



Queensland

Police Powers and Responsibilities (Motorbike Noise) Amendment Act 2005

Act No. 64 of 2005



Queensland

Police Powers and Responsibilities (Motorbike Noise) Amendment Act 2005

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Queensland

Police Powers and Responsibilities (Motorbike Noise) Amendment Act 2005

Act No. 64 of 2005

An Act to amend the *Police Powers and Responsibilities Act 2000*, and for other purposes

[Assented to 28 November 2005]

The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Police Powers and Responsibilities (Motorbike Noise) Amendment Act 2005*.

2 Commencement

This Act commences on a day to be fixed by proclamation.

Part 2 Amendment of Police Powers and Responsibilities Act 2000

3 Act amended in pt 2 and schedule

This part and the schedule amend the *Police Powers and Responsibilities Act 2000*.

4 Amendment of s 34 (Power for age-related offences)

(1) Section 34, heading, after ‘offences’—

insert—

‘and for particular motor vehicle related purposes’.

(2) Section 34(1)—

insert—

‘(c) the person’s age is relevant to any of the following—

- (i) giving a notice in relation to a motor vehicle impounded under chapter 2B;¹
- (ii) giving a noise abatement direction in relation to excessive noise emitted by a motorbike being driven on a place other than a road;
- (iii) the making of an application for an impounding order or a forfeiture order under chapter 2B;
- (iv) the making of an application under section 367A² for a noise abatement order.’.

5 Amendment of s 50 (Power for regulating traffic)

- (1) Section 50(1), ‘or animal’—

omit.

- (2) Section 50(5)—

omit.

6 Amendment of s 51 (Stopping vehicles for prescribed purposes)

- (1) Section 51(3)—

insert—

- ‘(f) to investigate the emission of excessive noise from—
 - (i) a motor vehicle on a road or in a public place; or
 - (ii) a motorbike being driven on a place other than a road;
- (g) to give a noise abatement direction to the person responsible for the emission of excessive noise from—
 - (i) a motor vehicle on a road or in a public place; or
 - (ii) a motorbike being driven on a place other than a road;

1 Chapter 2B (Motor vehicle impounding powers for prescribed offences and motorbike noise direction offences)

2 Section 367A (Noise abatement order—application for order)

Note—

For the power to give noise abatement directions, see section 360.³

(h) to impound a motor vehicle under chapter 2B.⁴.

(2) Section 51(6)—

insert—

‘excessive noise means excessive noise mentioned in section 358(1) and to which chapter 9, part 3 applies.’.

7 Replacement of ch 2, pt 6, div 2 hdg and ss 59A–59LA

Chapter 2, part 6, division 2, heading, and sections 59A to 59LA—

omit, insert—

‘Chapter 2B Motor vehicle impounding powers for prescribed offences and motorbike noise direction offences

‘Part 1 Preliminary

‘Division 1 Interpretation

‘59A Definitions for ch 2B

‘In this chapter—

applied section 258 see section 59LW.⁵

applied section 259 see section 59LW.

3 Section 360 (Powers of police officer to deal with excessive noise)

4 Chapter 2B (Motor vehicle impounding powers for prescribed offences and motorbike noise direction offences)

5 Section 59LW (Costs order for child drivers)

burn out, for a motor vehicle, means wilfully drive the motor vehicle in a way that causes the tyres or a substance poured onto the road surface, or both, to smoke when the drive wheels lose traction with the road surface.

excessive noise means excessive noise mentioned in section 358(1) and to which chapter 9, part 3 applies.

forfeiture order—

- (a) for a vehicle related offence—see section 59LJ(2); or
- (b) for a motorbike noise order offence—see section 59LK(2).⁶

impounding notice—

- (a) for a vehicle related offence—see section 59J(2); or
- (b) for a motorbike noise direction offence or a motorbike noise order offence—see section 59K(2).⁷

impounding order—

- (a) for a vehicle related offence—see section 59LE(2); or
- (b) for a motorbike noise order offence—see section 59LF(2).⁸

initial impoundment period, for a motor vehicle, means—

- (a) a period of 48 hours starting when the motor vehicle is impounded; or
- (b) if the period of 48 hours ends at any time after 5p.m. and before 8a.m. on a day, a period starting when the motor vehicle is impounded and ending at 8a.m. next occurring after the period of 48 hours ends.

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

6 Section 59LJ (Application for forfeiture order for vehicle related offence) or 59LK (Application for forfeiture order for motorbike noise order offence)

7 Section 59J (Impounding notice for vehicle related offence) or 59K (Impounding notice for motorbike noise direction offence or motorbike noise order offence)

8 Section 59LE (Application for impounding order for vehicle related offence) or 59LF (Application for impounding order for motorbike noise order offence)

initiating impoundment offence means—

- (a) the vehicle related offence for which a motor vehicle is impounded under this chapter; or
- (b) for a motorbike noise order offence—the motorbike noise order offence because of which a police officer applies for an impounding order or a forfeiture order for the motorbike involved in the commission of the offence.

magistrate includes a Childrens Court magistrate.

modify, a motor vehicle, includes remove the engine or gearbox from the motor vehicle.

motorbike noise direction offence means the contravention of a noise abatement direction given in relation to excessive noise emitted by a motorbike being driven on a place other than a road.

motorbike noise order offence means the contravention of a noise abatement order given in relation to excessive noise emitted by a motorbike being driven on a place other than a road.

offence, in relation to which an application is made, means the initiating application offence and any other offence relied on for the purposes of any order under this chapter.

prescribed impoundment information means—

- (a) information about how the owner of a motor vehicle impounded under this chapter may recover the motor vehicle; and
- (b) a statement that, before the motor vehicle may be recovered, the owner may be required to produce satisfactory evidence of the ownership of the motor vehicle; and
- (c) a statement that, if the driver is an adult and the driver is found guilty of the offence for which the motor vehicle was impounded, the driver will be required to pay the costs of removing and keeping the motor vehicle; and
- (d) a statement that, if the driver is a child and the child is found guilty of the offence for which the motor vehicle

was impounded, the court may order the child or the child's parent or guardian to pay the costs of removing and keeping the motor vehicle; and

- (e) a statement that, if the owner of a motor vehicle fails to recover the motor vehicle after the period of impounding ends and the owner was the driver of the motor vehicle when it was impounded, the owner is liable to pay the costs of keeping the motor vehicle for each day after the period of impounding ends, whether or not the driver is found guilty of the offence for which the motor vehicle is impounded; and
- (f) a statement that, if the owner of the motor vehicle fails to recover the motor vehicle after the period of impounding ends and the owner was not the driver of the motor vehicle when it was impounded, the owner is liable to pay the costs of keeping the motor vehicle for each day after the period of impoundment ends that is more than 2 business days after the owner is given the impounding notice; and
- (g) the penalty for unlawfully removing the motor vehicle from the place at which it is held.

prescribed offence means—

- (a) a motorbike noise order offence; or
- (b) a vehicle related offence.

prescribed period, in relation to an application for an impounding order or a forfeiture order—

- (a) for a vehicle related offence—means the relevant period and any period from the end of the relevant period to and including the day on which the application is heard and decided; or
- (b) for a motorbike noise order offence—the period for which the motorbike noise order to which the offence relates is in force and any period from the end of that period to and including the day on which the application is heard and decided.

relevant court, in relation to an application for an impounding order or a forfeiture order for a motor vehicle, means—

- (a) the Magistrates Court for the Magistrates Court district, or division of the district, in which the motor vehicle was impounded for the prescribed offence to which the application relates; or
- (b) if the driver of the motor vehicle is a child—a Childrens Court constituted by a magistrate sitting in the Magistrates Court district, or division of the district, in which the motor vehicle was impounded for the prescribed offence to which the application relates.

relevant period, in relation to a motor vehicle impounded for a vehicle related offence, means the period of 3 years before the initiating impoundment for the motor vehicle.

vehicle related offence means any of the following offences committed in circumstances that involve a speed trial, a race between motor vehicles, or a burn out—

- (a) an offence against the Criminal Code, section 328A⁹ committed on a road or in a public place;
- (b) an offence against the Road Use Management Act, section 83;¹⁰
- (c) an offence against the Road Use Management Act, section 85;¹¹
- (d) 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.

Note—

At the enactment of this definition, a relevant offence for paragraph (d), for example, is an offence against the *Transport Operations (Road Use Management—Road Rules) Regulation 1999*, section 291(1)(b).

‘59B References to motor vehicle includes motorbike

‘To remove any doubt, it is declared that—

9 Criminal Code, section 328A (Dangerous operation of a vehicle)

10 Road Use Management Act, section 83 (Careless driving of motor vehicles)

11 Road Use Management Act, section 85 (Racing and speed trials on roads)

- (a) a reference in this chapter to a motor vehicle in relation to a prescribed offence includes a reference to a motorbike; and
- (b) a reference in this chapter to a motor vehicle in relation to a vehicle related offence includes a reference to a motorbike.

‘59C 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) This section applies for this chapter if a proceeding for a prescribed offence is started against a person by notice to appear or arrest.
- ‘(2) If the proceeding is started by notice to appear, the person is taken to be charged with having committed the offence when the notice to appear is issued and served on the person.
- ‘(3) If the proceeding is started by arrest, the person is taken to be charged with having committed the offence when the person is arrested.

‘59D Punishment under this chapter is in addition to other punishment for the same offence

‘The impounding or forfeiture of a motor vehicle or the imposition of community service on a person under this chapter arising out of the commission of a prescribed offence is in addition to any other penalty that may be imposed on the person for the prescribed offence.

‘Division 2 Relationship with other legislation

‘59E Consumer Credit Code

‘Nothing in this chapter affects the rights of a credit provider to repossess a motor vehicle under the Consumer Credit Code and sell it.

‘Part 2 Impounding motor vehicles

‘Division 1 Impounding powers and duties after impounding

‘59F Impounding motor vehicles

- ‘(1) A police officer may impound a motor vehicle if the driver of the motor vehicle is charged with having committed a vehicle related offence in relation to the motor vehicle.
- ‘(2) Also, a police officer may impound a motorbike if, in relation to the motorbike—
- (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, paragraph (a) does not apply, 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 59C.

