

# **Police Powers and Responsibilities and Other Legislation Amendment Bill 2006**

## **Explanatory Notes**

### **General Outline**

#### **Policy Objectives of the Legislation**

The principle objectives of the legislation are:

- (1) to amend the *Police Powers and Responsibilities Act 2000* (PPRA) by:
  - (a) renaming the existing (hoon) vehicle related offences as type 1 vehicle related offences and incorporating type 2 vehicle related offences within Chapter 4 'Motor vehicle impounding powers for prescribed offences and motorbike noise direction offences' of the PPRA;
  - (b) extending the liability of the driver to pay costs associated with the initial impoundment of any vehicle impounded under Chapter 4 of the PPRA; and
  - (c) enabling the Commissioner of the Queensland Police Service (QPS) to administratively forfeit any vehicle impounded under Chapter 4 of the PPRA, in circumstances where the vehicle has not been recovered by the owner or driver within 30 days after the expiration of the impoundment period;
- (2) to amend the *Maritime and Other Legislation Amendment Act 2006* (MOLA Act) to modify a number of Immediate Driver Licence Suspension Scheme provisions covering persons charged with high risk drink driving offences. In particular, the amendments will:
  - (a) extend the immediate suspension provisions to a driver charged with dangerous operation of a motor vehicle under section 328A of the Criminal Code when, at the relevant time, the person was allegedly over their permissible blood alcohol limit;
  - (b) clarify provisions that provide for a court to make an order allowing a person whose licence has been immediately suspended to continue to drive in restricted circumstances and, in

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particular, provide that the licence remains suspended until the person obtains a replacement licence indicating that an order is in place; and

- (c) ensure that a person who is charged with a drink driving offence while driving under a court order will once again have their licence immediately suspended;
- (3) to amend the *Transport Operations (Road Use Management) Act 1995* (TORUM Act) to:
- (a) amend section 79(2J) “Driving etc. whilst under influence of liquor or drugs or with prescribed concentration of alcohol in blood or breath” by inserting after “licence” the words, “or to whom a replacement licence is issued under section 79F”. This amendment will clarify that a zero blood/breath alcohol concentration limit will apply to a driver whose licence has been immediately suspended due to a high risk drink driving charge but who subsequently obtains a court order allowing them to continue to drive in certain circumstances up until the court hears the drink driving charge;
  - (b) insert new sections 79E and 79F which replace section 150AB as mentioned in section 145 of the MOLA Act. These new sections provide that the court may, in certain circumstances, allow a person whose licence has been immediately suspended to continue to drive. Section 79E also contains a head of power for regulations to provide further details of that court process. Those details will include, for example, who is and is not eligible to apply for an order and the criteria to be used in deciding an application for an order. The sections also make clear that, where a person is successful in obtaining a court order, they must not drive until they obtain a replacement licence that indicates that their authority to drive is subject to a court order;
  - (c) amend section 81(1)(a) “Notices to offenders for certain first offences” of the TORUM Act by omitting references “(2D) or (2J)” and inserting in their place, “or (2D), or against (2J) while the person is the holder of a restricted licence”. Section 81 currently allows a police officer to proceed against a driver they believe has not previously been convicted of a drink driving offence by way of issuing a notice. Where the person pays the penalty specified in the notice the matter does not need to be dealt with by a court. This amendment will clarify that police

should not proceed under section 81 against a person who is driving under a court order issued after their licence has been immediately suspended for a high risk drink driving charge;

- (d) amend section 86(2)(e) “Disqualification of drivers of motor vehicles for certain offences” by inserting after the words “a driver licence” the words, “, was a person to whom a replacement licence is issued under section 79F”. This amendment specifies the appropriate disqualification period for a driver who is convicted of certain drink driving offences while driving under a court order as outlined above; and
- (e) amend section 127 to ensure that a person who obtains a court order allowing them to continue to drive in restricted circumstances is not prevented from applying for and obtaining a replacement licence under section 79F.

## **Reasons for the Bill**

### Vehicle impoundment and unlawfully modified vehicles

One of the key outcomes of the February 2006 Road Safety Summit (the Summit) was to identify key aspects of road safety in the Queensland road toll, including discussion of issues arising from the 2005 road toll. Following the Summit, the Premier announced a range of new road safety initiatives.

Together, these initiatives have been collated into a draft 2006-2007 Queensland Road Safety Action Plan. The impaired driving initiatives arising from the Summit include the introduction of legislation enabling police to impound vehicles of repeat drink drivers (.15% or more), disqualified or unlicensed drivers and drivers of unregistered vehicles.

The 100-Day Action Plan Commitment Number 74 (Commitment No. 74) provides for the development of legislation to give police the power to confiscate the vehicles of repeat drink drivers (.15% or more), unlicensed and disqualified drivers and those who drive unregistered or illegally modified cars.

QPS Statistics indicate that:

- (1) during the 10 months from January to October 2005:
  - 5,100 drivers were caught more than once driving an unregistered vehicle; and

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- 10,611 drivers were caught more than once driving while unlicensed;
- (2) for the whole of 2005:
- 1,864 drivers were caught more than once driving disqualified; and
  - 1,041 drivers were caught more than once drink driving;
- (3) approximately 106 offenders repeatedly illegally modified their vehicles.

