

Road Traffic Amendment Bill 2006

Explanatory Memorandum

This Road Traffic Amendment Bill 2006 (“the Bill”) will chiefly amend the vehicle impounding and confiscation provisions contained in Part V Division 4 of the *Road Traffic Act 1974* (“the Act”). These provisions were inserted by the *Road Traffic (Impounding and Confiscation of Vehicles) Act 2004*.

Presently, these provisions create certain offences, the commission of which may result in the impounding or confiscation of the vehicle used in the commission of the offence.

An impounding offence (driving) is committed if a person drives a vehicle:

- so as to cause the vehicle’s tyres to produce excessive noise or excessive smoke; or
- recklessly or dangerously in circumstances where the vehicle is being used to race another vehicle, or in an attempt to establish or break a speed record, or in order to test or contest the speed, acceleration, braking or steering capability of the vehicle.

This type of dangerous driving behaviour is commonly known as “hoon” behaviour.

An impounding offence (driver’s licence) is committed if a person drives a vehicle without being authorised to drive, because the person has:

- been refused the issue of a driver licence;
- had his or her driver licence cancelled; or
- had his or her driver licence suspended,

by the Director General on the grounds that the person:

- is addicted to alcohol or drugs to such an extent as to make him or her dangerous to the public when in control of a motor vehicle;
- suffers from a mental or physical disorder or disability that is likely to impair his or her ability to control a motor vehicle; or
- is no longer capable of controlling the class of motor vehicle in respect of which he or she holds a driver licence.

The Act currently empowers a police officer to impound a vehicle for 48 hours where the police officer has personal knowledge that a person has committed an impounding offence and the vehicle was used in the commission of the offence. The driver of the vehicle will be charged with the impounding offence and may also face a fine upon conviction. In addition, the Act provides that a

court may order that a vehicle used in the commission of an impounding offence be impounded for up to 3 months, or 6 months in certain circumstances, or confiscated, where a person is convicted of subsequent offences within a specified timeframe.

The purpose of the impounding and confiscation provisions is to target reckless and dangerous driving behaviour. Impounding by a police officer is intended to remove a vehicle so as to put a stop to the commission of further offences. The court's power to order that vehicles be impounded for longer periods or confiscated, where a person is convicted of subsequent offences, is intended to act as a strong deterrent against the commission of further offences.

Part 1 - Preliminary

1. Short title

This Bill will become the *Road Traffic Amendment Act 2006*.

2. Commencement

This clause provides that the provisions of this Bill will commence operation following the making of a proclamation to that effect, rather than immediately upon receiving Royal Assent. It also provides that different provisions of this Bill may commence operation on different days.

This is necessary to ensure that the Western Australia Police is operationally ready to commence enforcing the relevant provisions immediately they commence operation.

3. The Act amended

The provisions contained in this Bill, except those proposed in clause 26, will amend the *Road Traffic Act 1974*.

The provisions of clause 26 will amend the *Criminal Property Confiscation Act 2000*, as a consequence of the amendments contained in Part 2 Division 5 of this Bill.

Part 2 – Amendments

Division 1 – High speed driving offences

4. Section 78A amended

The Act currently provides that an impounding offence (driving) is committed if a person drives a vehicle:

- so as to cause the vehicle's tyres to produce excessive noise or excessive smoke; or
- recklessly or dangerously in circumstances where the vehicle is being used to race another vehicle, or in an attempt to establish or break a speed record, or in order to test or contest the speed, acceleration, braking or steering capability of the vehicle.

The definition of "impounding offence (driving)" is contained in section 78A.

This clause will amend that definition to provide that, in addition to the above, a person commits an impounding offence (driving) if the person drives a vehicle:

- at a speed of 155 kilometres per hour or more (which also constitutes an offence against section 60(1a) of the Act); or
- at a speed exceeding the speed limit set under the Act by 45 kilometres per hour or more (which also constitutes an offence against section 60(1b) of the Act).

Division 2 – Removing special rule for when suspicion reasonably held

5. Section 5 amended

The Act currently provides that, in order to be empowered to impound a vehicle for 48 hours, a police officer must personally have witnessed the commission of the impounding offence.

Sections 79 and 79A empower a police officer to impound a vehicle where he or she reasonably suspects a person has committed an impounding offence, and that the vehicle was used in the commission of the offence.

Section 5(6) qualifies, however, that the reasonable suspicion must be formed by the police officer of his or her own knowledge. This is instead of allowing the established criminal law principles in relation to "reasonable suspicion" to apply.

There was considerable debate regarding the inclusion of this provision when the impounding and confiscation amendments were originally considered by the Parliament. The relevant Hansard appears to indicate that the intention of section 5(6) was to ensure that a police officer could not impound a vehicle on the basis of an allegation made, maliciously or otherwise, by another person.

As a result, the Act does not permit a police officer to impound a vehicle, following completion of an investigation prompted by a civilian witness report or photographic evidence obtained by a multanova or red light camera, even if that investigation leads the police officer to form a reasonable suspicion that a person has committed an impounding offence.

The Parliament's concerns arose in the absence of a clear explanation of how these provisions are intended to operate.

Where a police officer reasonably suspects a person has committed an impounding offence, the police officer is empowered to impound the vehicle believed to have been used in the commission of the offence for a period of 48 hours. The purpose of this provision is to effect the removal from the scene of the vehicle, so as to prevent the commission of further offences.