- ‘(3) A motor vehicle impounded under subsection (1) or (2) is impounded for the initial impoundment period.

‘59G Particular powers for impounding motor vehicles

- ‘(1) To impound a motor vehicle under section 59F, a police officer may—
- (a) stop the motor vehicle if it is moving, whether or not the motor vehicle is on a road; or

- (b) require the driver of the motor vehicle if it is stationary to remain at the place where it is stopped for the time reasonably necessary; or
 - (c) direct the person who has the key needed to move the motor vehicle—
 - (i) to give the key to a police officer; or
 - (ii) if the motor vehicle is in a dwelling, to move the motor vehicle out of the dwelling, and to give the key to a police officer; or
 - (d) if it is necessary to enter the motor vehicle to impound it, enter the motor vehicle to impound it; or
 - (e) enter a place, other than the part of the place that is a dwelling, and stay for a reasonable time on the place; or
 - (f) do anything else reasonably necessary for impounding the motor vehicle.
- ‘(2) Also, when impounding a motorbike that is not registered under a transport Act, a police officer may require the driver of the motorbike to state the name and address of the owner of the motorbike.

Note—

Failure to comply with a direction or requirement given or made under this section is an offence against section 445.

- ‘(3) Subsection (1)(a) and (b) is in addition to, and does not limit, section 51 or 52.
- ‘(4) Also, the powers exercisable under subsection (1)(a) and (b) may be exercised before or after the motor vehicle is impounded.

‘59H Duties of police officer after impounding motor vehicle

- ‘(1) After impounding the motor vehicle, the police officer must 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.

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

driving, pushing, towing or transporting the motor vehicle

- ‘(2) However, if the motor vehicle is a motor vehicle that is being unlawfully used or has been stolen or is a rental motor vehicle—
- (a) the motor vehicle must be released to the owner as soon as reasonably practicable; and
 - (b) an application for an impounding order or a forfeiture order about the motor vehicle must not be made.

- ‘(3) In this section—

rental motor vehicle means a motor vehicle made available by a person in the course of a business in which the person rents vehicles to members of the public.

‘59I Police officer may authorise tow

- ‘(1) This section applies if a police officer arranges for the impounded motor vehicle to be towed to a holding yard.
- ‘(2) A police officer may sign a towing authority for the impounded motor vehicle.
- ‘(3) The driver of a tow truck towing the impounded motor vehicle under a towing authority must tow the motor vehicle to—
- (a) if the police officer directs the driver to tow the motor vehicle to a particular holding yard—the holding yard; or
 - (b) if paragraph (a) does not apply—the holding yard to which the driver ordinarily tows motor vehicles.

- ‘(4) In this section—

towing authority means—

- (a) a towing authority under the *Tow Truck Act 1973*; or
- (b) another document authorising a person to tow a motor vehicle.

‘59J Impounding notice for vehicle related offence

- ‘(1) This section applies if a motor vehicle is impounded 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 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 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 must include the information required under section 59L or 59LA.
- ‘(5) 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 impounding 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 under this section must be given personally to the person to whom it is required to be given.

‘59K 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

- ‘(2) The impounding notice must state—
- (a) that the motor vehicle is impounded for the initial impoundment period; and
 - (b) the prescribed impoundment information.

‘59LA Content of notice for second or subsequent vehicle related offence

- ‘(1) This section applies if a motor vehicle has been impounded because of a vehicle related offence and a police officer reasonably suspects that, in addition to the initiating impoundment offence, and within the relevant period—
- (a) the driver of the motor vehicle has previously been charged with having committed a vehicle related offence on at least 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 vehicle related offence committed on at least 1 previous occasion within the relevant period.
- ‘(2) The impounding notice must state—
- (a) that the motor vehicle is impounded for the initial impoundment period; and
 - (b) that an application will be made to a court or a magistrate for an order that the motor vehicle be impounded for up to 3 months, if either of the following apply to the driver at the time of the initiating impoundment—
 - (i) the driver has previously been charged with having committed a vehicle related offence on 1 previous occasion within the relevant period and the charge has not been decided before the initiating impoundment;
 - (ii) the driver has previously been found guilty of a vehicle related offence committed on 1 previous occasion within the relevant period; and

- (c) that an application will be made to a court or a magistrate for an order that the motor vehicle be forfeited to the State, if any of the following apply to the driver at the time of the initiating impoundment—
 - (i) the driver has previously been charged with having committed vehicle related offences on at least 2 previous occasions within the relevant period and the charges have not been decided before the initiating impoundment;
 - (ii) the driver has previously been found guilty of having committed vehicle related offences on at least 2 previous occasions within the relevant period;
 - (iii) the driver has previously been found guilty of having committed a vehicle related offence on at least 1 previous occasion within the relevant period and has previously been charged with having committed a vehicle related offence on at least 1 previous occasion within the relevant period and the charge has not been decided before the initiating impoundment; and
- (d) the prescribed impoundment information.

‘Division 3 Notice requirements for motorbikes impounded for motorbike noise direction offences

‘59LB Content of notice for motorbike noise direction offence

- ‘(1) This section applies if a motorbike has been impounded because a police officer reasonably suspects the driver of the motorbike has committed a motorbike noise direction offence.
- ‘(2) The impounding notice must state—
 - (a) that the motorbike is impounded for the initial impoundment period; and
 - (b) the prescribed impoundment information; and

- (c) that an application will be made to the relevant court for a noise abatement order within 48 hours after the end of the impoundment period.

‘Division 4 Notice requirements for motorbikes impounded for motorbike noise order offences

‘59LC Content of notice for first motorbike noise order offence

- ‘(1) This section applies if a motorbike has been impounded because of a motorbike noise order offence and section 59LD does not apply to the driver of the motorbike.
- ‘(2) The impounding notice must state—
 - (a) that the motorbike is impounded for the initial impoundment period; and
 - (b) the prescribed impoundment information; and
 - (c) that an application will be made to the relevant court for an order that the motorbike be impounded for 3 months if the driver of the motorbike is found guilty of a motorbike noise order offence relating to the motorbike.

‘59LD Content of notice for second or subsequent motorbike noise order offence

- ‘(1) This section applies if a motorbike has been impounded because of a motorbike noise order offence and—
 - (a) the driver of the motorbike has been found guilty of having committed a motorbike noise order offence relating to that motorbike on at least 1 previous occasion and has been charged with having committed another motorbike noise order offence that has not been decided and relates to that motorbike; or
 - (b) the driver of the motorbike has been charged with having committed a motorbike noise order offence

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relating to that motorbike on at least 2 previous occasions and the charges have not been decided;

within 2 years after a noise abatement order is made in relation to the driver of the motorbike.

Note—

See section 59C for when a person is charged for this chapter. Also, this section, unlike the corresponding provisions about motor vehicle related offences, does not rely on the suspicion of a police officer because the principal operation of the section in fact relates to children and processes under the *Juvenile Justice Act 1992* apply.

- (2) The impounding notice must state—
- (a) that the motorbike is impounded for the initial impoundment period; and
 - (b) that an application will be made to the relevant court for an order that the motorbike be forfeited to the State if either of the following apply to the driver—
 - (i) the driver of the motorbike has previously been found guilty of a motorbike noise order offence relating to that motorbike;
 - (ii) the driver of the motorbike has been charged with having committed a motorbike noise order offence relating to that motorbike on at least 2 previous occasions and the charges have not been decided; and
 - (c) the prescribed impoundment information.

‘Part 3 Obtaining impounding orders

‘Division 1 Impounding order application provisions

‘59LE Application for impounding order for vehicle related offence

- ‘(1) This section applies if a motor vehicle has been impounded for a vehicle related offence and, in addition to the initiating impoundment offence—
- (a) the driver of the motor vehicle has previously been charged with having committed a 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 vehicle related offence committed on 1 previous occasion within the relevant period.

Note—

For vehicle related offences, the offences do not have to be committed using the same vehicle.

- ‘(2) Within 48 hours after charging the person with the initiating impoundment offence, a police officer must apply in the approved form for an order that the motor vehicle be held at a holding yard for a period of not more than 3 months (*impounding order*).
- ‘(3) The application must be made in relation to 2 vehicle related offences consisting of—
- (a) any vehicle related offence the circumstances of which apply to the driver under subsection (1)(a) or (b); and
 - (b) the initiating impoundment offence.
- ‘(4) The application must be made to the relevant court but may be started by application to a magistrate under section 451 and subsection (6) of this section.

- ‘(5) Subsection (4) applies even though the value of the motor vehicle may be more than the maximum amount that may be claimed in a personal action in the civil jurisdiction of a Magistrates Court.
- ‘(6) If the application is properly made to a magistrate under section 451, the magistrate must—
 - (a) order that a police officer may have the application brought on for hearing and decision in the relevant court and adjourn the application to that court; and
 - (b) give a copy of the application and the order to the clerk of the court of the relevant court.

‘59LF Application for impounding order for motorbike noise order offence

- ‘(1) This section applies to the driver of a motorbike that is impounded for a motorbike noise order offence if the driver has been charged with the offence and an application for a forfeiture order for the motorbike can not be made under section 59LK.¹⁴
- ‘(2) Within 48 hours after charging the person with the offence, a police officer must apply in the approved form for an order that the motorbike be held at a holding yard for a period of not more than 3 months (*impounding order*).
- ‘(3) The application must be made to the relevant court but may be started by application to a magistrate under section 451 and subsection (5) of this section.¹⁵
- ‘(4) Subsection (3) applies even though the value of the motorbike may be more than the maximum amount that may be claimed in a personal action in the civil jurisdiction of a Magistrates Court.
- ‘(5) If the application is properly made to a magistrate under section 451, the magistrate must—

14 Section 59LK (Application for forfeiture order for motorbike noise order offence)

15 Section 451 (Obtaining warrants, orders and authorities, etc., by telephone or similar facility)

- (a) order that a police officer may have the application brought on for hearing and decision in the relevant court and adjourn the application to that court; and
- (b) give a copy of the application and the order to the clerk of the court of the relevant court.

