forfeiture of vehicles being driven in contravention of certain provisions of the Criminal Code and the *Transport Operations (Road Use Management) Act 1995*. Additionally, the Bill provides a method of addressing further type of "hoonish" behaviour referred to as "lapping", which is the subject of constant complaints to police. Lapping involves vehicles being driven repeatedly around a number of predetermined streets. The predominate source of complaint is the volume at which the stereo systems in the vehicles are operated during lapping.

Means of Achieving Policy Objectives

The legislation will complement certain existing 'prescribed' offences relating to dangerous and irresponsible activities on roads and also those activities which cause an unacceptable annoyance to members of the public.

Alternative Means of Achieving Policy Objectives

It is possible to amend the *Transport Operations (Road Use Management) Act 1995* and associated regulations to reflect the policy changes, however, as the policy initiatives relate to powers exercised by police officers, it is more appropriate they be placed within the *Police Powers and Responsibilities Act 2000*.

Estimated Cost of Implementation for Government

The financial impact of the Bill will be comparatively low.

Consistency with Fundamental Legislative Principles

The Bill is consistent with fundamental legislative principles.

Consultation conducted in Development of the Bill

There has been consultation with relevant representative community groups such as the RACQ, the Queensland Law Society, the Queensland Council for Civil Liberties, and the Youth Advisory Council.

Where there are potential implications on the roles of government departments, these departments were consulted with respect to the Bill.

NOTES ON PROVISIONS

Short title

Clause 1 specifies the short title of the Bill.

Commencement

Clause 2 provides that this Act is to commence on a day to be fixed by proclamation. A commencement by proclamation will allow sufficient time for police officers to be trained in the new provisions.

Act amended

Clause 3 provides that the Bill amends the *Police Powers and Responsibilities Act 2000*.

Amendment of ch 2, pt 6, div 2, hdg

Clause 4 provides that the existing chapter 2, part 6, division 2 of the *Police Powers and Responsibilities Act 2000* does not apply to the contents

of the Bill. Consequently, the present scheme within the existing division 2 remains separate to the scheme provided by the Bill.

Renumbering ch2, pt 6, divs 2-3

Clause 5 renumbers existing divisions to allow for the insertion of the new division 2 as contained in the Bill.

Insertion of new ch 2, pt 6, div 2

Clause 6 inserts the new division, Vehicle impounding for prescribed offences, as contained in the Bill into the *Police Powers and Responsibilities Act 2000*.

Within clause 6 are the new sections 59A to 59X.

59A Application of div 2

This section provides that the division applies if a police officer reasonably suspects a person is committing, or has committed, a prescribed offence. "Prescribed offences" will be defined in the Dictionary to the *Police Powers and Responsibilities Act 2000*. It will mean an offence against section 328A of the Criminal Code (dangerous operation of a motor vehicle), section 83 of the Road Use Management Act (careless driving of motor vehicles), or section 85 of the Road use Management Act (racing and speed trials on roads) involving —

- a speed trial;
- a race between vehicles; or
- a burn out.

Additionally, the section specifies that counting of 3 offences is subject to case law which regulates how counting is to be done. Therefore, the section prevents the operation of the division from being retrospective prior to its proclamation.

Further, subsection (3) allows the *Consumer Credit (Queensland) Act 1994* to continue to operate with respect to the repossession of a vehicle even though that vehicle may be impounded.

59B Punishment under this division is in addition to other punishment for the same offence

This section specifies that the impounding or forfeiture of a vehicle or the imposition of community service on a person for a prescribed offence is in addition to any other penalty that may be imposed for the prescribed offence, e.g. a fine and demerit points. Therefore, this section removes any suggestion that double jeopardy may be an issue.

59C Powers for prescribed offence

This section provides powers to police officers.

For a prescribed offence, subsection (1) allows a police officer to stop a moving vehicle.

Subsection (2) requires a police officer who intends to use the powers under this division, to commence a proceeding against the driver of the vehicle by way of arrest or notice to appear. In excluding action by complaint and summons or Traffic Infringement Notice it is ensured that a proceeding is commenced prior to a vehicle being impounded and that the matter is brought before a court and determined in the shortest period of time. The option to use a complaint and summons does not guarantee that a proceeding will be commenced prior to impoundment. Further, the use of a Traffic Infringement Notice could mean that several months are likely to pass before the prescribed offence is heard and determined. This subparagraph does not encourage the unnecessary use of arrest. However, it recognises that for some prescribed offences, such as dangerous operation of a motor vehicle under the Criminal Code, arrest is a viable option due to the seriousness of the offence. Subsection (2) also prevents a vehicle being impounded prior to a proceeding being commenced. Therefore, the driver of the vehicle must be arrested or issued with a Notice to Appear prior to the vehicle being impounded.