The consequence of the impounding of a vehicle by a police officer does not constitute proof of the commission of an impounding offence. Following the impounding, the driver of the vehicle is charged with the impounding offence and a court determines whether the alleged offender is guilty of the impounding offence or not.

Regardless of the manner in which a police officer forms a reasonable suspicion that a person has committed an impounding offence, it is necessary for that suspicion to be based upon reasonable grounds that will stand up to scrutiny in a court. A vehicle may not be impounded on the basis of a civilian witness report, unless that evidence is corroborated by other forms of evidence gathered by the investigating police officer such as further, supporting witness reports, admissions made by an alleged offender, or relevant evidence in or on the vehicle it is alleged was used in the commission of the offence or at the scene.

Section 79C also contains the additional safeguard that requires a police officer, as soon as is practicable after impounding a vehicle, to inform a senior officer of the impounding. It also requires the senior officer to make enquiries into the impounding so as to satisfy themselves that there are reasonable grounds for the formation of the police officer's suspicion that led to the impounding. It provides that, where the senior officer is not satisfied that there are reasonable grounds, the vehicle is to be released and returned to the vehicle licence holder or, if that person is not available, the person who was driving the vehicle at the time of the alleged commission of the offence.

This clause will remove the restriction that a police officer must personally witness the commission of an impounding offence, in order to be empowered to impound a vehicle for 48 hours.

Division 3 – Release of impounded vehicles

6. Section 79D amended

Section 79D concerns the release of vehicles that have been impounded for 48 hours by a police officer, where that police officer has formed a reasonable suspicion that a person has committed an impounding offence and that the vehicle was used in the commission of that offence.

Section 79D(3) provides that the Commissioner of Police is to ensure that a vehicle impounded in the above circumstances is released on the application of the vehicle licence holder when the impounding period ends.

This clause will repeal section 79D(3), as its subject matter will be dealt with in the proposed new section 80IA that will be inserted by clause 9.

The proposed new section 80IA(1) will require the Commissioner of Police to ensure that a vehicle impounded either in the above circumstances, or pursuant to a court order, is released on the application of the responsible person for the vehicle when the impounding period ends. There will be some circumstances, however, in which the Commissioner will be empowered to refuse to release an impounded vehicle.

For example, the proposed new section 80IB will enable the Commissioner to refuse to release a vehicle that has been impounded, either by a police officer for 48 hours or for a longer period pursuant to a court order, when the impounding period ends, unless the costs associated with the impounding have been paid. (See clause 9.)

Currently, section 80I(1) provides that if an impounded vehicle is not collected when the relevant impounding period ends, the Commissioner is empowered to refuse to release it until he or she is reimbursed all of the costs reasonably incurred by him or her in storing the impounded vehicle during any period of time after the end of the impounding period.

7. Section 79E replaced

Section 79E concerns liability to reimburse the Commissioner of Police for the costs associated with the impounding of a vehicle for 48 hours

by a police officer, where that police officer has formed a reasonable suspicion that a person has committed an impounding offence and that the vehicle was used in the commission of that offence.

In the above circumstances, after impounding the vehicle, the police officer charges the person with the impounding offence. Section 79E currently provides that, if convicted by a court of the impounding offence, the person becomes liable upon conviction for the Commissioner's costs associated with the impounding of the vehicle.

Section 79D currently requires the Commissioner to ensure the release of the impounded vehicle when the impounding period ends. Because the impounding period generally ends before the relevant charges are heard, at present, it is necessary for the Commissioner to pay the contractor the costs associated with the impounding and subsequently make a demand for reimbursement from the offender, following his or her conviction.

Where the offender does not make payment, the costs involved in undertaking recovery action through the courts make it uneconomical for the Commissioner to pursue the amount. In the 2-year period since the Act's impounding and confiscation provisions commenced operation, the Commissioner has absorbed the impounding costs in 56% of cases.

Clause 9 of this Bill will therefore insert a proposed new section 80IB that will empower the Commissioner to refuse to release an impounded vehicle until the associated impounding costs have been paid.

As a consequence, this clause will repeal the existing section 79E, and replace it with the proposed new section 79E. The effect of the proposed new section 79E will be that a person will become liable to the Commissioner, upon conviction of an impounding offence, for payment of the costs associated with the impounding of the vehicle used in the commission of the offence, if the Commissioner has not already been paid those costs by a person in order to secure the release of the impounded vehicle pursuant to the proposed new section 80IB.

This will ensure that the Commissioner cannot receive payment for the impounding costs more than once.

8. Section 80H amended

Section 80H concerns liability to reimburse the Commissioner of Police for the costs associated with the court-ordered impounding of a vehicle.

Section 80H(1) provides that, if convicted by a court of an impounding offence, the person becomes liable upon conviction for the Commissioner's costs associated with any court-ordered impounding of the vehicle.

Section 80H(2) provides that, if the vehicle licence holder and the offender are the same person, the Commissioner may refuse to release the vehicle until the costs are paid.

This clause will repeal section 80H(2), as the subject matter of that section will be dealt with in the proposed new section 80IB that will be inserted by clause 9.

9. Sections 80IA and 80IB inserted

This clause will insert proposed new sections 80IA and 80IB.

The proposed new section 80IA(1) will provide that the Commissioner is to ensure the release of a vehicle that has been impounded, either by a police officer for 48 hours or for a longer period pursuant to a court order, when the impounding period ends, upon the application of the responsible person for the vehicle. In most cases, the responsible person will be the vehicle licence holder. This provision is in keeping with the current position in relation to whom an impounded vehicle may be released, and is intended to ensure that an impounded vehicle is released into the custody of a person with a rightful claim to it.

