

Police Powers and Responsibilities (Motor Vehicle Impoundment) Amendment Bill 2011

Explanatory Notes

Short title

The short title of the Bill is the Police Powers and Responsibilities (Motor Vehicle Impoundment) Amendment Bill 2011 (the Bill).

Policy objectives and the reasons for them

The objective of the Bill is to amend the type 1 and type 2 vehicle impoundment schemes found in Chapter 4 of the *Police Powers and Responsibilities Act 2000* (the Act). Both type 1 and type 2 vehicle impoundment 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. However, the type 2 vehicle impoundment scheme contains a concept of a 'pre-impoundment offence' whereby the first type 2 vehicle related offence (the pre-impoundment offence) does not immediately result in the impounding of a motor vehicle but triggers the start of a three year period during which a police officer may impound or forfeit a vehicle if the driver continues to commit similar type 2 vehicle related offences.

The Queensland Police Service (QPS) conducted an evaluation of the type 2 vehicle impoundment scheme. As a result of this evaluation, recommendations were developed that were designed to improve this scheme. The QPS has identified other initiatives that have been included into these amendments to further improve both type 1 and 2 vehicle impoundment schemes. These amendments will improve the efficiency of these schemes and enhance consistency with other Australian jurisdictions. The Act will:

- allow proceedings to commence by Traffic Infringement Notice (TIN or ticket) for a 'pre-impoundment offence' rather than having to proceed by way of a Notice to Appear or arrest;

- 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 for the type 2 vehicle impoundment scheme to apply;
- remove the requirement to notify registered security interest holders of the impoundment of a motor vehicle for the initial impoundment period;
- increase the time for making an application to the court for a further sanction from 48 hours to 7 days;
- allow for an automatic impoundment period of 28 days for the second repeat offence and subsequent offences for the type 2 vehicle impoundment scheme and the first repeat offence and subsequent offences for the type 1 vehicle impoundment scheme without having to make an application to the court;
- allow police officers to apply to a court for an impounding order for an impoundment period of not more than 3 months for the second repeat and subsequent offences of a type 2 vehicle related offence and for the first repeat offence and subsequent offences of a type 1 vehicle related offence;
- allow enforcement action to be taken against repeat type 2 offenders who are non-owner drivers in circumstances where the owner may have a defence under section 107 (Defence) of the Act;
- increase the length of the initial impoundment period from 48 hours to 7 days for the type 1 and 2 vehicle impoundment scheme;
- amend the definition of ‘burn out’;
- introduce high end speeding as a type 2 vehicle related offence; and
- repeal section 73A (Application of ch 4 to type 2 vehicle related offences) of the Act.

Achievement of policy objectives

The Bill achieves the objectives by implementing those amendments identified as necessary to increase efficiencies through the review of the type 1 and 2 vehicle impoundment scheme. The Bill proposes to allow proceedings to commence by TIN for a ‘pre-impoundment offence’ rather than having to proceed by way of a Notice to Appear or arrest. This allows a significant number of offences such as 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, this 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 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'. 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 schemes.

The Bill will remove the requirement to notify registered security interest holders of the impoundment of a motor vehicle for the initial impoundment period. Consultation with major registered security interest holders about removing notification requirements received varied results; some in the industry were satisfied to be advised on occasions the vehicle is liable for forfeiture, whilst others have requested the current process remain. It is the QPS view that the information needs of registered security interest holders will be met through police officers continuing to notify an owner of a vehicle, including a registered security interest holder, of a proposed sale or disposal of a motor vehicle that has not been recovered within 30 days after a period of impounding ends. Further, the QPS has undertaken to develop State-wide administrative arrangements to allow for the prompt notification of registered security interest holders when vehicles remain uncollected after the period of impounding ends. These measures will ensure that a registered security interest holder will remain appropriately informed about the motor vehicle they have an interest in. This amendment, by removing the requirement to provide information to registered security interest holders about a motor vehicle being impounded for the initial impoundment period, will release policing resources that may be re-directed to other duties.

