

# **POLICE POWERS AND RESPONSIBILITIES (MOTOR VEHICLE IMPOUNDMENT) AND OTHER LEGISLATION AMENDMENT BILL 2012**

## **Explanatory Notes**

### **Short title**

The short title of the Bill is the Police Powers and Responsibilities (Motor Vehicle Impoundment) and Other Legislation Amendment Bill 2012 (the Bill).

### **Policy objectives and the reasons for them**

The objective of the Bill is to amend Chapter 4 ‘Motor vehicle impounding powers for prescribed offences and motorbike noise direction offences’ of the *Police Powers and Responsibilities Act 2000* (the PPRA) and the *Corrective Services Act 2006* (the CSA).

Chapter 4 of the PPRA provides for the type 1 and 2 vehicle impoundment schemes. These schemes can be used by a police officer to impound or forfeit a motor vehicle depending upon the offence committed by the driver of the relevant vehicle. The type 1 vehicle impoundment scheme applies to a range of traffic offences (type 1 vehicle related offences) commonly associated with hooning. The type 2 vehicle impoundment scheme contains offences (type 2 vehicle related offences) that may be associated with hooning behaviours such as unlicensed driving or driving an unregistered vehicle.

However, the type 2 vehicle impoundment scheme can be contrasted with the type 1 vehicle impoundment scheme as it contains a concept of a ‘pre-impoundment offence’. A pre-impoundment offence is the first type 2 vehicle related offence committed by an offender. This offence does not immediately result in the impounding of a motor vehicle but triggers the start of a three year period (the relevant period) during which a police officer may impound or forfeit a vehicle if the driver continues to commit similar type 2 vehicle related offences.

This Bill amends Chapter 4 of the PPRA to meet the Government’s commitment to introduce the toughest anti-hooning laws in the nation. Additional amendments that address administrative and operational inefficiencies in the type 1 and 2 vehicle impoundment schemes have also been included in the Bill. These amendments include:

- increasing sanctions for the type 1 vehicle impoundment scheme to 90 days impoundment for the first offence and forfeiture for the second offence;
- including evade police offences and high end speeding (>40 km/hr above the speed limit) as type 1 and type 2 vehicle related offences respectively;
- increasing type 2 impoundment sanctions to 7 days for the second type 2 vehicle related offence, 90 days for the third type 2 vehicle related offence and forfeiture for any subsequent type 2 vehicle related offence;
- increasing the relevant period for vehicle impoundment offences from 3 to 5 years;
- amending the definition of ‘burnout’;
- allowing proceedings to commence, where applicable, by Traffic Infringement Notice (TIN) rather than having to proceed by way of a Notice to Appear or arrest;

- amending the impoundment and forfeiture processes to operate automatically rather than through court applications;
- removing the requirement that repeat offences under the type 2 vehicle impoundment scheme must be the same type as the ‘pre-impoundment offence’;
- allowing additional methods of impoundment including tow and store, immobilisation/clamping, crushing, removal of registration plates and the use of vehicle production notices;
- allowing certain people to apply to the Commissioner for the release of impounded vehicles and to allow these applications to be appealable to a Magistrates Court;
- allowing the early return of a vehicle where specific offences that created the impoundment have been remedied (e.g. payment of registration and insurance fees and obtaining a driver’s licence); and
- other technical and minor drafting amendments

Additionally, the Bill amends the CSA to provide that remanded prisoners, not sentenced to a term of imprisonment, can only be given a maximum or high security classification and remove the requirement to review remanded prisoners’ security classification if they are classified as a high security.

The proposed amendments of the CSA will reduce red tape and aligns with the Department of Community Safety’s commitment to redirect resources to front line services.

## **Achievement of policy objectives**

The Bill expands type 1 and type 2 vehicle related offences to include ‘evade police’ offences and ‘high end speeding’ respectively. High end speeding occurs where a person drives more than 40 km per hour over the speed limit. Speeding has been identified as a leading factor in road crashes both internationally and in Australia despite current speed management strategies. Whilst the prevalence of high end speeding offences appears to be small, research suggests that there are a small number of drivers who engage in both the current type 2 vehicle related offences and high end speeding offences.

This amendment will incapacitate or deter these drivers from re-committing these offences through the impoundment of their vehicle with its associated costs. Additionally, this approach is consistent with other jurisdictions. South Australia and Tasmania allow for a vehicle to be impounded or clamped for 28 days for the first offence of driving at a speed exceeding the speed limit by 45 kilometres per hour or more. Victoria allows a vehicle to be clamped or impounded for 30 days for the first offence of driving a vehicle at 145 kilometres per hour in a 110 kilometre per hour speed zone or for exceeding the speed limit by 45 kilometres per hour or more

Chapter 22 of the PPRA contains a separate standalone impoundment scheme specifically for this offence. However this scheme applies only after an offender is convicted for the offence and leaves no scope for immediate impoundment. This approach is reliant on police being able to locate the offending vehicle some time after the offence has occurred.

The Queensland Police Service (QPS) believes a more flexible impoundment regime is required to reduce the rate of this type of offending. Including ‘evade police’ offences as type 1 vehicle related offences achieves that objective and is consistent with laws in South Australia, Victoria and Tasmania that currently have the capacity to immediately impound vehicles used to evade police.

Further, the Bill increases the sanctions for committing a type 1 vehicle related offence to impoundment of the vehicle for 90 days for the first offence and forfeiture of the relevant vehicle for the second and subsequent offences within 5 years.

The Bill also increases sanctions for committing a type 2 vehicle related offence as follows:

- impoundment of the vehicle used to commit a second type 2 vehicle related offence within 5 years for 7 days;
- impoundment of the vehicle used to commit a third type 2 vehicle related offence within 5 years for 90 days; and
- forfeiture of the vehicle used to commit a fourth or subsequent type 2 vehicle related offence within 5 years upon the offender being found guilty the offence.

Currently, applications are made to court for a vehicle to be subject to an impounding or forfeiture order. These applications must be sought within 48 hours after charging the person with the initiating impoundment offence. The Bill increases the efficiency of the type 1 and 2 vehicle impoundment scheme by changing from a judicial process to a process where vehicles are impounded automatically upon an offender being charged.