QPS statistics detail that the number of infringement notices issued in relation to the use of illegally modified vehicles are: for 2004, 16,741; and for 2005, 18,947. While there are no statistics as to the number of repeat offenders, the QPS estimate that 25% to 30% (approximately 4,800) of the total annual figure are thought to be repeat offenders.

The Bill renames the existing vehicle related impoundment scheme as type 1 vehicle related offences and incorporates type 2 vehicle related offences. The type 2 vehicle related offence impoundment scheme (the scheme) implements the Summit's impaired driving initiatives and Commitment No. 74. It is proposed that the scheme commence on 1 July 2007.

The scheme consists of four stages and applies when a person is charged (by arrest or notice to appear) with having committed a type 2 vehicle related offence and has, within 3 years (the relevant period), been charged with, or found guilty of, another type 2 vehicle related offence of the same kind. The offences that are type 2 vehicle related offences are: driving under the influence of alcohol (.15% or more), drive disqualified, drive unlicensed, drive or permit to drive an uninsured vehicle and drive or permit to drive unregistered and unlawfully modified vehicles.

An example of the application of the scheme is:

First offence

A driver is charged with an offence of disqualified driving of a motor vehicle. The driver pleads guilty to offence. The vehicle is not impounded.

Second offence

One month later the driver is charged with another offence of disqualified driving of a motor vehicle. The vehicle may be impounded for 48 hours (the initial impoundment period) following charging the person with the offence. The driver pleads guilty to offence.

### Third offence – 3 Month Impoundment Order

Four months later, the driver is charged with a third offence of disqualified driving. The motor vehicle may be impounded for the initial impoundment period and notice is to be given personally to the driver and the owner in accordance with the *Acts Interpretation Act 1954*. Within 48 hours, an application is made by the police officer made for 3 month impoundment order. If the application properly made, it will be adjourned until the court determines the third offence.

The vehicle may be released after the initial impoundment period to the owner, provided the initial impoundment costs are paid to the towing operator. The State is not liable for the cost of towing and storing for the initial impoundment period. The driver is liable.

When the driver is found guilty of the third offence, the application for a further impoundment period of up to three months may be determined by a court. Before hearing the application, the court must be satisfied that the owner has been served with notice of hearing of impoundment application. When determining the application, the court may consider any defence or circumstances of severe financial or physical hardship raised.

Following consideration of the matter, Court decides the matter and may make an impoundment order for up to three months or order the performance of community service and the return the vehicle to the owner. If an impoundment order is made, police will give effect to order and impound vehicle in accordance with order.

The driver is liable to pay the impoundment costs associated with the court ordered impoundment. The owner will be liable for storage costs if vehicle not recovered at end of initial impoundment period or the court ordered impoundment period.

If the impounded vehicle is not collected by the owner within 30 days after the end of the initial impoundment period or the court ordered impoundment period, the vehicle may be forfeited to the State. Before forfeiting the vehicle, notice of intention to sell or dispose must be given to the owner or if the owner not known, by advertisement in the newspaper circulating in the locality where the vehicle was impounded.

### Fourth Offence – Forfeiture Order

Six months later the driver is charged with a fourth offence of disqualified driving. The motor vehicle may be impounded for the initial impoundment

period and notice is to be given personally to the driver and the owner in accordance with the *Acts Interpretation Act 1954*.

Within 48 hours, an application for a forfeiture order must be made by a police officer. If the application is properly made, it will be adjourned until court determines the fourth offence. The vehicle may be released after the initial impoundment period to the owner, provided the initial impoundment costs are paid to the towing operator. The State is not liable for the cost of towing and storing for the initial impoundment period. The driver is liable.

When the court determines the disqualified driving charge and finds the driver guilty of the offence, the court may hear and determine the application for forfeiture. However, before determining the application, the court must be satisfied that the owner has been served with a notice of hearing of the impoundment application. When determining the application, the court may consider any defence or circumstances of severe financial or physical hardship raised.

Following consideration of the matter, the Court may decide to forfeit the vehicle, make another impoundment order or order the performance of community service and order the return the vehicle to the owner. Should the court make an order for the vehicle's forfeiture or a further period of impoundment, police will give effect to order. The driver is liable to pay impoundment costs associated with the impoundment.

If the impounded vehicle not collected by the owner within 30 days after end of the initial impoundment period, the vehicle may be forfeited to the State. Before forfeiting the vehicle, notice of intention to sell or dispose must be given to the owner or if the owner not known, by advertisement in the newspaper circulating in the locality where the vehicle was impounded.

### General provisions

The Bill provides that at the end of the initial or court ordered impoundment period, the vehicle may be released to the owner or someone acting on the owners' behalf, provided the impoundment costs (towing and storage costs) have been paid to the towing operator.

The State will not be liable for the payment of the initial impoundment costs or costs associated with a court ordered impoundment. However, the State will pay initial impoundment costs when the driver of the impounded vehicle is a child driver. These costs may be recovered through seeking a costs order be made against the child driver or if the child does not have the capacity to pay, the parents of the child may be asked by the Court to show

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cause why the parents should not pay the costs associated with the impoundment of the vehicle.

If the vehicle is not collected after 30 days and notice has been given to the owner, the Commissioner may administratively forfeit the vehicle. The vehicle may then be sold and the proceeds distributed in accordance with section 121 'Application of proceeds of sale' of the PPRA.