Currently, applications for an impounding or forfeiture order are required to be sought within 48 hours after charging the person with the initiating impoundment offence. The Bill extends the timeframe for a court

application to be made from 48 hours to 7 days. This amendment resolves the difficulties that both police officers and the courts face with meeting a 48 hour timeframe.

The Bill introduces an automatic impoundment period of 28 days for the second repeat offence and subsequent offences for the type 2 vehicle impoundment scheme and first repeat offence and subsequent offences for the type 1 vehicle impoundment scheme without having to make an application to the court. This amendment will create considerable savings for police, courts and offenders through elimination of the paperwork required of police officers to complete court applications for an impounding order of up to three months. Further savings will be achieved through not requiring offenders to appear in court in relation to impoundment applications.

Provision is made to allow the usual driver or owner of the impounded motor vehicle to make application to the Commissioner for the motor vehicle's release on the grounds that the impoundment will cause severe financial or physical hardship or, in the case of an owner, they can prove that the prescribed offence happened without their knowledge and consent. If the Commissioner decides not to release the impounded motor vehicle, an aggrieved person may appeal to the Magistrates Courts.

The Bill allows for flexibility in appropriately dealing with impounded vehicles by allowing police officers the discretion to apply to a court for an impounding order for an impoundment period of not more than 3 months for the second repeat offence and subsequent offences for the type 2 vehicle impoundment scheme and for the first repeat offence and subsequent offences for the type 1 vehicle related offence. This allows police officers to apply to a court for an impounding order for up to 3 months in circumstances where the police officer does not consider the automatic impoundment period to be sufficient. In such an instance, a court can properly determine if the seriousness of the matter warrants the subject vehicle being impounded for longer than the automatic impoundment period.

The Bill ensures equal deterrence and parity in dealing with owner-drivers and non owner-drivers of vehicles involved in the commission of impoundment related offences by allowing a court to impose community service on a driver of a vehicle where the owner of the vehicle successfully raises a defence to the vehicle's impoundment or forfeiture.

The Bill, through increasing the initial impoundment period of 48 hours to 7 days, enhances the deterrent effect of the impoundment schemes and obtains greater parity with other jurisdictions. This amendment not only acts as a deterrent through the increase in time that the vehicle is impounded but also through the increase in storage fees incurred through impounding the vehicle.

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 high end speeding 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 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.

Finally, the Bill makes a minor technical amendment through the repealing of section 73A of the Act.

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 the 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.

Clause 4 of the Bill, by increasing the initial impoundment period of 48 hours to 7 days, adversely affects offenders who commit prescribed offences through their vehicle being impounded for a longer time. The offender is further affected by this amendment through being liable to pay the increased storage fees of the vehicle. Potentially, impounding vehicles not only affects the offending individual but may have detrimental impacts on the offender's family and associates. Increasing the initial impoundment period may be considered harsh particularly as the period of impoundment cannot be reduced because of hardship caused to the driver or owner of the vehicle or through the owner being unaware of the driver committing the prescribed offence.

However, a study undertaken by the Queensland University of Technology in 2009 entitled "*There is no way in hell I would pull up*": *Deterrent and other effects of vehicle impoundment laws for hooning* has reported that participants in their study considered impoundment for 3 months and permanent forfeiture penalties to be far more severe than the initial 48 hour impoundment period. In examining first-time hooning behaviour the researchers described the classical deterrence model as a poor fit as the initial impoundment period is not a sufficient deterrent. The researchers speculated that the deterrence effect of the initial 48 hour impoundment period comes from the offender becoming eligible for more severe periods

of impoundment or forfeiture. It is the QPS view that the initial impoundment period should be considered a deterrent in itself rather than a threshold that must be crossed before a person becomes eligible for more serious consequences. It is considered that this amendment is justified to ensure that the initial impoundment period is of sufficient duration in itself to effectively deter offenders from committing the first impounding offence.