Subsection (3)(a) allows a police officer to direct a person in control of a vehicle or who has possession of the keys to a vehicle or keys to any locking or immobilising device on the vehicle to give the keys to a police officer to allow for the vehicle to be moved. Although it is not necessary for police to be in possession of keys to a vehicle to move it, and damage which might otherwise be caused can be minimised by unlocking devices on the vehicle, e.g. a steering wheel lock. It is to be noted that a failure to comply with the direction given by the police officer is an offence against section 445 of the *Police Powers and Responsibilities Act 2000*.

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Subsection (3)(b) allows a police officer to enter a vehicle, without warrant, for the purposes of impounding the vehicle. This subsection will link in with section 375 of the *Police Powers and Responsibilities Act 2000* to allow for the use of force, if reasonably necessary, to enter and impound the vehicle.

Subsection (3)(c) allows a police officer to do anything reasonably necessary to impound the vehicle. For example, a police officer may dismantle or arrange for someone to dismantle a locking device so that the vehicle may be moved. Also, a police officer may need to remove persons from the vehicle, should they refuse to do so, in order that the vehicle may be towed.

Subsection (4) relates to a first prescribed offence for a driver of a vehicle. It allows for a vehicle to be impounded for a period of 48 hours. Should it be a driver's second or subsequent prescribed offence, procedures relating to impoundment or forfeiture of the vehicle are found in section 59H.

Subsection (5) allows that a police officer must move, or arrange to move, a vehicle to a place where it is to be held during impoundment. The subsection also allows for the vehicle to be moved from place to place, from time to time, as decided by the Commissioner.

Subsection (6) exempts vehicles which have been stolen or unlawfully used or which are rental vehicles from a 3 month impoundment or forfeiture. A rental vehicle is one which is rented on a short term basis from a firm such as Avis or Hertz car rentals. The exemption does not apply to longer term lease vehicles. Consequently, a stolen or unlawfully used vehicle or a rental vehicle may be impounded at the time a proceeding is commenced, however, no application is to be made for either a 3 month impoundment or forfeiture and the vehicle must be returned to the owner as soon as is reasonably practicable.

59D Police officer may authorise tow

The section allows a police officer to authorise the towing of a vehicle by signing a towing authority. The driver of a tow truck is to tow the vehicle to the nearest holding yard available to the driver or, if directed, to a police establishment or other place as directed by the officer or the commissioner. It is an offence under this section to unlawfully remove a vehicle from the place to which it has been moved, whether by towing or otherwise.

59E Notice of impounding to be given

The section requires a police officer as soon as reasonably practicable following impoundment to give a written notice of impoundment to the driver of the vehicle and if the driver is not the owner, then also to the owner of the vehicle.

59F Content of notice for first offence

Subsection (1) provides that the section applies if section 59G does not apply, i.e. it applies to first offences or offences outside the 3 year limitation created by section 59G.

Subsection (2) contains the information to be provided in the notice to the driver and owner of the vehicle. The information will allow the driver and owner to be made aware of the impoundment of the vehicle, where it is held, that it cannot be collected for 48 hours, that the owner should have sufficient identification with him or her at the time of collecting the vehicle and that the person will be responsible for costs incurred in removing and keeping the vehicle should they be found guilty of the prescribed offence. Also the notice will warn that it is an offence to unlawfully remove the vehicle.

59G Content of notice for second or subsequent offence

Subsection (1) states that the section only applies where a police officer reasonably suspects that the driver of an impounded vehicle has previously been found guilty of a prescribed offence within 3 years before the day the vehicle is impounded. Consequently, should a second offence not be committed within 3 years of a first offence then the second offence is to be dealt with as a first offence.

