

## Explanatory Memorandum

### Road Traffic Amendment (Impounding and Confiscation of Vehicles) Bill 2016

The *Road Traffic Amendment (Impounding and Confiscation of Vehicles) Bill 2016 (Bill)* amends the *Road Traffic Act 1974 (RTA)*, the *Criminal Code*, the *Road Safety Council Act 2002*, the *Young Offenders Act 1994* and the *Road Traffic Legislation Amendment Act 2016* to implement a number of initiatives to penalise drivers who commit hoon offences (impounding offences (driving)), to enable the impounding and confiscation of unlicensed trail bikes which are being used on roads and assist police with the timely disposal of uncollected impounded vehicles.

The amendments relating to penalising drivers who commit hoon offences include:

- Enabling a court to confiscate a vehicle, where the driver has committed an impounding offence (driving):
  - in an active school zone;
  - in a confiscation zone (where the speed limit is 50 km/h or less) and the offence resulted in:
    - a member of the public experiencing harassment, intimidation, fear or alarm; or
    - damage to any property, including the road;
  - which involved the driving of a vehicle at 90 km/h or more above the speed limit (Clauses 31, 35);
- Providing that where a person has been convicted of an impounding offence (driving), committed in a confiscation zone and they have within the preceding five years been convicted of another impounding offence (driving) committed in a confiscation zone, the vehicle used in the offence will be confiscated unless extreme physical or financial hardship to a person other than the driver can be proved (Clause 31, 35);
- Replacing the existing very broad “Reckless driving” provision at section 60 with separate provisions which incorporate new reckless driving offences committed in circumstance where a Court will be able to confiscate the vehicle under the amended section 80A (Clause 7 to 11); and
- Providing that any reckless driving and reckless driving speeding convictions which occurred prior to the amended RTA coming into effect, will be counted as prior convictions in relation to the new confiscation offences (Clause 47).

The amendments relating to the impounding and confiscation of unlicensed trail bikes being used on roads are all within clause 45 and include:

- Providing that an unlicensed motor cycle that is used or reasonably suspected of being used on a road in contravention of section 4(2) of the *Road Traffic (Vehicles) Act 2012* and has not been licensed for road use in the previous 2 years, will be subject to confiscation;
- Providing that a person who has right to possession of a motor cycle that has been impounded pending confiscation may make a claim to the Commissioner of Police for possession of the motor cycle;

- Providing that the driver of a motor cycle that has been confiscated is liable to pay an amount equivalent to all reasonable costs incurred by the Commissioner of Police in impounding and storing the vehicle; and
- Enabling the Commissioner of Police to sell or dispose of a confiscated motor cycle or item to defray the proceeds to meet the costs of selling, impounding and storing the motor cycle along with any other expenses incurred consequent on the sale of the motor cycle.

The amendments relating to the management of uncollected vehicles include:

- Allowing the Commissioner of Police to sell or otherwise dispose of an uncollected impounded vehicle 7 days after the impounding period has ended (clause 41(3));
- Allowing the Commissioner of Police to sell or otherwise dispose of an uncollected vehicle before the relevant offence is determined in a court (clause 41(4));
- Introducing related compensation provisions if a person is acquitted of the offence after their vehicle has been sold or disposed of (clause 44);
- Removing the requirement for the Commissioner to publish a notice of the intended sale or disposal of an uncollected vehicle in the newspaper (clause 41(5));
- Extending the ability for a person to give consent for their impounded vehicle to be sold or disposed of (clause 40);
- Removing the requirement for the Commissioner to refund monies paid by a person for any impounding and storage costs when the person collected the impounded vehicle if the case was not heard within 12 months and replacing it with a requirement that the Commissioner refund any monies paid if the person was subsequently acquitted or the charge was withdrawn or dismissed. (Clause 38(2)); and
- Providing that a person convicted of an impounding offence is liable to pay “post-impoundment expenses” and empowering the Commissioner to pursue those expenses (clause 39).

A number of technical amendments are also contained in the Bill, including:

- Empowering the Commissioner to enter into contracts for services relating to the sale or disposal of vehicles under section 80JA of the RTA (clause 16(2))
- Providing for an offence if a person does a “restricted act” in respect to a vehicle following the making of the order granting the impounding or confiscation of that vehicle (clause 23);
- Providing that where a person is initially charged with a particular impounding offence (driving) and the Court makes an alternative verdict and convicts them of another of the impounding offences, the person is deemed to have been charged and convicted of an impounding offence (driving) (clause 14(5)).
- Creating offences where a person fails to comply with a surrender notice, or where they take any action which devalues a vehicle that is subject to a surrender notice (clauses 23, 25 and 28);
- Amending the *Criminal Code* and Schedule 1 of *Young Offenders Act 1994* to reflect the proposed changes to the offences of reckless driving and reckless driving speeding under the RTA; (Clauses 48 to 50, 55 and 56)

- Amending the *Road Safety Council Act 2002* to require that the balance of money received from the sale of an unlicensed motor cycle be credited to the Road Trauma Trust Account. (Clauses 51 and 52)
- Amending the recently passed *Road Traffic Legislation Amendment Act 2016* to include the definitions that are contained within clause 31.

## **Part 1 – Preliminary**

### **1. Short Title**

Pursuant to this clause, when the Bill is passed and receives Royal assent, it will be known as the *Road Traffic Amendment (Impounding and Confiscation of Vehicles) Act 2016*.

### **2. Commencement**

(1) This clause provides when the Bill is passed and receives Royal Assent, the Act will commence operation on a day that is nominated for that purpose in the proclamation. There may be one or more proclamations as it is necessary to enable agencies, such as the Department of Transport and the Western Australia Police to undertake systems programming and to make any other arrangements required to give effect to the amendments contained in the Bill.

(2) This clause provides that if section 42 of the *Road Traffic Legislation Amendment Act 2016* comes into operation before section 4 of this Act, section 5 and Part 3 Division 3 of this Act are repealed when section 4 comes into operation.

## **Part 2 – Road Traffic Act 1974 amended**

### **3. Act amended**

Part 2 of the *Road Traffic Amendment (Impounding and Confiscation of Vehicles) Act 2016* amends the *Road Traffic Act 1974*.

### **4. Section 49AAA amended**

This clause is an alternative to clause 5 and Part 3 Division 3 and applies if the *Road Traffic Legislation Amendment Act 2016* section 42 comes into operation on or before the day on which this provision comes into operation.

### **5. Section 49AA amended**

(1) This provision inserts definitions of terms and expressions used in the Bill.

