

Police Powers and Responsibilities (Motorbike Noise) Amendment Bill 2005

Explanatory Notes

General Outline

Objective of the Legislation

The objective of the *Police Powers and Responsibilities (Motorbike Noise) Amendment Bill 2005* (the Bill) is to amend the *Police Powers and Responsibilities Act 2000* (PPRA) to regulate excessive noise which is created by motorbikes being operated on a place other than a road.

Reasons for the Legislation

During the debate of the *Police Powers and Responsibilities and Another Act Amendment Act 2003* (the hoon legislation), various members raised issues surrounding the use of trail bikes and the nuisance caused by some riders. Members suggested that the hooning regime be extended to cover offences caused by nuisance trail bike riders. The Police and Corrective Services Portfolio Subcommittee on trail bikes (the Subcommittee) was formed following this debate.

The ‘Police and Corrective Services Portfolio Subcommittee on Trail Bikes – Final Report, 19 August 2003’ (the Final Report), produced by the Subcommittee, was the culmination of research and information obtained from sources ranging from motorcycle clubs and their members, manufacturers, local governments and State Government agencies such as the Queensland Police Service, Queensland Transport, Sport and Recreation Queensland, Environmental Protection Agency, Office of Youth Affairs, Natural Resources and Mines and Department of Premier and the Cabinet.

The Final Report identified:

Recreational trail bike usage, particularly in bushland areas near private residences, presents a range of interrelated problems for participants, adjoining landholders, Local Governments and State

*Police Powers and Responsibilities (Motorbike Noise)
Amendment Bill 2005*

Government agencies in Queensland. The problems associated with trail bikes will not simply go away. Trail bikes do cause impacts (especially noise, dust and erosion).

Trail bike noise continues to be a major issue that councils and police are required to deal with throughout Queensland. The noise issue has divided local communities and a minority of irresponsible riders is eroding the reputation of the majority of responsible riders. Very little planning has gone into providing opportunities for trail bike riding in the past. Now solving the problem of trying to fit trail bikes into the landscape has become a major headache for local government recreation planners. It is increasingly difficult for trail bike riders to find legal places to ride that won't disturb the peace and quiet of local residents. In reality, the task of creating trail bike opportunities is difficult because sites that provide riders with a worthwhile recreation experience, but are far enough away from homes so as not to disturb the residents with noise, are almost impossible to find.

On 25 January 2004 the Premier, in a Ministerial Media Statement, released the Government policy commitment in relation to trail bikes. The Ministerial Media Statement provided in part:

The proposed laws will:

- allow police to seek court-ordered permanent confiscation of motor bikes against repeat offending riders;
- enable courts to impose restrictions on the use of trail bikes - including the times, place and manner in which they can be used;
- give police the power to issue 48 hour noise abatement orders;
- enable police to seize bikes for 48 hours if noise orders are breached;
- give police the power under the *Police Powers and Responsibilities Act* to act on a complaint about nuisance trail bike riding;
- give police the power to enter properties in order to properly investigate complaints;
- protect the identity of complainants and empower police to act immediately on complaints without having to first visit the complainant; and

- consider introducing new penalties for trail bike riders trespassing on private, council or state-owned land.

Means of Achieving Policy Objectives

The Bill contains the motorbike noise scheme. This scheme enables police officers to take enforcement action against drivers of motorbikes that create excessive noise on places other than roads by:

- following investigation of the first noise complaint, giving a motorbike noise direction requiring the person to stop the noise for 48 hours;
- if a second noise complaint is received about the same motorbike at the same place within the 48 hours and following the investigation of the complaint, impounding the motorbike for 48 hours, if the driver of the motorbike breaches the initial direction within the 48 hour period;
- making an application for a motorbike noise abatement order to regulate the use of the motorbike. A motorbike noise abatement order may also be made if the person 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;
- commencing proceedings, or for a child considering alternatives to instituting proceedings in accordance with the *Juvenile Justice Act 1992*, against the person who has committed the motorbike noise direction offence;
- if a further noise complaint is received about the same rider and motorbike and following the investigation of the complaint, impounding the motorbike for 48 hours following the first breach of the motorbike noise order by the driver of the motorbike;
- commencing proceedings, or for a child considering alternatives to instituting proceedings in accordance with the *Juvenile Justice Act 1992*, against the person who has committed the motorbike noise order offence;
- within 48 hours of charging the person, making an application for a three month impoundment order;
- if a further noise complaint is received about the same rider and motorbike and following the investigation of the complaint,

*Police Powers and Responsibilities (Motorbike Noise)
Amendment Bill 2005*

impounding the motorbike for 48 hours following the second breach of the motorbike noise order by the driver of the motorbike;

- commencing proceedings, or for a child considering alternatives to instituting proceedings in accordance with the *Juvenile Justice Act 1992*, against the person who has committed the second motorbike noise order offence; and
- within 48 hours of charging the person, making an application for a forfeiture order.