Subsection (2) contains the information to be provided in the notice to the driver and owner of the vehicle. The information will allow the driver and owner to be made aware—

- that an application will be made to a court for the either the impoundment of the vehicle for up to 3 months for a second offence or forfeiture for a third or subsequent offence;
- that the driver or owner may apply to a court for the return of the vehicle pending the hearing and determining of the application;

- that the owner should have sufficient identification with him or her at the time of collecting the vehicle; and
- the person will be responsible for costs incurred in removing and keeping the vehicle should they be found guilty of the prescribed offence

Also the notice will warn that it is an offence to unlawfully remove the vehicle;

59H Application for impounding or forfeiture orders

This section provides procedures to be followed by a police officer who impounds a vehicle where the driver has, in the previous 3 years, been found guilty of a prescribed offence.

A police officer must apply within 48 hours after the vehicle is impounded to a Magistrates Court for an order that the vehicle be impounded for up to 3 months for a second offence, or forfeited to the State for a third or subsequent offence.

Subsections (3) and (4) provide jurisdiction to a Magistrates Court or magistrate to receive an application irrespective of the value of the vehicle involved by requiring that an application must be made to a Magistrates Court or a magistrate under section 451 of the *Police Powers and Responsibilities Act 2000*.

Section 451 allows a police officer to make an application by telephone, etc to a magistrate should circumstances be such that the application cannot be made within 48 hours. For example, a court may only sit in an isolated country area each 6 weeks. Likewise, the owner of the vehicle may apply for the return of the vehicle by telephone to the magistrates.

However, should a court not be sitting within 48 hours after impoundment due to a public holiday, then an application need not be made by telephone to a magistrate as the issue is covered by section 38(2) of the *Acts Interpretation Act 1954*.

59I Orders if relevant offence not decided

The section provides that a court must adjourn the hearing of an application for an impoundment or forfeiture if the prescribed offence against the driver has not been heard and determined.

As requests for adjournments in the hearing of the prescribed offence may mean that some period elapses prior to the matter being heard and decided, subsection (3) requires a court to return the vehicle to the owner in the interim unless the court or magistrate is satisfied the vehicle should continue to be impounded to prevent the commission of another prescribed offence. Consequently, the owner of the vehicle may not be without it during the time it takes to conclude the hearing of the application.

However, as the vehicle may ultimately be the subject of forfeiture or impoundment for up to 3 months, subsection (4) requires that the owner must not sell or otherwise dispose of the vehicle pending the outcome of the hearing of the application.

Subsection (5) provides that where a vehicle is impounded for a second offence and is liable to impoundment for up to 3 months and a court does not order the return of the vehicle to the owner pending the determination of the impoundment application, then the vehicle must not be held for more than 3 months from the time it was impounded by police. This ensures that an owner does not suffer any greater penalty than may be ordered by the court following the determination of the application.

Subsection (6) clarifies that subsection (5) does not apply to applications for forfeiture of a vehicle.

59J Where application to be decided

This section requires that the court which hears the prescribed offence must also hear the application for impoundment or forfeiture. This provision will ensure that the court hearing the application is familiar with the evidence adduced during the hearing of the prescribed offence.

59K Advice to owner of date of hearing

This section requires a police officer to give written notice to the owner of a vehicle of the time, date and place an application for 3 month impoundment or forfeiture is to be heard. The application must be given as soon as reasonably practicable after the date is set. Written notification will allow the owner to be present in court to raise a defence or other issue of mitigation as to why the impoundment or forfeiture should not occur.

59L Consideration of application

This section applies if the driver of the vehicle is found guilty of the prescribed offence to which the impoundment application relates.

This section provides the statutory basis to allow the court to order impoundment or forfeiture of the vehicle.

It provides that a court may, where a period of impoundment for up to 3 months or forfeiture of a vehicle will cause severe financial or physical hardship to the owner or usual driver of the vehicle —

- order the vehicle be returned to the driver or owner; and
- if the owner or usual driver was the adult found guilty of the offence, order that the owner or usual driver, as the case may be, perform not more than 240 hours community service instead of the impoundment or forfeiture of the vehicle.

The usual driver of the vehicle is a person who, in the normal course of events, regularly drives the vehicle. For example, the usual driver may be a child of the owner of the vehicle and may use the vehicle each day to travel to and from his or her place of employment. Also, the usual driver may be a person who, although the vehicle is not owned by him or her, shares the use of the vehicle for travel for entertainment purposes on a regular basis.