The term “**above the speed limit**” is defined to mean driving a vehicle at a speed exceeding the speed limit applicable to the driver, the vehicle or the length of road where it is being driven.

The term “**confiscation zone**” means:

- (a) in relation to a vehicle, a length of road where the speed limit applicable to the vehicle, or the length of road, is 50 km/h or less; or
- (b) a school zone.

The term “**motor cycle**” means a motor vehicle that has 2 wheels and includes:

- (a) a 2-wheeled motor vehicle with a sidecar attached to it that is supported by a third wheel; and
- (b) a motor vehicle with 3 wheels that is ridden in the same way as a motor vehicle with 2 wheels.

The term “**school zone**” means a length of road designated as a school zone under a road law, being the *Road Traffic Code 2000*. A designated length of road is only a school zone during its hours of operation.

The term “**speed limit**” means a speed limit set under a road law, being the *Road Traffic Code 2000*.

- (2) The definition of “**grievous bodily harm**” is amended to delete the full stop and insert a semi-colon in order to allow further definitions to be inserted.

The clause inserts a note to explain the consequences of the *Road Traffic Legislation Amendment Act 2016* section 42 not coming into operation on or before section 4 and Part 3 Division 3 of this Act comes into operation. If this occurs section 4 of this Act is repealed.

## 6. Section 49AB amended

This is a minor amendment that does not affect the substance of the provision. It deletes and replaces the existing subsection 49AB(1)(b), to reflect that a new definition of “above the speed limit” has been included in section 49AA.

## 7. Section 60 amended

- Sections 60(1) to (1D) are deleted.
- The existing offence at section 60(1) has been deleted and replaced with a like offence that includes a person who wilfully drives in a reckless manner in a confiscation zone. In the circumstances specified in section 80A, a Court will be able to confiscate the vehicle of a person convicted on their first offence of driving in a reckless manner, in a “confiscation zone”. The specific reference to a confiscation zone in this offence will enable a police officer and the Court to easily identify offences for which the Court can confiscate the vehicle.
- The existing offences at section 60(1a) and (1b) that deal with speed related reckless driving are deleted and replaced with like offences (proposed new section 60A) by clause 8 of this Bill.
- The existing exceptions for police, fire and ambulances at section 60(1c) are deleted and replaced with like exemptions (proposed new section 61B) by clause 11 of this Bill.
- The existing police power of arrest without warrant at section 60(1D) is deleted and replaced with a like power (proposed new section 60C) by clause 8 of this Bill.
- The section numbers for alternative verdicts listed in the existing section 60(2) are consequentially amended show replacement offences enacted by this Bill.
- Sections 60(3) to (7) are deleted.
- The existing penalty provisions at section 60(3) to (7) are replaced with like penalty provisions (proposed new section 60B) by clause 8 of this Bill.
- The heading of section 60 is amended to “Driving in reckless manner”.

## 8. Sections 60A, 60B and 60C inserted

### 60A. Driving at reckless speed

This clause deals with reckless driving speeding and replaces the existing offences at sections 60(1a) and (1b). These offences include a person who commits either of the offences in a confiscation zone. In the circumstances specified in section 80(A), a Court will

be able to confiscate on the first offence, the vehicle of a person convicted of either of these offences in a “confiscation zone”. The specific reference to a confiscation zone in this offence will enable police and the Court to easily identify offences for which the Court can confiscate the vehicle.

#### **60B. Penalties for offences against sections 60 and 60A**

This section replaces the penalty provisions that are currently contained within subsections 60(3) to (7). The structure of the penalty provision has changed, however the penalties are the same.

#### **60C. Arrest without warrant for driving in reckless manner or at reckless speed**

This new clause reinserts the arrest powers currently contained in section 60(1D).

### **9. Section 61 amended**

Section 61(4) provides that where a person is convicted of dangerous driving and had been previously convicted of dangerous driving causing death or grievous body harm, dangerous driving causing bodily harm, or reckless driving (this includes reckless driving speeding), these offences are to be considered as a previous offence for sentencing purposes. The changes made by clause 6, necessitated inserting section 60A (reckless speeding) so that it will be considered as a previous conviction for the purposes of sentencing.

### **10. Section 61A amended**

This is a consequential amendment to reflect that the former offence provision at section 60(1) is now found at 60(1A).

### **11. Section 61B inserted**

Clause 7 of this Bill deletes section 60(1c) that provides a defence for police, firemen and ambulance drivers committing an offence of reckless speeding in the performance of their duties. The new section 61B replicates the deleted 60(1c).

### **12. Section 62A replaced**

The existing offence at section 62A has been deleted and replaced it with a like offence. The scope of the offence has expanded to included offences committed in a confiscation zone. The specific reference to a confiscation zone in this offence will enable a police officer and the Court to easily identify offences for which the Court can confiscate the vehicle. The penalty for the offence has been increased from 12 to 30 penalty units to better reflect the seriousness of the offence.

### **13. Section 74 deleted**

The deletion of section 74 is a drafting change and the provision is reinserted at section 78F by clause 18.

### **14. Section 78A amended**

This subclause updates and inserts new definitions for the purposes of the amended Division 4.

- A definition of “*impound*” in relation to a vehicle is inserted to clarify that this means the storage of the vehicle in police custody after its seizure or surrender.

- The term “**impounding offence (driving)**” has been updated to include the new section 60A (reckless speeding) as a consequence of sections 60(1a) and (1b) being deleted and replaced section 60A by clause 7. A transitional provision is included to capture offences under the former provisions of the Act.
- The term “**Impounding or confiscation order**” has been updated to include the new section 80A as a consequence of the section being recast by clause 31 of this Bill.
- A transitional provision has been inserted to provide that a court order made before the commencement of the *Road Traffic Amendment (Impounding and Confiscation of Vehicles) Act 2016* continues to be in force after the commencement of the Act.
- The insertion of the term “**interest**” in section 78A is a formatting change. The term is currently defined in sections 80G and 80JA. Clauses 35 and 40 of this Bill will delete the definition from those sections.
- The term “**reasonable expenses**” has been defined to clarify that the Commissioner of Police can only claim the costs that the Commissioner has incurred and that are currently owed to him. The term is used in other provisions within Division 4 and for drafting consistency it has been inserted into section 78A.
- The definition of “**road rage offence**” has been consequentially amended to reflect the creation of the specific section 60A offence of “Driving at reckless speed” by clause 8 of this Bill.