The court, when determining an application for a three month impoundment or forfeiture order, may:

- (1) determine that a defence raised by the owner that the type 2 vehicle related offence of the same kind happened without the knowledge and consent of the owner. If satisfied the court may order the release of the vehicle to the owner; or
- (2) make a community service order if satisfied impounding or forfeiting a vehicle will cause severe financial or physical hardship to an owner or usual driver of the vehicle. If satisfied the court may order the release of the vehicle to the owner.

Additionally, the Bill makes necessary amendments to the PPRA to enable the type 2 vehicle related offence impoundment scheme to be trialled in the QPS Southern Police Region and the North Coast Police Region.

Amendments to the *Maritime and Other Legislation Amendment Act 2006*

Section 143 of the MOLA Act will insert new provisions into the TORUM Act which, once commenced, will immediately suspend the driver licence of a person charged with:

- (1) driving a motor vehicle while under the influence of a high-level of alcohol (that is, a blood/breath alcohol concentration, or BAC, of 0.15 or above) [section 79(1) of the TORUM Act];
- (2) failure to provide a specimen of blood or breath for analysis [section 80(11) of the TORUM Act];
- (3) a drink driving offence under sections 79(2), (2A), (2B) or (2J) of the TORUM Act while an earlier such charge is still pending; or
- (4) dangerous operation of a motor vehicle while adversely affected by a high-level of alcohol (0.15 BAC or above) [section 328A of the Criminal Code].

Section 145 of MOLA Act inserts a head of power into the TORUM Act for a regulation to be made giving courts the power to allow certain drivers whose licences have been immediately suspended under section 79B to

continue to drive until the court deals with the initial charge. Such orders would be available where, for example, a person required their licence for work purposes. The amendments in this Bill:

- (1) extend the immediate driver licence suspension provisions to a driver who is charged with an offence under section 328A of the Criminal Code at a time when they are over the permissible alcohol limit that applies to them under section 79 of the TORUM Act – under the existing provisions of the MOLA Act, immediate suspensions are imposed on drivers charged under section 328A only when the charge also alleges the person was over the high alcohol limit (that is, a BAC of 0.15 and above);
- (2) in combination with amendments to the TORUM Act, replace the head of power in section 145 with new sections 79E and 79F which provide that court orders will be made under the Act rather than under a regulation and which clarify the regulation making power in relation to those court orders;
- (3) provide that the immediate suspension imposed on a driver licence under section 79B will be lifted where a court issues an order allowing the person to continue to drive subject to conditions – the lifting of the suspension will require the person to obtain a replacement licence indicating that their authority to drive is subject to a court order; and
- (4) impose a further immediate driver licence suspension when a person who is successful in obtaining a court order allowing them to drive is charged with a drink driving offence while driving under that order.

#### Amendments to the TORUM Act

These amendments will complement the immediate driver licence suspension amendments described above in relation to the MOLA Act. In particular, they will provide that:

- (1) a person whose licence has been immediately suspended may apply to the court for an order allowing them to continue to drive in certain circumstances (for example, for work purposes) – this process is currently provided for in section 145 of the MOLA Act but new sections 79E and 79F will replace section 145 and will clarify the application process and the requirements on a person who obtains a court order;
- (2) a person who obtains a court order allowing them to continue to drive will be required to obtain a replacement licence indicating that a court order is in place;



- (3) the person who obtains a court order will not be prevented from applying for and obtaining a replacement licence by section 127 of the TORUM Act;
- (4) the person, while driving under a court order, will be subject to the no alcohol limit;
- (5) a person who is charged with a drink driving offence while driving under an order will be required to appear in court to have the matter dealt with; and
- (6) a person who, while driving under a court order, commits a drink driving offence other than an offence involving the high alcohol limit will be disqualified for a period of between 3 and 9 months. (Those driving while over the high alcohol limit will have their disqualification period determined under existing provisions).

### **Achievement of the Objectives**

The Bill achieves the objectives by amending the PPRA, the MOLA Act, and the TORUM Act.

### **Alternative Means of Achieving Policy Objectives**

There are no alternative means of achieving the policy objectives other than by legislative reform.

### **Estimated Cost for Government Implementation**

The initiatives contained in this Bill will have significant operational, logistical, and administrative implications for the QPS and other agencies.

### **Fundamental Legislative Principles**

#### PPRA amendments

The identified impacts of the extension of the triggers for impoundment under Chapter 4 of the PPRA raise issues which fall under the heading of the rights and liberties of individuals. These are:

- (1) While the Bill builds on and makes use of existing provisions in Chapter 4 of the PPRA, which have been in operation since November 2002, it adds impoundment triggers of drink driving, unlicensed driving (which includes driving while a driver licence is under

suspension), driving an unregistered motor vehicle and driving an unlawfully modified vehicle on a road.