The motorbike noise scheme applies to adults and children who create or permit excessive noise being made by a motorbike and is consistent with the object and principles of the *Juvenile Justice Act 1992*. For example, if a child is detected committing a motorbike noise order offence, police must consider alternatives to instituting proceedings as required by the Act. If police determine, based on the circumstances of the matter, that the child should be cautioned or referred to a youth justice conference for the purpose of making an agreement about the offence, then no application for a three month impoundment or forfeiture order may be made. This determination does not prevent the impounding of the motorbike immediately following the detection of the breach of the offence.

A person who is found guilty of a motorbike noise direction offence or a motorbike noise order offence will be liable to pay the costs of impounding and the keeping the motorbike. Additionally, if a court determines that a child does not have the capacity to pay the costs associated with impoundment and storage, the court may issue a show cause notice to a parent or guardian of the child to show cause why the parent or guardian should not pay the costs.

This legislative approach also provides for the regulation of the unlawful driving of a motorbike on public land. While this approach creates an offence for unlawful driving of a motorbike on public land, a regulation will be developed to regulate and enable the declaration of identified public land along with the type of approval that must be carried by a person who is found by a police officer driving a motorbike on the land.

This approach is to be supported through amendments to the State Penalties and Enforcement Regulation to enable police to issue an infringement notice to the person if the person does not have a reasonable excuse to drive the motorbike on the public land or can not produce the

stated authority to a police officer on request. The infringement notice offence penalty will be 2 penalty units.

Addressing noise nuisance caused by motor bikes is a complex issue which is fraught with difficulty. This Bill is not aimed at stopping a person's enjoyment of riding motorbikes for recreational purposes. Rather it is about achieving a responsible attitude in motor bike riders and reducing unnecessary noise levels. Simply developing punitive measures to use against trail bike riders who cause nuisance problems is not a complete solution to this problem. Broader solutions are required. Consequently, the legislative approach is one aspect of the Government response to this problem.

In addition to the Bill, other non-legislative options to address nuisance caused by motor bikes are being considered by Government. Those options include providing places to ride and establishing frameworks for cooperation, consultation and collaboration with organisations in the motorcycling industry and Government. To this extent a joint interdepartmental working group has been formed to consider these options and report to Government.

Alternative means of achieving policy objectives

There are no other viable alternatives that would achieve the policy objectives other than the amendments proposed in the Bill.

Costs for Government of implementation

No cost increases to Government are anticipated as a consequence of the implementation of this Bill. However, the Queensland Police Service may experience an increase in workload and costs resulting from the legislation once passed by Parliament. These additional costs will be funded from within existing agency allocations.

Consistency with Fundamental Legislative Principles

The confiscation of motorbikes may raise possible fundamental legislative principle issues. However, it is considered that the proposed scheme creates a process that has sufficient regard to the rights and liberties of persons who own or are drivers of motorbikes on a place that is not a road. The motorbike noise scheme provides for a balance between community enjoyment of an area and a person's right to ride a motorbike in a public place or on private property. The proposed scheme provides a process that

*Police Powers and Responsibilities (Motorbike Noise)
Amendment Bill 2005*

must be adopted by police in responding to motorbike noise complaints or breaches of a noise abatement order.

The proposed scheme, while substantially modelled on the existing scheme for the impounding of motor vehicles involved in 'road hooning' activities, also takes into consideration the object and principles of the *Juvenile Justice Act 1992* by:

- requiring police to consider alternatives to instituting proceedings against a child who has committed a motorbike noise order offence; and
- linking the making of an application for a three month impoundment order or a forfeiture order to the charging of a person (serving a notice to appear or arrest). If police decide to caution or conference the child offender, based on the circumstances of the matter, then no impoundment order or forfeiture order can taken against the child.

This approach does not prevent the motorbike being impounded for 48 hours at the time of the offence and is consistent with the existing road hoon impoundment provisions in the PPRA which require a person to be charged with a road hoon offence before an application for a three month impoundment or forfeiture order is made.

While the Bill provides for the impoundment of a motor vehicle following a breach of a prescribed offence or a motorbike noise direction offence, it authorises the temporary continued holding of the impounded vehicle until the first reasonably practicable opportunity, during business hours. It is considered that delaying the release of the vehicle to the first reasonably practical opportunity is not unreasonable and appropriately balances the recovery of the vehicle with the allocation of resources and alleviates difficulties in making personnel available 24 hours a day to release a vehicle.

The proposed scheme has the potential to adversely affect the rights of drivers of motorbikes to enjoy the use of a noisy motorbike on places that are not a road. However, the rights of these motorbike drivers must be balanced against the competing interests of the wider community in ensuring there is no noise nuisance associated with the use of motorbikes. It is considered that the proposed scheme and the application of the object and principles of the *Juvenile Justice Act 1992* to the existing impounding scheme is reasonable, legitimate, and a balanced extension of the law to an area of growing community concern.