A new subclause (2) is inserted in section 78A to address an anomaly in relation to alternate verdicts for an impounding offence (driving). Currently, if a person is charged with a particular impounding offence (driving) but is convicted of an alternate impounding offence (driving), the Commissioner of Police pursuant to section 80IB is required to refund the impoundment costs. This was not the intent of section 80IB. This new clause resolves this anomaly and the Commissioner will no longer be required to refund the payment made for the release of the vehicle where the driver is convicted of an alternate impounding offence (driving).

## 15. Section 78C amended

Currently, section 78C provides that where a vehicle has been impounded or confiscated, a police officer or an agent is empowered to drive or tow the vehicle to the place where it is to be stored, or *at* the place where it is stored. A police officer is also empowered to seize the keys for an impounded vehicle and if necessary, use reasonable force to enter a premises for the purpose of executing a court order. Police will now be permitted to seize an unlicensed motor cycle in accordance with section 80O and 80Q (inserted by Clause 45 of this Bill). As a consequence, an amendment to section 78C is now necessary.

- Subsection 78C(1) is amended to include that where an unlicensed motor cycle is seized in accordance with section 80O(2), a police officer or agent may convey it to a place where it is to be stored.
- Subsection 78C(2A) is amended to include where an unlicensed motor cycle is surrendered in accordance with section 80Q(1) and (2), a police officer may take possession of the motor cycle.
- Subsection 78C(2) is amended to include that where an unlicensed motor cycle is surrendered in accordance with section 80Q(2), a police officer or agent may convey an unlicensed motor cycle to a place where the vehicle is to be stored.
- Subsection 78C(3) is amended to include that a police officer may seize the keys of an unlicensed motor cycle which is impounded in accordance with sections 80O(2) or 80Q(2).

- Subsection 78C(4) is amended to include that where a police officer reasonably suspects that the keys to an unlicensed motor cycle or an unlicensed motor cycle that is subject to a surrender under 80Q(2) notice and has not been surrendered are in any premises, the police officer may enter those premises without a warrant in order to seize the keys, or convey the motor cycle to a place where the motor cycle is to be stored. This amendment also reflects the changes within subsection 78C(3)(ba), now amended to (aa).

#### **16. Section 78D amended**

Section 78D provides that the Commissioner of Police is able to enter into contractual arrangements with towing firms and other service providers for the provision of services to give effect to the impounding and confiscation provisions of the Act. As police will now have the power to seize unlicensed motor cycles in accordance with section 80O and 80Q, section 78D is amended to enable the Commissioner of Police to enter into a contract with service providers in relation to an impounded unlicensed motor cycle.

Subsection 78D(a) is amended to include that the contractor may convey unlicensed motor cycles that have been impounded under 80O(2), 80Q(1) or (2) to a place to be stored.

Subsection 78D(ca) is amended to enable contactors to be able to assist in the sale of confiscated motor cycles under section 80V and uncollected impounded vehicles that are to be sold with the consent of the owner(s) under section 80JA .

#### **17. Section 78E amended**

Section 78E provides that the Commissioner of Police may recover expenses for which a person is liable under section 79E, 80H, 80K, or 80LA from a court of competent jurisdiction. The inclusion of the provisions that enable the Commissioner of Police to seize and dispose of a confiscated motor cycle has necessitated an amendment to section 78E. This enables the expenses incurred by the Commissioner of Police in dealing with the motor cycle to be recouped.

Section 78E is amended to include that the Commissioner of Police may recover expenses reasonably incurred under sections 80I and 80W of the Act.

#### **18. Section 78F inserted**

The new section 78F is a replication of section 74, which is deleted by clause 13.

#### **19. Part V Division 4 Subdivision 2 heading amended**

The heading for Subdivision 2 is amended to “Impounding of vehicles by police for certain offences”

#### **20. Section 79 amended**

Section 79 requires a police officer to impound a vehicle where he or she reasonably suspects that the vehicle has been used in an impounding offence (driving).

This clause amends subsection 79(1) by inserting the words “seize and” before impound. The addition of these words clarifies that a police officer is required to take physical possession of a vehicle which is to be impounded.

#### **21. Section 79A amended**

Section 79A requires a police officer to impound a vehicle where he or she reasonably suspects that the vehicle has been used in an impounding offence (driver’s licence).

This clause amends subsection 79A(1) by inserting the words “seize and” before impound. The addition of these words clarifies that a police officer is required to take physical possession of a vehicle which is to be impounded.

## **22. Section 79BA amended**

Section 79BA deals with the issuing of a surrender notice to a vehicle’s driver or a responsible person, requiring the surrender of a vehicle which is reasonably suspected to have been used in the commission of an impounding offence (driving), or an impounding offence (driver’s licence). Pursuant to subsection (5)(b), this notice must include a statement as to the effect of section 79BB(5), which makes it an offence for a person to dispose of their interest in the vehicle after they have received a surrender notice.

This clause amends the current subsection 5 to require a statement as to the effects of section 79BB(5) and (6) as a consequence of an amendment made to the offence provision at clause 23 of this Bill.

## **23. Section 79BB amended**

Section 79BB sets out the different consequences that may result following the giving of a surrender notice.

This clause makes minor drafting amendments to subsections (1) to (4) that have no substantial effect.

The clause also deletes and replaces the existing offence provision at subsection (5) to address an inadequacy. Currently, a person commits an offence if they dispose of an interest in a vehicle after receiving a surrender notice. No offence is committed if the person fails to comply with a notice, or having received a notice, does something or allows another person to do something to the vehicle that results, or will result in a reduction of the value of the vehicle.

These actions result in a cost to the State and it is considered the legislation should provide a deterrent.

Subsection 5 is replaced with expanded offences at subsections (5) and (6). In addition to the current offence of disposing of an interest in a vehicle after receiving a surrender notice, it will also be an offence to fail to comply with a surrender notice, or to do anything or permit another person to do anything that results, or will result in a reduction in the value of the vehicle. The penalty for these offences is a fine of up to 50PU, which equates to \$2500.

## **24. Section 79BCA amended**

Section 79BCA deals with the issuing of a surrender substitute vehicle notice to the driver of a vehicle who has been charged with an impounding offence.

Pursuant to subsection (6)(b), this notice must include a statement as to the effect of sections 79BCB(5), which makes it an offence for a person dispose of their interest in the vehicle after they have received a surrender notice.

This clause amends the current subsection 5 to require a statement as to the effects of section 79BCB(5) and (6) as a consequence of an amendment made to the offence provision at clause 25 of this Bill.

## **25. Section 79BCB amended**



This clause makes minor drafting amendments to subsections (1) to (4) that have no substantial effect.