- (2) In relation to driving an unlawfully modified motor vehicle on a road there is a potential for the impoundment of a motor vehicle for what may be considered by some as a relatively insignificant modification. This may be seen as unduly harsh. However, as with existing impounding provisions for hoons and motorbike noise, a motor vehicle can not be impounded if an infringement notice is issued for the relevant offence. The driver must be arrested or given a notice to appear for the offence. This requirement appears to have a moderating effect on the otherwise potentially severe effect of the proposed legislation.
- (3) The 2005 statistics show that a high number of repeat offenders will be affected by the Bill. The new triggers for impoundment may be seen as adversely affecting the rights and liberties of the individual whose motor vehicle is impounded. This is particularly true if the occasion of the relevant offence gives rise to an application for the impounding of the motor vehicle for up to 3 months or for the forfeiture of the motor vehicle to the State. However, it is considered that the identified triggers are based on improving road safety by modifying driver behaviour and ensuring that only safe vehicles are driven on Queensland roads. Consequently, while the driver of the motor vehicle may be adversely affected, the potential for injury or the death of a member of the public if the motor vehicle is not impounded for the offence is a legitimate reason for taking impounding action.
- (4) The type 2 impoundment scheme takes into consideration the object and principles of the *Juvenile Justice Act 1992* by requiring police to consider alternatives to commencing proceedings against a child who has committed a type 2 vehicle related offence.
- (5) The scheme amends Chapter 4 of the PPRRA to provide that as a general rule the State is not liable for the cost of removing and storing a vehicle impounded under the Chapter. The Bill provides a number of exceptions to this general rule. While this approach impacts on rights and liberties of individuals, it is considered to be reasonable, legitimate, and a balanced extension of the law to an area of growing community concern. It is expected that the scheme will result in a marked decline particularly in unlicensed and disqualified driving can be expected. Additionally, it is anticipated that a large number of unroadworthy vehicles will be removed from Queensland roads.

Historically, unregistered vehicles are often poor condition and are unacceptable safety risks.

- (6) The Bill enables Commissioner to administratively forfeit a vehicle if an impounded vehicle remains uncollected by the owner after 30 days. While this affects the rights and liberties of individuals, the Bill sets out requirements that must be met before the vehicle may be forfeited.
- (7) Like the hoon impoundment scheme, the type 2 impoundment scheme also has the potential to interfere with a number of relationships, for example, relationships between motor vehicle owners and credit providers. To the extent that the scheme has the potential to interfere with contractual or financial arrangements, the Bill preserves the rights of the credit providers and thus has appropriate regard to credit providers' rights. Also, to the extent that the scheme affects the rights of an owner of a motor vehicle that is being driven by someone else, the Bill has appropriate regard to the rights of the owner of the motor vehicle in the same way as the PPRA currently has regard to the rights of owners of vehicles involved in the hoon impoundment scheme.
- (8) The Bill provides for the potential forfeiture to the State of a motor vehicle after it has been impounded at least twice. Once forfeited to the State, the vehicle may be sold. The proceeds of the sale are to be applied towards the costs of removing and keeping the vehicle, the sale, the costs incurred by the State and then towards satisfying any amounts owing because of a security interest registered under the *Motor Vehicles and Boats Securities Act 1986*. The forfeiture to the State of motor vehicles in these situations may be seen as a compulsory acquisition of property without fair compensation. However, the Bill is consistent with the hoon impoundment scheme.
- (9) While the compulsory sale of a motor vehicle may be seen as not providing for fair compensation for the owner of the vehicle, the distribution of the proceeds as proposed recognises the normal expectations of credit providers when a vehicle is sold. To the extent that the sale price of the vehicle is inadequate to satisfy the full amount outstanding the owner of the vehicle remains liable for the remaining debt. This is consistent with what happens when a vehicle is destroyed in an accident and the insurance cover is insufficient to satisfy the full amount outstanding. In the circumstances, the proposal is considered to be reasonable.

### Immediate driver licence suspension

The amendments to the immediate driver licence suspension provisions in the transport legislation may raise issues relating to the fundamental legislative principles. Earlier in the year, the *Maritime and Other Legislation Amendment Act 2006* established a legislative scheme for the immediate suspension of the driver licence of a person charged with a high risk drink driving offence. The amendment Act provided for a process under which certain drivers whose licences had been immediately suspended could apply to the court for an order allowing them to continue driving under certain circumstances until the charge had been dealt with. It also, however, established that a person who was charged with a lower level drink driving offence at a time when an earlier such charge was still pending, would not have access to those court orders. The current amendments are consistent with that approach in that they will ensure that a person obtains a court order allowing them to continue to drive, will once again have their licence immediately suspended should they be charged with a lower level drink driving offence while driving under that order. That person will not be eligible to obtain another court order and, as such, their licence will remain suspended until the drink driving charges are finalised. Any interference with that individual's ability to continue driving is justified by the need to protect other road users and the community generally from those charged with multiple drink driving offences.

### **Consultation conducted in development of the Bill**

The following government departments were consulted during the preparation of the Bill:

- (1) Department of the Premier and Cabinet;
- (2) Queensland Transport;
- (3) Department of Justice and Attorney-General;
- (4) Queensland Treasury;
- (5) Department of Communities;
- (6) Department of State Development, Trade and Employment;
- (7) Department of Tourism Fair Trading and Wine Industry Development;
- (8) Department of Aboriginal and Torres Strait Islander Policy;
- (9) Department of Local Government, Planning, Sport and Recreation;  
and
- (10) Disability Services Queensland.

## **Notes on Provisions**

### **Part 1                      Preliminary**

#### **Short title**

Clause 1 specifies the short title of the Bill.

#### **Commencement**

Clause 2 provides for the commencement of various Parts of the Bill. Parts 2 and 5 commence on 1 July 2007. Part 6 commences immediately after the commencement of the MOLA Act.

### **Part 2                      Amendment of *Police Powers and Responsibilities Act 2000***

#### **Act amended**

Clause 3 identifies that this part amends the PPRA.