‘Division 2 Orders if offence not decided

‘59LG Orders on application for impounding order if vehicle related offence not decided

- ‘(1) This section applies if—
 - (a) an application is made to a relevant court for an impounding order under section 59LE for a motor vehicle impounded for a vehicle related offence; and
 - (b) any proceeding on a charge of a vehicle related offence or offences in relation to which the application is made has not been decided.
- ‘(2) If the driver of the motor vehicle has not been found guilty of vehicle related offences in relation to offences committed on 2 occasions within the prescribed period, the court must adjourn the application until the driver of the motor vehicle is found guilty of charges in relation to offences committed on 2 occasions within the prescribed period.
- ‘(3) However, if the application relates to at least 1 vehicle related offence of which the driver has been found guilty, the court may, if satisfied on application that the motor vehicle should be impounded to stop the commission of another vehicle related offence, order that the motor vehicle be impounded for a further period of not more than 3 months.

‘59LH Orders on application for impounding order if motorbike noise order offence not decided

- ‘(1) This section applies if—
 - (a) an application is made to a relevant court under section 59LF for an impounding order for a motorbike; and

- (b) any proceeding on a charge of a motorbike noise order offence in relation to which the application is made has not been decided.
- ‘(2) The court must adjourn the application until the driver has been found guilty of the offence.

‘Division 3 Advice of date of hearing

‘59LI Advice to owner of date of hearing

- ‘(1) As soon as reasonably practicable after a date is set for the hearing of an application for an impounding order in relation to a motor vehicle, a police officer must give the driver of the motor vehicle and each owner of the motor vehicle written notice of the date, time and place of the hearing.
- ‘(2) If the driver or owner is a child and it is reasonably practicable to do so, notice must also be given to the child’s parent or guardian.

‘Part 4 Obtaining forfeiture orders

‘Division 1 Forfeiture order application provisions

‘59LJ Application for forfeiture order for vehicle related offence

- ‘(1) This section applies in relation to a motor vehicle impounded under section 59F for a vehicle related offence if, at the time of the initiating impoundment, in addition to the initiating impoundment offence, the driver of the motor vehicle has previously been charged with having committed vehicle related offences on at least 2 previous occasions within the relevant period and any of the following circumstances apply to the driver—

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- (a) the charges of the vehicle related offences have not been decided before the initiating impoundment;
 - (b) the driver has been found guilty of 1 of the vehicle related offences but the other charge or charges have not been decided before the initiating impoundment;
 - (c) the driver has previously been found guilty of having committed the vehicle related offences on at least 2 previous occasions.
- ‘(2) Within 48 hours after charging the person with the initiating impoundment offence, a police officer must apply in the approved form for an order that the motor vehicle be forfeited to the State (*forfeiture order*).
- ‘(3) The application must be made in relation to at least 3 vehicle related offences consisting of—
- (a) the vehicle related offences the circumstances of which apply to the driver under subsection (1)(a), (b) or (c); and
 - (b) the initiating impoundment offence.
- ‘(4) The application must be made to the relevant court but may be started by application to a magistrate under section 451 and subsection (6) of this section.
- ‘(5) Subsection (4) applies even though the value of the motor vehicle may be more than the maximum amount that may be claimed in a personal action in the civil jurisdiction of a Magistrates Court.
- ‘(6) If the application is properly made to a magistrate under section 451, the magistrate must—
- (a) order that a police officer may have the application brought on for hearing and decision in the relevant court and adjourn the application to that court; and
 - (b) give a copy of the application and the order to the clerk of the court of the relevant court.

‘59LK Application for forfeiture order for motorbike noise order offence

- ‘(1) This section applies in relation to a motorbike impounded under section 59F for a motorbike noise order offence if the driver of the motorbike—
- (a) has been—
 - (i) found guilty of having committed a motorbike noise order offence relating to that motorbike on at least 1 previous occasion; and
 - (ii) charged with having committed another motorbike noise order offence relating to that motorbike and the charge has not been decided; or
 - (b) has been charged with having committed a motorbike noise order offence relating to that motorbike on at least 2 previous occasions and the charges have not been decided.
- ‘(2) Within 48 hours after charging the person with the offence in relation to which the motorbike was impounded under section 59F, a police officer must apply in the approved form for an order that the motorbike be forfeited to the State (***forfeiture order***).
- ‘(3) The application must be made in relation to at least 2 motorbike noise order offences the circumstances of which apply to the driver under subsection (1)(a) or (b).
- ‘(4) The application must be made to the relevant court but may be started by application to a magistrate under section 451¹⁶ and subsection (6) of this section.
- ‘(5) Subsection (4) applies even though the value of the motorbike may be more than the maximum amount that may be claimed in a personal action in the civil jurisdiction of a Magistrates Court.
- ‘(6) If the application is properly made to a magistrate under section 451, the magistrate must—

16 Section 451 (Obtaining warrants, orders and authorities, etc., by telephone or similar facility)

- (a) order that a police officer may have the application brought on for hearing and decision in the relevant court and adjourn the application to that court; and
- (b) give a copy of the application and the order to the clerk of the court of the relevant court.

‘Division 2 Orders if offence not decided

‘59LL Orders on application for forfeiture order if vehicle related offence not decided

- ‘(1) This section applies if—
 - (a) an application is made to a relevant court under section 59LJ for a forfeiture order in relation to a motor vehicle impounded for a vehicle related offence; and
 - (b) any proceeding on a charge of a vehicle related offence or offences in relation to which the application is made has not been decided.
- ‘(2) If the driver of the motor vehicle has not been found guilty of vehicle related offences in relation to offences committed on 3 occasions within the prescribed period, the court must adjourn the application until the driver is found guilty of charges in relation to vehicle related offences committed on at least 3 occasions within the prescribed period.
- ‘(3) However, if the application relates to at least 1 vehicle related offence of which the driver has been found guilty, the court may, if satisfied on application that the motor vehicle should be impounded to stop the commission of another vehicle related offence, order that the motor vehicle be impounded for a further period of not more than 3 months.

‘59LM Orders on application for forfeiture order if motorbike noise order offence not decided

- ‘(1) This section applies if a police officer applies to a relevant court under section 59LK for a forfeiture order for a motorbike and any proceeding on a charge of a motorbike

noise order offence in relation to which the application is made has not been decided.

- ‘(2) If the driver of the motorbike has not been found guilty of motorbike noise order offences in relation to offences committed on 2 occasions within the prescribed period, the court must adjourn the application until the driver has been found guilty of charges in relation to motorbike noise order offences committed on at least 2 occasions within the prescribed period.
- ‘(3) However, if the application relates to at least 1 motorbike noise order offence of which the driver has been found guilty, the court may make an order under subsection (4) if satisfied the motorbike should be impounded to stop the commission of another motorbike noise order offence.
- ‘(4) The court may order that the motorbike be impounded, or continue to be impounded, for a stated period of not more than 3 months.

‘Division 3 Advice of date of hearing

‘59LN Advice to owner of date of hearing

- ‘(1) As soon as reasonably practicable after a date is set for the hearing of an application for a forfeiture order in relation to a motor vehicle, a police officer must give the driver of the motor vehicle and each owner of the motor vehicle written notice of the date, time and place of the hearing.
- ‘(2) If the driver or owner is a child and it is reasonably practicable to do so, notice must also be given to the child’s parent or guardian.

‘Part 5 Deciding applications

‘Division 1 Where and when an application may be heard

‘59LO Where application is to be decided

‘An application for an impounding order or a forfeiture order must be heard and decided by the relevant court.

‘59LP When application to be heard—vehicle related offence

- ‘(1) An application for an impounding 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 2 vehicle related offences committed on 2 occasions within the prescribed period.
- ‘(2) An 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 3 vehicle related offences committed on 3 occasions within the prescribed period.

‘59LQ When application to be heard—motorbike noise order offence

- ‘(1) An application for an impounding order for a motorbike noise order offence must be heard and decided as soon as practicable after the person to whom the application relates is found guilty of 1 motorbike noise order offence.
- ‘(2) An application for a forfeiture order for a motorbike noise order offence must be heard and decided as soon as practicable after the person to whom the application relates is found guilty of 2 motorbike noise order offences committed on 2 occasions within the prescribed period.

‘Division 2 Consideration of application if made for vehicle related offence

‘59LR Consideration of application for impounding order

- ‘(1) On the hearing of the application for an impounding order for a vehicle related offence, the relevant court may, if the driver of the motor vehicle has been found guilty of a vehicle related offence committed on 2 occasions within the prescribed period, order that the motor vehicle be impounded for a stated period of not more than 3 months.

Note—

Section 59O makes provision for enforcing the order.

- ‘(2) Also, if the driver of the motor vehicle was a child when the last offence was committed, the relevant court must consider whether to make a costs order under section 59LW.¹⁷
- ‘(3) Despite subsection (1), the relevant court may make an order under section 59LV for the performance by the driver of the motor vehicle of community service as decided by the court.
- ‘(4) Also, if an owner of the motor vehicle raises the defence mentioned in section 59M and the relevant court is satisfied the defence has been made out, the court may order that the motor vehicle be released to the owner.

‘59LS Consideration of application for forfeiture order

- ‘(1) On the hearing of an application for a forfeiture order for a vehicle related offence, the relevant court may order that the motor vehicle be forfeited to the State or impounded for the period, of not more than 3 months, fixed by the court if the driver of the motor vehicle has been found guilty of a vehicle related offence committed on 3 occasions within the prescribed period.

Note—

Section 59O makes provision for enforcing the order.

17 Section 59LW (Costs order for child drivers)

- ‘(2) If the relevant court can not make the order under subsection (1) but can make an impounding order under section 59LR, the court may order, under section 59LR, that the motor vehicle be impounded for 3 months or make another order the court may make under that section.
- ‘(3) Also, if the driver of the motor vehicle was a child when the last offence was committed, the relevant court must consider whether to make a costs order under section 59LW.¹⁸
- ‘(4) Despite subsection (1), the relevant court may make an order under section 59LV for the performance by the driver of the motor vehicle of community service as decided by the court.
- ‘(5) Also, if an owner of the motor vehicle raises the defence mentioned in section 59M and the relevant court is satisfied the defence has been made out, the court may order that the motor vehicle be released to the owner.
- ‘(6) On the making of a forfeiture order for a motor vehicle—
 - (a) the vehicle becomes the property of the State; and
 - (b) any right of a person to enforce a charge or other security interest registered under the *Motor Vehicles and Boats Securities Act 1986* against a person other than the State by taking possession of the vehicle is extinguished.