The clause also deletes and replaces the existing offence provision at subsection (5) to address an inadequacy. Currently, a person commits an offence if they dispose of an interest in a vehicle after receiving a surrender substitute vehicle notice. No offence is committed if the person fails to comply with a notice, or having received a notice, does something or allows another person to do something to the vehicle that results, or will result in a reduction of the value of the vehicle.

These actions result in a cost to the State and it is considered the legislation should provide a deterrent.

Subsection 5 is replaced with expanded offences at subsections (5) and (6). In addition to the current offence of disposing of an interest in a vehicle after receiving a surrender substitute vehicle notice, it will also be an offence to fail to comply with a surrender substitute vehicle notice, or to do anything, or permit another person to do anything that results or will result in a reduction in the value of the vehicle. The penalty for these offences is a fine of up to 50PU, which equates to \$2500.

#### **26. Section 79BCC amended**

This clause addresses a drafting error contained in section 79BCC(2)(c)(ii), as it currently refers to Part III of the RTA, which has been repealed with the introduction of the *Road Traffic Vehicles) Act 2012*.

The heading for section 79BCC is amended to “Cancelling notices under s. 79BA, 79BCA or 79 BCD”.

#### **27. Section 79BCD amended**

Section 79BCD deals with the issuing of a surrender alternative vehicle notice to the driver of a vehicle who has been charged with an impounding offence.

Pursuant to subsection (6)(b), this notice must include a statement as to the effect of section 79BCE(5), which makes it an offence for a person to dispose of their interest in the vehicle after they have received a surrender notice.

This clause amends the current subsection 5 to require a statement as to the effects of sections 79BCE(5) and (6) as a consequence of an amendment made to the offence provision at clause 28 of this Bill.

#### **28. Section 79BCE amended**

This clause makes minor drafting amendments to subsections (1) to (4) that have no substantial effect.

The clause also deletes and replaces the existing offence provision at subsection (5) to address an inadequacy. Currently a person commits an offence if they dispose of an interest in a vehicle after receiving a surrender alternative vehicle notice. No offence is committed if the person fails to comply with a notice, or having received a notice, does something, or allows another person to do something to the vehicle that results, or will result in a reduction of the value of the vehicle.

These actions result in a cost to the State and it is considered the legislation should provide a deterrent.

Subsection 5 is replaced with expanded offences at subsections (5) and (6). In addition to the current offence of disposing of an interest in a vehicle after receiving a surrender alternative vehicle notice, it will also be an offence to fail to comply with a surrender alternative vehicle notice, or to do anything or permit another person to do anything that results, or will result in a reduction in the value of the vehicle. The penalty for these offences is a fine of up to 50PU, which equates to \$2500.

### **29. Section 79C amended**

Where a police officer impounds a vehicle, he or she must as soon as practicable thereafter advise a senior officer, informing them of the grounds on which the vehicle was impounded. This is to ensure that there is sufficient evidence for the vehicle to be impounded.

These minor amendments insert “seize and” into section 79C(1) and replaces “the impounding” with “the date of the seizure and impounding” in section 79(1)(aa). This is to clarify that where an officer seizes a vehicle for an impounding offence, they should notify a senior officer of the date of the seizure and impounding.

### **30. Section 79E amended**

This section provides that the driver of a vehicle convicted of an offence giving rise to police impounding will be liable for the expenses reasonably incurred by the Commissioner of Police in impounding the vehicle.

A minor drafting amendment has been made to this section to remove content that is no longer required because this Bill inserts a new definition of “reasonable expense” into section 78A.

### **31. Section 80A replaced**

Currently section 80A provides for the confiscation of a vehicle if an offender is convicted of a third impounding offence (driving) within five years.

Pursuant to the Government’s 2013 election commitment, the scope of this provision has been expanded to enable a vehicle to be confiscated under specific circumstance on conviction for either a first or second impounding offence (driving).

A Court will be able to order the confiscation of a vehicle used in an impounding offence driving on a first offence if:

- the offence was committed in a school zone. A school zone being a length of road designated as a school zone under a road law being the *Road Traffic Code 2000*. A designated length of road is only a school zone during its hours of operation; or
- the offence was committed in a confiscation zone; and the commission of the offence resulted in or was likely to result in-
  - members of the public experiencing harassment, intimidation, fear or alarm; or
  - damage to property, including the road; or
- the offence involved the driving of the vehicle at 90 km/h or more above the speed limit.

A Court will be able to order the confiscation of a vehicle used in an impounding offence driving on a second offence if the offence was committed in a confiscation zone and within the previous 5 years, the offender has been convicted of an impounding offence driving.

### **32. Section 80D amended**

This clause deletes the reference to section 80A(1) and inserts the words “section 80A, as in force at any time”. This is to reflect the expanded confiscation provisions inserted by clause 31 of this Bill.

### **33. Section 80E amended**

The amendments to section 80E that delete the reference to section 80A(1) and insert the reference 80A. This is to reflect the expanded confiscation provisions inserted by clause 31 of this Bill.

### **34. Section 80FA amended**

The amendment to section 80FA that deletes the reference to section 80A(1) and inserts the reference 80A. This is to reflect the expanded confiscation provisions inserted by clause 31 of this Bill.

### **35. Section 80G amended**

As a consequence of clause 14 which inserts the definition “interest” into section 78A, the definition of “interest” contained within section 80G is deleted.

The amendment to section 80G(1) deletes the reference to section 80A(1) and inserts the reference 80A. This is to reflect the expanded confiscation provisions inserted by clause 31 of this Bill.

Currently, the Commissioner of Police must make application to a Court for the confiscation of a vehicle used in an impounding offence. The insertion of subsection 80G(3A) provides a court the ability, on their own volition to issue a confiscation order for a vehicle under sections 80A, 80B(1), 80C(1), 80CA(1) or 80CB(1). This amendment is aimed at streamlining the current confiscation process and reducing the time police are using to complete complex applications to a Court.

Subsection 80G(5) details the matters a court may have regard to when determining whether or not to make an impounding or confiscation order in relation to any impounding offence and a road rage offence.

Clause 35(4) of this Bill deletes reference in section 80G(5) to section 80A(1) and replaces it with sections 80A(3) and (4). This is a consequential amendment needed because section 80A has been amended by clause 31 of this Bill to add two additional circumstances for which a vehicle used in an impounding offence (driving) can be confiscated.

Sections 80A(3) and (4) are specifically mentioned within section 80G(6A), because unlike the other confiscation provisions, a Court considering a confiscation under sections 80A(3) and (4) must make the order unless severe financial or physical hardship would be caused to a person other than the driver.