#### **Amendment of s 69 (Definitions for Ch 4)**

To enable the use of existing terms within Chapter 4, clause 4 omits and inserts definitions for *forfeiture order*, *impounding order*, *relevant period*, *type 1 vehicle related offence*, *type 2 vehicle related offence*, and *vehicle related offence* for Chapter 4 of the PPRA.

#### **Insertion of new section 69A (Meaning of type 1 and type 2 vehicle related offences)**

Clause 5 inserts the definitions of a *type 1 vehicle related offence* and a *type 2 vehicle related offence*.

For paragraph (e) of the definition of a type 2 vehicle related offence the prescribed offences are specified in the *Police Powers and Responsibilities Regulation 2000*. For section 69A(3) a modification is dealt with in the

*Transport Operations (Road Use Management – Vehicle Standards and Safety) Regulation 1999.*

### **Insertion of new section 70A**

Clause 6 inserts a new provision that sets out that:

- (1) particular references for vehicle related offences within Chapter 4 are to be taken as a reference to two or more of the same type of vehicle related offence, i.e. two or more type 1 vehicle related offences.
- (2) any reference to a vehicle related offence that is a reference to type 2 vehicle related offences must be to a type 2 vehicle related offence of the same kind and not a combination of different type 2 vehicle related offences; and
- (3) the particular offence must be within the description of an offence stated in the definition of a type 2 vehicle related offence. For example, paragraph (d) three section 80(5A) offences. Additionally, for paragraph (e) any modification offence may be counted.

### **Insertion of new ch 4, pt 1, div 3**

Clause 7 inserts a new Chapter 4, part 1, ‘Division 3 Application of chapter 4 to type 2 vehicle related offences and section 73A Application of ch 4 to type 2 vehicle related offences.

Section 73A is required to enable the trial application of the impoundment powers in relation to type 2 vehicle related offences and is limited to only in relation to type 2 vehicle related offences committed in the North Coast Police Region and the Southern Police Region. The section provides a regulation making power to:

- (1) extend the application of type 2 vehicle related offences to another police region or the whole State; and
- (2) declare the boundaries of police regions to which the application of type 2 vehicle related offences applies.

Additionally, the section provides that a reference in this chapter to a type 2 vehicle related offence is a reference to a type 2 vehicle related offence committed in the declared area.

### **Amendment of s 74 (Impounding motor vehicles)**

Clause 8 amends the existing section by distinguishing between type 1 vehicle related offences and integrates the type 2 vehicle related offences to enable a police officer to impound a vehicle if the driver of the vehicle has, within the relevant period, committed and been charge with at least two type 2 vehicle related offence of the same kind.

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

Clause 9 amends the existing power that enables a police officer to require the driver of a motorbike to provide the name of the owner of unregistered motorbike by extending it to apply to drivers of unregistered vehicles impounded under Chapter 4.

### **Amendment of s 78 (Impounding notice for vehicle related offence)**

Clause 10 amends the existing section to provide that the impoundment notice must be given personally to the driver and must be served on the owner in accordance with the *Acts Interpretation Act 1954*. Additionally, if the name of the owner of the vehicle is not known, the notice 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 QPS internet website.

### **Amendment of s 79 (Impounding notice for motorbike noise direction offence or motorbike noise order offence)**

Clause 11 amends the existing section to provide that the impoundment notice must be given personally to the driver and must be served on the owner in accordance with the *Acts Interpretation Act 1954*. Additionally, if the name of the owner of the vehicle is not known, the notice 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 QPS Internet website.

### **Amendment of ch 4, pt 2, div 2 hdg**

Clause 12 amends Chapter 4, part 2, division 2 heading by inserting type 1 after 'impounded for.

**Amendment of s 80 (Content of notice for first vehicle related offence)**

Clause 13 amends section 80 to limit its application to type 1 vehicle related offences.

**Amendment of s 81 (Content of notice for second or subsequent vehicle related offence)**

Clause 14 amends section 81 to clearly provide that the section applies to type 1 vehicle related offences.

**Insertion of new ch 4, pt 2, div 2A**

Clause 15 inserts Chapter 4, Part 2, Division 2A Notice requirements for motor vehicles impounded for type 2 vehicle related offences, section 81A and section 81B.

Section 81A provides the requirements that must be stated on an impounding notice for a motor vehicle that has been impounded because of a second type 2 vehicle related offence. Section 81B provides the requirements that must be stated on an impounding notice for a motor vehicle that has been impounded because of a third or subsequent type 2 vehicle related offence and application requirements for an order for impoundment for a period up to three months or a forfeiture order.

**Amendment of s 85 (Application for impounding order for vehicle related offence)**

Clause 16 amends section 85(1) to clearly provide that the section applies to type 1 vehicle related offences.

**Insertion of new s 85A**

Clause 17 inserts a new section 85A to provide application requirements for an impounding order for type 2 vehicle related offences.

**Amendment of s 87 (Orders on application for impounding order if vehicle related offence not decided)**

Clause 18 amends section 87 to clearly provide that the section applies to type 1 vehicle related offences.



**Insertion of new s 87A (Orders on application for impounding order if type 2 vehicle related offence not decided)**

Clause 19 inserts a new section 87A. The section applies when an application for an impounding order has been made. If the driver has not been found guilty of type 2 vehicle related offences in relation to offences committed on 3 occasions within the prescribed period the court must adjourn the application until the driver of the motor vehicle is found guilty of charges. Further, section enables the court to order that the motor vehicle be impounded to stop the commission of another type 2 vehicle related offence for up to three months.