Similarly, these impoundment schemes are improved by allowing for the automatic forfeiture of vehicles. Where a vehicle is subject to forfeiture, the Bill authorises the impounding of the vehicle until the impounding offence has been finalised. Forfeiture then occurs automatically upon:

- in the case of an offence involving the issuing of a TIN:
  - payment in part or full of the TIN;
  - a default certificate being registered by the registrar under the *State Penalties Enforcement Act 1999*; or
- a finding of guilt by a court.

Adoption of automatic impoundment periods or forfeiture creates considerable savings through the:

- reduction of time taken by police officers to prepare applications; and
- reduction in court time required to consider applications.

Towing and storing an impounded vehicle at a holding yard is the only method of impoundment provided for under existing impoundment provisions. This restriction causes operational difficulties, particularly in regional areas that may lack the services of a dedicated towing company. The Bill expands the methods that may be used to immobilise a motor vehicle to include clamping, confiscation of number plates and the use of a vehicle production notice. Allowing police officers a variety of alternatives in immobilising a motor vehicle maximises the efficiency of the type 1 and 2 vehicle impoundment schemes generally. Alternatives police officers may employ include:

- removing and confiscating the number plates attached to a motor vehicle and attach a number plate confiscation notice to the motor vehicle;
- attaching an immobilising device, or arranging for an immobilising device to be attached to a motor vehicle; and
- requiring the driver of a motor vehicle by a vehicle production notice to produce the vehicle at a stated place and time for impoundment or immobilisation.

To mitigate concerns about the impact of automatic impoundment and forfeiture, the Bill allows for the return of impounded or immobilised motor vehicles. An eligible person (the owner or usual driver) may apply to the Commissioner, or his delegate, for the release of an impounded motor vehicle if:

- the impoundment offence occurred without the consent of the vehicle's owner;
- the impoundment will cause severe financial hardship to the applicant or their family by depriving the applicant of the means to earning a living;
- the impoundment will cause severe physical hardship to the applicant or their family, other than by depriving the applicant of the means to earning a living;
- the impoundment of the vehicle was due to the vehicle being unregistered or the driver being unlicensed and the offence has been remedied; or
- there were no reasonable grounds to impound or immobilise the motor vehicle.

The Commissioner has 5 business days, if reasonably practicable, upon receiving the application and other required documentation to make a decision. The Bill allows applications to be assessed and determined quickly so that successful applicants may have their vehicles returned as soon as possible.

The Commissioner may release impounded or immobilised vehicles to a successful applicant on the grounds that the Commissioner sees fit. For example, the Commissioner may impose a condition that a certain recidivist offender is not allowed to drive the subject vehicle. If those grounds are breached, the vehicle may be re-impounded for the remainder of the period of impoundment outstanding. This measure encourages the owner of the vehicle to ensure that only appropriate persons drive the vehicle.

If a person is aggrieved of a decision made by the Commissioner the person may appeal to a Magistrates Court. A Magistrates Court may confirm the Commissioner's decision or set the Commissioner's decision aside.

Other amendments in the Bill will achieve increased efficiencies with the type 1 and 2 vehicle impoundment scheme. The Bill proposes to allow proceedings to commence by TIN rather than having to proceed by way of a Notice to Appear or arrest. This allows a significant number of offences such as high end speeding, driving an unregistered and uninsured vehicle, certain unlicensed driving and illegally modified vehicle offences to be dealt with by way of a TIN rather than a court appearance. This would achieve savings to both the courts and the QPS through allowing the offender the option of avoiding a court appearance.

Further, the Bill proposes to remove the requirement that repeat type 2 vehicle related offences have to be of the same kind as the preceding type 2 vehicle related offences. Currently, the type 2 vehicle impoundment scheme only applies to offenders who repeatedly commit the same offence as the initial 'pre-impoundment offence'. By removing this requirement, the type 2 vehicle impoundment scheme will more effectively target those offenders who continue to commit any type 2 vehicle related offence rather than those who persistently commit only one type of offence. This amendment will bring Queensland into line with all other Australian jurisdictions which do not have a similar restriction on their impoundment schemes and reduce differences between the operation of the type 1 and 2 vehicle impoundment scheme.

The Bill amends the definition of 'burn out' which currently does not cover those instances where there is a loss of a vehicle's traction and no smoke is produced such as when a vehicle is driven on a wet or gravel road. This amendment will ensure that a driver who engages in this type of hooning behaviour will not escape the type 1 vehicle impoundment scheme and also makes this definition consistent with the majority of other Australian jurisdictions.

The Bill introduces new offences in relation to:

- selling, modifying or disposing a motor vehicle that is subject to a vehicle production notice without a reasonable excuse;
- failing to comply with a requirement to produce a motor vehicle without a reasonable excuse;
- operating a motor vehicle during a number plate confiscation period without a reasonable excuse;
- removing, tampering or modifying a number plate confiscation notice attached to a motor vehicle without a reasonable excuse;
- removing, tampering or modifying an immobilising device attached to a motor vehicle without a reasonable excuse; and
- operating a motor vehicle without a reasonable excuse if an immobilising device attached to the motor vehicle has been unlawfully removed, tampered with or modified.

The offences carry a maximum penalty of 40 penalty units. This penalty is consistent with other offences in the PPRA. Further, when compared to other jurisdictions in Australia, these penalties meet the Government's commitment to introduce the toughest anti-hooning laws in the nation.

Finally, the Bill makes a minor technical amendment through the repealing of s 73A of the PPRA.

The Bill fundamentally changes the vehicle impoundment process in Queensland. The new type 1 and 2 schemes will not apply retrospectively to persons charged with a type 1 vehicle related offence or a type 2 vehicle related offence of a 'different kind' committed before the commencement of the Bill.

However, the new scheme will apply retrospectively to a type 2 vehicle related offence of the 'same kind' that has been committed up to 3 years prior to the commencement of the Bill. For example, if a person had committed three type 2 vehicle related offences in the 3 years prior to the commencement of the Bill and the person commits another type 2 vehicle related offence of the 'same kind' after the commencement of the Bill, the vehicle may be impounded and, if the driver is found guilty of the last offence, the vehicle will be forfeited.