*Police Powers and Responsibilities (Motorbike Noise)
Amendment Bill 2005*

The proposed scheme also has the potential to interfere with a number of relationships, for example, relationships between motorbike owners and credit providers. To the extent that the scheme has the potential to interfere with contractual or financial arrangements, the Bill preserves the rights of the credit providers and thus has appropriate regard to credit providers' rights. This is consistent with the current provisions of the road hoons legislation in the PPRA.

Also, to the extent that the scheme affects the rights of an owner of a motorbike that is being ridden by someone else, the Bill has appropriate regard to the rights of the owner of the motorbike in the same way as the PPRA currently has regard to the rights of owners of vehicles involved in hooning. For example, impoundment for a period of greater than 48 hours will require the making of an application to the relevant magistrates court. Further, to the extent the Bill provides for the ultimate sale of a motorbike forfeited to the State, the Bill proposes a distribution of proceeds to ensure any amounts paid to the State are applied towards satisfaction of a debt owed by the owner of the motorbike under a vehicle mortgage. It is considered that the Bill has adequate regard to the rights of those individuals.

The Bill provides for the potential forfeiture to the State of a motorbike after it has been impounded at least three times. Once forfeited to the State, the motorbike may be sold. The proceeds of the sale are to be applied towards the costs of the sale, the costs incurred by the State and then towards satisfying any amounts owing because of a security interest registered under the *Motor Vehicles and Boats Securities Act 1986*, for example, because of a vehicle mortgage. Only then does the owner of the motorbike become entitled to the remaining proceeds of the sale.

While the forfeiture to the State of motorbikes in these situations may be seen as a compulsory acquisition of property without fair compensation, the Bill is consistent with the current provisions of the road hoons legislation in the PPRA.

While the compulsory sale of a motorbike may be seen as not providing for fair compensation for the owner of the bike, the distribution of the proceeds as proposed recognises the normal expectations of credit providers when a vehicle is sold. To the extent that the sale price of the motorbike is inadequate to satisfy the full amount outstanding the owner of the motorbike remains liable for the remaining debt. This is consistent with what happens when a vehicle is destroyed in an accident and the insurance cover is insufficient to satisfy the full amount outstanding. In the circumstances, the proposal is considered to be reasonable.

Also, the Bill authorises a police officer to:

- enter (without a search warrant) the place, excluding a dwelling house, for the purpose of stopping the motor bike, requiring the name, address of the rider of the bike, and to impound the motorbike; and
- enter (with a search warrant) a dwelling for the purpose of impounding a motor vehicle that has committed a prescribed offence.

It is considered that the provision of these powers is reasonable and essential to enable police officers to take enforcement action proposed by the scheme and is consistent with existing noise powers in the PPRA. Sections 360 and 362 of the PPRA currently authorises the entry, without warrant, to a place from which the noise is being emitted for giving a person a direction to abate excessive noise, lock an item to prevent it's further use, seize and remove it from the place or make it inoperable by removing, seizing and taking a part[s] from the place. Also, the Bill enables police to give effect to an order made by a Magistrates Court to impound or forfeit a motorbike. This power is not inconsistent with existing road hoon impoundment powers that enable police to give effect to an order of the court. Without the provision of these powers, the proposed scheme will be unworkable.

The Bill provides for the regulation of unlawful driving of a motorbike on public land. The Bill enables the development of a regulation for an approval process, identification of the public land and the different types of approval that maybe issued to a person in authorising the driving of a motorbike on public land. It is considered that this process is consistent with fundamental legislative principles as it will enable the identification and assessment of public land through a regulatory process, enable the clear identification the subject public land and will identify the type approval required to be produced by a person who is found by a police officer driving a motorbike on the identified land.

Consultation

The Police and Corrective Services Portfolio Subcommittee was established and tasked to develop punitive measures to use against trail bike riders who cause nuisance problems. Additionally, the scope of the Committee was extended to develop a broader solution following the identification of the range of benefits, issues, problems and consequences

*Police Powers and Responsibilities (Motorbike Noise)
Amendment Bill 2005*

that are produced by this type of recreational activity. The report, 'Police and Corrective Services Portfolio Subcommittee on Trail Bikes – Final Report, 19 August 2003' was produced by the Subcommittee. The final Report was the culmination of research and information obtained from sources ranging from motorcycle clubs and their members, manufacturers, local governments and State Government agencies.

On 25 January 2004, the Premier, in a Ministerial Media Statement, released the Government policy commitment in relation to trail bikes.

In March 2005 a consultation version of the Bill was forwarded to the following relevant Government Departments for comment. A further consultation version of the Bill was forwarded to the relevant Government Departments for written comment by 11 August 2005.

- Department of the Premier and Cabinet;
- Queensland Treasury;
- Department of Justice and Attorney-General;
- Department of State Development and Innovation;
- Department of Environment;
- Department of Employment and Training;
- Department of Communities;
- Department of Local Government, Planning, Sport and Recreation;
- Queensland Transport;
- Department of Aboriginal and Torres Strait Islander Policy; and
- Department of Natural Resources and Mines.