The proposed new section 80IA(2) will provide that in certain circumstances, the Commissioner may refuse to release an impounded vehicle. The relevant circumstances are prescribed in proposed new sections 80IA(3) and 80IB, described below, and in existing section 80I(1).

Section 80I(1) concerns the liability for payment of impounding costs, where a vehicle has been impounded either by a police officer for a 48-hour period or following the order of a court for a period of up to 3 or 6 months, following the conviction of a person of a relevant offence.

It provides that if an impounded vehicle is not collected when the relevant impounding period ends, the Commissioner is empowered to refuse to release it until they are reimbursed all of the costs reasonably incurred in storing the impounded vehicle during any period of time after the end of the impounding period.

The proposed new section 80IA(3) will provide that the Commissioner may refuse to release an impounded vehicle, where the responsible person seeks its release from the place in which it is impounded at a time outside of normal business hours. The provisions of section 80I(2) will act to ensure that a person will not become responsible to pay the cost of storing the impounded vehicle during any 24-hour period in which the place where the vehicle is stored is not open to the public.

The purpose of the proposed new section 80IA(3) is to prevent the Commissioner, or a contractor of the Commissioner, from being required to attend to release an impounded vehicle at commercially unreasonable hours.

The proposed new section 80IB will enable the Commissioner to refuse to release a vehicle that has been impounded, either by a police officer for 48 hours or for a longer period pursuant to a court order, when the impounding period ends, unless the costs associated with the impounding have been paid.

Presently, the Act provides that a person becomes liable for the Commissioner's costs in impounding a vehicle when that person is convicted of an impounding offence.

In the case of a 48-hour impounding, the impounding period has usually ended and the vehicle been released before the charges are heard by a court.

Because section 79D currently requires the Commissioner to ensure the release of the impounded vehicle when the impounding period ends, at present, it is necessary for the Commissioner to pay the contractor the costs associated with the impounding and subsequently make a demand for reimbursement from the offender, following their conviction.

Where the offender does not make payment, the costs involved in undertaking recovery action through the courts make it uneconomical for the Commissioner to pursue the amount. In the 2-year period since the Act's impounding and confiscation provisions commenced operation, the Commissioner has absorbed the impounding costs in 56% of cases.

In the case of a court-ordered impounding, section 80I currently enables the Commissioner to refuse to release an impounded vehicle until the impounding costs have been paid, where the offender and the vehicle licence holder are the same person only.

The effect of the proposed new section 80IB will be that, where an offender or an alleged offender does not pay the impounding costs to

enable the release of the impounded vehicle, the vehicle's owner will only be able to recover the vehicle by paying the impounding costs themselves.

These provisions are intended to place greater onus upon vehicle owners to be aware of who is using their vehicle and the manner of that use, and to make offenders and vehicle owners responsible for the payment of these costs instead of the community.

The proposed new section 80IB(1) will empower the Commissioner to refuse to release an impounded vehicle until the costs associated with its impounding have been paid.

The proposed new section 80IB(2) will provide that the Commissioner may refuse to release an impounded vehicle, even if the responsible person for the vehicle is not the offender or alleged offender.

The proposed new section 80IB(3) will enable the Commissioner to release an impounded vehicle without first requiring the payment of the costs associated with its impounding, if he or she considers it appropriate to do so. This will be the case, even though the proposed new section 80IB will empower the Commissioner to refuse its release in those circumstances. The purpose of this provision is to provide the Commissioner with the discretion to release an impounded vehicle, without first requiring the payment of the impounding costs, in circumstances such as where a person would suffer hardship if deprived of the use of the vehicle.

The proposed new section 80IB(4) will provide that the payment made by any person of impounding costs, in order to secure the release of an impounded vehicle, will extinguish the liability of an offender or alleged offender for that amount. This will ensure that the Commissioner cannot receive payment for the impounding costs more than once.

The proposed new section 80IB(5) will relate to the impounding of a vehicle for 48 hours by a police officer, where that police officer has formed a reasonable suspicion that a person has committed an impounding offence and that the vehicle was used in the commission of that offence. It will apply when a person has paid the associated impounding costs in order to secure the release of the impounded vehicle.

In the above circumstances, after impounding the vehicle, the police officer charges the person with the impounding offence. The proposed new section 80IB(5) will provide that, if a court subsequently acquits the alleged offender of the impounding offence charges, the Commissioner will be required to refund the impounding costs to whoever paid them.

It will also provide that the Commissioner must refund the impounding costs in the event that the police officer does not prefer charges against the alleged offender within the year following the alleged commission of the offence.

10. Section 80J amended

Section 80J prescribes the powers of the Commissioner of Police for selling or disposing of a confiscated vehicle, an impounded vehicle that has not been collected within 2 months after the end of the relevant impounding period (an “uncollected vehicle”) or an item in a confiscated or uncollected vehicle.

This clause will amend section 80J(7). That section prescribes how the proceeds from the sale or disposal of a confiscated or uncollected vehicle, or an item, are to be disbursed.

Sections 80J(c), (d), (e) and (f) provide that proceeds from such a sale or disposal may be used to pay any outstanding costs associated with impounding a vehicle, or paid in satisfaction of a judgement debt where the Commissioner has successfully taken proceedings through a court to recover such outstanding costs. They provide that the proceeds may only be so directed, however, if the offender or alleged offender is also the licence holder of the vehicle that has been sold or disposed of.