The amendment to the offence at subsection (6) is a minor drafting change.

### **36. Section 80H amended**

This is a minor drafting amendment to section 80H that is consequential to the insertion of a definition of “reasonable expenses” into section 78A by clause 14 of this Bill. The definitions contained in section 78A apply to the terms used in Division 4.

### **37. Part V Division 4 Subdivision 4 heading replaced.**

The heading for Subdivision 4 is amended to “Vehicle impounded or confiscated under Subdivisions 2 or 3”.

**38. Section 80IB amended.**

A minor drafting amendment is made to section 80IB(1) that is consequential to the insertion of a definition of “reasonable expenses” into section 78A by clause 14 of this Bill. The definitions contained in section 78A apply to the terms used in Division 4.

Section 80IB(5)(b) is amended to address an anomaly through which an offender can avoid paying storage costs for the impounded vehicle if the charge is not heard within 12 months of the charge being laid.

Pursuant to the existing subsection (5)(b), the Commissioner of Police is required to refund any payment an alleged offender paid to the Commissioner for the storage and transport of an impounded vehicle if they are not convicted of the impounding offence within 12 months of the date that charge was laid.

In some instances, matters outside the control of the Commissioner of Police result in a charge not being heard within the required 12 months and although the person is subsequently convicted of the impounding offence, the Commissioner has to refund the impoundment costs that were paid on release of the vehicle from the impounding yard.

Pursuant to the amended section 80IB (5)(b), the Commissioner will only have to refund any impounding costs paid if the person alleged to have committed the offence is subsequently acquitted of the charge, or the charge is withdrawn or dismissed.

**39. Section 80I amended**

Section 80I empowers the Commissioner of Police to refuse to release an impounded vehicle until the Commissioner is paid the expenses incurred in storing the vehicle after the end of the impounding period.

Clause 39 amends 80I by inserting a new subsection (1A) that creates a liability for the convicted person to pay the reasonable expenses of the Commissioner of Police in storing the vehicle after the impounding period ends. The purpose of this is to enable the Commissioner of Police to recoup any unpaid costs that have been reasonably incurred in a Court of competent jurisdiction as a debt owed to the Commissioner, should the vehicle not be collected or inadvertently released without the costs being paid.

The clause also makes minor drafting amendments to subsections (1), (2A), and (2) so that the term “post impounding expenses” defined in the new section 1A is used appropriately within the section.

**40. Section 80JA amended**

Section 80JA(2) empowers the Commissioner of Police to sell or dispose of an “impounded vehicle” with the consent of the owner/s of the impounded vehicle and in accordance with the section.

For the purposes of section 80JA, section 80JA(1) provides that an “impounded vehicle” is a vehicle that has been impounded pursuant to section 79A, because it is suspected to have been used in the commission of an “impounding offence (driver’s licence)”.

A vehicle that has been impounded pursuant to section 79 because it is suspected to have been used in the commission of an “impounding offence (driving)” offence is not captured with section 80JA and therefore cannot be sold or disposed of with the consent of the owner/s of the impounded vehicle.

Police receive regular requests from the owner/s of vehicles impounded for an “impounding offence (driving)” offence to give consent to the early sale or disposal of their vehicle.

To allow this, this clause amends section 80JA(1) to expand the application of section 80JA to include those vehicles that have been impounded pursuant to section 79 because they are suspected to have been used in the commission of an “impounding offence (driving)”.

This clause also deletes the definition of “interest”. The term is used a number of times in Part 5 Division 4 of the Act and accordingly it has been inserted into section 78A, which lists the terms used in Division 4, by clause 14 of this Bill.

The amendment to subsection 80JA(8)(b) is a consequence to inserting the term “reasonable expenses” into section 78A.

#### **41. Section 80J amended**

The amendments to section 80J will have a significant benefit for WA Police, as it will greatly reduce the expenses currently being incurred by the Commissioner of Police in having to retain possession of uncollected vehicles until the person is convicted of the impounding offence. It is acknowledged that the effective confiscation of a person’s property prior to a relevant finding of guilt will raise concerns for some members of the community. To ensure that the operation of the legislation is fair and reasonable, safeguards will be put in place to guarantee that vehicle owners are afforded natural justice. Vehicles will only be disposed of where the owner has made no effort to collect the vehicle and WA Police has made significant efforts to ensure the owner is aware of the consequences of inaction. Currently, the Act requires each responsible person for an impounded vehicle be given an initial written notice setting out the details of the impoundment, stating that they may secure the release of their vehicle at the end of the impounding period by paying the costs of impoundment in full. Where the person cannot pay the full amount, a time to pay arrangement may be entered into.

Amongst other matters, section 80J sets out the process via which the Commissioner may sell or otherwise dispose of a vehicle that is an “uncollected vehicle”.

Section 80J(1) defines an “uncollected vehicle” as a vehicle “that was impounded under Subdivision 2 or on an impounding order and not collected within 28 days after the end of the impounding period”.

Vehicles impounded under Subdivision 2 are impounded as a consequence of the suspected commission of an “impounding offence (driving)” or an “impounding offence (driver’s licence)”.

They may be impounded by a member of the Police Force at the roadside following the commission of the alleged offence (section 79 or 79A), or following the giving by a member of the Police Force of a surrender notice (section 79BA) or a surrender substitute vehicle notice (section 79BCA).

Sections 80B(1), 80CA(1), 80FA(1) and 80FA(2) empower a court to order the impounding of a vehicle following a person's conviction of a "road rage offence" or of a second or subsequent "impounding offence (driver's licence)" or as an alternative to the confiscation of a vehicle following a person's conviction of a "road rage offence" or of a third or subsequent "impounding offence (driver's licence)".

Clause 41(1) makes a minor drafting amendment to the provision by inserting for the purposes of this section a definition of "expenses".

Clause 41(2) amends section 80J(1) the definition "confiscated vehicle" by deleting the reference to section 80A(1) and inserts the reference to "section 80A, as in force at any time". This is done to ensure that the sale of a vehicle confiscated under the deleted section 80A(1) will be allowable under section 80J after this Bill is enacted.

Clause 41(3) amends section 80J to provide that a vehicle will become an "uncollected vehicle" if it is not collected within 7 days, rather than 28 days, following the end of the applicable impounding period.

The time period of 7 days has been chosen as statistics show that approximately 80% of vehicles are collected 7 days after the impounding period ends. Reducing this time period allows for police to dispose of a vehicle in 49 days, down from 70 days. This will then assist WA Police to better manage uncollected vehicles.