Additionally, a consultation version of the Bill was forwarded to the following external stakeholders and written comment was requested by 12 August 2005. Additionally, an extended period was provided to the Local Government Association of Queensland and the South East Queensland Regional Organisation of Councils to provide comment. Other external stakeholders are:

- Queensland Outdoor Recreation Federation Inc;
- Motorcycling Queensland;
- Federation of Off Highway Vehicles Australia;
- Dual Sport Motorcycle Rider's Association; and
- Treadlightly Australia.

Notes on Provisions

Part 1 Preliminary

Clause 1 - Short title

Specifies the short title of the Bill.

Clause 2 - Commencement

Provides for commencement by proclamation.

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

Clause 3 - Act amended in pt 2 and sch

Provides that this part and the schedule amends the *Police Powers and Responsibilities Act 2000*.

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

This clause amends subsection 34(1) by extending the power to require a person's age if it is relevant to:

- giving a notice in relation to an motor vehicle impounded under Chapter 2B 'Motor vehicle impounding powers for prescribed offences and motorbike noise direction offences';
- giving a noise abatement direction in relation to excessive noise emitted by a motorbike being driven on a place other than a road;
- the making an application for an impounding order or a forfeiture order under chapter 2B; and
- the making of an application under section 367A 'Noise abatement order-application for order'.

Clause 5 - Amendment of s 50 (Power for regulating traffic)

This clause omits reference to 'animal' and the head of power for prescribing the way a police officer may give directions under this section. This power is relocated to section 459 'Regulation making power' of the PPRA.

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

This clause extends the prescribed purpose for stopping vehicles to include:

- the investigation of the emission of excessive noise, in accordance with s. 358, from a motor vehicle on a road or in a public place, or a motorbike being driven on a place other than a road;
- the giving of a noise abatement direction in accordance with s. 360 to the person responsible for the noise; and
- the impounding of a motor vehicle under Chapter 2B.

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

This clause omits and replaces Chapter 2, Part 6, Division 2 'Vehicle impounding powers for prescribed offences' and sections 59A to 59LA the following sections. These sections incorporate both the existing vehicle impounding scheme and the motorbike noise scheme.

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

Part 1 Preliminary

Division 1 Interpretation

Section 59A inserts the following definitions for Chapter 2B: ‘applied section 258’; ‘applied section 259’; ‘burn out’; ‘excessive noise’; ‘forfeiture order’; ‘impounding notice’; ‘impounding order’; ‘initial impoundment period’; ‘initiating impoundment’; ‘initiating impoundment offence’; ‘magistrate’; ‘modify’; ‘motorbike noise direction offence’; ‘motorbike noise order offence’; ‘prescribed impoundment information’; ‘prescribed offence’; ‘prescribed period’; ‘relevant court’; ‘relevant period’ and ‘vehicle related offence’.

Section 59B declares that a reference in this chapter to a motor vehicle in relation to a prescribed offence includes a reference to a motorbike and a reference in this chapter to a motor vehicle in relation to a vehicle related offence includes a reference to a motorbike.

Section 59C applies if a proceeding for a prescribed offence is started against a person by notice to appear or arrest. The section identifies when a person is taken to be charged for this chapter in relation to prescribed offence if proceeding for offence started by notice to appear or arrest.

Section 59D provides that the punishment under Chapter 2B is in addition to other punishment for the same offence.

Division 2 Relationship with other legislation

Section 59E provides that nothing in the Bill affects the rights of a credit provider to repossess a motor vehicle under the Consumer Credit Code.

Part 2 - Impounding motor vehicles

Division 1 - Impounding powers and duties after impounding

Section 59F provides for the stopping of a motor vehicle on a road or elsewhere and enables a police officer to require that vehicle remain stationary for the purpose of impounding a motor vehicle that has been used to commit a motor vehicle related offence, a motorbike noise order offence or a motorbike noise direction offence. In addition, if the driver of a motorbike is a child, the section enables the impoundment of the motorbike if the child is reasonably suspected of having committed a motorbike noise direction offence or a motorbike noise order offence. A motor vehicle impounded under this section is impounded for the initial impoundment period.

Section 59G provides particular powers to enable a police officer to give effect to the impounding of a motor vehicle under section 59F. For example, the section enables a police officer to require a person to move a vehicle that is to be impounded out of a dwelling. Failure to comply with this direction is an offence. Failure to comply with the requirement, in subsection (2), to provide the name and address of the owner of the impounded motorbike is also an offence. See section 445 of the PPRA.

Section 59H outlines the duties of a police officer after impounding motor vehicle under Chapter 2B. The meaning of a rental motor vehicle is clarified to apply to 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.

Section 59I re-states the existing section 59D that a police officer may authorise a tow for a motor vehicle impounded under this Chapter. The towing authority maybe made under the *Tow Truck Act 1973* or another document authorising a person to tow a motor vehicle.