This clause will amend sections 80J(c), (d), (e) and (f) to provide that proceeds from the sale or disposal of a confiscated or uncollected vehicle, or an item, may be directed to pay outstanding impounding costs or in satisfaction of a judgement debt, regardless of whether or not the offender or alleged offender is also the licence holder of the vehicle that has been sold or disposed of.

This amendment is in keeping with the amendments in the proposed new section 80IB that will be inserted by clause 9. The proposed new section 80IB will empower the Commissioner to refuse to release an impounded vehicle until the costs associated with its impounding have been paid. Its effect will be that, where an offender or an alleged offender does not pay the impounding costs to enable the release of the impounded vehicle, the vehicle’s owner will only be able to recover the vehicle by paying the impounding costs himself or herself. It is intended to place greater onus upon vehicle owners to be aware of who is using their vehicle and the manner of that use, and to make offenders and vehicle owners responsible for the payment of these costs instead of the community.

Division 4 – Meaning of “senior officer”

11. Section 78A amended

The Act empowers a police officer to impound a vehicle for 48 hours, where the police officer reasonably suspects that a person has committed an impounding offence and the vehicle was used in the commission of the offence.

In order to ensure that this power is always utilised appropriately, section 79C requires a police officer who impounds a vehicle to notify a senior officer of the impounding and the grounds for the impounding as soon as practicable after he or she has impounded the vehicle.

Section 79C requires the senior officer to make enquiries into the impounding so as to satisfy themselves that there are reasonable grounds for the formation of the police officer's suspicion that led to the impounding. It provides that, where the senior officer is not satisfied that there are reasonable grounds, the vehicle is to be released and returned to the vehicle licence holder or, if that person is not available, the person who was driving the vehicle at the time of the alleged commission of the offence.

Section 78A establishes who may be a senior officer for the purposes of section 79C. It provides that a senior officer is “a member of the Police Force who has attained the rank of inspector or a rank higher than that of inspector”. In places outside of the “Perth Metropolitan Area”, however, it provides that a senior officer may be a person who has attained the substantive rank of sergeant.

The term “Perth Metropolitan Area” is not defined. It is not clear, therefore, in respect of which places it is acceptable for a police officer to inform, as a senior officer for the purposes of section 79C, a person who has attained the substantive rank of sergeant.

The practice of the Western Australia Police, in enforcing the Act's impounding and confiscation provisions in the Perth environs, is that following an impounding, the police officer telephones the Duty Inspector at Police Communications to notify him or her of the impounding. The Duty Inspector arranges for any further inquiry to be conducted through the local Police District Office.

It is proposed that in country areas throughout the State, where a senior officer who has attained the rank of inspector or a rank higher than that of inspector is unavailable, a police officer will telephone the Duty Inspector at Police Communications to notify him or her of an impounding. This will ensure a consistent and appropriate level of review and oversight of a police officer's decision to exercise the power to impound a vehicle.

This clause will amend the definition of “senior officer” to remove reference to the “Perth Metropolitan Area” and the ability for a person who has attained the rank of sergeant to act as a senior officer for the purposes of section 79C outside that Area.

Division 5 – Road rage

12. Part V Division 4 heading amended

This clause is required as Division 5 of this Bill will insert amendments that will empower a court to order that a vehicle may be impounded for up to 3 months, or up to 6 months in certain circumstances, or confiscated, where the vehicle was being driven by a person who has been convicted of committing a specified offence in “road rage circumstances”.

A specified offence will include an assault or property damage, contrary to the *Criminal Code*.

As such an offence will not constitute a driving offence, this clause will amend the heading to Part V Division 4 of the Act to reflect that it concerns the impounding and confiscation of vehicles for various offences.

13. Section 78A amended

This clause is necessary because clause 16 will insert the proposed new section 80CA.

Section 80CA will empower a court to order that, where a person is convicted of a specified offence committed in “road rage circumstances”, the vehicle that the offender was using at the time of the offence be impounded for a period of up to 3 months.

Section 78A contains a definition of the term “impounding period”. This clause will amend section 78A so that the definition will also include an impounding period under the proposed new section 80CA.

This clause will also insert definitions of the terms “road rage circumstances” and “road rage offence”.

The proposed definition of “road rage offence” will provide that a person commits an offence in respect of which a court may order the vehicle that the offender was using to be impounded or confiscated when the person:

- commits an assault contrary to the *Criminal Code*;
- damages property, contrary to the *Criminal Code*; or

- drives a vehicle recklessly contrary to section 60 of the Act in a way that endangers a particular person,

in “road rage circumstances”.

The proposed definition of “road rage circumstances” will provide that one of the above offences constitutes a “road rage offence” where both the trigger incident that substantially gives rise to the commission of the offence, and the commission of the offence, occur on a road.

The introduction of this initiative is consistent with an election undertaking made by the Government, in recognition of the public danger that can arise from serious road rage incidents that involve assault or wilful damage, or reckless driving that is directed at a particular person.

14. Section 78C amended

This clause is necessary because clause 16 will insert the proposed new sections 80CA and 80CB.

Section 80CA will empower a court to order that, where a person is convicted of a specified offence committed in “road rage circumstances”, the vehicle that the offender was using at the time of the offence be impounded for a period of up to 3 months.

Section 80CB will empower a court to order that, where a person is convicted of a specified offence committed in “road rage circumstances”, the vehicle that the offender was using at the time of the offence be confiscated.

Section 78C provides police officers, and persons assisting police officers in the administration of the impounding and confiscation provisions, with powers to enable them to impound a vehicle or to give effect to a court order for the impounding or confiscation of a vehicle.