The amendments to the CSA will commence on assent.

## **Alternative ways of achieving policy objectives**

There are no other alternatives that would achieve the policy objectives other than through legislative reform.

## **Estimated cost for government implementation**

All costs associated with the implementation of the amendments will be met through existing QPS budgets. There are no anticipated additional costs to the State Government.

## Consistency with fundamental legislative principles

The Bill has been drafted with due regard to the Fundamental Legislative Principles (FLPs) as outlined in the *Legislative Standards Act 1992* (the LSA). Section 4(2) of the LSA requires that legislation has sufficient regard to the rights and liberties of individuals. Owing to the often emotive issues that are raised within the community regarding vehicle impoundment, the impact on FLPs has been fully canvassed as follows:

### ***Whether the legislation has sufficient regard to the rights and liberties of individuals—s 4(2)(a) LSA***

An overarching theme of the Bill is the continued balance between the competing rights and liberties of individuals and the rights and liberties of the public to have a safe road environment.

Introducing ‘evade police’ offences and ‘High End’ speeding (>40km/hour in excess of the speed limit) as type 1 and type 2 vehicle related offences respectively will adversely affect drivers who commit these offences by making their vehicles subject to the type 1 and 2 vehicle impoundment schemes.

Impoundment, or where applicable forfeiture, of a vehicle will be in addition to the current measures such as driver licence suspensions, monetary fines and licence point demerits used as a sanction for ‘high end’ speeding offences. Regardless of these sanctions, speeding remains a major causal factor in fatal and injury accidents. In 2010, 55 people died on Queensland roads as a result of accidents involving excessive speed. In 2009, excessive speed accounted for 75 deaths. In the 12 months from 1 July to 30 June 2009, 416 people were hospitalised as a consequence of accidents in which speed was a causal factor.

In relation to the offence of ‘evade police’, the impact of this amendment is minimal as offenders who currently commit this offence may be subject to court applications seeking similar impoundment outcomes. The amendment will bring about impoundment outcomes occurring automatically as compared to through a court application.

This amendment is based on improving road safety by modifying driver behaviour. This is achieved through providing another potential deterrent to offenders who disregard the speed limit excessively or disobey police directions. The QPS considers the possibility for injury or the death of a member of the public if the motor vehicle is not impounded for these offences as a legitimate reason for these offences to be included as type 1 or 2 vehicle related offences.

It may be suggested that this Bill adversely affects the rights and liberties of individuals through increasing the impoundment sanctions for vehicle related offences. Increasing impoundment periods adversely affects offenders who commit these offences through their vehicles being impounded for a longer time or forfeited. The offender is further affected through being liable to pay increased storage fees for the vehicle. The impact of impounding vehicles may not only affect the offending driver. The impact may extend to the offender’s family and associates through not being able to use the vehicle whilst it is impounded.

Provision has been made to allow the usual driver or owner of the impounded vehicle to apply to the Commissioner for its release. Release of impounded vehicles can be made on various grounds including severe financial or physical hardship to the owner, usual driver or their families. The owner may also apply to the Commissioner for the release of the impounded vehicle if they can prove that the impounding offence occurred without their knowledge and consent.

This safeguard is enhanced by allowing an applicant to appeal to the Courts if their application to the Commissioner for the return of an impounded vehicle is unsuccessful. The QPS considers this amendment streamlines the impoundment process while making allowance for the return of impounded vehicles when it is appropriate to do so. This safeguard promotes the operational efficiency of courts and the QPS and removes the need for the offender to appear in court for the hearing of applications for impoundment or forfeiture orders.

Amending the definition of 'burn out' will make offenders who engage in hooning behaviour on wet and gravel roads subject to the impoundment provisions. Currently, to fall within the definition of a 'burn out' a vehicle has to be driven in a manner that produces smoke. This amendment changes this definition so that a 'burn out' will occur when there is a sustained loss of traction by a vehicle regardless of whether smoke is produced. The QPS considers this amendment to be a reasonable, legitimate, and balanced extension of the law to an area of community concern that has been adopted by almost every Australian jurisdiction.

Allowing offences to be proceeded against by way of traffic infringement notices as an alternate method of commencing proceedings as compared to a Notice to Appear or arrest is of obvious benefit to an offender as it removes a requirement for the offender to appear in court. However, an offender may be adversely affected if they are not aware of the consequences of committing a pre-impoundment offence. Although the QPS is not obliged to inform people of the consequences of committing impoundment offences, the QPS has undertaken to issue offenders with a facts sheet outlining the consequences and effect of committing a pre-impoundment offence when traffic infringement notices for these offences are issued.

Currently, the application of the type 2 vehicle impoundment scheme is dependant upon the offender repeatedly committing a series of the same offence as the initial 'pre-impoundment offence'. This Bill removes the requirement that repeat type 2 vehicle related offences have to be of the same kind. This allows the type 2 vehicle impoundment scheme to effectively target repeat offenders who commit any type 2 vehicle related offence rather than those who persistently commit only one type of offence. This amendment will bring Queensland into line with all other Australian jurisdictions and reduce differences between the operation of the type 1 and 2 vehicle impoundment scheme.

Finally, the Bill allows for the forfeiture and disposal of motor vehicles in certain circumstances. If the impounded motor vehicle is subject to forfeiture and the offender fails to appear in relation to the offence that makes the vehicle liable to forfeiture, the vehicle will be forfeited to the State upon a warrant being issued for the arrest of the driver.

Although this amendment may be considered to infringe on fundamental legislative principles by affecting a person's rights to their property, this concern may be mitigated through the procedures adopted in forfeiting these vehicles. Prior to the sale of a vehicle forfeited to the State, the Commissioner must provide notice to any owner unless the owner is unknown or cannot be located. In these circumstances, information in relation to the proposed sale can be made available on the police service internet website. These concerns are further mitigated if the driver is later located and found not guilty. This Bill provides a mechanism under the proposed section 121A which will provide compensation to an owner in these circumstances.

## **Consultation**

Consultation has occurred with the following government departments and agencies: the Department of the Premier and Cabinet, the Department of Transport and Main Roads, Queensland Treasury and Trade, the Department of Justice and the Attorney-General and the Department of Communities, Child Safety and Disability Services. Consultation was also conducted with major stakeholders in the community interested in the impoundment and forfeiture of motor vehicles. These stakeholders include the Queensland Law Society, RACQ and the Motor Trade Association of Queensland.