**Amendment of s 90 (Application for forfeiture order for vehicle related offence)**

Clause 20 amends section 90 to clearly provide that the section applies to type 1 vehicle related offences.

**Insertion of new s 90A (Application for forfeiture order for type 2 vehicle related offence)**

Clause 21 inserts a new section 90A to provide application requirements for a forfeiture order for type 2 vehicle related offences.

**Amendment of s 92 (Orders on application for forfeiture order if vehicle related offence not decided)**

Clause 22 amends section 92 to clearly provide that the section applies to type 1 vehicle related offences.

**Insertion of new s 92A (Orders on application for forfeiture order if type 2 vehicle related offence not decided)**

Clause 23 inserts a new section 92A. The section applies when an application for an forfeiture order has been made. If the driver has not been found guilty of type 2 vehicle related offences in relation to offences committed on 4 occasions within the prescribed period the court must adjourn the application until the driver of the motor vehicle is found guilty of charges. Further, section enables the court to order that the motor vehicle be impounded to stop the commission of another type 2 vehicle related offence for up to three months.

### **Amendment of s 96 (When application to be heard—vehicle related offence)**

Clause 24 amends section 96 to clearly provide that the section applies to type 1 vehicle related offences.

### **Insertion of new s 96A (When application to be heard—type 2 vehicle related Offence)**

Clause 25 inserts a new section 96A. The section provides that an application for an:

- (1) impounding order in relation to a type 2 vehicle related offence must be heard and decided as soon as practicable after the person to whom the application relates is found guilty of 3 type 2 vehicle related offences committed on 3 occasions within the prescribed period; or
- (2) application for a forfeiture order in relation to a vehicle related offence must be heard and decided as soon as practicable after the person to whom the application relates is found guilty of 4 type 2 vehicle related offences committed on 4 occasions within the prescribed period.

### **Amendment of s 97 (When application to be heard – motorbike noise order offence)**

Clause 26 amends section 97(4) to make a correct reference to division 3.

### **Amendment of ch 4, pt 5, div 2 hdg**

Clause 27 amends the Chapter 4, part 5, division 2, heading by inserting reference to a type 1 vehicle related offence.

### **Amendment of s 98 (Consideration of application for impounding order)**

Clause 28 amends section 98 to clearly provide that the section applies to type 1 vehicle related offences. Additionally, the section is amended to provide that the court may order that a motor vehicle be released to the owner if a community service order is made against the driver in accordance with section 102.

### **Amendment of s 99 (Consideration of application for forfeiture order)**

Clause 29 amends section 99 to clearly provide that the section applies to type 1 vehicle related offences. Additionally, section 99 is amended to provide that the court may order that a motor vehicle be released to the owner if a community service order is made against the driver in accordance with section 102.

### **Insertion of new ch 4, pt 5, div 2A (Consideration of application if made for type 2 vehicle related offence)**

Clause 30 amends Chapter 4, part 5 by inserting a new Division 2A Consideration of application if made for type 2 vehicle related offence, a new section 99A (Consideration of application for impounding order—type 2 vehicle related offence) and section 99B (Consideration of application for forfeiture order—type 2 vehicle related offence).

Section 99A enables the court to make an impoundment order for up to three months. If the driver is a child the court must consider whether to orders costs. Additionally, the court may make a community service order under section 102 of the PPRA. Further, the court may order the release of the vehicle is the owner raises a defence under section 107 of the PPRA.

Section 99B enables the court to make a forfeiture order. If the driver is a child the court must consider whether to orders costs. Additionally, the court may make a community service order under section 102 of the PPRA. Further, the court may order the release of the vehicle is the owner raises a defence under section 107 of the PPRA. On making a forfeiture order the vehicle becomes the property of the State.

### **Amendment of s 100 (Consideration of application for impounding order)**

Clause 31 amends section 100(3) to provide that instead of order impoundment for three months, the court may make an order and section 102 and order the vehicle be released to the owner.

**Amendment of s 101 (Consideration of application for forfeiture order)**

Clause 32 amends section 101(4) to provide that instead of order forfeiture or impoundment for three months, the court may make an order and section 102 and order the vehicle be released to the owner.

**Amendment of s 108 (Counting the occasions)**

Clause 33 amends the existing section 108 by separates the existing section into clear provisions by through the creation of sections 108 (Counting the occasions-general), 108A (References to previous occasions in ss 81, 81B, 84, 85, 85A, 90, 90A and 91) and 108B (Matters for decisions under ss 85, 85A, 87, 87A, 90-93 and 96-99B and 101). Additionally, the clause makes the necessary references to include type 2 vehicle related offences.

**Amendment of s 111 (State's liability to pay costs of impounding)**

Clause 34 amends section 111 to provide that the State is not liable to pay the costs of removing a motor vehicle impounded under this chapter and keeping it for the initial impoundment period. The exceptions are stated in subsection (2).

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

Clause 35 amends section 112(3) to clearly provide that if the driver is found guilty of the prescribed offence or motorbike noise direction offence, any costs paid by someone else on the driver's behalf become a debt payable to the other person by the driver.