Amending the definition of the term 'burn out' will have the effect of making driving in a manner that would otherwise be considered hooning behaviour, had it not taken place on a wet or gravel road, subject to the impoundment provisions. This is achieved through changing the current definition of 'burn out' to ensure that hoon behaviour such as sustained loss of traction by a vehicle is captured in the impoundment scheme regardless of whether smoke is produced. Although this amendment will impact on the rights and liberties of individuals, the QPS considers it to be reasonable, legitimate, and a balanced extension of the law to an area of community concern that has been adopted by almost every Australian jurisdiction.

Removing the requirement for repeat offences under the type 2 vehicle impoundment scheme to be of the same offence type as the pre-impoundment offence has the potential to increase the number of offenders whose vehicles may be subject to impoundment or forfeiture. Impounding or forfeiting vehicles potentially not only impacts upon the offending driver but others who may use that vehicle. While this amendment will affect the rights and liberties of individuals, it is designed to provide protection to the community as a whole by modifying the driving behaviour of repeat offenders who commit a range of type 2 vehicle related offences by providing a more readily applicable deterrent of vehicle impoundment or forfeiture.

This Bill allows pre-impoundment offences to be proceeded by way of a TIN, as an alternative to requiring the offender to appear in court through a Notice to Appear or arrest. Although removing the obligation for an offender to appear in court is an obvious advantage to the offender, the offender's rights and liberties may be adversely affected if they are not advised of the consequences of committing a pre-impoundment offence. This will be mitigated through the QPS undertaking to issue information notices with infringement notices for these offences so that offenders will be provided with facts outlining the consequences and effect of committing a pre-impoundment offence.

This Bill makes provision for the automatic impoundment of vehicles for 28 days for the first repeat offence and subsequent offences for the type 1 impoundment scheme and for the second repeat offence and subsequent offences for the type 2 impoundment scheme without having to make an application to the court. This amendment adversely affects the rights and liberties of individuals by allowing for the impoundment of the offender's vehicle for a substantial time before the offence may be dealt with by a court. However, this impact is mitigated by allowing a usual driver or owner to apply to the Commissioner for the return of the vehicle on the grounds that the continued impoundment will cause severe financial or physical hardship to the owner or usual driver. The owner may also apply for the return of their vehicle if they can prove that the prescribed offence happened without their knowledge and consent. This amendment promotes operational efficiency for courts and the QPS and eliminates the current burden upon the offender to appear in court for the hearing of applications for impoundment orders.

Through the introduction of high end speeding offences as a type 2 vehicle related offence, offenders who exceed the speed limit by more than 40 km/hr will be subject to the vehicle impoundment scheme. This strategy would add to the measures currently employed in relation to high end speeding including driver's licence suspensions, monetary fines and licence point demerits. It is considered that this amendment is based on improving road safety by modifying driver behaviour through providing another potential deterrent to offenders who repeatedly disregard the speed limit excessively. Consequently, while the driver of the motor vehicle may be adversely affected, the QPS considers the possibility for injury or the death of a member of the public if the motor vehicle is not impounded for this offence is a legitimate reason for this offence to be included as a type 2 vehicle related offence.

The removal of the requirement to notify registered security interest holders that motor vehicles they have an interest in have been impounded for the initial impoundment period does not affect the contractual or financial arrangements associated with those impounded vehicles. However, to protect the interests of a registered security interest holder of a motor vehicle that remains uncollected after a period of impoundment, the QPS will implement state-wide administrative arrangements that allow for the prompt notification of the registered security interest holder. This will mitigate any disadvantage to the registered security interest holder by allowing them the opportunity of enforcing their rights over the vehicle.