Section 59J replaces the existing notice of impoundment to be given to the driver and owner of the motor vehicle that has been impounded for a vehicle related offence. If the if the driver of the motorbike is a child, notice must also be given and explained to the child's parent or guardian if it is reasonably practicable to do so, unless the parent or guardian is given notice. Notice must be given in the approved form.

Section 59K provides that notice, in the approved form, of impounding is to be given to the driver and owner of the motorbike as soon as reasonably practicable after a motorbike is impounded for a motorbike noise direction offence or a motorbike noise order offence.

Division 2 - Notice requirements for motor vehicles impounded for vehicle related offences

Section 59L provides what information the impounding notice must state for a first vehicle related offence. The section replaces the existing section 59F.

Section 59LA provides what information the impounding notice must state for a second or subsequent vehicle related offence. The section replaces the existing section 59G.

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

Section 59LB provides what information the impounding notice must state for a motorbike noise direction offence.

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

Section 59LC provides what information the impounding notice must state for a first motorbike noise order offence.

Section 59LD provides what information the impounding notice must state for a second or subsequent motorbike noise order offence.

Part 3 - Obtaining impounding orders

Division 1 – Impounding order application provisions

Section 59LE provides for the making of an application for impounding order for vehicle related offences. This section replaces the existing section 59H.

Section 59LF applies in relation to the driver of an impounded motorbike if the person has been charged with a motorbike noise order offence. The section requires a police officer to make an application, in the approved form, for a 3 month impounding order within 48 hours after charging the person with the offence.

Division 2 - Orders if offence not decided

Section 59LG provides for the orders that the relevant court must make when an application for an impounding order has been made, following a vehicle related offence, but not decided. This section replaces the existing section 59I.

Section 59LH provides that if an application for an impounding order has been made, following a motorbike noise order offence, but has not been decided, the court must adjourn the application until the driver has been found guilty of the offence.

Division 3 - Advice of date of hearing

Section 59LI provides that a police officer must give to the driver and owner of the motor vehicle, and if the driver or owner is a child also to the child's parent or guardian, notice of the date, time and place of the hearing. The advice must be given as soon as reasonably practicable after a date is set for the hearing of an application for an impounding order in relation to the motor vehicle.

Part 4 - Obtaining forfeiture orders

Division 1 - Forfeiture order application provisions

Section 59LJ provides for the making of an application for a forfeiture order for vehicle related offences. This section replaces the existing section 59HA.

Section 59LK provides for the making of an application for a forfeiture order for motorbike noise order offences. It applies in relation to the driver of an impounded motorbike who has been found guilty of having committed a motorbike noise order offence relating to that motorbike on at least 1 previous occasion or 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. The section requires a police officer to make the application in the approved form within 48 hours after charging the person with the offence.

Division 2 - Orders if offence not decided

Section 59LL provides for the orders that the relevant court must make when an application for a forfeiture order has been made, following a vehicle related offence, but not decided. This section replaces the existing section 59IA.

Section 59LM provides that if an application for a forfeiture order has been made, following a motorbike noise order offence, but has not been decided, the court must adjourn the application until the driver has been found guilty of motorbike noise order offences committed on two separate occasions.

Division 3 - Advice of date of hearing

Section 59LN provides that a police officer must give to the driver and owner of the motor vehicle, and if the driver or owner is a child also to the child's parent or guardian, notice of the date, time and place of the hearing.

The advice must be given as soon as reasonably practicable after a date is set for the hearing of an application for a forfeiture order in relation to the motor vehicle

Part 5 - Deciding the application

Division 1 – Where and when application may be heard

Section 59LO provides that the relevant court must hear and decide an application for an impounding order or a forfeiture order.

Section 59LP provides that as soon as practicable after the person to whom an application relates is found guilty of the identified number of vehicle related offences the application for an impounding or forfeiture order must be heard and decided by the relevant court.

Section 59LQ provides that as soon as practicable after the person to whom the application relates is found guilty of the identified number of motorbike noise order offences the application for an impounding and or forfeiture order must be heard and decided by the relevant court.

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

Section 59LR provides what a relevant court must consider on the hearing of the application for an impounding order relating to a vehicle related offence. This section replaces the existing section 59L as it applies to an application for an impounding order.

Section 59LS provides what a relevant court must consider on the hearing of the application for a forfeiture order relating to a vehicle related offence. This section replaces the existing section 59L as it applies to an application for a forfeiture order.

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

Section 59LT provides what a relevant court must consider on the hearing of the application for an impounding order relating to a motorbike noise order offence.

Section 59LU provides what a relevant court must consider on the hearing of the application for a forfeiture order relating to a motorbike noise order offence.

Division 4 - Other provisions about applications and orders'

Subdivision 1 Community service orders

Section 59LV provides for the making of a community service order instead of an impoundment or a forfeiture order.

Subdivision 2 Costs order for child drivers

Section 59LW provides for costs to be awarded against child drivers if the court considers that the child has the capacity to pay the costs of removing and keeping the motor vehicle. Also, the section enables a court to call on the child's parent under applied sections of the *Juvenile Justice Act 1992* to show cause why the parent should not pay the costs of removing and keeping the vehicle, in circumstances where the court considers that the child driver does not have the capacity to pay the costs.