Clause 41(4) amends section 80J(3) of the Act.

Section 80J(3) of the Act places limits on when the Commissioner may sell or otherwise dispose of a confiscated vehicle, an uncollected vehicle or an item.

In particular, subsection 80J(3) provides that the Commissioner may not sell or dispose of a "confiscated vehicle", an "uncollected vehicle" or an "item" unless:

- (a) any appeal against the conviction for an offence in respect of which the vehicle was impounded or confiscated is determined; and
- (b) any appeal against an impounding or confiscation order in respect of the vehicle is determined."

Clause 41(4) deletes section 80J(3) and inserts a new provision that maintains the prohibition currently at subsection (a) on the sale or disposal of an impounded or confiscated vehicle, pending the determination of any appeal against the conviction for an offence in respect of which the vehicle was impounded or confiscated, but removes the prohibition currently at subsection (b) on the sale or disposal of an impounded or confiscated vehicle, pending the determination of any appeal against an impounding or confiscation order in respect of the vehicle being determined.

This supports the intent of the amendments to section 80J, which is to reduce the costs being incurred in storing uncollected impounded vehicles by enabling the earlier sale or disposal.

Clause 41(5) amends section 80J(4) of the Act.

Section 80J(4) sets out further circumstances in which the Commissioner may not sell or otherwise dispose of an uncollected vehicle or an item.

In particular, paragraph (b) provides that the Commissioner may not sell or dispose of an “uncollected vehicle” or an “item” unless, at least 14 days before the proposed sale or disposal, the Commissioner publishes notice of the intended sale or disposal in a newspaper that is circulated throughout Western Australia.

While there is merit in providing notice to persons affected by the sale or disposal of an uncollected vehicle, it is considered that this result is adequately achieved by the personal written notice currently required pursuant to paragraph (a) and the requirement to publish a notice in a newspaper pursuant to paragraph (b) is an unnecessary duplication. To the knowledge of Police, not a single enquiry from an interested party has been generated from a newspaper advertisement in the time that the legislation has been operating. In order to reduce costs, it is proposed that the requirement to publish a notice in a newspaper is removed.

This clause deletes subsection 80J(4)(b) to do away with the requirement for the Commissioner to publish a notice in a newspaper.

This supports the intent of the amendments to section 80J which is to reduce the costs being incurred in storing uncollected impounded vehicles by enabling the earlier sale or disposal.

Clause 41(6) makes a consequential amendment at section 80J(7)(j)(i) to replace the reference to the deleted section 80A(1) with “section 80A as in force at any time”. This wording is necessary to ensure that both the current and superseded confiscation provisions can still apply after the commencement of this clause.

#### **42. Section 80LA amended**

This is a drafting amendment to ensure the consistent use of terminology in the Act. The amendment made to subsection 80LA(2) is a consequence of inserting a definition of “reasonable expenses” into section 78A. Section 78A defines the terms used that are relevant to provisions in Part 5 and Division 4 of the Act.

#### **43. Section 80L amended**

Clause 43 makes a consequential amendment to section 80L to replace the reference to the deleted section 80A(1) with section 80A as in force at any time. This wording is necessary to ensure that both the current and superseded confiscation provisions can still apply after the commencement of this clause.

#### **44. Section 80M inserted**

This clause inserts new section 80M which will provide compensation for uncollected vehicles or items disposed of under section 80J. It is necessary due to clause 41 of this Bill amending section 80J to allow the earlier sale or disposal of an uncollected vehicle or item.

The new section 80M provides compensation to the responsible person where their vehicle is sold (prior to conviction) and they are subsequently acquitted or otherwise not convicted for the impounding offence. In these circumstances, the State will be liable to compensate the affected vehicle owner for the loss of his or her vehicle. Where the amount of compensation cannot be agreed between the affected person and the State, the person will be able to bring an action in a court of competent jurisdiction to determine the amount to be paid.

The Bill will provide that affected persons will be entitled to an amount of compensation equal to the market value of the vehicle at the time that it was seized.

Section 80M(1) defines terms used in the section, “former owner”, “item” and “uncollected vehicle”.

Section 80M(2) provides that the State is liable to pay compensation to the former owner if the vehicle or item is sold; and

- no charge was laid for the impounding offence for which the vehicle was impounded within one year of the alleged offence; or
- the charge was laid within one year of the alleged offence, but the person was acquitted of that offence, or the charge is withdrawn or dismissed.

Section 80M(3) provides that where the vehicle is sold, compensation may be paid prior to the conditions prescribed in subsection (2) if the Commissioner of Police is satisfied that it is unlikely that a charge will be laid.

Section 80M(4) provides that the liability for compensation that the State has under subsection (2) is reduced by an amount of compensation paid under subsection (3).

Section 80M(5) will provide the State may recover from a person the amount of compensation paid from a court of competent jurisdiction if;

- a person is, after the compensation has been paid, convicted of the offence; and
- any appeal against the conviction is not quashed or overturned.

Section 80M(6) provides more safeguards to ensure the former owner is not disadvantaged by the sale of their vehicle. It will provide the State is liable to pay compensation where-

- a person is convicted of the offence for which the vehicle was impounded; and
- the person is subsequently acquitted of the offence; and
- at the time of the acquittal –
  - no other person has been convicted of the impounding offence; or
  - if a person was charged with the impounding offence, the person was acquitted of the offence, or the charge was withdrawn or dismissed.

Section 80M(7) limits the amount of compensation to the market value of the vehicle or item, as at the time the vehicle was impounded.

Section 80M(8) prescribes what the market value for the purposes of subsection (7) will be. This being, the amount agreed between the State and the former owner, or if no such agreement exists, the amount of compensation can be determined by a court of competent jurisdiction.

#### **45. Part V Division 4 Subdivision 5 inserted**

The new Subdivision 5 -

- empowers a police officer to impound an unlicensed motor cycle being used on a road;
- permits a police officer to issue a surrender notice where it is not practical to impound the motor cycle immediately;



- creates offences for a person who fails to surrender a motor cycle, disposes of the motor cycle, or does an act that will devalue the motor cycle before the motor cycle is surrendered;
- provides that where a motor cycle has been impounded, the responsible person can apply to the Commissioner of Police for the return of the vehicle;
- permits the motor cycle to be confiscated where the Commissioner of Police rejects a claim for its return, or no claim was made within the specified time;
- creates a liability for the rider of the motor cycle to pay all expenses reasonably incurred by the Commissioner of Police where the motor cycle is confiscated.