## **Consistency with legislation of other jurisdictions**

Vehicle impoundment schemes vary considerably across Australian jurisdictions. There is no uniform vehicle impoundment scheme in Australia. However, where possible, this Bill has been designed to enhance consistency between Queensland and other jurisdictions. An example is the amendment to the definition of 'burn out' which aligns this definition with that used in most Australian jurisdictions.

## Notes on provisions

### Part 1 Preliminary

#### 1. Short title

*Clause 1* establishes the short title to the Act as the *Police Powers and Responsibilities (Motor Vehicle Impoundment) and Other Legislation Amendment Act 2012*.

#### 2. Commencement

*Clause 2* provides that the Act will commence on a date fixed by proclamation.

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

#### 3. Act amended

*Clause 3* provides that Part 2 amends the *Police Powers and Responsibilities Act 2000*.

#### 4. Amendment of ch4, hdg (Motor vehicle impounding powers for prescribed offences and motorbike noise direction offences)

*Clause 4* amends the Chapter 4 heading to accurately reflect the contents of this chapter.

#### 5. Amendment of s 69 (Definitions for ch 4)

*Clause 5* amends the definition of 'burn out' by removing the requirement for smoke to be produced when the drive wheels lose traction with the road surface. The definition of 'burn out' is now met when a motor vehicle is wilfully driven so that the wheels experience a sustained loss of traction with the road surface.

This clause introduces the term 'immobilise' which includes restricting the use of a motor vehicle by an immobilising device such as a wheel clamp or through the removal and confiscation of the motor vehicle's number plate.

This clause also introduces the term 'prescribed impoundment period'. A prescribed impoundment period is the period of time a vehicle may be impounded for as prescribed under this Chapter. If the period of time a vehicle may be impounded for ends outside of business hours the impoundment of the motor vehicle may continue until 8 a.m. on the next business day.

This clause extends the relevant period in relation to a motor vehicle impounded or immobilised for a type 1 or 2 vehicle related offence from 3 years to 5 years.

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

*Clause 6* introduces evade police offences (section 754) and ‘high end speeding’ (speeding more than 40 km/hour above the speed limit) as type 1 and type 2 vehicle related offences respectively.

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

*Clause 7*, by omitting section 70A, removes the limitation that the type 2 vehicle impoundment scheme can only operate where an offender repeatedly commits the same type 2 vehicle related offence within the relevant period. This amendment allows the type 2 vehicle impoundment scheme to apply when any of the suite of type 2 vehicle related offences are committed within the relevant period.

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

*Clause 8* provides that a person served with an infringement notice for a vehicle related offence will be deemed to have been charged with an offence under this chapter. The purpose of this section is to allow vehicle impoundment sanctions such as impoundment and immobilisation to be available when an offender is issued an infringement notice for a vehicle related offence.

**9. Insertion of new s 71A**

*Clause 9* outlines that, where an infringement notice is issued for a vehicle related offence, the charge is not decided if:

- there is no payment of the ticket;
- a default certificate has not been issued; or
- the person has not otherwise been found guilty of the offence.

This clause ensures that infringement notices issued for vehicle related offences may be considered in determining appropriate prescribed impoundment periods. In determining the appropriate prescribed impoundment period it may be necessary to consider whether a person had previously been charged and the charges had not been decided.

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

Section 72 provides that impounding or forfeiting a motor vehicle is in addition to any other penalty that may be imposed on a person for a prescribed offence. This clause extends this section to include the immobilising of a motor vehicle.

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

Section 73A originally existed to restrict the operation of the type 2 impoundment scheme to specific Police Regions. On 1 July 2008, the type 2 impoundment scheme was expanded to operate state-wide. Once this scheme began operating state-wide, this section became unnecessary. This clause repeals section 73A.

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

*Clause 12* amends this heading to accurately reflect the contents of this part.

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

*Clause 13* amends this heading to accurately reflect the contents of this division.

**14. Replacement of s 74 (Impounding motor vehicles)**

*Clause 14* provides that a motor vehicle used to commit a type 1 vehicle related offence may be impounded for 90 days.

**15. Insertion of new ss 74A and 74B**

*Clause 15* inserts sections 74A and 74B. Section 74A (Impounding motor vehicles for second or subsequent type 1 vehicle related offence) provides that a motor vehicle may be impounded until the end of proceedings for all charges if the vehicle had been used to commit a type 1 vehicle related offence and the driver had previously been charged with, or found guilty of committing another type 1 vehicle related offence within 5 years.

Section 74B (Forfeiture of motor vehicles if driver found guilty of second or subsequent type 1 vehicle related offence) provides that the vehicle will be forfeited to the State upon a driver being found guilty of these type 1 vehicle related offences. Further, any right of a person to enforce a security interest under the *Personal Property Securities Act 2009* (Cth) is extinguished unless the secured interest is against the State.

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

*Clause 16* inserts Division 1A 'Impounding powers for type 2 vehicle related offences and forfeiture of motor vehicles in particular circumstances'. This Division consists of sections 74C to 74F which outlines the prescribed impoundment periods for offenders who commit type 2 vehicle related offences.

Section 74C (Impounding motor vehicles for second or subsequent type 2 vehicle related offence) provides that a motor vehicle may be impounded for a prescribed impoundment period of 7 days if the driver is charged with a type 2 vehicle related offence and the driver has within 5 years been charged with, or found guilty of, another type 2 vehicle related offence.

Section 74D (Impounding motor vehicles for third or subsequent type 2 vehicle related offence) provides that a motor vehicle may be impounded for a prescribed impoundment period of 90 days if the driver is charged with a type 2 vehicle related offence and the driver has within 5 years been charged with, or found guilty of, two other type 2 vehicle related offences.

Section 74E (Impounding motor vehicles for fourth or subsequent type 2 vehicle related offence) provides that a motor vehicle may be impounded until the end of proceedings for all charges if the vehicle had been used to commit a type 2 vehicle related offence and the driver had previously been charged with, or found guilty of committing three other type 2 vehicle related offences within 5 years.