These powers include the authority to drive, tow or convey in some other manner a vehicle that is being impounded, to seize keys to a vehicle, and to enter premises without a warrant for the purpose of seizing keys to a vehicle that a court has ordered be impounded or confiscated.

This clause will amend section 78C so that it will also confer the above powers upon police officers, and persons assisting them, to enable them to give effect to a court order for the impounding or confiscation of a vehicle pursuant to the proposed new sections 80CA and 80CB.

15. Section 78D amended

This clause is required as clause 16 will insert the proposed new sections 80CA and 80CB.

Section 80CA will empower a court to order that, where a person is convicted of a specified offence committed in “road rage circumstances”, the vehicle that the offender was using at the time of the offence be impounded for a period of up to 3 months.

Section 80CB will empower a court to order that, where a person is convicted of a specified offence committed in “road rage circumstances”, the vehicle that the offender was using at the time of the offence be confiscated.

Section 78D empowers the Commissioner of Police to enter into contracts under which the contractor may provide services to assist the Commissioner in administering the Act’s impounding and confiscation provisions.

It provides that the services may be in relation to the driving, towing or otherwise conveying of a vehicle that is being impounded or confiscated pursuant to a court order, the storage of an impounded or confiscated vehicle, and the provision of assistance to a police officer in the performance of a function conferred by the Act’s impounding and confiscation provisions.

This clause will amend section 78D so that it will also apply in the case of services that may be required in order to enable the administration of the proposed new sections 80CA and 80CB.

16. Sections 80CA and 80CB inserted

This clause will insert proposed new sections 80CA and 80CB, which will empower courts to order the impounding or confiscation of a vehicle where a person is convicted of committing a road rage offence in road rage circumstances.

The proposed definition of “road rage offence” will provide that a person commits an offence in respect of which a court may order the vehicle that the offender was using to be impounded or confiscated when:

- the person commits an assault contrary to the *Criminal Code*; or
- damages property, contrary to the *Criminal Code*; or
- drives a vehicle recklessly contrary to section 60 of the Act in a way that endangers a particular person,

in “road rage circumstances”. (See clause 13.)

The proposed definition of “road rage circumstances” will provide that one of the above offences constitutes a “road rage offence” where both the trigger incident that substantially gives rise to the commission of the offence, and the commission of the offence, occur on a road. (See clause 13.)

The introduction of this initiative is consistent with an election undertaking made by the Government, in recognition of the public danger that can arise from serious road rage incidents that involve assault or wilful damage, or reckless driving that is directed at a particular person.

17. Section 80D amended

This clause is necessary because clause 16 will insert the proposed new section 80CB.

Section 80CB will empower a court to order that, where a person is convicted of a specified offence committed in “road rage circumstances”, the vehicle that the offender was using at the time of the offence be confiscated.

Section 80D provides that, when a court orders the confiscation of a vehicle, property in that vehicle vests absolutely in the State and that any interests, rights, titles or claims in or to the ownership or possession of the vehicle are effectively extinguished.

This clause will amend section 80D to provide that it also applies in the case of a vehicle confiscated by an order of the court made pursuant to the proposed new section 80CB.

18. Section 80E amended

This clause is required as clause 16 will insert the proposed new sections 80CA and 80CB.

Section 80CA will empower a court to order that, where a person is convicted of a specified offence committed in “road rage circumstances”, the vehicle that the offender was using at the time of the offence be impounded for a period of up to 3 months.

Section 80CB will empower a court to order that, where a person is convicted of a specified offence committed in “road rage circumstances”, the vehicle that the offender was using at the time of the offence be confiscated.

Section 80E(1) provides that a court may not order the impounding for up to 3 months or the confiscation of a vehicle used in the commission of a relevant offence if, at the time of the commission of the offence, the vehicle being used was a stolen vehicle or a hired vehicle.

Section 80E(2) provides that a court may not order the confiscation of a vehicle used in the commission of a relevant offence if, at the time of the commission of the offence, the vehicle being used was a “lent” vehicle. Section 78A defines a “lent” vehicle as a vehicle that is subject to a hire purchase agreement under the *Hire Purchase Act 1959* or a goods mortgage under the *Consumer Credit Code*. A “lent” vehicle is also a vehicle that has been lent to someone, within the ordinary meaning of the word “lent”.

In lieu of confiscation, section 80E(2) empowers a court to order that a vehicle used in the commission of a relevant offence be impounded for a period of up to 6 months.

This clause will amend section 80E to provide that it also applies in the case of a vehicle that might be subject to an impounding or confiscation order under the proposed new sections 80CB or 80CB because a person has been convicted of a specified offence committed in “road rage circumstances”.

19. Section 80F amended

This clause is necessary because clause 16 will insert the proposed new sections 80CA and 80CB.

Section 80CA will empower a court to order that, where a person is convicted of a specified offence committed in “road rage circumstances”, the vehicle that the offender was using at the time of the offence be impounded for a period of up to 3 months.

Section 80CB will empower a court to order that, where a person is convicted of a specified offence committed in “road rage circumstances”, the vehicle that the offender was using at the time of the offence be confiscated.

Section 80F provides that, if a court makes an order for the impounding or confiscation of a vehicle used in the commission of a relevant offence, it must specify in the order the time by which and the place at which the vehicle licence holder is to surrender the vehicle and its keys to the Commissioner of Police.