Severe financial hardship is intended to relate to the likelihood that the owner or usual driver of the vehicle may not be able to travel to and from their place of employment if the vehicle is impounded or forfeited and therefore may lose his or her job.

Severe physical hardship is intended to relate to instances where the owner or usual driver of the vehicle lives in an isolated area and has no other means of transport to town centres, e.g. a shopping centre to purchase groceries. Also, the vehicle may be used to transport a physically disabled person to a place for medical treatment or a place for work. Severe physical hardship would not in its ordinary context mean that a healthy person would be required to walk short distances to transport or for shopping.

The section stipulates that an order for community service is to be taken to be an order made under the *Penalties and Sentences Act 1992* in a proceeding for an offence. The linking of this section with the *Penalties*

and Sentences Act 1992 will allow the Department of Corrective Services to overview the performance of the community service.

Further, the section allows a court to order the return of a vehicle to the owner where a defence under section 59M is successfully raised. This order is in addition to those which may be made due to severe financial or physical hardship.

Finally, the section states that the making of a forfeiture order transfers ownership of the vehicle to the State and extinguishes any claim to it by any person with a charge or other security interest in the vehicle.

59M Defence

This section provides that it is a defence for an owner to prove that the prescribed offence happened without the knowledge and consent of the owner. As in other areas of law, the owner merely has to raise the defence on the balance of probabilities and the onus then falls on the prosecution to negate that defence. Consequently, a parent who lends a vehicle to a child for the purpose of travelling to a location will not suffer the impoundment of the vehicle for up to three months or risk having it forfeited, should the owner not have consented to, or have knowledge of, the child committing a prescribed offence. Clearly, the defence will not be ordinarily be available to an owner who was a passenger in the vehicle at the time of the prescribed offence and who agreed to the offence being committed, or an owner who was a spectator at a street racing event.

59N Appeal

This section allows for an appeal to the District Court by a person who is dissatisfied with an order made by a Magistrates Court. The appeal must be lodged within 28 days after the day the order was made. An appeal from a decision of the District Court will lie with the Court of Appeal.

59O Powers for enforcing court order

The section applies where a vehicle has been returned to its owner and a court on hearing and determining the application order that the vehicle be impounded or forfeited.

Subsection (2) allows a police officer to enter any place, without warrant, where the vehicle is reasonably suspected to be and search for and seize the vehicle.

59P Who must pay costs of impounding

Responsibility for the costs of removing and keeping a vehicle for the first 48 hours after it is impounded will rest initially with the State. The person who committed the prescribed offence will be liable to repay the State the costs of towing and storage should the person be found guilty of the prescribed offence. Recovery of the costs is enforceable under the *State Penalties Enforcement Act 1999*. However, should the driver be found not guilty of the prescribed offence or the proceeding is discontinued the costs of removing and keeping the vehicle must be met by the State.

59Q Return of vehicle for first prescribed offence

For a first prescribed offence, the section states that the owner of an impounded vehicle may recover it after the lapse of 48 hours from the time of impoundment whether the State has paid the costs or not. The person holding the vehicle must return the vehicle to the owner on request.

59R Return of vehicle if driver found not guilty etc

A vehicle must be returned to the owner as soon as is reasonably practicable should the driver be found not guilty of a prescribed offence or the proceeding is discontinued. In this case the costs of moving and keeping the vehicle will be paid by the State and the vehicle returned to the owner.

59S Protection from liability

This section provides that a police officer acting in good faith and without gross negligence is not liable for any damage, loss or depreciation to the vehicle during the impounding of the vehicle, i.e. the removing and keeping of the vehicle. Although the police officer will not be personally liable, liability will still attach to the State. Also, the State will not be held liable for any damage, loss or depreciation to the vehicle from the time a towing authority is signed and while the vehicle is in the custody of a towing company.

59T Recovery of impounded vehicle

The section provides that if an owner does not recover a vehicle within 2 months of the end of an impoundment, the commissioner of police may either sell the vehicle and anything in or on it by public auction or dispose of it in the way the commissioner thinks appropriate. Clearly, should the vehicle be valueless, there is little point in adding to expenses incurred by placing the vehicle for sale by public auction.

Subsection (2) requires that notice be given in a newspaper circulating in the locality where the vehicle was impounded of the intended sale or disposal of the vehicle.

Subsection (3) requires that the Commissioner give written notice of the proposed sale or disposal of the vehicle to the owner of the vehicle.