Section 74F (Forfeiture of motor vehicles if driver found guilty of fourth or subsequent type 2 vehicle related offence) provides that the vehicle will be forfeited to the State upon a driver being found guilty of these type 2 vehicle related offences. Further, any right of a person to enforce a security interest under the *Personal Property Securities Act 2009* (Cth) is extinguished unless the secured interest is against the State.

This Clause also inserts Division 1B 'Immobilising powers for type 1 and type 2 vehicle related offences'. This Division provides alternative ways for a motor vehicle impounded under Division 1 or 1A to be kept at a place other than a holding yard.

Subdivision 2 'Removal and confiscation of number plate powers' outlines the powers that police officers may use in removing and confiscating number plates.

Section 74H (Power to remove and confiscate number plates) allows a police officer to remove and confiscate number plates attached to a motor vehicle as an alternative to impounding it. The police officer may also attach a number plate confiscation notice to the motor vehicle. A motor vehicle to which a number plate confiscation notice is attached is prohibited from being operated for the period the vehicle would have been impounded in a holding yard.

Section 74I (Moving motor vehicle to which number plate confiscation notice is attached) allows a motor vehicle bearing a number plate confiscation notice to be moved to a place authorised by a police officer where that vehicle may stand.

Subdivision 3 'Immobilising device powers' outlines the powers police officer have in immobilising a motor vehicle as an alternative to impoundment.

Section 74J (Power to attach immobilising device) allows a police officer to attach an immobilising device to a motor vehicle. The period for which the immobilising device may be attached to the vehicle is the period the vehicle would otherwise have been impounded in a holding yard.

Additionally, this clause inserts Division 1C 'Vehicle production notices' outlines how police officers may require a person to produce a motor vehicle for immobilisation or impoundment under a vehicle production notice.

Section 74K (Power to require motor vehicle to be produced) allows a police officer to require the owner or driver of a vehicle that may be impounded or immobilised to produce the vehicle at a stated time and place for the vehicle to be immobilised or impounded. Section 74L (Period of impoundment or immobilisation starts only when motor vehicle produced) provides that the prescribed impoundment period commences upon the vehicle being produced. Section 74M (Vehicle production notices generally) outlines that the vehicle production notice must state a date of production no later than the first business day occurring 5 business days after the notice is given. This section allows the Commissioner to withdraw the notice under certain circumstances.

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

*Clause 17* amends this heading to reflect that the contents of this part refer to general provisions about the impounding and immobilising of motor vehicles.

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

*Clause 18* extends the powers a police officer has in impounding a vehicle to immobilising a vehicle. This clause also consolidates the powers a police officer may use in impounding a motor vehicle through relocating the obligation a police officer has to move a motor vehicle to a holding yard from its previous position in section 76.

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

Section 76 obliges a police officer to return a motor vehicle to its owner if the vehicle is impounded and the vehicle is being unlawfully used, has been stolen or is a rental vehicle. This clause extends this obligation to include motor vehicles immobilised under this chapter. Clause 19 also amends the heading to this section to more accurately reflect its contents.

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

This section authorises a police officer to arrange for either an impounded motor vehicle to be towed to a holding yard or an immobilised motor vehicle to be towed to a place.

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

*Clause 21* obligates police officers to provide an impounding notice or an immobilising notice to the driver of the motor vehicle as soon as reasonably practicable upon the vehicle being impounded or immobilised respectively. If the driver is not the owner or not the only owner of motor vehicle, these notices must be given to each other owner. Further, if the driver is a child, these notices must also be given to the child's parent or guardian.

This clause allows information to be contained in the impounding or immobilising notice to be prescribed under the *Police Powers and Responsibilities Regulation 2000*.

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

*Clause 22* omits section 79 (Impounding notice for motorbike noise direction offence or motorbike noise order offence). This section is relocated by Clause 25 of the Bill as section 80 under a new Part 2A for this chapter.

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

Chapter 4 Part 2 Division 2 and 2A contained the following provisions:

- Section 80 (Content of notice for first type 1 vehicle related offence);
- Section 81 (Content of notice for second or subsequent type 1 vehicle related offence);
- Section 81A (Content of notice for motor vehicle impounded for second type 2 vehicle related offence); and
- Section 81B (Content of notice for third or subsequent type 2 vehicle related offence).

Upon commencement of this Bill these sections become superfluous. Consequently, Clause 23 effects their omission.

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

*Clause 24* inserts Division 2 'Other provisions relating to impounded or immobilised motor vehicles'. This Division allows for the release of motor vehicles that are impounded or immobilised after an application to the Commissioner has been made by an eligible person. The Commissioner may grant the application with or without conditions. If a person is aggrieved by the decision of the Commissioner, the person may appeal to the Court. The Court may confirm the Commissioner's decision or substitute another decision that it considers appropriate.

Division 2 consists of four Subdivisions. Subdivision 1 'Preliminary' contains section 79 (Definitions for div 2). This section defines an eligible person to mean an owner or usual driver of the motor vehicle that has been impounded or immobilised. This section also prescribed the information that must be contained in an 'information notice' and a 'vehicle release notice'.

Subdivision 2 'Application for release of impounded or immobilised motor vehicle' outlines the grounds upon which applications for the release of impounded or immobilised motor vehicles may be sought. These grounds are:

- severe hardship, either physical or financial;
- the prescribed offence happened without the owner's consent; or
- the offences causing the impoundment have been rectified.

Applications must be in the approved form and be supported by enough information to enable the Commissioner to decide the application. The Commissioner must, if reasonably practicable, decide the application within 5 business days of receiving the application and other documents required to support the application.

If the Commissioner is satisfied:

- that refusing to grant the application would cause severe financial or physical hardship to the applicant or their family;
- the relevant prescribed offence happened without the consent of the owner;
- the relevant type 2 vehicle related offence has been rectified; or
- there were not reasonable grounds to impound or immobilise the motor vehicle

the Commissioner must then give the applicant a vehicle release notice for the motor vehicle.

The vehicle release notice contains important information including:

- the decision made by the Commissioner;
- any conditions to which the release of the vehicle is subject; and
- the time and date when the impoundment or immobilisation of the vehicle ends.