‘Division 3 Consideration of application if made for motorbike noise order offence

‘59LT Consideration of application for impounding order

- ‘(1) On the hearing of an application for an impounding order for a motorbike noise order offence, the relevant court may order that the motorbike be impounded for 3 months if the driver of the motorbike has been found guilty of a motorbike noise order offence.

18 Section 59LW (Costs order for child drivers)

- ‘(2) Also, if the driver of the motorbike was a child when the last offence was committed, the relevant court must consider whether to make a costs order under section 59LW.
- ‘(3) Despite subsection (1), the relevant court may make an order under section 59LV for the performance by the driver of the motorbike of community service as decided by the court.
- ‘(4) Also, if an owner of the motorbike raises the defence mentioned in section 59M and the relevant court is satisfied the defence has been made out, the court may order that the motorbike be released to the owner.

‘59LU Consideration of application for forfeiture order

- ‘(1) On the hearing of an application for a forfeiture order for a motorbike noise order offence, the relevant court may order that the motorbike be forfeited to the State or impounded for the period, of not more than 3 months, fixed by the court if the driver of the motorbike has been found guilty of a motorbike noise order offence committed on 2 occasions within the prescribed period.
- ‘(2) If the relevant court can not make the order under subsection (1) but can make an impounding order under section 59LT, the court may order, under section 59LT, that the motorbike be impounded for 3 months or make another order the court may make under that section.
- ‘(3) Also, if the driver of the motorbike was a child when the last offence was committed, the relevant court must consider whether to make a costs order under section 59LW.¹⁹
- ‘(4) Despite subsection (1), the relevant court may make an order under section 59LV for the performance by the driver of the motorbike of community service as decided by the court.
- ‘(5) Also, if an owner of the motorbike raises the defence mentioned in section 59M and the relevant court is satisfied the defence has been made out, the court may order that the motorbike be released to the owner.

¹⁹ Section 59LW (Costs order for child drivers)

- ‘(6) On the making of a forfeiture order for a motorbike—
- (a) the motorbike becomes the property of the State; and
 - (b) any right of a person to enforce a charge or other security interest registered under the *Motor Vehicles and Boats Securities Act 1986* against a person other than the State by taking possession of the motorbike is extinguished.

‘Division 4 Other provisions about applications and orders

‘Subdivision 1 Community service orders

‘59LV Community service instead of impounding or forfeiture order

- ‘(1) This section applies if—
- (a) the relevant court is satisfied impounding or forfeiting a motor vehicle will cause severe financial or physical hardship to an owner or usual driver of the motor vehicle; and
 - (b) the driver to whom the application relates was an adult when he or she committed the last offence in relation to which the application is made.
- ‘(2) The court may, instead of ordering the impounding or forfeiture of the motor vehicle, order the driver to perform not more than 240 hours community service.
- ‘(3) An order made under subsection (2)—
- (a) is taken to be an order made under the *Penalties and Sentences Act 1992* for the performance of community service under a fine option order under that Act; and
 - (b) is taken to have been made in the proceeding for the vehicle related offence or motorbike noise order offence giving rise to the application for the impounding order or forfeiture order.

‘Subdivision 2 Costs orders for child drivers

‘59LW Costs order for child drivers

- ‘(1) This section applies if the relevant court makes an impounding order or a forfeiture order and the driver of the motor vehicle was a child when he or she committed the last offence in relation to which the order is made.
- ‘(2) The relevant court must consider whether the child has the capacity to pay the costs of removing and keeping the motor vehicle and, if the relevant court considers the child has the capacity to pay those costs, may order the child to pay the costs of removing and keeping the motor vehicle.
- ‘(3) If, after considering any submissions made by the child or the child’s parent, the relevant court considers the child does not have the capacity to pay the costs of removing and keeping the motor vehicle, the relevant court may call on the child’s parent under applied section 258 to show cause under applied section 259, as directed by the court, why the parent should not pay the costs of removing and keeping the motor vehicle.
- ‘(4) The relevant court may, under applied section 259(5), order the child’s parent to pay the costs of removing and keeping the motor vehicle.
- ‘(5) In this section—

applied section 258 means the *Juvenile Justice Act 1992*, section 258, as applied by section 59LX.

applied section 259 means the *Juvenile Justice Act 1992*, section 259, as applied by section 59LX.

parent includes a guardian other than the chief executive (child safety).

‘59LX Application of applied sections for s 59LW

- ‘(1) This section states how applied sections 258 and 259 apply for section 59LW.
- ‘(2) Applied section 258 applies as if—

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- (a) subsections (1) and (9) were omitted; and
 - (b) a reference in the applied section—
 - (i) to compensation were a reference to the costs of removing and keeping a motor vehicle impounded under this chapter; and
 - (ii) to the prosecution were a reference to the applicant for the impounding order or forfeiture order.
- ‘(3) Applied section 259 applies as if—
- (a) a reference in the applied section—
 - (i) to compensation were a reference to the costs of removing and keeping a motor vehicle impounded under this chapter; and
 - (ii) to the prosecution were a reference to the applicant for the impounding order or forfeiture; and
 - (b) a reference in applied section 259(4) to a show cause hearing is a reference to the hearing and determination of the issue of whether a parent should be ordered, under applied section 259(5), to pay the costs of removing and keeping a motor vehicle impounded under this chapter; and
 - (c) applied section 259(4), to the extent it mentions the director of public prosecutions, does not apply; and
 - (d) the expression in applied section 259(5) ‘of the matters mentioned in section 258(1)(a), (b) and (c)’ read instead as ‘that the parent should be ordered to pay the costs of removing and keeping a motor vehicle impounded under the *Police Powers and Responsibilities Act 2000*, chapter 2B’.
- ‘(4) Also, in relation to an order made under applied section 259(5)—
- (a) section 260 of that Act does not apply to the order; and

- (b) the order is instead taken to be an order fining a person for an offence for the purposes of the *State Penalties Enforcement Act 1999*, section 34.²⁰

‘Subdivision 3 Offences

‘59LY Offence to remove vehicle from holding yard

- ‘(1) A person must not unlawfully remove an impounded motor vehicle from a holding yard.

Maximum penalty—40 penalty units.

- ‘(2) For subsection (1), it does not matter how the motor vehicle came to be in the holding yard.

‘59LZ Offence to modify, sell or dispose of motor vehicle before application decided

- ‘(1) This section applies if a motor vehicle that is the subject of an application for an impounding order or a forfeiture order is released to the owner of the motor vehicle before the application is decided.

- ‘(2) The owner of the motor vehicle must not modify or sell or otherwise dispose of the motor vehicle until the application for the impounding order or forfeiture order is decided or otherwise ends.

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

8 Insertion of new s 59MA

After section 59M—

insert—

²⁰ *State Penalties Enforcement Act 1999*, section 34 (Default in paying fine, penalty or other amount under court order)

‘59MA Counting the occasions

- ‘(1) For sections 59LA, 59LD, 59LJ to 59LM, 59LP to 59LS and 59LU, for an occasion of the commission of an offence to be counted in addition to another occasion counted, an occasion must be a separate occasion, that is, an event or series of events that happened on an occasion separate to the event or series of events making up the other occasion.
- ‘(2) However, if a series of events that would, apart from this subsection, be treated as a single occasion of the commission of an offence under subsection (1) includes the intervention in any way by a police officer between the commission of 1 vehicle related offence and another vehicle related offence or 1 motorbike noise offence and another motorbike noise offence in the course of the events, the events that happen after the police officer’s intervention must be treated as a separate occasion.

Example for subsection (2)—

A driver commits a vehicle related offence at 10p.m. on 1 January. The driver is stopped by a police officer. Before the driver can be given a notice to appear in relation to the vehicle related offence, the driver continues to commit the offence but using another motor vehicle. A police officer again stops the driver. The police officer impounds both motor vehicles. Because a police officer has intervened between the happening of the first and second offences, the occasions must be treated as 2 separate occasions for this chapter.

- ‘(3) In sections 59LA, 59LD, 59LE, 59LJ and 59LK, a reference to a vehicle related offence or a motorbike noise order offence committed on a previous occasion is a reference to a vehicle related offence or motorbike noise order offence committed on an occasion before the occasion on which the initiating impoundment offence was committed.
- ‘(4) Subject to subsections (1) to (3), for a decision under sections 59LE, 59LG, 59LJ to 59LM, 59LP to 59LS and 59LU of whether or not a person has, or has previously, been charged with, or found guilty of, a vehicle related offence or motorbike noise order offence committed on a previous occasion or any occasion or occasions, the following do not matter—
- (a) whether or not any finding of guilt relied on relates to a charge heard and decided together with another charge

or other charges relating to another or other findings of guilt being relied on;

- (b) whether or not findings of guilt relied on relate to charges that were heard and decided in the order in which the occasions of the commission of offences to which they related happened;
- (c) whether or not any occasion of the commission of an offence, or any charge or any finding of guilt, relied on happened before or after any occasion of the commission of an offence, charge or finding of guilt also relied on.

Example—

An offender commits vehicle related offences on 1 January (offence 1), 1 May (offence 2) and 1 June (offence 3). The offender is charged with offence 1 on 1 January, offence 2 on 1 May and offence 3 on 1 June. The offender is convicted of offence 3 on 15 June and offences 1 and 2 on 1 October. When a court or magistrate considers the application for impoundment or forfeiture on 1 December, for the purpose of counting the occasions mentioned in subsection (1), there are 3 occasions the court may rely on to make an order.

- ‘(5) For a decision under section 59LR, 59LS, 59LT or 59LU, the following do not matter—
 - (a) whether or not any finding of guilt relied on is for an offence in relation to which the application was originally started;

Example for paragraph (a)—

An application may relate to particular vehicle related offences but before the application is decided, the driver is found guilty of another vehicle related offence. The court may rely on the latter finding of guilt when making an order under the sections mentioned.

- (b) whether or not any finding of guilt relied on in an application relates to an offence committed before or after the application was started.’