Section 59LX provides for the application of sections 258 and 259 of the *Juvenile Justice Act 1992*.

Subdivision 3 Offences

Section 59LY creates an offence for the unlawful removal of a vehicle from a holding yard.

Section 59LZ provides that the owner a motor vehicle that is the subject of an application for an impounding order or a forfeiture order and is released to the owner before the application is decided, commits an offence if the

owner modifies, sells or disposes of the vehicle before an impounding or forfeiture order is decided.

Clause 8 - Insertion of new s 59MA (Counting the occasions)

This clause inserts section 59MA to reflect the renumbered vehicle related impounding scheme and to give effect to the motorbike noise scheme. The section replaces the existing section 59LA.

Clause 9 - Amendment of s 59N (Appeal)

This clause extends the appeal rights of a person, who is the driver of a motor vehicle impounded under this chapter, to include any order requiring the performance of community service made under Chapter 2B.

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

This clause amends section 59O to enable police officers to give effect to an impounding or forfeiture order made by a court under Chapter 2B.

Clause 11 - Replacement of s 59P (who must pay costs of impounding)

This clause omits section 59P and inserts the following heading, division and sections 59P to 59PD.

Part 6 - Other provisions

Division 1 - Liability for cost of impounding

Section 59P has been replaced with sections 59P to 59PD. The insertion of these sections provide the general rule as to when the State is liable to pay costs, the payment of costs of impounding a motor vehicle if the driver is an adult and the payment of costs of impounding a motorbike if the driver is a child.

Section 59PA provides for the liability of a adult driver for the payment of costs in relation to the prescribed offence of a motorbike noise direction offence.

Section 59PB provides for the liability of a child driver for the payment of costs in relation to the prescribed offence of a motorbike noise direction offence.

Section 59PC provides for the payment of costs when a motor vehicle is not recovered after a period of impoundment ends.

Section 59PD enables the commissioner to give particulars of the costs to the registrar under the *State Penalties Enforcement Act 1999*.

Division 2 - Release of impounded vehicle.

Clause 12 - Replaces ss 59Q - 59W

Section 59Q is amended and replaced to provide for the release of a motor vehicle impounded under either the existing impoundment scheme (vehicle related offences) or the motorbike noise scheme. Additionally, the section enables the owner to authorise another person to collect the motor vehicle on behalf of the owner, at the first reasonably practicable opportunity.

Section 59R is restated.

A new heading 'Division 3 Sale or transfer of impounded vehicle' is inserted.

Section 59S is amended to capture both schemes.

Section 59T applies despite section 59LZ which prevents the owner of a motor vehicle that is the subject of an impounding order or forfeiture order application under Chapter 2B from modifying, selling or disposing of the vehicle before the application is decided.

Section 59U re-states section 59V.

Section 59V re-states section 59W.

The heading 'Division 4 - Other provisions' is inserted.

Section 59W re-states s 59S and applies it to both schemes

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

This clause amends section 59X to reflect that a magistrates court may hear an application for an impoundment or forfeiture order in relation to a motor vehicle related offence even though the value of the vehicle may be more than the maximum amount that may be claimed in a personal action in the civil jurisdiction of a magistrates court.

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

This clause inserts the following sections relating to removal powers for vehicles and powers relating to animals.

Chapter 2C - Removal powers other than for impounded vehicles

Division 1 Seizing or moving vehicles

Section 59Y 'Removal of vehicles from roads and other places' replicates the existing power contained in section 60 'Removal of vehicles and animals from roads and other places', however it omits references to 'animals'.

Section 59Z 'Prescribed circumstances for removing vehicles' replicates the existing section 61 'Prescribed circumstances for removing vehicles and animals', however it omits references to 'animals'.

Division 2 Other provisions about seizure

Section 59ZA 'Steps after seizing vehicle' replicates section 63 'Steps after seizing vehicle or animal', however it omits references to 'animals'.

Section 59ZB 'Recovery of seized vehicle' replicates section 64 'Recovery of seized vehicle or animal', however it omits references to 'animals'.

Section 59ZC ‘Application of proceeds of sale’ replicates section 65 ‘Application of proceeds of sale’, however it omits references to ‘animals’.

Section 59ZD ‘Police officer may authorise tow’ replicates section 62 ‘Police officer may authorise tow’. The towing authority may be made under the *Tow Truck Act 1973* or another document authorising a person to tow a motor vehicle.

Chapter 2D - Powers relating to animals

Part 1 - Interpretation

Section 59ZE defines who is a person in charge of an animal for Chapter 2D. The definition is based on section 65B(d) of the PPRA.

Part 2 - General powers

Section 59ZF ‘Power of inquiry into road use contraventions involving an animal’ replicates section 45 ‘Power of inquiry into road use contraventions’, except it applies solely to contraventions involving an animal.