Section 79I (Impoundment or immobilisation ends if application for release of motor vehicle granted) provides that the impoundment or immobilisation of a motor vehicle ends upon the Commissioner granting an application.

If the Commissioner refuses to grant the application the Commissioner must give the applicant an information notice outlining:

- the decision made by the Commissioner;
- the reasons for the decision;
- that the person to whom notice is given may appeal against the decision; and
- how the person may appeal.

Subdivision 3 'Appeals' outlines how a person aggrieved by a decision of the Commissioner may appeal. A decision made by the Commissioner includes a condition imposed upon the release of a motor vehicle.

Section 79K (How to start appeal) provides that an appeal is started through filing a notice to appeal with the clerk of the Magistrates Court within 28 days of the appellant being given an information notice. A copy of the notice must be served on other persons entitled to appeal against the decision made by the Commissioner. The notice of appeal must fully state the grounds upon which the appeal is relied upon.

Section 79L (Effect of appeal on decision) outlines that starting an appeal doesn't affect the operation of a decision made by the Commissioner. For example, starting an appeal will not affect the impoundment or immobilisation of a motor vehicle if the Commissioner has refused to grant the application. However, this section does allow the court to make an order staying the operation of the decision being appealed against until the appeal is decided.

Section 79O (Powers of Magistrates Court) provides that a Court may confirm the Commissioner's decision or set it aside and substitute another decision.

Subdivision 4 'Miscellaneous' clarifies that the Commissioner may delegate his powers under this division to a police officer of at least the rank of Inspector. Furthermore, section 79P (Power to take certain action if breach of condition) allows a police officer to re-impound or re-immobilise a motor vehicle that has been released under this Division if it is being used contrary to conditions imposed upon its release. The vehicle may be re-impounded or re-immobilised for the remainder of the period for which the vehicle would

have been impounded or immobilised starting from the day on which the condition was breached.

**Clause 25 Insertion of new ch 4, pt 2A**

The purpose of this Clause is to consolidate and move provisions relating to motorbike noise direction and motorbike noise order offences into Part 2A.

*Clause 25* moves the powers for motorbike noise direction offences or motorbike noise order offences previously contained in section 74 (Impounding motor vehicles) to section 80 (Impounding motorbike for motorbike noise direction offence or motorbike noise order offence).

Section 81 (Impounding notice for motorbike noise direction offence or motorbike noise order offence) relocates laws relating to impounding notices which were previously contained in section 79 (Impounding notice for motorbike noise direction offence or motorbike noise order offence).

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

*Clause 26* amends this heading to reflect that the contents of this part only apply to orders for motorbike noise direction offences or motorbike noise order offences.

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

*Clause 27* omits a heading that has become unnecessary.

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

*Clause 28* amends this heading to reflect that the contents of this part only apply to orders for motorbike noise order offences.

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

*Clause 29* omits a heading that has become unnecessary.

**Clause 30 Omission of ss 85 and 85A**

*Clause 30* omits:

- section 85 (Application for impounding order for type 1 vehicle related offence); and
- section 85A (Application for impounding order for type 2 vehicle related offence).

Upon commencement of this Act these sections become superfluous. Consequently, Clause 30 effects their omission.

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

*Clause 31* omits a heading that has become unnecessary.

**Clause 32 Omission of ss 87 and 87A**

*Clause 32* omits:

- section 87 (Orders on application for impounding order if type 1 vehicle related offence not decided); and
- section 87A (Orders on application for impounding order if type 2 vehicle related offence not decided).

Upon commencement of this Act these sections become superfluous. Consequently, Clause 32 effects their omission.

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

*Clause 33* omits a heading that has become unnecessary.

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

Upon the commencement of the Act, this section will only apply to motorbike noise order offences. Consequently, Clause 34 makes a minor drafting amendment that clarifies that advice to the hearing of an application for an impounding order can only be given to the owner of a motorbike.

**Clause 35 Amendment of ch 4, pt 4, hdg (Obtaining forfeiture orders)**

*Clause 35* amends this heading to reflect that the contents of this part only apply to orders for motorbike noise order offences.

**Clause 36 Omission of ch4, pt 4, div 1, hdg (Forfeiture order application provisions)**

*Clause 36* omits a heading that has become unnecessary.

**Clause 37 Omission of ss 90 and 90A**

*Clause 37* omits:

- section 90 (Application for forfeiture order for type 1 vehicle related offence); and
- section 90A (Application for forfeiture order for type 2 vehicle related offence).

Upon commencement of this Act these sections become superfluous. Consequently, Clause 37 effects their omission.

**Clause 38 Omission of ch 4, pt 4, div 2, hdg (Orders if offence not decided)**

*Clause 38* omits a heading that has become unnecessary.

### **Clause 39 Omission of ss 92 and 92A**

*Clause 39* omits:

- section 92 (Orders on application for forfeiture order if type 1 vehicle related offence not decided); and
- section 92A (Orders on application for forfeiture order if type 2 vehicle related offence not decided).

Upon commencement of this Act these sections become superfluous. Consequently, Clause 39 effects their omission.

### **Clause 40 Omission of ch 4, pt 4, div 3, hdg (Advice of date of hearing)**

*Clause 40* omits a heading that has become unnecessary.

### **Clause 41 Amendment of s 94 (Advise to owner of date of hearing)**

Upon the commencement of the Act, this section will only apply to motorbike noise order offences. Consequently, Clause 41 makes a minor drafting amendment that clarifies that advice to the hearing of an application for an impounding order can only be given to the owner of a motorbike.

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

*Clause 42* makes a minor technical amendment to clarify that applications for forfeiture orders under this section may only be made for a motorbike noise order offence.

### **Clause 43 Omission of ss 96 and 96A**

*Clause 43* omits:

- section 96 (When applications to be heard –type 1 vehicle related offence); and
- section 96A (When application to be heard- type 2 vehicle related offence).

Upon commencement of this Act these sections become superfluous. Consequently, Clause 43 effects their omission.

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

*Clause 44* omits:

- section 98 (Consideration of application for impounding order – type 1 vehicle related offence);
- section 99 (Consideration of application for forfeiture order – type 1 vehicle related offence);
- section 99A (Consideration of application for impounding order – type 2 vehicle related offence); and
- section 99B (Consideration of application for forfeiture order – type 2 vehicle related offence).