9 Amendment of s 59N (Appeal)

- (1) Section 59N(1), ‘under section 59L(2)(b)’—

omit, insert—

‘under section 59LV for the performance of community service’.

- (2) Section 59N(2), from ‘Magistrates’ to ‘division’—
omit, insert—
‘relevant court or magistrate under this chapter’.

10 Amendment of s 59O (Powers for enforcing court order)

- (1) Section 59O(1)—
omit, insert—

‘(1) This section applies if a relevant court, on an application under this chapter for an impounding order or forfeiture order for a motor vehicle, makes an impounding order or a forfeiture order for the motor vehicle.’.

- (2) Section 59O(2), ‘the vehicle’—
omit, insert—
‘the motor vehicle’.

11 Replacement of s 59P (Who must pay costs of impounding)

Section 59P—
omit, insert—

‘Part 6 Other provisions

‘Division 1 Liability for cost of impounding

‘59P State’s liability to pay costs of impounding

- ‘(1) Unless otherwise expressly provided by this division, the State is liable to pay the costs of removing a motor vehicle impounded under this chapter and keeping it for the initial impoundment period.

- ‘(2) Also, the State is liable to pay the costs of removing an impounded vehicle and keeping it if the driver of the motor vehicle is found not guilty of the offence for which the motor vehicle was impounded or the proceeding for the offence was withdrawn.

‘59PA Liability to pay costs of impounding—adult driver

- ‘(1) This section applies in relation to a motor vehicle impounded for a prescribed offence or a motorbike noise direction offence if the driver of the motor vehicle was an adult when he or she committed the offence for which it was impounded.
- ‘(2) The driver of the motor vehicle is liable to pay the costs of removing and keeping the motor vehicle.
- ‘(3) If the driver is found guilty of the prescribed offence or motorbike noise direction offence, any costs paid by the State under section 59P(1) or by someone else on the driver’s behalf become a debt payable to the State or other person by the driver.

‘59PB Liability to pay costs of impounding—child driver

- ‘(1) This section applies in relation to a motor vehicle impounded 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.
- ‘(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 and keeping the motor vehicle if the relevant court orders under section 59LW that the child pay the costs; or
- (b) if the relevant court orders, under that section, the child’s parent to pay the costs of removing and keeping the motor vehicle under applied section 259, the child’s parent is liable to pay the costs of removing and keeping the motor vehicle.

- ‘(3) If the relevant court orders the child to pay the costs of removing and keeping the motor vehicle, any costs paid by the State under section 59P(1) become a debt payable to the State by the child.
- ‘(4) If the relevant court orders the child’s parent or guardian to pay the costs of removing and keeping the motor vehicle, any costs paid by the State under section 59P(1) become a debt payable to the State by the child’s parent or guardian.

‘59PC Payment of costs if motor vehicle not recovered

- ‘(1) This section applies if a person who is entitled to recover a motor vehicle after a period of impoundment ends fails to recover the motor vehicle after the period ends.

- ‘(2) If—

- (a) before the period of impoundment ends, the owner was personally given an impounding notice for the motor vehicle; and
- (b) the owner was the driver when the vehicle was impounded;

the owner is liable to pay the costs of keeping the motor vehicle for each day after the period of impounding ends, whether or not the driver is found guilty of the offence for which the vehicle is impounded.

- ‘(3) If—

- (a) before the period of impoundment ends, the owner was personally given an impounding notice for the motor vehicle; and
- (b) the owner was not the driver of the motor vehicle when it was impounded;

the owner is liable to pay the costs of keeping the vehicle for each day that is more than 2 business days after the owner is given the impounding notice, whether or not the driver is found guilty of the offence for which the vehicle is impounded.

- ‘(4) If, after the period of impoundment ends, the owner was personally given an impounding notice for the motor vehicle, the owner is liable to pay the costs of keeping the motor vehicle for each day that is more than 2 business days after the owner is given the impounding notice, whether or not the owner was the driver and whether or not the driver is found guilty of the offence for which the vehicle is impounded.
- ‘(5) If the owner was not the driver of the motor vehicle and pays the costs of keeping the motor vehicle as required under subsection (2), (3) or (4), the owner may recover the costs paid from the driver as a debt.

‘59PD Registration of costs under State Penalties Enforcement Act 1999

- ‘(1) If an adult who is liable to pay costs under this division fails to pay the costs, the commissioner may give particulars of the costs to the registrar under the *State Penalties Enforcement Act 1999* for registration under that Act as if—
 - (a) the commissioner were the registrar of a court; and
 - (b) the particulars were particulars of a fine imposed by a court and the amount of the fine were unpaid after the time allowed by the court for payment.
- ‘(2) The registrar must register the particulars under the *State Penalties Enforcement Act 1999*, section 34.²¹
- ‘(3) For this section, the adult who is liable to pay costs under this division fails to pay the costs if—
 - (a) the commissioner obtains an order for payment of costs against the person; and
 - (b) the commissioner gives the person a copy of the order and a letter of demand for payment of the costs; and

²¹ *State Penalties Enforcement Act 1999*, section 34 (Default in paying fine, penalty or other amount under court order)

- (c) the person fails to pay the costs within 28 days after receiving the copy of the order and the letter of demand, or the longer period agreed to by the commissioner.

‘Division 2 Release of impounded vehicle’.

12 Replacement of ss 59Q-59W

Sections 59Q to 59W—

omit, insert—

‘59Q Release of motor vehicle impounded under section 59F

- ‘(1) This section applies if an impounding notice under section 59J or 59K was given to a person.
- ‘(2) When the initial impoundment period for which the motor vehicle is impounded ends, the owner of the motor vehicle is entitled to recover the motor vehicle from the holding yard at which it is kept whether or not the State has paid the costs of removing the motor vehicle to, and keeping it at, the holding yard.
- ‘(3) At the request of the owner, the person holding the motor vehicle must release the motor vehicle to the owner, or a person appointed in writing by the owner, at the first reasonably practicable opportunity, during business hours, after the request is made.
- ‘(4) In this section—
- business hours* means 8a.m to 5p.m. on any day.

‘59R Release of motor vehicle if driver found not guilty etc.

‘If a driver is found not guilty of the prescribed offence or the proceeding is discontinued, the motor vehicle must be released to the owner as soon as reasonably practicable if it is impounded under this chapter.

**‘Division 3 Sale, transfer or disposal of
impounded or forfeited motor
vehicle**

**‘59S Sale of motor vehicle if not recovered after
impounding ends**

- ‘(1) If, within 2 months after a period of impounding ends, the owner of the motor vehicle does not recover it, 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.
- ‘(2) Notice of the proposed sale or disposal must be given by advertisement in a newspaper circulating in the locality where the vehicle was impounded.
- ‘(3) Also, the commissioner must give written notice of the proposed sale or disposal of the motor vehicle to the owner.

**‘59T Voluntary transfer of ownership of motor vehicle to
State**

- ‘(1) This section applies despite section 59LZ.

Note—

Under section 59LZ it is an offence for the owner of a motor vehicle that is the subject of an impounding order or forfeiture order application to modify, sell or otherwise dispose of the vehicle before the application is decided.

- ‘(2) The owner of a motor vehicle to which section 59LZ applies may agree to transfer ownership of the motor vehicle to the State.
- ‘(3) The agreement must be written and witnessed by a person who may witness a statutory declaration.
- ‘(4) If the State agrees in writing to the transfer of the motor vehicle—
 - (a) the motor vehicle becomes the property of the State; and

- (b) the commissioner may sell or dispose of the motor vehicle and anything in or on it in the way the commissioner considers appropriate.

‘59U Disposal of forfeited motor vehicle

‘The commissioner may dispose of a motor vehicle forfeited to the State under this chapter in the way the commissioner considers appropriate, including by selling it.

‘59V Application of proceeds of sale

- ‘(1) This section applies if the commissioner decides to sell a motor vehicle under section 59S or 59U.
- ‘(2) The proceeds of the sale are to be applied in the following order—
 - (a) in payment of the expenses of the sale;
 - (b) in payment of the costs of removing and keeping the motor vehicle and for searching registers for giving notice of the motor vehicle’s impounding;
 - (c) if there is an amount owing to a person under a security interest registered for the motor vehicle under the *Motor Vehicles and Boats Securities Act 1986*—in payment of the amount owing to the holder of the security interest;
 - (d) if the motor vehicle is sold under section 59S—in payment of any balance to the owner;
 - (e) if the motor vehicle is sold under section 59U—in payment to the consolidated fund.

‘Division 4 Other provisions

‘59W Protection from liability

- ‘(1) A police officer acting in good faith and without negligence is not liable for any damage, loss or depreciation to a motor vehicle during the impounding of the motor vehicle.

- ‘(2) If subsection (1) prevents liability attaching to a police officer, liability instead attaches to the State.
- ‘(3) Also, if a police officer signs a towing authority under section 59I for the motor vehicle, the State is not liable for any damage, loss or depreciation to the motor vehicle while it is being moved under the towing authority and while it is impounded in the holding yard of the person authorised under the towing authority to tow the motor vehicle.’.

13 Amendment of s 59X (Third party protection from forfeiture order)

- (1) Section 59X(1), ‘the vehicle’—
omit, insert—
‘the motor vehicle’.
- (2) Section 59X(1), ‘subsection (5)’—
omit, insert—
‘subsection (6)’.
- (3) Section 59X(4), ‘subsection (5)’—
omit, insert—
‘subsection (6)’.
- (4) Section 59X(5) and (6), ‘the vehicle’—
omit, insert—
‘the motor vehicle’.
- (5) Section 59X(7)(a)—
omit, insert—
‘(a) the applicant must give notice of the making of the application to the commissioner; and’.
- (6) Section 59X(2) and (3), 59X(4) to (7), as amended, and 59X(8)—
renumber as section 59X(3) to (9).
- (7) Section 59X—

insert—

- ‘(2) Subsection (1) applies even though the value of the motor vehicle may be more than the maximum amount that may be claimed in a personal action in the civil jurisdiction of a Magistrates Court.’