**Amendment of s 113 (Liability to pay costs of impounding—child driver)**

Clause 36 amends section 113 to refer to the exemptions contained in section 111(2).

**Amendment of s 114 (Payment of costs if motor vehicle not recovered)**

Clause 37 amends section 114 to reflect that service of the notice of impoundment may be served on the owner in accordance with the provisions of the *Acts Interpretation Act 1954*.

**Amendment of s 115 (Registration of costs under State Penalties Enforcement Act 1999)**

Clause 38 amends section 115 to correctly refer to section 113(4).

**Amendment of s 116 (Release of motor vehicle impounded under s 74 or impounding order)**

Clause 39 amends section 116 to reflect that following the end of the initial impoundment period or after an impoundment period, the impounded vehicle may only be released once the costs of removing and keeping the vehicle at the holding yard have been paid. Further, that while the driver is liable for the payment of costs associated with the initial impoundment of the vehicle, the owner or another person on behalf of the owner must collect the vehicle. This approach is designed to enable the identification of the owner of a vehicle in circumstances where a police officer can not find out who the owner is and the driver refuses to provide the information.

**Replacement of s 118 (Sale of motor vehicle if not recovered after impounding ends)**

Clause 40 replaces section 118 to enable the forfeiture of a vehicle that has been impounded under the Chapter and has not, following the end of the impoundment period and after the expiration of 30 days, been collected by the owner of the vehicle. The new section sets out the advertising requirements that must be met before the vehicle may be forfeited to the State.

**Amendment of s 800 (Obtaining warrants, order and authorities, etc., by telephone or similar facility)**

Clause 41 inserts updated references into section 800.

### **Insertion of new Ch 24, Pt 9 (Transitional provisions for Police Powers and Responsibilities and Other Legislation Amendment Act 2006)**

Clause 42 inserts a new Chapter 24, Part 9 and sections 862 (Costs of impoundment), 863 (Existing references) and 864 (Amendment of regulation by *Police Powers and Responsibilities and Other Legislation Amendment Act 2006* does not affect powers of Governor in Council) for the Bill. These declaratory provisions are intended to enable the continuation of existing applications, liability for the payment of costs and declare that the amendment of the PPRR in the Bill does not affect the power of the Governor in Council to further amend the regulation or to repeal it.

### **Amendment of sch 6 (Dictionary)**

Clause 43 amends the dictionary by inserting definitions of: *costs of removing and keeping a motor vehicle impounded under this Act, type 1 vehicle related offence* and *type 2 vehicle related offence*.

## **Part 3                      Amendment of Police Powers and Responsibilities Regulation 2000**

### **Regulation amended in pt 4**

Clause 44 provides that this part amends the *Police Powers and Responsibilities Regulation 2000*.

### **Insertion of new s 10B (Declared sections for Act, s 69A, definition *type 2 vehicle related offence*, paragraph (e))**

Clause 45 inserts a new section 10B that prescribes the relevant sections of the *Transport Operations (Road Use Management—Vehicle Standards and Safety) Regulation 1999* for section 69A, definition *type 2 vehicle related offence*, paragraph (e).

## **Part 4                      Amendment of *Maritime and Other Legislation Amendment Act 2006***

### **Act amended in pt 4**

Clause 46 provides that this part of the Bill amends the *Maritime and Other Legislation Amendment Act 2006*.

### **Amendment of s 143 (Insertion of new ss 79B-79D in Act No. 9 of 1995)**

Clauses 47(1) – (4) amend section 143 of the MOLA Act which inserts new sections in to the TORUM Act.

Clause 47(1) amends section 143 of the MOLA Act which inserts section 79B(1)(c) “Immediate suspension or disqualification” in the TORUM Act to replace the words, “another offence under section 79(2), (2A), (2B) or (2J)” with the words “a section 79B offence”. A "section 79B offence" is defined in clause 46(4) described below. This amendment will ensure that a person who is charged with a drink driving offence under section 79(2), (2A), (2B) or (2J) of the TORUM Act while they are driving under a court order issued following the immediate suspension of their licence for a high-risk drink driving offence will once again have their licence immediately suspended. If the person was to be charged with any of the offences mentioned in section 79B(1)(a), (b) or (d) while driving under the court order their licence would, under the existing provisions of the MOLA Act, be immediately suspended. However, under the current wording of section 79B(1)(c), if a person was charged with a drink driving offence - that is, an offence under s.79(2), (2A), (2B) or (2J) of the TORUM Act while driving under a court order issued following the immediate suspension of their licence, they would not have their licence immediately suspended. Clause 47(1) corrects this.

Clause 47(2) amends section 143 by re-wording section 79B(1)(d) to apply the immediate suspension provisions to a person who is charged with dangerous operation of a motor vehicle under section 328A of the Criminal Code where, at the time of committing the offence, the person was allegedly over their permissible alcohol limit. Currently, section 79B(1)(d) provides for the immediate suspension of a person charged with dangerous driving under section 328A of the Criminal Code but only where there is a

circumstance of aggravation that the person was over the high alcohol limit. These amendments will apply the immediate suspension provisions under section 79B to any driver charged under section 328A with dangerous operation of a motor vehicle who is over their permissible blood/breath alcohol concentration limit as specified in the TORUM Act.