Finally, this Bill amends section 102 (Community service instead of impounding or forfeiture order) of the Act to allow a court to impose a community service order on a non owner-driver of an impounded motor vehicle in circumstances where the owner of the vehicle is able to rely on a defence under section 107 (Defence) of the Act. The imposition of community service as an alternative to the continued impoundment or forfeiture of a motor vehicle allows for the return of the vehicle in circumstances where impoundment or forfeiture would be considered unjust. This amendment will ensure equal deterrence and parity in dealing with owner-drivers and non owner-drivers of vehicles used in the commission of impoundment related offences.

Consultation

No community consultation has been undertaken at this time. Consultation has been undertaken with major registered security interest holders in relation to amending notification requirements of the impounding of motor vehicles.

Consistency with legislation of other jurisdictions

There is no uniform scheme in relation to vehicle impoundments in Australia. Consequently, vehicle impoundment schemes vary considerable across these jurisdictions. However, where possible, this Bill has been designed to enhance consistency between Queensland and other jurisdictions. Examples include increasing the initial impoundment period from 48 hours to seven days in recognition of the significant impoundment periods imposed in other Australian jurisdictions. Further, amending the definition of 'burn out' aligns this definition with that used in most Australian jurisdictions.

Notes on provisions

Short title

Clause 1 states that when enacted the Bill will be cited as the *Police Powers and Responsibilities (Motor Vehicle Impoundment) Amendment Act 2011*.

2. Commencement

Clause 2 provides that the *Police Powers and Responsibilities (Motor Vehicle Impoundment) Amendment Act 2011* will commence on a date fixed by proclamation.

3. Act amended

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

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

Clause 4 defines the automatic impoundment period as a period of 28 days starting when the motor vehicle is impounded or, if the period of 28 days ends after 5p.m. and before 8a.m., a period starting when the motor vehicle is impounded and ending at 8a.m. on the next occurring business day after the period of 28 days ends.

This clause amends the definition of ‘burn out’ by removing the requirement that smoke must be produced from a vehicle’s tyres or a substance poured onto the road surface, or both. Consequently, a driver who engages in hooning behaviour by wilfully causing a sustained loss of traction on one or more of their vehicle’s drive wheels on a wet or gravel road may be subject to the type 1 vehicle impoundment scheme.

This clause amends the definition of ‘initial impoundment period’ by extending this period from 48 hours to 7 days or, if the period ends between 5p.m. and 8a.m., a period starting when the motor vehicle is impounded and ending at 8a.m. next occurring on a business day after the period of 7 days ends.

However, the amendment of this definition does not change the existing impoundment period of a motorbike impounded in relation to a motorbike noise direction offence or a motorbike noise order offence.

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

This clause introduces ‘high end speeding’ (of more than 40km/hour over the speed limit) as a type 2 vehicle related offence. Further this clause clarifies that an offence prescribed by regulation for section 69A(2)(e)

includes an offence involving modifying a vehicle if the vehicle is driven on a road.

6. Omission of s 70A (References to type 2 vehicle related offences including the same kind)

Section 70A (References to type 2 vehicle related offences including the same kind) of the PPRA limits the application of the type 2 vehicle impoundment scheme to type 2 vehicle related offences of the same kind as the preceding offences within the relevant period. This clause, by omitting this section, removes that restriction so that a driver who commits any of the offences within the suite of type 2 vehicle related offences is subject of the type 2 vehicle impoundment scheme.

7. Insertion of new s 71A

Clause 7 inserts section 71A (Service of infringement notice for pre-impoundment type 2 vehicle related offence and effect of service) which allows a police officer to serve an infringement notice on a person for a pre-impoundment type 2 vehicle related offence. A pre-impoundment type 2 vehicle related offence is a type 2 vehicle related offence that is an infringement notice offence, the commission of which does not make the vehicle used in the commission of the offence liable to impoundment. A person is deemed to be charged with the offence upon being served with the infringement notice.