14 Insertion of new ch 2C and ch 2D, pts 1 and 2

After section 59X—

insert—

‘Chapter 2C Vehicle removal powers generally

‘Division 1 Seizing or moving vehicles

‘59Y Removal of vehicles from roads and other places

- ‘(1) A police officer may, in prescribed circumstances, seize and move a vehicle, or arrange for it to be moved, to another place for safe keeping.
- ‘(2) In the prescribed circumstances mentioned in section 59Z(c), (d) or (e), the police officer may, without seizing a vehicle, instead move the vehicle, or arrange for it to be moved, to another place where it can be located by its driver.
- ‘(3) Subsections (1) and (2) do not prevent the person in control of the vehicle taking possession of it, with the consent of the police officer, before or while it is being moved.

‘59Z Prescribed circumstances for s 59Y

‘The prescribed circumstances for section 59Y are as follows—

- (a) the person in control of a vehicle has been arrested;
- (b) a police officer reasonably suspects the person who was last in control of a vehicle has abandoned it;

- (c) a police officer—
 - (i) reasonably suspects a vehicle has been involved in a relevant vehicle incident; and
 - (ii) reasonably believes it is necessary to keep the vehicle for completing inquiries and investigations into the incident;
- (d) a police officer reasonably suspects a vehicle has been left on a road unattended, temporarily or otherwise, and because of the time for which it has been left unattended, the way it has been left unattended, or the place, condition, or circumstances in which it has been left unattended, its presence on the road—
 - (i) may be dangerous to others; or
 - (ii) may prevent or hinder the lawful use by others of the road or a part of the road;
- (e) a police officer reasonably suspects a vehicle has been left in circumstances that are an offence against any of the following Acts and the person in control of the vehicle can not be easily located or fails to comply with a direction of the police officer to move the vehicle immediately—
 - the Road Use Management Act
 - the *Brisbane Forest Park Act 1977*
 - the *Recreation Areas Management Act 1988*
 - the *Nature Conservation Act 1992*.

‘Division 2 Other provisions about seizure

‘59ZA Steps after seizing vehicle

- ‘(1) As soon as practicable, but within 14 days after seizing a vehicle under this chapter, the police officer who seized it must give or arrange for another police officer to give to the owner, if known, a notice stating—
 - (a) how the owner may recover the vehicle; and

- (b) that, before the vehicle may be recovered, the person—
 - (i) may be required to produce satisfactory evidence of the ownership of the vehicle; and
 - (ii) must pay the costs of removing and keeping the vehicle; and
 - (c) the penalty for unlawfully removing the vehicle from the place at which it is held.
- ‘(2) If practicable, the notice must be given to the owner personally.
- ‘(3) If it is not practicable to comply with subsection (2), the notice may be given by advertisement in a newspaper circulating generally in the locality in which the vehicle was found.
- ‘(4) A requirement under this Act to return the vehicle applies subject to section 59ZB.

‘59ZB Recovery of seized vehicle

- ‘(1) If, within 1 month after notice of the seizure of a vehicle under this chapter is given, the owner does not recover the vehicle, the commissioner may sell the vehicle and anything in or on it by public auction or dispose of it in the way the commissioner considers appropriate.
- ‘(2) Notice of the proposed sale must be given by advertisement in a newspaper circulating in the locality where the vehicle was found.

‘59ZC Application of proceeds of sale

- ‘(1) The proceeds of the sale of a vehicle under section 59ZC must be applied in the following order—
- (a) in payment of the expenses of the sale;
 - (b) in payment of the cost of removing and keeping the vehicle and giving notice of its seizure;
 - (c) in payment of any balance to the owner.

- ‘(2) Compensation is not recoverable against the State for a payment under this section.

‘Division 3 General towing authority

‘59ZD Police officer may authorise tow after seizure under any Act

- ‘(1) This section applies if—
- (a) a police officer seizes a vehicle under an Act; or
 - (b) the owner of a damaged vehicle, or the owner’s agent, is away from the vehicle or incapacitated.
- ‘(2) A police officer may sign a towing authority for the vehicle.
- ‘(3) The driver of a tow truck towing the vehicle under the towing authority must tow the vehicle to—
- (a) the nearest holding yard available to the driver; or
 - (b) if directed by a police officer, the nearest police establishment or other place directed by the police officer.
- ‘(4) A person must not unlawfully remove a vehicle from the place to which it is towed under subsection (3).
- Maximum penalty for subsection (4)—40 penalty units.
- ‘(5) In this section—
- towing authority*** means—
- (a) a towing authority under the *Tow Truck Act 1973*; or
 - (b) another document authorising a person to tow a vehicle.

‘Chapter 2D Powers relating to animals

‘Part 1 Interpretation

‘59ZE Definition for ch 2D

‘In this chapter—

person in charge, of an animal, means—

- (a) a person who owns or has a lease, licence or other proprietary interest in the animal; or
- (b) a person who has care, control or custody of the animal; or
- (c) a person who is employing or has engaged someone else who has care, control or custody of the animal and the care, control or custody is within the scope of the employment or engagement.

‘Part 2 General powers

‘59ZF Power of inquiry into road use contraventions involving an animal

- ‘(1) It is lawful for a police officer to make any reasonably necessary inquiry, investigation, inspection, examination, or test for establishing whether or not an offence against the Road Use Management Act has been committed involving an animal.
- ‘(2) Also, it is lawful for a police officer to arrange for someone else to make any reasonably necessary inspection, examination, or test for establishing whether or not an offence against the Road Use Management Act has been committed involving an animal.

‘59ZG Power to require information about identity of person in charge of animal

- ‘(1) This section applies if a person alleges to a police officer, or a police officer reasonably suspects, a contravention of the Road Use Management Act involving an animal has been committed.
- ‘(2) A police officer may require any of the following to give to the police officer information that will identify or help identify the person who was in charge of the animal when the contravention happened—
- (a) an owner of the animal;
 - (b) a person in possession of the animal;
 - (c) a person who may reasonably be expected to be able to give the information.

Note—

Failure to comply with a requirement under this section is an offence against section 445.

‘59ZH Power of entry for ss 59ZF–59ZG

- ‘(1) For sections 59ZF and 59ZG, a police officer may enter a place and stay on the place for the time reasonably necessary for the purpose of the entry.
- ‘(2) However, the police officer may use reasonably necessary force to enter the place only if the entry is authorised by a police officer of at least the rank of inspector.

‘59ZI Power for regulating traffic

- ‘(1) A police officer may give to a person in charge of an animal any direction, signal or order the police officer reasonably considers necessary for the safe and effective regulation of traffic on the road.
- ‘(2) If a police officer reasonably suspects an emergency exists or it is otherwise necessary to temporarily prohibit, divert or direct traffic, the police officer may take any action and give or cause to be given any direction, signal or order to a person

in charge of an animal the police officer reasonably considers necessary or desirable to control traffic on a road.

- ‘(3) The direction, signal or order may include a direction to the person in charge of an animal to move the animal as soon as practicable.’.

15 Amendment of s 65B (Power to give animal welfare direction)

- (1) Section 65B(2)(a) to (d)—

omit, insert—

- ‘(a) a person in charge of the animal; or
(b) a person whom the police officer reasonably suspects is a person in charge of the animal; or’.

- (2) Section 65B(2)(e)—

renumber as section 65B(2)(c).

- (3) Section 65B(3), ‘Despite subsection (2)(a)’—

omit, insert—

‘Also’.

16 Amendment of s 68 (Search warrant application)

Section 68(1)—

omit, insert—

- ‘(1) A police officer may apply for a warrant to enter and search a place (a *search warrant*)—
- (a) to obtain evidence of the commission of an offence; or
(b) to obtain evidence that may be confiscation related evidence in relation to a confiscation related activity; or
(c) to find a vehicle that is to be impounded under section 59F.²²’.

²² Section 59F (Impounding motor vehicles)

17 Replacement of s 358 (Application of pt 3)

Section 358—

omit, insert—

‘Division 1 Noise abatement direction

‘358 Application of pt 3

- ‘(1) This part applies to an environmental nuisance caused by noise of a kind mentioned in section 359A(1)(b), 359B(1)(b) or 359C(1)(b) or (2)(b) that is audible at or near any residential or commercial premises and is excessive in the circumstances.
- ‘(2) However, this part does not apply to an environmental nuisance caused by noise emitted from a place—
- (a) while being used for an open-air concert or commercial entertainment; or
 - (b) by a public meeting under a permit under a law authorising the amplification or reproduction of sound by—
 - (i) any electrical or mechanical appliance, apparatus or device; or
 - (ii) another way; or
 - (c) while the place is being used by motor vehicles under a permit under a law.’.

18 Insertion of new ss 359A–359C

After section 359—

insert—

‘359A How to decide what is excessive noise—noise emitted from a place

- ‘(1) This section applies if—
- (a) a complaint has been made about noise; and
 - (b) the complaint relates to noise emitted from a place by—

- (i) a musical instrument; or
 - (ii) an appliance for electronically producing or amplifying music or other sounds; or
 - (iii) a motor vehicle, other than a motor vehicle on a road; or
 - (iv) a gathering of people for a meeting, party, celebration or similar occasion; and
- (c) a police officer attending in response to the complaint is reasonably satisfied the noise complained of is clearly audible at or near the complainant's residential or commercial premises; and
- (d) section 359B does not apply.
- '(2) In deciding, for this part, whether the noise is excessive in the circumstances, the police officer may have regard to any relevant matters, including—
- (a) the degree of interference the noise is causing or is likely to cause to the conduct of activities ordinarily carried out in the vicinity of the place from which the noise is being emitted; and
 - (b) the nature of the lawful uses permitted for premises in the vicinity of the place from which the noise is being emitted.

'359B How to decide what is excessive noise—noise emitted by motorbike driven on a place that is not a road

- '(1) This section applies if—
- (a) a complaint has been made about noise; and
 - (b) the complaint relates to noise emitted by a motorbike being driven on a place that is not a road; and
 - (c) a police officer attending in response to the complaint is reasonably satisfied the noise complained of is clearly audible at or near the complainant's residential or commercial premises.

- ‘(2) In deciding, for this part, whether the noise is excessive in the circumstances, the police officer may have regard to any relevant matters, including—
- (a) the degree of interference the noise is causing, or is likely to cause, to the conduct of activities ordinarily carried out in the vicinity of the place from which the noise is being emitted; and
 - (b) the nature of the lawful uses permitted for premises in the vicinity of the place from which the noise is being emitted.