Clause 47(3) amends section 143 so far as it inserts section 79B(5) in to the TORUM Act. Currently, section 79B(5) states that an immediate suspension or disqualification begins when the person is charged and ends when the charge is dealt with by a court or is withdrawn or otherwise discontinued. This clause amends section 79B(5) to provide that a suspension or disqualification under sections 79B(2), (3) or (4) starts when the person is charged and ends:

- (1) for a suspension of a Queensland driver licence in relation to which a court may make an order under section 79E, when the first of the following happens- (i) the chief executive issues a replacement licence to the person under section 79F (see clause 55); (ii) the charge is dealt with by a court or is withdrawn or otherwise discontinued; or
- (2) in any other case, the charge is dealt with by a court or is withdrawn or otherwise discontinued.

This amendment is necessary to ensure that the immediate suspension is lifted where a court makes an order allowing the person to continue to drive and the person obtains a replacement licence indicating their authority to drive is subject to that court order.

Clause 47(4) amends section 143 to amend section 79B(7) by defining a “section 79B offence” to mean an offence against a provision mentioned in subsection (1) as a consequence of the amendment to section 79B(1)(c) that includes this term [see clause 47(1)].

### **Amendment of s 144A (Insertion of new ss 90A-90D in Act No. 9 of 1995)**

Clauses 48(1) - (2) amend section 144A of MOLA Act that inserts section 90A in to the TORUM Act. These clauses delete references to section 150AB and replace them with references to subsections of the new section 79E as a result of the amendments contained in clauses 49 and 55.



### **Replacement of s 145 (Insertion of new s 150AB in Act No. 9 of 1995)**

Clause 49 omits section 145 of MOLA Act which was to insert new section 150AB into the TORUM Act. The provisions of section 150AB have, instead, been incorporated and clarified in new sections 79E and 79F as contained in clause 38. The purpose of clause 55 is described below.

## **Part 5                      Amendment of Tow Truck Act 1973**

### **Act amended in pt 3**

Clause 50 provides that this part amends the *Tow Truck Act 1973*.

### **Amendment of s 38 (Exemptions)**

Clause 51 amends section 38(2) to clearly provide that although a person is exempt under a regulation from stated provisions of the *Tow Truck Act*, a regulation made under section 43 for the purposes of Chapters 4, 5 and 22 of the PPRA. Effectively, this amendment extends the existing section of the Act to include all vehicle impoundment schemes under the PPRA.

### **Amendment of s 43 (Regulation making power)**

Clause 52 amends section 43(1)(r) by extending this existing application of the regulation making power that enables the making of a regulation for the amounts to be charged for towing and keeping vehicles impounded under Chapter 4 of the PPRA to include Chapter 22, 'Provisions about evading police officers' under the PPRA.

## **Part 6                      Amendment of *Transport Operations (Road Use Management) Act 1995***

### **Act amended in pt 6**

Clause 53 provides that Part 6 of the Bill amends the *Transport Operations (Road Use Management) Act 1995*.

### **Amendment of s 79 (Driving etc. whilst under influence of liquor or drugs or with prescribed concentration of alcohol in blood or breath)**

Clause 54 amends section 79(2J) of the TORUM Act by inserting after the word “licence” the provisions, “or to whom a replacement licence is issued under section 79F”. This amendment will ensure that a person who obtains a court order allowing them to drive after having had their licence immediately suspended due to a high risk drink driving offence will, while driving under that order, be subject to the no alcohol limit.

### **Insertion of new s 79E and s 79F**

Clause 55 inserts new sections 79E “Court may allow particular person whose licence is suspended under s 79B to drive” and 79F “Replacement licence if there is an order under s 79E”. These sections provide for a person whose licence has been immediately suspended due to being charged with a high risk drink driving offence to apply to the court for an order allowing them to continue to drive in certain circumstances. New section 79E(4) will allow details of this process to be provided for in regulations including, for example, who is and is not eligible for an order and the criteria to be used in deciding an application for an order. Section 79E(3) makes clear that a person who obtains a court order will need to obtain a replacement licence, under the provisions in section 79F, before they re-commence driving. That replacement licence will indicate that the person's authority to drive is subject to a court order.

### **Amendment of s 81 (Notices to offenders for certain first offences)**

Clause 56 amends section 81(1)(a) of the TORUM Act by omitting references “(2D) or (2J)” and inserting in their place, “or (2D), or against (2J) while the person is the holder of a restricted licence”. Section 81 currently allows a police officer to proceed against a driver who has not been convicted of a drink driving offence in the previous five years way of issuing a notice. Where the person pays the penalty specified in the notice the matter does not need to be dealt with by a court. This amendment will clarify that police should not proceed under section 81 against a person who is driving under a court order issued after their licence has been immediately suspended for a high risk drink driving charge. As this person is driving under an order issued by a court, it is appropriate that any further drink driving charge should be dealt with by the court.

### **Amendment of s 86 (Disqualification of drivers of motor vehicles for certain offences)**

Clause 57 amends section 86(2)(e) of the TORUM Act by inserting after the words, “a driver licence”, the words, “, was a person to whom a replacement licence is issued under section 79F”. This amendment specifies the appropriate disqualification period for a person who commits a lower level drink driving offence while driving under a section 79E order.

Amendment of s 127 (Effect of disqualification)

Clauses 58(1) – (2) amend section 127(7) and section 127(13) to include reference to a replacement licence under section 79F. This amendment is necessary to ensure that a person who obtains such an order is not prevented from applying for and obtaining a replacement licence.