8. Omission of ch 4, pt 1, div 3

Originally, the operation of the type 2 impoundment scheme was restricted by section 73A (Application of ch 4 to type 2 vehicle related offences) of the PPRA to specific Police Regions. Through regulation, this scheme was expanded to operate state-wide on 1 July 2008. Upon state-wide application, this section became unnecessary and this clause affects its repeal.

9. Amendment of s 74 (Impounding motor vehicles)

Clause 9 amends the section heading to clarify that section 74 authorises the impounding of motor vehicles for the initial impoundment period.

10. Insertion of new ss 74A and 74B

Clause 10 inserts section 74A (Impounding motor vehicles for automatic impoundment period if second or subsequent type 1 related offence) which authorises a police officer to impound a motor vehicle for the automatic impoundment period if the driver is charged with a type 1 vehicle related offence and within the relevant period the driver had previously been charged with a type 1 vehicle related offence. This section provides that a motor vehicle may be impounded for the automatic period if the offender has been found guilty of this previous charge or if the charge has not been decided.

Further, this clause inserts section 74B (Impounding motor vehicles for automatic impoundment period if third or subsequent type 2 related offence) which authorises a police officer to impound a motor vehicle for the automatic impoundment period if the driver is charged with a type 2 vehicle related offence and within the relevant period the driver had previously been charged with two type 2 vehicle related offences. This section provides that a motor vehicle may be impounded for the automatic period if the offender has been found guilty of these previous charges or if the charges have not been decided.

11. Amendment of s 75 (Particular Powers for impounding motor vehicles)

Clause 11 extends the powers a police officer has to impound a motor vehicle to include those motor vehicles automatically impounded under the new sections 74A and 74B.

12. Amendment of s 78 (Impounding notice for vehicle related offence)

Clause 12 removes the requirement that a police officer has to give an impounding notice to a registered security interest holder upon a motor vehicle being impounded for the initial impoundment period.

13. Amendment of s 81 (Content of notice for second or subsequent type 1 vehicle related offence)

Clause 13 amends section 81 (Content of notice for second or subsequent type 1 vehicle related offence) to require that the information that must be stated in an impounding notice issued for a second or subsequent type 1

vehicle related offence must include that a motor vehicle was impounded for the automatic impoundment period.

Further, this clause amends information that must be stated in an impounding notice to include that an application for an impounding order may be made to a court.

14. Amendment of s 81B (Content of notice for third or subsequent type 2 vehicle related offence)

Clause 14 amends section 81B (Content of notice for third or subsequent type 2 vehicle related offence) to require that the information that must be stated in an impounding notice issued for a third or subsequent type 2 vehicle related offence must include that a motor vehicle was impounded for the automatic impoundment period.

Additionally, this clause amends information that must be stated in an impounding notice to include that an application for an impounding order may be made to a court.

15. Insertion of new ch 4, pt 2, div 5

Clause 15 through the insertion of Division 5 ‘Other provisions relating to motor vehicles impounded for automatic impoundment period’ provides a mechanism for the return of motor vehicles impounded for the automatic impounded period in certain circumstances. This Division outlines that an eligible person may apply to the Commissioner for the return of a motor vehicle impounded under the automatic impoundment period. If a person is aggrieved by the decision of the Commissioner to refuse to grant the application for the return of the impounded vehicle, the person may appeal to the Court. The Court may confirm the Commissioner’s decision or set it aside and substitute another decision that it considers appropriate.

Division 5 ‘Other provisions relating to motor vehicles impounded for automatic impoundment period’ is comprised of three Subdivisions.

Subdivision 1 ‘Preliminary’ inserts section 84A (Definitions for div 5) which defines an eligible person to mean an owner or usual driver of the impounded vehicle. Further the information required in an ‘impounded vehicle release notice’ and an ‘information notice’ is prescribed.