‘359C How to decide what is excessive noise—noise emitted in other particular circumstances

- ‘(1) This section applies if—
- (a) a complaint is made about noise; and
 - (b) the complaint relates to noise that—
 - (i) is emitted from a motor vehicle on a road or in a public place; and
 - (ii) is emitted by an appliance for electronically producing or amplifying music or other sounds including, for example, by a radio, CD player or other similar equipment for producing or amplifying music or other sounds that is in the motor vehicle; and
 - (c) the police officer attending in response to the complaint is reasonably satisfied the noise complained of is clearly audible at or near the complainant’s residential or commercial premises.
- ‘(2) This section also applies if—
- (a) a police officer hears noise; and
 - (b) the noise is emitted from a motor vehicle in the circumstances mentioned in subsection (1)(b); and
 - (c) the police officer is satisfied that the noise is clearly audible at or near residential or commercial premises.

- ‘(3) In deciding, for this part, whether noise is excessive in the circumstances, the police officer may have regard to any relevant matters, including the degree of interference or annoyance the noise is causing, or is likely to cause, to persons in the vicinity of the road or public place.

Example—

The person may be causing interference or annoyance to patrons of a motel by continually driving past the motel with the volume of a radio in the car at an excessive level.’.

19 Replacement of s 360 (Powers of police officers on investigation of excessive noise)

Section 360—

omit, insert—

‘360 Powers of police officer to deal with excessive noise

- ‘(1) This section applies if a police officer is reasonably satisfied that noise to which this part applies is excessive in the circumstances.
- ‘(2) The police officer may enter the place without warrant.
- ‘(3) The police officer must give the person responsible for the noise a direction (*noise abatement direction*)—
- (a) orally or in writing; or
 - (b) if the direction relates to noise emitted by a motorbike being driven on a place other than a road—by a notice in the approved form.
- ‘(4) Also, if the person to whom the direction is given under subsection (3)(b) is a child, a copy of the notice must be given to the child’s parent or guardian if it is reasonably practicable to do so.
- ‘(5) A direction given under subsection (3)(a) must direct any person responsible for the noise, or for permitting the noise to be caused, to immediately abate the excessive noise from the place.

- ‘(6) A notice given to a person under subsection (3)(b) must direct the driver to immediately abate the excessive noise from the motorbike and include—
- (a) the time the notice was given; and
 - (b) the name and other particulars of the person given the direction; and
 - (c) the particulars necessary to properly identify the motorbike; and
 - (d) a general description of the place or, if the noise abatement direction relates only to a part of the place, the part of the place to which the direction relates.
- ‘(7) Unless otherwise stated, the noise abatement direction applies to the whole of the place to which it relates.
- ‘(8) However, a notice given under subsection (3)(b) may be limited to a stated part of a place if the police officer giving the notice is satisfied, having regard, for example, to the size or topography of the place—
- (a) the driving of the motorbike on the stated part of the place is appropriate; and
 - (b) another complaint about noise emitted from the motorbike is unlikely to be made if the motorbike is driven on the place but not on the part of the place stated in the notice.
- ‘(9) For subsection (5), persons responsible for noise include—
- (a) if the noise is being emitted from or by a motor vehicle—the person driving the motor vehicle; or
 - (b) if the noise is being emitted from another place—the person apparently in charge of the place.’.

20 Amendment of s 361 (Compliance with noise abatement direction)

- (1) Section 361(1)(b), from ‘relates’—
omit, insert—

‘relates or, if the direction relates only to a part of the place, the stated part of the place, for the noise abatement period.’.

- (2) Section 361(2), from ‘relates’—

omit, insert—

‘relates or, if the direction relates only to a part of the place, the stated part of the place, for the noise abatement period.’.

- (3) Section 361—

insert—

- ‘(4) In this section—

noise abatement period means—

- (a) for a noise abatement direction given in relation to a motorbike being used on a place that is not a road—48 hours after the direction is given; or
- (b) for any other noise abatement direction—12 hours after the direction is given.’.

21 Amendment of s 362 (Additional powers of police officers on later investigation)

- (1) Section 362(1)(b)—

omit, insert—

‘(b) within the noise abatement period as defined under section 361(4), a police officer is satisfied on further investigation that the police officer must again exercise the powers mentioned in section 360 about the same place or the same motor vehicle.’.

- (2) Section 362(2)(b)—

insert—

‘(iv) if it is a motorbike and section 59F applies—impound the motorbike under section 59F.²³’.

23 Section 59F (Impounding motor vehicles)

22 Amendment of s 365 (Recovery of costs of seizure etc.)

Section 365—

insert—

- ‘(2) Subsection (1) does not apply to costs incurred if, because of section 362(2)(b)(iv), a police officer impounds a motorbike under chapter 2B.

Note—

Chapter 2B, part 6 makes provision about who is liable to pay the costs of removing and keeping a motorbike impounded because of the exercise of powers under this part.’.

23 Insertion of new ch 9, pt 3, div 2

Chapter 9, part 3, after section 367—

insert—

‘Division 2 Noise abatement order

‘367A Noise abatement order—application for order

- ‘(1) This section applies if a person (the *respondent*)—
- (a) contravenes a noise abatement direction in relation to excessive noise emitted by a motorbike driven on a place other than a road; or
 - (b) is given 2 noise abatement directions within a period of 1 month in relation to excessive noise emitted by a motorbike and the directions both relate to the driving of the motorbike on the same place which is not a road.

Example for subsection (1)(b)—

The driver of a motorbike is given 2 noise abatement directions, one on 1 July and the other on 5 July. Both directions relate to excessive noise emitted by a motorbike when being driven on the same place. An application may be made under this section for a noise abatement order even though the person does not contravene either direction.

- ‘(2) A police officer may apply for an order that the driving of the motorbike by the respondent be restricted in the way requested in the application (a *noise abatement order*).

- ‘(3) The application must be made—
- (a) if the respondent contravened a noise abatement direction mentioned in subsection (1)(a)—within 48 hours after the contravention; or
 - (b) if the second of 2 noise abatement directions mentioned in subsection (1)(b) was given to the respondent—within 48 hours after the second direction was given.
- ‘(4) The application must be made to the relevant court in the approved form but may be made to a magistrate in the way provided under section 451²⁴ and subsection (4) of this section.
- ‘(5) If the application is properly made to a magistrate under section 451, the magistrate must—
- (a) order that a police officer may have the application brought on for hearing and decision in the relevant court and adjourn the application to that court; and
 - (b) give a copy of the application and the order to the clerk of the court of the relevant court.
- ‘(6) As soon as reasonably practicable after a date is set for hearing the application, a police officer must give notice of the application to—
- (a) the respondent; and
 - (b) if the respondent is not the owner of the motorbike—the owner of the motorbike; and
 - (c) if a person mentioned in paragraph (a) or (b) is a child, the child’s parent or guardian if it is reasonably practicable to do so; and
 - (d) if a person mentioned in paragraph (a), (b) or (c) is not the owner of the land on which the contravention happened, the owner of the land if it is reasonably practicable to do so.

²⁴ Section 451 (Obtaining warrants, orders and authorities, etc., by telephone or similar facility)

- ‘(7) The notice must be in the approved form and state—
- (a) the name and other particulars of the respondent; and
 - (b) the particulars necessary to properly identify the motorbike; and
 - (c) a description sufficient to identify the land on which the contravention happened and who owns the land; and
 - (d) that an application has been made to a stated court for an order to restrict the driving of a stated motorbike by the respondent in stated ways; and
 - (e) when and where the application is to be heard; and
 - (f) that if the respondent does not appear at the hearing, the application may be heard and decided in the respondent’s absence.

‘(8) The notice may be combined with another notice given under this Act.

‘(9) In this section—

Magistrates Court, for an application brought against a child, means a Childrens Court constituted by a magistrate.

relevant court means the Magistrates Court for the Magistrates Court district, or division of the district, in which the noise abatement order was contravened.

‘367B Noise abatement order—making the order

- ‘(1) The relevant court may make a noise abatement order against the respondent if satisfied that—
- (a) the respondent—
 - (i) has contravened a motorbike noise abatement direction; or
 - (ii) has been given 2 noise abatement directions in relation to excessive noise emitted by a motorbike and the directions both relate to the driving of a motorbike on the same place which is not a road; and
 - (b) section 367A has been complied with.

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- ‘(2) However, if the respondent has been charged with having committed an offence arising out of conduct on which the application is based and the proceeding on the charge has not been decided, the court must adjourn the application until the proceeding has been decided.
- ‘(3) The order must be in the approved form and state—
- (a) the name and address of the respondent; and
 - (b) the particulars necessary to properly identify the motorbike; and
 - (c) the period, of not more than 2 years, for which the order is in force; and
 - (d) a description sufficient to identify the land on which the contravention happened and who owns the land; and
 - (e) any conditions the court considers appropriate to impose on the respondent in relation to the driving of the motorbike.
- ‘(4) Without limiting subsection (3)(e), the order may include conditions restricting the use of the motorbike including, for example, any of the following conditions—
- (a) the hours of day during which the respondent may drive the motorbike on private property;
 - (b) the maximum length of time the respondent may drive the motorbike at any one time during those hours;
 - (c) any particular areas on private property that must be avoided by the respondent when driving the motorbike;
- Example for paragraph (c)—*
- The respondent must not drive the motorbike within 100m of the boundaries of neighbours.
- (d) the particular manoeuvres that must not be performed by the respondent when driving the motorbike.
- ‘(5) The respondent must not drive the motorbike in contravention of the noise abatement order.

Maximum penalty—40 penalty units.

- ‘(6) The owner of the motorbike must not knowingly permit the respondent to drive the motorbike in contravention of the noise abatement order.

Maximum penalty for subsection (6)—40 penalty units.

‘367C Noise abatement order—appeal against order

- ‘(1) An adult against whom a noise abatement order has been made may appeal against the order to the District Court within 28 days after the day the order is made.
- ‘(2) A child against whom a noise abatement order has been made may appeal against the order to the Childrens Court constituted by a judge within 28 days after the day the order is made.
- ‘(3) An appeal under subsection (1) or (2) is by way of rehearing from the start.
- ‘(4) A person may appeal against an order of the District Court or the Childrens Court constituted by a judge to the Court of Appeal within 28 days after the day the order is made.’.