Section 59ZG ‘Power to require information about identity of person in charge of animal’ replicates section 46 ‘Power to require information about identity of drivers of vehicles etc.’, except it applies solely to contraventions of the *Transport Operations (Road Use Management) Act 1995* involving an animal.

Section 59ZH ‘Power of entry for ss 59ZF–59ZG’ replicates section 47 ‘Additional power of inquiry for relevant vehicle incidents’, except it applies solely to contraventions involving an animal.

Section 59ZI ‘Power for regulating traffic’ replicates section 50 ‘Power for regulating traffic’, except that it solely to a person in charge of an animal.

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

This clause makes a minor amendment to section 65B to reflect that a 'person in charge of an animal' has been relocated to section 59ZE.

Clause 16 - Amendment of s 68 (Search warrant application)

This clause amends section 68(1) to enable the motorbike noise scheme and the existing vehicle impounding scheme to be effectively applied in instances where police or other persons video tape 'hooning' motor vehicles and police later intend to take enforcement action. These amendments will enable police to obtain a search warrant for the purpose of entering a dwelling to impound a motor vehicle that has been used to commit a prescribed offence.

Clause 17 - Replacement of s 358 (Application of pt 3)

Division 1 Noise Abatement Direction

This clause amends section 358 to reflect current drafting practises, it incorporates an appropriate reference for the noise emitted by a motorbike driven on a place that is not a road, and to provides this part does not apply to environmental nuisance caused by noise emitted from a place while the place is being used by motor vehicles under a permit under any Act or law.

Clause 18 - Insertion of new ss 359A–359C

This clause inserts sections which identify the application of Part 3 'Powers relating to noise'.

Section 359A applies if a complaint has been made about noise emitted from a place by:

- a musical instrument;
- an appliance for electronically producing or amplifying music or other sounds;
- a motor vehicle, other than a motor vehicle on a road; or
- a gathering of people for a meeting, party, celebration or similar occasion.

The section provides direction to a police officer on how to decide whether the noise complained of is excessive.

Section 359B applies if a complaint has been made about noise emitted by a motorbike being driven on a place other than a road. The section provides direction and alternative tests that may be considered by a police officer in deciding whether the noise complained of is excessive.

Section 359C applies if a complaint is made about noise emitted from a motor vehicle on a road or in a public place and it 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. The section provides direction that may be considered by a police officer in deciding whether the noise complained of is excessive.

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

The clause reenacts the existing powers confirmed in s. 360 and applies the giving of a direction to abate noise to the existing noise scheme and motorbike noise scheme. It provides for—the giving of a written noise abatement direction, an approved form, about excessive noise emitted from a motorbike being driven on a place other than a road. If the written direction is given to a child, a copy of the notice must be given, if reasonably practicable to the child's parent or guardian. Additionally, the written direction given by a police officer may, depending upon the topography and the likelihood of further complaint, prohibit the driving of the motorbike on a place or a part of the place where the motorbike was being driven.

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

This clause amends section 361 to reflect noise abatement periods that apply when a particular noise abatement direction is given by a police officer.

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

This clause amends section 362 to enable a police officer to impound a motorbike, in accordance with section 59J, when the driver of the

motorbike has breached a noise abatement direction given by a police officer.

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

This clause amends section 365 to exclude the recovery of costs incurred if, because of section 362(2)(b)(iv), a police officer impounds a motorbike under chapter 2B.

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

Division 2 Noise Abatement order

This clause inserts new provisions which provide for the application, making and appeal of a noise abatement order. Section 367A sets out the requirements for the making, and the content of an application for a noise abatement order. In order to break the ‘complaint/response cycle’ the section provides that a police officer must also apply for a noise abatement order if a person is given 2 motorbike noise abatement directions within a 1 month period 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. Notice of the application to must be given to the driver of the motorbike, the owner of the motorbike and if the driver or owner is a child, the parent or guardian of the child.

Section 367B enables a relevant court to make a noise abatement order if it is satisfied that the requirements in this section and in section 367A have been complied with. The section sets out relevant conditions that the order may include. However, any additional conditions restricting the use of the motorbike may be included on the order.

Section 367C provides for the appeal against the making of noise abatement order to the District Court or a Childrens Court constituted by a judge within 28 days after the day the order is made.

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

This clause amends subsection 451(1) to include applications for impounding or forfeiture orders under Chapter 2B and a noise abatement order.

Clause 25 – Insertion of new section 458A (Review of motorbike noise provisions)

This clause provides for the review of the effectiveness of the motorbike noise provisions in mitigating the emission of excessive noise from motorbikes being driven on places other than roads.

Clause 26 - Amendment of s 459 (Regulation-making power)

This clause amends section 459 by replacing subsection (2) and providing in subsection (2)(b) authority for a regulation to prescribe the way a police officer may give directions under chapter 2A, 2B or 2C or 2D.

Clause 27 - Insertion of new ch 13, pt 6

This clause inserts a new Chapter 13, Part 6 ‘Transitional provisions for *Police Powers and Responsibilities (Motorbike Noise) Amendment Act 2005*’.