This clause will amend section 80F to provide that it also applies in the case of an impounding or confiscation order made by a court pursuant to the proposed new section 80CA or 80CB.

20. Section 80G amended

This clause is required as clause 16 will insert the proposed new sections 80CA and 80CB.

Section 80CA will empower a court to order that, where a person is convicted of a specified offence committed in “road rage circumstances”, the vehicle that the offender was using at the time of the offence be impounded for a period of up to 3 months.

Section 80CB will empower a court to order that, where a person is convicted of a specified offence committed in “road rage circumstances”, the vehicle that the offender was using be confiscated.

Section 80G prescribes the manner in which an application may be made to a court for an order that a vehicle, used in the commission of a relevant offence, be impounded or confiscated.

Section 80G(1) defines relevant terms used throughout section 80G.

Section 80G(2) provides that an application for an order may only be made by the Commissioner of Police. It may be heard either at the same time as the court hears the charges for the impounding offence, or in subsequent proceedings brought no later than 3 months after a person’s conviction of the offence that is the reason that the order is being sought.

Section 80G(3) requires the Commissioner of Police to give at least 14 days’ written notice of his or her intention to make an application for an order to various interested parties, including the driver and licence holder of the relevant vehicle, any other person the Commissioner is aware has an interest in the vehicle, and the Director General. It also requires the Commissioner to publish notice of the intention in a newspaper.

Section 80G(4) provides that a court must not make an order for the impounding or confiscation of a vehicle unless it has given the driver and/or licence holder of the relevant vehicle, and/or any other person with an interest in the vehicle, an opportunity to show cause why the court should not make the order for impounding or confiscation.

Section 80G(5) prescribes those matters the court may consider in determining an application for an order for impounding or confiscation of a vehicle. These include whether making the order will cause severe financial or physical hardship to a person who has an interest in the vehicle or is the usual driver of the vehicle.

Section 80G(6) prohibits the driver or licence holder, or other person with an interest in, a vehicle that is the subject of an application for an

impounding or confiscation order from disposing of any interest in the vehicle until the application is decided or the court makes an order approving of the disposal.

Section 80G(7) prohibits the Director General from transferring the licence of a vehicle that is the subject of an application for an impounding or confiscation order, until the application is decided.

This clause will amend section 80G so that the above provisions will also apply in the case of an application for impounding or confiscation pursuant to the proposed new sections 80CA and 80CB.

21. Section 80H amended

This clause is necessary because clause 16 will insert the proposed new section 80CA.

Section 80CA will empower a court to order that, where a person is convicted of a specified offence committed in “road rage circumstances”, the vehicle that the offender was using at the time of the offence be impounded for a period of up to 3 months.

Section 80H(1) provides that, following the conviction of a person of a relevant offence, where a court orders the impounding of the vehicle used in the commission of the offence, the offender is liable to reimburse the Commissioner of Police for all of the costs reasonably incurred by him or her in respect of the impounding.

This clause will amend section 80H(1) to provide that it also applies where a court makes an order that a vehicle be impounded pursuant to section 80CA.

22. Section 80I amended

This clause is required as clause 16 will insert the proposed new section 80CA.

Section 80CA will empower a court to order that, where a person is convicted of a specified offence committed in “road rage circumstances”, the vehicle that the offender was using at the time of the offence be impounded for a period of up to 3 months.

Section 80I(1) concerns the liability for payment of impounding costs, where a vehicle has been impounded either by a police officer for a 48-hour period or following the order of a court for a period of up to 3 or 6 months, following the conviction of a person of a relevant offence.

It provides that if an impounded vehicle is not collected when the relevant impounding period ends, the Commissioner of Police is empowered to refuse to release it until he or she is reimbursed all of the costs reasonably incurred by him or her in storing the impounded vehicle during any period of time after the end of the impounding period.

This clause will amend section 80H(1) to provide that it also applies where a court makes an order that a vehicle be impounded pursuant to section 80CA.

23. Section 80J amended

This clause is necessary because clause 16 will insert the proposed new sections 80CA and 80CB.

Section 80CA will empower a court to order that, where a person is convicted of a specified offence committed in “road rage circumstances”, the vehicle that the offender was using at the time of the offence be impounded for a period of up to 3 months.

Section 80CB will empower a court to order that, where a person is convicted of a specified offence committed in “road rage circumstances”, the vehicle that the offender was using at the time of the offence be confiscated.

Section 80J prescribes the powers of the Commissioner of Police for selling or disposing of a confiscated vehicle, an impounded vehicle that has not been collected within 2 months after the end of the relevant impounding period (an “uncollected vehicle”) or an item in a confiscated or uncollected vehicle.

Section 80J(1) defines relevant terms used throughout section 80J.

Section 80J(2) empowers the sale or disposal of a confiscated or uncollected vehicle or an item.

Section 80J(3) provides that the Commissioner of Police must not sell or dispose of a confiscated or uncollected vehicle or an item, if an offender has appealed the conviction because of which the vehicle has been confiscated or impounded and the appeal has not yet been determined. It also provides that the Commissioner of Police must not sell or dispose of a confiscated or uncollected vehicle, if a person has appealed a court order for the impounding or confiscation of a vehicle and the appeal has not yet been determined.

Section 80J(4) requires the Commissioner of Police to give a vehicle licence holder at least 14 days’ written notice of the intention to sell or dispose of an uncollected vehicle or item, as well as to publish notice of

this intention in a newspaper at least 14 days prior to the proposed sale or disposal. It also requires him or her to take reasonable steps to return an item to its owner.