Clause 45 inserts a new Part V, Division 4, Subdivision 5 into the RTA

### **Section 80N Terms used**

Defines the terms used for the purpose of Subdivision 5.

The term “immediate family” is used for purposes of section 80S, which allows a person whose motor cycle has been impounded pending confiscation, to make a claim to the Commissioner of Police for the return of the vehicle.

The term “surrender notice” has the meaning give in section 80P(2). A surrender notice will be issued where is not practical to seize and impound at the time of the alleged offence.

The term “suspected use” means the use of the motor cycle in circumstances described in 80O(1)(a) to (c). That is

- a motor cycle is being used on a road;
- the use constitutes an offence of driving an unlicensed motor cycle pursuant to section 4(2) of the *Road Traffic (Vehicles) Act 2012*; and
- during the past 2 years, the motor cycle was not licensed nor subject to a permit.

### **Section 80O Police power to impound unlicensed motor cycle used on road**

Subsection (1) provides that a police officer who reasonably suspects that;

- the motor cycle was being used on a road; and
- the use of the motor cycle would be constitute an offence under section 4(2) of the *Road Traffic (Vehicles) Act 2012* (unlicensed vehicle); and
- the motor cycle was not subject to a licence issued under the provisions of the *Road Traffic (Vehicles) Act 2012* or a permit, or number plate issued under section 13 of the *Road Traffic (Vehicles) Act 2012* in the previous 2 years.

Where a police officer reasonably suspects the matters specified in subsection (1), the police officer may seize and impound the motor cycle within 28 days from the alleged use.

Subsection (3) provides the Commissioner of Police is to serve a notice on the responsible person for the motor cycle and if the person has not reached 18 years, a responsible adult, as defined in the *Young Offenders Act 1994*.

The notice must be in an approved form and specify the following;

- the time when the motor cycle was impounded;
- the address of the place where the motor cycle is stored;

- sufficient details of the motor cycle to identify it;
- the time and place of the suspected use of the motor cycle;
- sufficient other details of the suspected use to identify the grounds for giving the notice;
- if known, the name of the driver of the motor cycle during its suspected use.

In addition to the above information, the notice is also to include the effects of;

- section 80S - the process in making a claim to the Commissioner of Police for the return of the bike; and
- section 80T - if the Commissioner of Police refuses the claim, or no claim is made within 14 days, the motor cycle is confiscated and becomes the property of the State; and
- section 80U - where the motor cycle is confiscated, the responsible person is liable to pay the Commissioner of Police all reasonable expenses, impounding and storage of the motor cycle; and
- section 80V - the Commissioner of Police may sell or dispose of a confiscated vehicle; and
- section 80W – the Commissioner of Police may recover the expenses that exceed the proceeds of the sale of the motor cycle.

### **Section 80P Surrender notice**

Where it is not practical to seize and impound the motor cycle at the time of the alleged offence, a police officer may issue a surrender notice to the responsible person, or a responsible adult, where the responsible person has not reached 18 years, to surrender the motor cycle with 7 days to the place specified in the notice.

A surrender notice cannot be issued more than 28 days after the alleged offence.

The notice is to be an approved form and contain the following information -

- sufficient details to identify the motor cycle ;
- the time and place of the suspected use of the motor cycle;
- sufficient other details of the suspected use to identify the grounds for giving the notice;
- if known, the name of the driver of the motor cycle during its suspected use;
- the place at which and the time of day during which the motor cycle and its keys are required to be surrendered; and
- the last day on or before in which the motor cycle and its keys are required to be surrendered, being the 7th day after the day the surrender notice has been given.

In addition to the above information it must also include a statement to the effects of -

- section 80Q – the consequences of no compliance with a surrender notice; and
- section 80S - the process in making a claim to the Commissioner of Police for the return of the motor cycle; and
- section 80T - if the Commissioner of Police refuses the claim, or no claim is made within 14 days, the motor cycle is confiscated and becomes the property of the State; and
- section 80U - where the motor cycle is confiscated, the responsible person is liable to pay the Commissioner of Police all reasonable expenses, impounding and storage of the motor cycle; and
- section 80V - the Commissioner of Police may sell or dispose of a confiscated motor cycle; and

- section 80W – the Commissioner of Police may recover all reasonable expenses incurred that exceed the proceeds of the sale of the motor cycle.

### **Section 80Q Consequences of surrender notice**

This section outlines the consequence of compliance and non-compliance of a surrender notice.

Subsection (1) provides that the impounding date is the date when the motor cycle is surrendered to police. This provision is required for the purposes of section 80S and 80T in determining when a person can make a claim for the return of the motor cycle, or when the motor cycle is deemed to be confiscated.

Subsection (2) provides that where a person fails to surrender the motor cycle within the specified time, the impounding date commences at the time police take possession of the motor cycle. Again, this provision is required for the purposes section 80S and 80T in determining when a person can make a claim for the return of the motor cycle, or when the motor cycle is deemed to be confiscated.

Subsection (3) provides where a person fails to surrender the motor cycle by the date, the person commits an offence and is subject to a fine of up to 50PU, which equates to \$2,500. The penalty is substantial to deter a person from not surrendering the motor cycle.

Subsection (4) provides a person commits an offence, if the person sells the motor cycle or does anything, causes, or permits another person to do anything to reduce the value of the motor cycle. The penalty is a fine of up to 50PU, which equates to \$2,500. The penalty has been set at this level to deter a person doing anything to reduce the value of the motor cycle prior to it being surrendered.

### **Section 80R Senior police officer to be informed if vehicle impounded**

Subsection 80R(1) includes a requirement for a police officer, who gives a responsible person for a motor cycle an impounding notice under section 80O(2), or a surrender notice under section 80P(2), to inform the senior police officer of the following –

- the date of the seizure and impounding or the giving of the surrender notice as the case requires; and
- the grounds on which the police officer reasonably suspected the motor cycle was being ridden on a road when unlicensed; and
- whether the motor cycle has been seized or surrendered.

Subsection (2) provides that where a senior police officer is informed under subsection (1), they must make enquiries as to whether there were reasonable ground for suspecting the matters referred to in section 80O(1)(a) to (c).

Subsection (3) requires that if a senior officer is not satisfied that the grounds to reasonably suspect specified in section 80O(1)(a) to (c) were valid, the senior officer is to cancel the surrender notice and ensure the motor cycle is returned to the responsible person.

### **Section 80S. Claims of right to possession**

This provision gives an aggrieved person the right to redress where their unlicensed motor cycle is impounded.