59U Voluntary transfer of ownership of vehicle to State

The section allows the owner of an impounded vehicle to transfer ownership to the State so that the vehicle may be sold or otherwise disposed of. The purpose of the section is to allow an owner to avoid a situation where towing and storage fees exceed the value of the vehicle and therefore make it purposeless in claiming the vehicle.

59V Disposal of forfeited vehicle

The section provides the basis for the commissioner to dispose of a vehicle which has been forfeited to the State under the provisions of this Bill.

59W Application of proceeds of sale

The section provides for the distribution of proceeds of the sale of a vehicle under section 59T or 59V.

59X Third party protection for forfeiture order

This provision protects the interest a party might have in a vehicle forfeited to the State. However, its use is restricted to those persons who did not commit the prescribed offence. An application may be made to a court for the return of the vehicle to the person should the State still be in possession of the vehicle. If, however, the vehicle has been disposed of, the

person may make a claim on the State for repayment of the interest the person has in the vehicle.

Amendment of s 65A (Application of div 2A)

Clause 7 alter the heading to section 65 A.

Amendment of s 358 (Application of pt 3)

Clause 8 amends section 358 of the *Police Powers and Responsibilities Act 2000* (Application of part 3 — Powers relating to noise).

Subsection (1) allows the powers relating to excessive noise to apply to motor vehicles "on a road or in a public place" rather than just to vehicles "off-road" as the part now applies.

Subsection (2) inserts a new subsection (3) into section 358. The subsection limits the operation of excessive noise powers relating to vehicles in public places to noise emitted by a radio, CD player or other similar equipment in the vehicle. Should excessive noise be caused by the spinning of tyres or the revving of an engine, the *Transport Operations (Road Use Management) Act 1995* and its relevant regulations apply.

Amendment of s 359 (Complaint about noise)

Clause 9 amends section 359 of the *Police Powers and Responsibilities Act 2000* to insert a new subsection (3). The effect of the amendment is to allow a police officer to take action with respect to a vehicle emitting excessive noise without the need to first receive a complaint from a member of the public. While it is acceptable to first require a complaint from a member of the public with respect to noise being emitted from a static sight such as a house or a vehicle parked in a private yard, the purpose of the amendment is to allow police to take action with respect to a moving vehicle which may be passing several houses or parked in a public place.

Amendment of s 360 (Powers of police officer on investigation of complaint)

Clause 10 amends section 360 of the *Police Powers and Responsibilities Act 2000*. The heading to the section is altered to reflect there is no need

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for a complaint to be made in the case of a vehicle in a public place before police can take action.

Other than machinery amendments, a new subsection (2) is to be inserted to ensure that the section applies if a police officer is reasonably satisfied the noise being emitted from a vehicle is excessive in the circumstances.

Also a new subsection (4) is to be inserted to provide that a police officer may have regard to the degree of interference or annoyance noise is causing, or is likely to cause, to persons in the vicinity of a public place in determining whether the noise is excessive in the circumstances.

Amendment of s 420 (Application of pt 3)

Clause 11 amends section 420(2)(a) of the *Police Powers and Responsibilities Act 2000* by excluding the operation of chapter 11, part 3 of the Act to vehicles forfeited or otherwise disposed of under this Bill. The exclusion is necessary as the Bill contains its own provisions dealing with disposal of a vehicle.

Amendment of s 451 (Obtaining warrants, orders and authorities etc, by telephone or similar facility)

Clause 12 amends section 451 of the *Police Powers and Responsibilities Act 2000* to allow for an application for impoundment or forfeiture to be lodged with a Magistrate by means of telephone, etc. The section will be used where a court is not sitting in a particular place for some time and therefore, a police officer cannot lodge the application within the 48 hour period permitted by the Bill.

Amendment of sch 4 (Dictionary)

Clause 13 amends the dictionary to the *Police Powers and Responsibilities Act 2000* to provide definitions for terms used in the Bill.

The terms "burn out", "holding yard", "owner", "prescribed offence", "seize" and "speed trial" are defined.

Part 3 — Amendment of *Tow Truck Act 1973*

Part 3 of the Bill amends the *Tow Truck Act 1973* to allow for a regulation to be developed to cap the maximum amount a towing business can charge for towing an impounded vehicle and for storage fees. The regulation will be developed following the passage of the Bill and negotiation with interested parties.