Section 80J(5) empowers the owner of an uncollected vehicle to apply for a court order delaying its proposed sale or disposal for a period of up to 3 months.

Section 80J(6) empowers the owner of an item to apply for a court order that the item be returned.

Section 80J(7) prescribes how the proceeds of the sale or disposal of a confiscated or uncollected vehicle, or an item, are to be disbursed.

Section 80J(8) provides that, where a person acquires an uncollected vehicle or an item that is sold or disposed of by the Commissioner of Police, the person acquires that vehicle or item with a clear title to it.

This clause will amend section 80J so that the above provisions will also apply in the case of a vehicle confiscated pursuant to the proposed new section 80CB or an uncollected vehicle that has been impounded pursuant to the proposed new section 80CA.

In particular, clause (c)(ii) will amend section 80J(7)(j) to provide that, where a court orders the confiscation of a vehicle pursuant to section 80CB, the proceeds of the sale or disposal of the vehicle are to be credited to the Confiscation Proceeds Account established under section 130 of the *Criminal Property Confiscation Act 2000*.

24. Section 80K amended

This clause is necessary because clause 16 will insert the proposed new section 80CB.

Section 80CB will empower a court to order that, where a person is convicted of a specified offence committed in “road rage circumstances”, the vehicle that the offender was using at the time of the offence be confiscated.

Section 80K provides that, if a confiscated vehicle is sold and the proceeds of the sale are insufficient to meet the costs incurred in the confiscation and sale of the vehicle, the person who was convicted of the offence that led to the confiscation and sale of the vehicle is liable to pay to the Commissioner of Police the difference between the total of those costs and the proceeds of the sale of the vehicle.

This clause will amend section 80K to provide that it also applies in the case of a vehicle that is sold following a court order for its confiscation pursuant to the proposed new section 80CB.

Section 80K currently refers to the expenses incurred in “impounding” a confiscated vehicle. This clause will also remove reference to the costs of “impounding” the confiscated vehicle and will insert instead the more appropriate and clearer reference to the costs “consequent upon the confiscation of the vehicle”.

25. Section 80L amended

This clause is required as clause 16 will insert the proposed new sections 80CA and 80CB.

Section 80CA will empower a court to order that, where a person is convicted of a specified offence committed in “road rage circumstances”, the vehicle that the offender was using at the time of the offence be impounded for a period of up to 3 months.

Section 80CB will empower a court to order that, where a person is convicted of a specified offence committed in “road rage circumstances”, the vehicle that the offender was using at the time of the offence be confiscated.

Section 80L imposes requirements on the Commissioner of Police and the Director General, where a court orders a vehicle to be confiscated, or where an impounded vehicle has not been collected within 2 months of the end of the relevant impounding period and is to be sold as an uncollected vehicle. It requires the Commissioner to notify the Director General in writing of the confiscation order or of the proposed sale of the uncollected vehicle. It also requires the Director General, upon receiving that notification, to transfer the relevant vehicle licence to the State of Western Australia.

This clause will amend section 80L to provide that it also applies where a court orders that a vehicle be confiscated pursuant to the proposed new section 80CB, or where an uncollected vehicle was impounded pursuant to the proposed new section 80CA.

26. *Criminal Property Confiscation Act 2000* amended in consequence

This clause is necessary because clause 16 will insert the proposed new section 80CB.

Section 80CB will empower a court to order that, where a person is convicted of a specified offence committed in “road rage circumstances”, the vehicle that the offender was using at the time of the offence be confiscated.

As a consequence, this clause will amend section 131 of the *Criminal Property Confiscation Act 2000* (“the Confiscation Act”).

Section 130 of the Confiscation Act creates a fund called the Confiscation Proceeds Account (“the Account”).

Section 131(1) of the Confiscation Act provides that certain monies are to be paid into the Account. Section 131(2) provides that money may be paid out of the Account for certain purposes, including providing support services and other assistance to victims of crime.

This clause will amend section 131(1) of the Confiscation Act to provide that, where a vehicle is confiscated pursuant to the proposed new section 80CB and subsequently sold or disposed of, the balance of proceeds from its sale or disposal, following the payment of costs and any unpaid amounts, is to be credited to the Account.

Division 6 – Onus of responsible person

27. Section 102B amended

Section 102B of the Act broadly provides an ability to serve on an individual who is the “responsible person” for a vehicle with a traffic infringement notice outlining traffic offences identifying via photographic evidence, where the name and address of the driver or person in charge of the vehicle are not known and cannot be immediately ascertained.

Clause 27(1) of the Bill amends section 102B(4) of the Act to remove the reference to “of 28 days after the day specified in the notice (being the day of the service of the notice or a subsequent day)” and inserting “for complying defined in subsection (4a)”.

Consistent with this, clause 27(2) inserts a new section 102B(4a) to the Act to define what is meant by the “complying period”, which will refer to:

1. 28 days where it is the first notice served on a responsible person identifying a traffic offence and contains photographic evidence; and
2. 14 days where it is a second notice containing the photographic evidence served on the responsible person identifying the traffic offence photographic evidence, which was preceded by an earlier “14 day notice” (the latter notice having been issued via section 102B(3) of the Act) that did not contain the photographic evidence.

As provided for currently in section 102B(4) of the Act, the person can respond to the notice by either:

- paying the prescribed penalty in the notice; or
- where they were not the driver of the vehicle;
 - advising the name and address of the driver or person in charge of the vehicle at the time;
 - providing information showing that the vehicle was stolen or unlawfully taken or used at that time; or
 - providing a statutory declaration that they did not know and could not reasonably have ascertained the name and address of the driver or person in charge of the vehicle at the time.