Section 504 inserts the following definition for part 6: ‘amendment Act’; ‘commencement’; ‘post-amended Act’ and ‘pre-amended Act’.

Sections 505, 506, 507 and 508 provide for existing proceedings, existing impoundments, existing impoundments and existing references.

Clause 28 - Amendment of sch 4 (Dictionary)

This clause makes amendments to definitions within Schedule 4 of the PPRA.

Clause 28(1) omits the following 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’.

Clause 28(2) inserts or amends the following Schedule 4 definitions: ‘burn out’; ‘caution’, ‘forfeiture order’, ‘impounding order’, ‘initiating impoundment’, ‘initiating impoundment offence’, ‘magistrate’, ‘modify’, ‘motorbike’, ‘motorbike noise direction offence’, ‘motorbike noise order offence’, ‘noise abatement order’, ‘person in charge’, ‘prescribed period’, ‘prescribed offence’, ‘relevant court’, ‘relevant period’, ‘vehicle related offence’, ‘youth justice conference’, ‘youth justice conference agreement’, ‘enforcement act’ and ‘owner’.

Part 3 - Amendment of *Tow Truck Act 1973*

Clause 29 - Act amended in pt 3

This part amends the *Tow Truck Act 1973*.

Clause 30 - Amendment of s 38 (Exemptions)

This clause amends section 38 to reflect the new Chapters 2B or 2C created by this Bill.

Clause 31 - Amendment of s 43 Regulation making power)

This clause amends section 43(2)(r) to reflect the new Chapter 2B.

Part 4 Amendment of *Summary Offences Act 2005*

Clause 32 - Act amended in pt 4

This part amends the *Summary Offences Act 2005*.

Clause 33 - Insertion of new s 11A

This clause inserts section 11A (Unlawful driving of motorbike on public land) in the *Summary Offences Act 2005*.

Clause 34 - Insertion of new pt 3A

This clause inserts a new part 3A 'General' and section 28A 'Regulation-making power' into the *Summary Offences Act 2005*.

Schedule Minor and consequential amendments

1. Chapter 2, part 6, heading and chapter 2, part 6, division 1, heading —

The new heading Chapter 2A ‘Powers relating to vehicles and traffic’ is inserted. This heading replicates the previous heading, however, it omits the reference to ‘animals’.

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

The reference to animal is omitted.

3. Section 59(1), ‘division’—

A correct reference to ‘chapter’ is inserted.

4. Section 59M, ‘impounded vehicle’—

A correct reference to an impounded motor vehicle is inserted.

5. Section 59M, ‘the vehicle’—

A correct reference to ‘the motor vehicle’ is inserted.

6. Section 59M, example, ‘a vehicle’—

A correct reference to ‘a motor vehicle’ is inserted.

7. Section 59M, example, ‘the vehicle’s’—

A correct reference to ‘the motor vehicle’s’ is inserted.

8. Chapter 2, part 6, division 3, heading—

Inserts a new heading, ‘Part 3 Removal powers for animals’.

9. Sections 60, heading and 61, heading, ‘vehicles and’—

Omits reference to vehicles. The removal power for vehicles is section 59Y

10. Sections 60(1), 61(c)(i), (d) and (e), 63(1), 64(1) and 65(1), ‘a vehicle or’—

Omits reference to vehicles. The removal power for vehicles is sections 59Y, 59Z, 59ZB, 59ZC and 59ZD.

11. Section 60(2), ‘its driver’—

Omits reference to driver and inserts ‘the person in charge of the animal’.

12. Sections 60(2), 61(c)(ii) and (e), 63(1)(a) and (b), (3) and (4), 64(1) and (2) and 65(1)(b), ‘the vehicle or’—

Omits reference to vehicles.

13. Sections 60(3) and 61(e), ‘control of the vehicle or’—

Omits reference to vehicles.

14. Section 61, ‘vehicles and’—

Omits reference to vehicles.

15. Section 61(a) and (b), ‘control of a vehicle or’—

Omits reference to vehicles.

16. Section 62—

This section is omitted as it has no application to animals.

17. Sections 63, heading and 64, heading, ‘vehicle or’—

Omits reference to vehicles.

18. Sections 63(1) and 64(1), ‘division’—

‘Division is omitted and replaced by ‘part’.

19. Section 63(1)(c)—

The subsection is omitted as it has no application to animals.

20. Chapter 2, part 6, division 4, heading—

The current heading is renamed as, ‘Part 4 - Animal welfare directions’.

21. Section 65A, heading, ‘div 4’—

Correctly reflects the renamed ‘Part 4 - Animal welfare directions’.

22. Section 65A(1) and (2), ‘division’—

Correctly reflects the renamed part 4.

23. Chapter 2, part 6, division 5, heading—

The current heading is renamed as, ‘Part 5 - Other provisions about animals’.

24. Section 420(2)(a), ‘chapter 2. part 6, division 2’—

Correctly reflects the renamed ‘chapter 2B’.