Subdivision 2 ‘Application for release of impounded motor vehicle’ provides criteria about how an application is made to the Commissioner. This clause inserts section 84B (Application for release of impounded

motor vehicle on basis of severe hardship), which allows an eligible person to apply in the approved form to the Commissioner for the release of a motor vehicle impounded for the automatic impoundment period on the basis that they would suffer severe hardship if the vehicle was not released.

Section 84C (Decision on application for release of impounded motor vehicle on basis of severe hardship) allows the Commissioner to either grant the application to release the impounded vehicle or refuse to grant the application. Upon the Commissioner being satisfied a refusal to grant the application would cause severe financial or physical hardship to the applicant or their family, the Commissioner may grant the application. The Commissioner must give the applicant an impounded vehicle release notice stating the decision made and the time and date the automatic impoundment period ends.

If the Commissioner refuses to grant the application, the Commissioner must give to the applicant, as soon as practicable, an information notice. An information notice is defined in Schedule 6 (Dictionary) of the Act and states the decision, the reasons for the decision, how a person may appeal the decision and the timeframe they are allowed to do so.

Section 84D (Application for release of impounded motor vehicle on basis prescribed offence happened without owner's knowledge or consent) allows an owner of an automatically impounded motor vehicle to apply to the Commissioner for its return because the offence happened without the owner's knowledge and consent.

Section 84E (Decision on application for release of impounded motor vehicle on basis prescribed offence happened without owner's knowledge and consent) allows the Commissioner to either grant the application to release the impounded vehicle or refuse to grant the application. Upon the Commissioner being satisfied that the offence causing the impoundment occurred without the knowledge and consent of the owner, the Commissioner may grant the application and give the applicant an impounded vehicle release notice stating the decision made and the time and date the automatic impoundment period ends.

Section 84F (Automatic impoundment period ends if application for release of vehicle granted) provides that upon the Commissioner granting an application for release of a motor vehicle, the automatic impoundment period for the vehicle ends.

If the Commissioner refuses to grant the application, the Commissioner must give to the applicant, as soon as practicable, an information notice.

An information notice is defined in Schedule 6 (Dictionary) of the Act and states the decision, the reasons for the decision, how a person may appeal the decision and the timeframe they are allowed to do so.

Subdivision 3 'Appeals' outlines how appeals of the Commissioner's decision may be made. Section 84G (Who may appeal) provides that a person aggrieved by the Commissioner's decision to refuse to grant an application to release the impounded motor vehicle may appeal.

Section 84H (How to start appeal) provides that an appeal must be started by filing a notice to appeal with the clerk of the Magistrates Courts within 28 days of the applicant being given an information notice. A copy of the notice must be served on other persons entitled to appeal against the decision and the Commissioner. The court may extend the time allowed for filing the notice of appeal.

Section 84I (Effect of appeal on decision) provides that the Commissioner's decision is not affected by the starting of an appeal.

Section 84J (Commissioner has right of appearance) clarifies that the Commissioner has the right to appear and be heard on an appeal.

Section 84K (Hearing procedures) restricts an appeal to be decided on the evidence and proceedings that was before the Commissioner. However, the Court may order the appeal be heard afresh, in whole or in part.

Section 84L (Powers of Magistrates Court) provides that a Magistrates Court may confirm the Commissioner's decision or set it aside and substitute another decision.

16. Amendment of s 85 (Application for impounding order for type 1 vehicle related offence)

Clause 16 provides that a police officer may apply to a Court for an impounding order if a motor vehicle has been impounded for a type 1 vehicle related offence and within the relevant period the driver of the impounded vehicle has previously been found guilty of or been charged with another type 1 vehicle related offence. This application must be made within 7 days.

17. Amendment of s 85A (Application for impounding order for type 2 vehicle related offence)

Clause 17 provides that a police officer may apply to a Court for an impounding order if a motor vehicle has been impounded for a type 2 vehicle related offence and within the relevant period the driver of the impounded vehicle has previously been found guilty of, or has been charged with, two type 2 vehicle related offences. This application must be made within 7 days.