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

Section 451(1), ‘mentioned in section 59H(6) or 59HA(6)’—
omit, insert—

‘under section 59LE(6), 59LF(6), 59LJ(6), 59LK(6), a noise abatement order’.

25 Insertion of new section 458A

After section 458—

insert—

‘458A Review of motorbike noise provisions

- ‘(1) As soon as practicable after the end of 1 year after the commencement of the *Police Powers and Responsibilities (Motorbike Noise) Amendment Act 2005*, the CMC must review the effectiveness of the motorbike noise provisions in

mitigating the emission of excessive noise from motorbikes being driven on places other than roads and prepare a report on the review.

- ‘(2) The conduct of the review and the preparation of the report is a function of the CMC for the *Crime and Misconduct Act 2001*.
- ‘(3) In the course of preparing the report, the CMC must consult with the Minister.
- ‘(4) The CMC must give a copy of the report to the Speaker for tabling in the Legislative Assembly.
- ‘(5) In this section—

motorbike noise provisions means—

- (a) chapter 2B, to the extent it applies to a motorbike impounded because of a motorbike noise direction offence or a motorbike noise order offence; and
- (b) chapter 9, part 3, to the extent it relates to the emission of excessive noise from a motorbike being driven on a place that is not a road.’.

26 Amendment of s 459 (Regulation-making power)

Section 459(2)—

omit, insert—

- ‘(2) Without limiting subsection (1), a regulation may make provision about—
 - (a) the responsibilities of the following persons under this Act—
 - (i) police officers;
 - (ii) support persons; or
 - (b) the way a police officer may give directions under chapter 2A, 2B, 2C or 2D.’.

27 Insertion of new ch 13, pt 6

Chapter 13—

'506 Existing impoundments

- '(1) A vehicle impounded under the pre-amended Act for which the period of the impoundment has not ended before the commencement is taken to have been impounded under the post-amended Act.
- '(2) A reference to a provision of the pre-amended Act in a notice given in relation to a vehicle impounded before the commencement for which the period of the impoundment has not ended before the commencement is taken, for the post-amended Act, to be a reference to a provision of the post-amended Act dealing with the same subject matter.
- '(3) A notice required to be given in relation to an impounded vehicle that has not been given immediately before the commencement may be given after the commencement as if the vehicle had been impounded after the commencement.
- '(4) However, for deciding the period of the impoundment, periods before and after the commencement are to be counted as a single period.
- '(5) The provisions of the post-amended Act apply in relation to any impoundment taken under this section to be an impoundment under the post-amended Act.

'507 Existing orders

- '(1) An impounding order made under the pre-amended Act and in force immediately before the commencement continues to have effect according to its terms as if it were an impounding order issued under the post-amended Act and the provisions of that Act apply.
- '(2) A forfeiture order made under the pre-amended Act that has not been enforced immediately before the commencement continues to have effect as if it were a forfeiture order made under the post-amended Act and may be enforced under section 59O of the post-amended Act.

‘508 Existing references

- ‘(1) This section applies to a notice or other document issued for a purpose under the pre-amended Act if the purpose for issuing the notice or document has not ended or the proceeding to which it relates has not been finally decided.
- ‘(2) A reference to a prescribed offence in the notice or document is taken, from the commencement, to be a reference to a vehicle related offence.’.

28 Amendment of sch 4 (Dictionary)

- (1) Schedule 4, definitions *burn out, forfeiture order, impounding order, initiating application charges, initiating impoundment, initiating impoundment offence, person in charge, prescribed offence* and *relevant period*—

omit.

- (2) Schedule 4—

insert—

‘burn out, for chapter 2B, see section 59A.

caution has the meaning given by the *Juvenile Justice Act 1992*, part 2, division 2.

forfeiture order, other than in relation to a forfeiture proceeding, see section 59A.

impounding order, for chapter 2B, see section 59A.

initial impoundment period, for chapter 2B, see section 59A.

initiating impoundment, for chapter 2B, see section 59A.

initiating impoundment offence, for chapter 2B, see section 59A.

magistrate, for chapter 2B, see section 59A.

modify a motor vehicle, for chapter 2B, see section 59A.

motorbike has the meaning given by the Road Use Management Act, and includes a 4 wheeled motor vehicle that is ridden in the same way as a motorbike.

motorbike noise direction offence see section 59A.

motorbike noise order offence see section 59A.

noise abatement order see section 367A.

person in charge, of an animal, for chapter 2D, see section 59ZE.

prescribed offence, for chapter 2B, see section 59A.

prescribed period, for chapter 2B, see section 59A.

relevant court, for chapter 2B, see section 59A.

relevant period, for chapter 2B, see section 59A.

vehicle related offence see section 59A.’.

- (3) Schedule 4, definition *enforcement act*—

insert—

‘(ia) the giving of a noise abatement direction;’.

- (4) Schedule 4, definition *owner*, ‘chapter 2, part 6, division 2’—

omit, insert—

‘chapter 2B’.

Part 3 **Amendment of Tow Truck Act 1973**

29 Act amended in pt 3

This part amends the *Tow Truck Act 1973*.

30 Amendment of s 38 (Exemptions)

Section 38(2), from ‘chapter 2’—

omit, insert—

‘chapter 2B or 2C²⁵ applies to the person.’.

31 Amendment of s 43 (Regulation making power)

Section 43(2)(r), from ‘chapter 2’—

omit, insert—

‘chapter 2B;²⁶’.

Part 4 Amendment of Summary Offences Act 2005

32 Act amended in pt 4

This part amends the *Summary Offences Act 2005*.

33 Insertion of new s 11A

After section 11—

insert—

‘11A Unlawful driving of motorbike on public land

‘(1) A person must not drive a motorbike on public land in contravention of a regulation under this Act or a local law that regulates access by motorbikes to public land, unless the person has a reasonable excuse.

Maximum penalty—20 penalty units.

‘(2) If a regulation under this Act or a local law requires a person to possess a stated type of authority while driving a motorbike

25 *Police Powers and Responsibilities Act 2000*, chapter 2B (Vehicle impounding powers for prescribed offences and motorbike noise direction offences) or 2C (Removal powers other than for impounded vehicles)

26 *Police Powers and Responsibilities Act 2000*, chapter 2B (Vehicle impounding powers for prescribed offences and motorbike noise direction offences)

on public land, a person who drives a motorbike on public land must be in possession of the stated authority while driving the motorbike, unless the person has a reasonable excuse.

Maximum penalty—20 penalty units.

- ‘(3) A person found by a police officer driving a motorbike on land mentioned in subsection (1) must produce the stated authority to the police officer on request.

Maximum penalty—20 penalty units.

- ‘(4) In this section—

motorbike has the meaning given by the *Transport Operations (Road Use Management) Act 1995*, and includes a 4-wheeled motorbike that is ridden in the same way as a motorbike.

public land, for a regulation or local law, means public land as defined under the regulation or local law, but does not include a road.

road has the meaning given by the *Transport Operations (Road Use Management) Act 1995*.’.

34 Insertion of new pt 3A

After section 28—

insert—

‘Part 3A General

‘28A Regulation-making power

‘The Governor in Council may make regulations under this Act.’.

Schedule **Minor and consequential
amendments of Police Powers
and Responsibilities Act 2000**

section 3

- 1** **Chapter 2, part 6, heading and chapter 2, part 6, division
1, heading—**

omit, insert—

**‘Chapter 2A Powers relating to vehicles
and traffic’.**

- 2** **Section 46(1) and (2), ‘, tram, or animal’—**

omit, insert—

‘or tram’.

- 3** **Section 59(1), ‘division’—**

omit, insert—

‘chapter’.

- 4** **Section 59M, ‘impounded vehicle’—**

omit, insert—

‘impounded motor vehicle’.

- 5** **Section 59M, ‘the vehicle’—**

omit, insert—

‘the motor vehicle’.

Schedule (continued)

- 6 Section 59M, example, ‘a vehicle’—**
omit, insert—
‘a motor vehicle’.
- 7 Section 59M, example, ‘the vehicle’s’—**
omit, insert—
‘the motor vehicle’s’.
- 8 Chapter 2, part 6, division 3, heading—**
omit, insert—
- ‘Part 3 Removal powers for animals’.**
- 9 Sections 60, heading and 61, heading, ‘vehicles and’—**
omit.
- 10 Sections 60(1), 61(c)(i), (d) and (e), 63(1), 64(1) and 65(1), ‘a vehicle or’—**
omit, insert—
‘an’.
- 11 Section 60(2), ‘its driver’—**
omit, insert—
‘the person in charge of the animal’.
- 12 Sections 60(2), 61(c)(ii) and (e), second mention, 63(1)(a) and (b), (3) and (4), 64(1) and (2) and 65(1)(b), ‘the vehicle or’—**
omit, insert—
‘the’.

Schedule (continued)

- 13 Sections 60(3) and 61(e), ‘control of the vehicle or’—**
omit, insert—
‘charge of the’.
- 14 Section 61, ‘vehicles and’—**
omit.
- 15 Section 61(a) and (b), ‘control of a vehicle or’—**
omit, insert—
‘charge of an’.
- 16 Section 62—**
omit.
- 17 Sections 63, heading and 64, heading, ‘vehicle or’—**
omit.
- 18 Sections 63(1) and 64(1), ‘division’—**
omit, insert—
‘part’.
- 19 Section 63(1)(c)—**
omit.
- 20 Chapter 2, part 6, division 4, heading—**
omit, insert—
‘Part 4 Animal welfare directions’.

Schedule (continued)

- 21 Section 65A, heading, ‘div 4’—**
omit, insert—
‘pt 4’.
- 22 Section 65A(1) and (2), ‘division’—**
omit, insert—
‘part’.
- 23 Chapter 2, part 6, division 5, heading—**
omit, insert—
- ‘Part 5 Other provisions about animals’.**
- 24 Section 420(2)(a), ‘chapter 2, part 6, division 2’—**
omit, insert—
‘chapter 2B’.