Upon commencement of this Act these sections become superfluous. Consequently, Clause 44 effects their omission.

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

*Clause 45* amends this heading to reflect that the contents of this division.

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

*Clause 46* inserts a heading to indicate that the content of this division concerns community service orders that apply in relation to motorbike noise direction offences or motorbike noise order offences.

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

*Clause 47* omits a heading that has become unnecessary.

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

*Clause 48* clarifies that section 102 only applies to motorbikes.

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

*Clause 49* is a minor drafting amendment to insert a heading that reflects the contents of this Part.

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

*Clause 50* inserts a new heading to reflect the content of this Division.

**Clause 51 Amendment of s 103 (Cost order for child drivers)**

*Clause 51* extends section 103 to allow a court to order a child found guilty of a prescribed offence to pay for the costs of removing and keeping a motor vehicle impounded or immobilised as a result of the offence. If after considering submissions from the child or their parent, the court does not consider the child to have capacity to pay costs, the court may call on the child's parents to show cause, under applied section 259, as to why they should not pay the costs of removing and keeping the motor vehicle.

The court may, under applied section 259(5), order the child's parent to pay the costs of removing and keeping the motor vehicle.

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

Section 104 is a machinery section that allows sections 258 and 259 of the *Youth Justice Act 1992* to be applied as an authority for making orders under section 103. This clause extends the application of these applied sections to the court to include orders made under section 103 in relation to child offenders found guilty of prescribed offences.

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

This clause inserts a new heading to reflect the content of this Division.

**Clause 54 Insertion of new ss 105A to 105F**

*Clause 54* inserts a number of offence provisions to ensure that the type 1 and 2 vehicle impoundment schemes are enforceable. These offences are:

- Section 105A (Failure to comply with requirement to produce motor vehicle);
- Section 105B (Offence to operate vehicle during number plate confiscation period);
- Section 105C (Offence to remove, tamper with or modify number plate confiscation notice);
- Section 105D (Offence to tamper with, remove or modify immobilising device);
- Section 105E (Offence to operate motor vehicle if immobilising device unlawfully removed, tampered with or modified); and
- Section 105F (Offence to breach condition made on release of motor vehicle).

A defendant who commits any of these offences faces a maximum penalty of 40 penalty units unless the defendant has a reasonable excuse.

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

*Clause 55* makes a minor drafting amendment that clarifies that this offence may only apply to motorbikes.

**Clause 56 Insertion of new s 106A**

Clause 56 introduces an offence for an owner of a motor vehicle subject of a vehicle production notice to modify, sell or dispose of the motor vehicle. The maximum penalty for this offence is 40 penalty units.

**Clause 57 Replacement of s 107 (Defence)**

*Clause 57* makes a minor drafting amendment to clarify that the defence provision relating to a proceedings for an impounding order or a forfeiture order only applies to motorbikes rather than motor vehicles generally.

**Clause 58 Amendment of s 108 (Counting the occasions – general)**

*Clause 58* allows this section to have application to vehicles impounded for type 1 and 2 vehicle related offences. Additionally, a minor drafting amendment is made to remove references to sections that are no longer relevant.

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

*Clause 59* allows this section to have application to vehicles impounded for type 1 and 2 vehicle related offences. Additionally, a minor drafting amendment is made to remove references to sections that are no longer relevant.

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

*Clause 60* allows this section to have application to vehicles impounded for type 1 and 2 vehicle related offences. Additionally, a minor drafting amendment is made to remove references to sections that are no longer relevant.

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

*Clause 61* makes a minor drafting amendment clarifying that this section only applies to motorbikes.

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

*Clause 62* amends this heading to reflect the contents of this division also apply to the immobilising of motor vehicles.

**Clause 63 Amendment of s 111 (State's liability to pay costs of impounding)**

*Clause 63* extends the State's liability to pay costs for removing and keeping a motor vehicle under section 111 to motor vehicles that are immobilised.

**Clause 64 Amendment of s 112 (Liability to pay costs of impounding – adult driver)**

*Clause 64* extends an adult driver's liability to pay costs for removing and keeping a motor vehicle under section 112 to motor vehicles that are immobilised.

**Clause 65 Amendment of s 113 (Liability to pay costs of impounding – child driver)**

*Clause 65* extends a child driver's liability to pay costs for removing and keeping a motor vehicle under section 113 to motor vehicles that are immobilised.

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

*Clause 66* amends this heading to reflect the contents of this division also apply to the immobilising of motor vehicles.

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

This clause amends the heading of the section to reflect this section also applies to motor vehicles that have been immobilised. This clause extends this section to include owners of immobilised motor vehicles that have been issued an immobilising notice. This clause authorises the release of an immobilised motor vehicle to its owner upon the period of

immobilising ending and payment of the costs of removing and keeping the motor vehicle for which the owner is liable.

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

*Clause 68* extends the reference of a proceedings being discontinued to include a withdrawal of an infringement notice under the *State Penalties Enforcement Act 1999*. This clause provides that a vehicle must be released unless another prescribed impoundment period applies in relation to the motor vehicle. For example, a driver is charged with a type 1 vehicle related offence and motor vehicle A is impounded for a prescribed impoundment period for 90 days (1<sup>st</sup> charge). A week later, the driver is charged with another type 1 vehicle related offence and motor vehicle B is impounded until proceedings for both of these offences are decided. The following day, the 1<sup>st</sup> charge is withdrawn. Motor vehicle A is released. However, motor vehicle B is impounded until the prescribed impoundment period of 90 days ends.

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

*Clause 69* amends this heading to reflect the contents of this division also apply to the immobilising of motor vehicles.

**Clause 70 Insertion of new s 118A**

Clause 70 allows for the administrative forfeiture of motor vehicles in certain circumstances. This clause applies if a motor vehicle was impounded until the end of proceedings for all charges under section 74A(2) and a warrant is issued for the defendant failing to appear for the charge for the second or subsequent type 1 vehicle related offence mentioned in section 74A(1). This clause also applies if a motor vehicle was impounded until the end of proceedings for all charges under section 74E(2) and a warrant is issued for the defendant failing to appear for the charge of the fourth or subsequent type 2 vehicle related offence mentioned in section 74E(1). In both of these instances, the motor vehicle is taken to have been forfeited to the State.