Further, this clause omits notes indicating that, because of section 70A, applications may only be made for type 2 vehicle related offences of the same kind. As Clause 6 omits section 70A, this reference is no longer required.

18. Amendment of s 90 (Application for forfeiture order for type 1 vehicle related offence)

Clause 18 amends section 90 to provide that a police officer must apply to a Court for a forfeiture order if a motor vehicle has been impounded for a type 1 vehicle related offence and within the relevant period the driver of the impounded vehicle has previously been found guilty of, or has been charged with, two type 1 vehicle related offences. This application must be made within 7 days.

19. Amendment of s 90A (Application for forfeiture order for type 2 vehicle related offence)

Clause 19 provides that a police officer must apply to a Court for a forfeiture order if a motor vehicle has been impounded for a type 2 vehicle related offence and within the relevant period the driver of the impounded vehicle has previously been found guilty of, or has been charged with, three type 2 vehicle related offences. This application must be made within 7 days.

Further, this Clause omits notes indicating that, because of section 70A, applications may only be made for type 2 vehicle related offences of the same kind. As Clause 6 omits section 70A this reference is no longer required.

20. Amendment of s 99A (Consideration of application for impounding order – type 2 vehicle related offence)

Clause 20 omits notes indicating that, because of section 70A, applications may only be made for type 2 vehicle related offences of the same kind. As Clause 6 omits section 70A this reference is no longer required.

21. Amendment of s 102 (Community service instead of impounding or forfeiture order)

Clause 21 allows a court to impose community service on the driver of an impounded motor vehicle in circumstances where the owner of an impounded vehicle may rely on the defence outlined in section 107 'Defence' of the Act.

22. Amendment of s 108 (Counting the occasions-general)

Clause 22 omits notes indicating that, because of section 70A, applications may only be made for type 2 vehicle related offences of the same kind. As Clause 6 omits section 70A this reference is no longer required.

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

Clause 23 omits notes indicating that, because of section 70A, applications may only be made for type 2 vehicle related offences of the same kind. As Clause 6 omits section 70A this reference is no longer required.

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

Clause 24 omits notes indicating that, because of section 70A, applications may only be made for type 2 vehicle related offences of the same kind. As Clause 6 omits section 70A this reference is no longer required.

25. Amendment of s 116 (Release of motor vehicle impounded under s 74)

Clause 25 amends the heading of section 116 of the Act to clarify that this section also applies to motor vehicles impounded for the automatic impoundment period.

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

Clause 26 amends section 117 of the Act to include a withdrawal of an infringement notice to be considered as a finding of not guilty.

27. Insertion of new ch 24, pt 13

Clause 27 inserts Part 13 ‘Transitional provisions for Police Powers and Responsibilities (Motor Vehicle Impoundment) Amendment Act 2011. Part 13 clarifies, through section 873 (Particular offence against Road Use Management Act committed before commencement) that high end speeding offences committed before the commencement of this Bill are not to be considered as a type 2 vehicle impoundment offence. Consequently, high end speeding offences committed before the commencement of this Bill cannot be considered in determining whether a vehicle should be impounded or forfeited.

Part 13 also declares that type 2 vehicle related offences of a different kind, i.e. offences described in different paragraphs of the definition of type 2 vehicle related offence in section 69A(2), which are committed before the commencement of this 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. This section also clarifies that 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.

28. Amendment of sch 6 (Dictionary)

Clause 28 amends schedule 6 (Dictionary) of the Act to define relevant terms in the Bill. The term ‘found guilty’ is expanded to include, for a type 2 vehicle related offence for which an infringement notice has been served, a payment of a penalty, in full or in instalments.

Schedule ‘Minor amendments of the Police Powers and Responsibilities Act 2000’

The Schedule makes minor technical amendments to comply with contemporary drafting practices.