Where a responsible person does not respond within the 28 day period in (1) above or the 14 day period in (2) above, they are presumed to be the driver and liable to the relevant penalty for the offence.

This change provides for a consistent total period of 28 days for a driver to respond, irrespective of which method of service of the notice occurs, and is mainly being inserted so that it is consistent with the proposed changes to section 102C of the Act.

28. Section 102C amended

Section 102C of the Act broadly provides the process for serving traffic infringement notice outlining traffic offences identified via photographic evidence where the responsible person is not an individual (in the main a corporate body but can also apply to other entities such as Government agencies and entities created by Statute); and the name and address of the driver or person in charge of the vehicle are not known and cannot be immediately ascertained.

The major change that will result from clause 28 of the Bill to section 102C is that it will add the ability for infringements to be issued with a photograph attached and served on a responsible person for a 28 day period, without the requirement to first issue a notice without a photograph and follow the notice up with an infringement with a photograph. This process is consistent with the manner in which infringements are issued to individuals under section 102B of the Act.

Clause 28(1) of the Bill amends section 10C(1)(b) of the Act by inserting after “requesting”:

“the responsible person to, within the period for complying defined in subsection (1a), supply to an officer specified in the notice”.

Relevantly, clause 28(2) of the Bill inserts section 10C(1a) into the Act to provide for the definition of a “period for complying”, which will refer to:

- A. 28 days where it is the first notice served on the responsible person for the vehicle identifying a traffic offence and contains photographic evidence; and
- B. 14 days where it is a second notice containing the photographic evidence served on the responsible person identifying the traffic offence photographic evidence, which was preceded by an earlier “14 day notice” (the latter notice having been issued via section 102C(2) of the Act) that did not contain the photographic evidence.

Consistent with (B) above, clause 28(3) of the Bill has the effect of meaning that a subsequent traffic infringement notice can be issued for a 14 day period, where there has been a previous notice issued to the responsible person that did not contain the photographic evidence.

Clause 28(4) of the Bill has the effect of amending section 102C(3) of the Act so, to be consistent with clause 28(2) and the definition of “period for complying”, the infringement period will be for either the 14 or 28 days (or a longer period if determined appropriate) depending upon whether a notice that did not include photographic evidence had previously been served upon the responsible person.

Similarly, clause 28(5) of the Bill amends section 102C(5) of the Act to effectively remove the current reference to a time period of 14 days and, instead, to refer to the more general reference to a time “specified in the notice” so as to be consistent with clause 28(2).

Clause 28(6) is required to be consistent with the amendments that will result in infringements containing photographic evidence of the commission of a traffic offence being issued either on the first occasion, or subsequent to a preceding notice having been issued that did not contain the photographic evidence of that offence.

29. Section 102D amended

Section 102D presently provides that a notice issued under section 102C becomes a traffic infringement notice for the purposes of the Act, only where it has been issued in accordance with section 102C(2). That is, where there has first been a notice sent out without a photograph attached that has been followed by a traffic infringement notice with a photograph.

This clause amends section 102D(2) of the Act so that a notice with a photograph served under the amended version of section 102C(1)

(arising from clause 28) can also be deemed a traffic infringement notice for the purpose of the Act.

Division 7 – Other amendments

30. Section 78A amended

The definition of “licence holder” in section 78A of the Act only applied to the use of the term in Part V Division 4. Clause 31 of the Bill replaces this reference with the term “responsible person”.

31. Certain references to vehicle’s licence holder replaced

This clause amends the various places in which the term “vehicle’s licence holder” is referred to in Part V Division 4 and replaces this term with “responsible person”.

It has the effect of overcoming a current problem whereby an impounded vehicle can only be released to the licence holder. This means that where, for example, a child has committed a hoon offence while using their parent’s vehicle the vehicle can only be released to the parent’s after the 48 hours impounding provision has expired. It also means that where the parents were away the vehicle would have to stay at the impound yard incurring additional costs, as the child concerned was not the “vehicle’s licence holder”. The amendment at clause 31 will allow the vehicle to be released to the “responsible person”, overcoming this current anomaly.

32. Section 80G amended

Section 80G prescribes the manner in which an application may be made to a court for an order that a vehicle, used in the commission of a relevant offence, be impounded or confiscated.

Section 80G(7) prohibits the Director General from transferring the licence of a vehicle that is the subject of an application for an impounding or confiscation order, until the application is decided.

This clause will amend section 80G(7) to provide that it applies only in the case of a vehicle that is licensed. This is because the provision would otherwise be meaningless, as a prohibition would be imposed upon the transfer of a vehicle licence where no vehicle licence in fact existed.

33. Section 80L amended

Section 80L imposes requirements on the Commissioner of Police and the Director General, where a court orders a vehicle to be confiscated, or where an impounded vehicle has not been collected within 2 months of the end of the relevant impounding period and is to be sold as an uncollected vehicle. It requires the Commissioner to notify the Director General in writing of the confiscation order or of the proposed sale of the uncollected vehicle. It also requires the Director General, upon receiving that notification, to transfer the relevant vehicle licence to the State of Western Australia.

This clause will amend section 80L to provide that it applies only in the case of a vehicle that is licensed. This is because it would otherwise serve no purpose for the Commissioner to notify the Director General of the proposed sale or disposal of the vehicle, as there would be no vehicle licence for the Director General to transfer.