The clause allows the Commissioner to dispose of a motor vehicle including through the sale of the vehicle. Notice of the proposed sale or disposal must be given to the owner, if locatable. Otherwise, notice may be given by making the information about the proposed sale of the motor vehicle available on the police service website.

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

*Clause 71* makes a minor drafting amendment clarifying that this section only applies to motorbikes.

**Clause 72 Amendment of s 121 (Applications of proceeds of sale)**

*Clause 72* extends this section to apply motor vehicles that have immobilised. This clause also provides that if the motor vehicle is sold under section 118A the proceeds of sale will go

to consolidated funds if the owner was the driver issued with a fail to appear warrant as mentioned in section 118A. Otherwise, the owner is eligible to receive the proceeds of sale pursuant to this section.

### **Clause 73 Insertion of new s 121A**

*Clause 73* inserts a new s 121A (Compensation for disposal of motor vehicle if driver found not guilty etc.). This section allows compensation to be paid to an owner of a motor vehicle which has been disposed of by the Commissioner and the driver is later found not guilty of a prescribed offence or the proceedings are discontinued. In accordance with the existing compensation regime under the PPRA, the Minister decides the amount of compensation and a person dissatisfied with this decision may appeal to a court within 28 days.

### **Clause 74 Amendment of s 122 (Protection from liability)**

Section 122 provides that a police officer, acting in good faith and without negligence, is not liable for any damage, loss or depreciation to an impounded motor vehicle. Further a police officer who signs a towing authority for a vehicle is not liable for any damage, loss or depreciation to the motor vehicle whilst it is moved or kept in a holding yard.

This clause extends these protections for police officers for any damage, loss or depreciation caused to immobilised motor vehicles or confiscated number plates.

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

*Clause 75* extends the third party protections certain persons have in forfeited motor vehicles. Persons who may rely on this section are extended to include persons who have an interest in a motor vehicle forfeited under the type 1 or 2 vehicle impoundment scheme other than the defendant. These persons may apply to a court which may order the State:

- transfer the motor vehicle to the applicant if the motor vehicle is still vested in the State; or
- pay the applicant the value of their interest in the motor vehicle after taking into account any amount paid to the holder of a registered security interest if the motor vehicle is no longer vested in the State.

This application must be made before the end of 6 months starting on the day the motor vehicle became the property of the State unless the determining court gives leave.

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

*Clause 76* clarifies that a motor vehicle that cannot be impounded or immobilised under chapter 4 for an evade police offence may still be subject to an application for an impounding or forfeiture order under chapter 22. If the motor vehicle can be impounded or immobilised under chapter 4 that vehicle may be impounded or immobilised under that chapter or be subject to an application for an impounding or a forfeiture order under chapter 22.

### **Clause 77 Amendment of s 809 (Regulation-making power)**

*Clause 77* amends this section to clarify that regulations may be made for notice requirements for impounding or immobilising motor vehicles under chapter 4.

### **Clause 78 Insertion of new ch 24, pt 13**

This clause inserts transitional provisions. Section 872 (One type 1 vehicle related offence committed before commencement and another type 1 vehicle related offence committed after commencement) provides that type 1 vehicle related offences committed before the commencement of the Act cannot be used in determining if a vehicle is eligible for impoundment or forfeiture if a driver commits another type 1 vehicle related offence after the commencement of the Act.

Similarly, section 873 (Different kinds of type 2 vehicle related offences committed before and after commencement) provides that different kinds of type 2 vehicle related offences (i.e. offences described in different paragraphs of the definition of type 2 vehicle related offences in section 69A(2)) which are committed before the commencement of the Act cannot be considered in determining if a vehicle is eligible for impoundment or forfeiture if a driver commits another different type 2 vehicle related offence after the commencement of this Act.

Section 874 (Type 2 vehicle related offences of same kind committed before and after commencement) provides that the impoundment or forfeiture of a motor vehicle caused through the commission of repeat type 2 vehicle related offences of the same kind is not affected by this Act. For example, type 2 vehicle related offences of the same kind committed before the commencement of this Act can be considered in determining the appropriate impoundment or forfeiture sanction if a person commits further type 2 vehicle related offences of the same kind after the Act commences.

### **Clause 79 Amendment of sch 6 (Dictionary)**

*Clause 79* amends schedule 6 (Dictionary) of the Act to define relevant terms in the Bill. The term found guilty is expanded to include for a vehicle related offence for which an infringement notice has been served, a payment, in full or part, of a penalty or the registering of a default certificate for the infringement notice by the registrar under the *State Penalties Enforcement Act 1999*.

### **Clause 80 Other amendments**

*Clause 80* provides that the schedule amends sections that it mentions.

## **Part 3 Amendment of Corrective Services Act 2006**

### **Clause 81 Act amended**

*Clause 81* states that this part amends the *Corrective Services Act 2006*.

### **Clause 82 Amendment of s 12 (Prisoner security classification)**

*Clause 82* amends section 12 of the *Corrective Services Act 2006* to provide that remanded prisoners, not sentenced to a term of imprisonment, can only be given a security classification of maximum or high. These prisoners will be automatically classified as high security with

the discretion for the chief executive to classify them as maximum security where it is considered necessary.

**Clause 83    Amendment of s 13 (Reviewing prisoner's security classification)**

*Clause 83* amends section 13 of the *Corrective Services Act 2006* to remove the requirement to review remanded prisoners' security classification if they are classified as high security. However, the ability to reclassify remanded prisoners, not sentenced to a term of imprisonment, to maximum security classification at any time and six monthly review requirements for maximum security classifications is retained.

**Clause 84    Insertion of new ch 7A, pt 6**

*Clause 84* is a transitional provision to ensure those prisoners who are on remand, and not sentenced to a term of imprisonment prior to the commencement of the Act, no longer require reviews of their high security classification.

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

The Schedule makes minor consequential amendments to extend the powers and obligations police officers have in relation to impounded vehicles to immobilised vehicles.