The person has 10 days from the date the motor cycle was impounded to give the Commissioner of Police a claim that the person –

- is the responsible person for the motor cycle; and
- is not a member of the driver's immediate family; and
- was not the driver of the motor cycle at the time of the alleged offence; and
- the use of the motor cycle was without their consent.

If the Commissioner of Police accepts the claim, the Commissioner must as soon as practicable return the motor cycle to the claimant.

If the Commissioner of Police rejects the claim, the Commissioner must as soon as practicable give written notice of the rejection to the person making the claim.

### **Section 80T. Confiscation**

Subsection (1) outlines that an impounded motor cycle becomes confiscated if the Commissioner of Police has not received a claim within 14 days after the motor cycle was impounded, or the day after the Commissioner of Police has rejected the claim, in accordance with section 80T(4).

Where the motor cycle is confiscated under subsection (1) the property in the motor cycle vests absolutely in the State. If the motor cycle is subject to a hire purchase agreement or other encumbrances, this provision removes these encumbrances and where the motor cycle is sold the purchaser receives good title in the motor cycle.

### **Section 80U. Liability for police expenses**

This section places a requirement on the driver of the motor cycle to pay the Commissioner of Police all reasonable expenses incurred by the Commissioner of Police in impounding and the storing of the motor cycle, before the motor cycle has been sold under section 80V.

### **Section 80V. Sale or other disposal of confiscated motor cycle and items on it**

Once the motor cycle has been confiscated, the Commissioner of Police may sell or otherwise dispose of it and its items.

If an item is not returned to the owner, the owner may apply to the Magistrates Court for an order to have the item returned.

Where a confiscated motor cycle is sold, the resulting funds are to be disbursed in the following order of priority:

- the costs incurred in selling the motor cycle;
- for expenses incurred after the motor cycle is confiscated;
- the unpaid amount which the person is liable to pay for impounding and storage of the motor cycle prior to confiscation;
- the unpaid amount of a judgement debt arising from impounding and storage fees liability;
- to the creditor for the amount of debt which the vehicle is secured;
- the balance to the credit of the Road Trauma Trust Account.

### **Section 80W. Liability for police expenses exceeding sale proceeds**

Section 80W places a liability on the driver of the motor cycle to pay the Commissioner of Police the balance of monies owing, where the proceeds of the sale of the motor cycle is insufficient to cover the expenses incurred in the impounding, storage and sale of the motor cycle.

#### **46. Part VIII heading amended**

The heading of Part VIII is amended to “Transitional and savings provisions”.

#### **47. Section 109 inserted**

This clause provides a number of transitional provisions to deleted sections that need to continue after the commencement of the *Road Traffic Amendment (Impounding and Confiscation of Vehicles) Act 2016*.

The term “former” has been inserted to address the situation where a vehicle was impounded prior to the commencement of this Act and is disposed of prior to the driver being convicted of the impounding offence. However if when the matter is determined by the court, the person is acquitted of the impounding offence, or the charge is dismissed or withdrawn, this will permit the responsible person for the vehicle to claim compensation under section 80M.

Subsection (2) to (5) deal with the former offence sections 60(1), 60(1a), 60(1b) and 62A which are deemed to be impounding offences (driving). A driver found committing any of these offences can have their vehicle impounded, or if they have committed two previous offences in the preceding 5 years have their vehicle confiscated. These offences were redrafted to establish greater penalties when any of these offences has been committed in a confiscation zone.

To ensure that the new offences in a confiscation zone will not have retrospective effect they have not been included in the transitional provisions detailed hereunder.

Section 109(2) provides that an offence under the former 60(1) “Reckless driving” is following commencement of the Bill to be considered as an offence against 60(1A)(b) “Driving in a reckless manner” which pursuant to clause 7 of the Bill will replace section 60(1) .

Section 109(3) provides that an offence under the former section 60(1a) “Reckless driving” is following commencement of the Bill to be considered as an offence against 60A(1) “Driving at reckless speed” which pursuant to clause 8 of the Bill will replace section 60(1a).

Section 109(4) provides that an offence under the former section 60(1b) “Reckless driving” is following commencement of the Bill to be considered as an offence against 60A(2)(b) “Driving at reckless speed” which pursuant to clause 8 of the Bill will replace section 60(1b).

Section 109(5) provides that an offence under the former section 62A “Causing excessive smoke noise or smoke from vehicle tyres” is following commencement of the Bill to be considered as an offence against 62A (b) or (c) which pursuant to clause 12 of the Bill will replace the existing section 62A.

Section 109(6) provides that offences mentioned in sections 80A(2) and (3) do not apply to or in relation to an offence committed before the this Bill comes into effect. Sections 80A(2) and (3) apply to circumstances where the commission of multiple impounding offences (driving) within a prescribed period can result in a Court ordering the confiscation of the

vehicle used in the last offence. This provision ensures these new confiscation powers do not have retrospective effect.

Section 109(7) provides that section 80J applies to a vehicle impounded under Part V Division 4 Subdivision 2, or an impounding order, whether before, on or after commencement day. Section 80J allows the Commissioner of Police to sell or dispose of a confiscated vehicle or an uncollected impounded vehicle or an item. This transitional provision ensures that vehicles and items impounded or confiscated under the powers applying before this Bill comes into effect can be sold or disposed of after the Bill's commencement.

Section 109(8) provides that section 80J applies to a vehicle confiscated under former section 80A(1) as if it had been confiscated under section 80A on or after commencement day. Section 80A replaces section 80A(1) and this provision ensures that vehicles confiscated under the former offence provision can be sold or otherwise disposed of under section 80J.

Section 109(9) provides that section 80J applies to a vehicle confiscated under former section 80C1 or 80CB(1) whether before on or after commencement day.

### **Part 3 - Consequential amendments to other and repeals Act**

#### ***Division 1 – The Criminal Code amended***

##### **48. Act amended**

This clause provides that this Division amends the *Criminal Code*.

##### **49. Section 378 amended**

This reflects the proposed changes to the offences of reckless driving and reckless driving speeding under Clauses 7 and 8.

##### **50. Section 417A amended**

This reflects the proposed changes to the offences of reckless driving and reckless driving speeding under Clauses 7 and 8.

#### ***Division 2 – Road Safety Council Act 2002 amended***

##### **51. Act amended**

This clause provides that this Division amends the *Road Safety Council Act 2002*.

##### **52. Section 12 amended**

This clause is consequential to the amendment to section 80V by clause 45, whereby the balance of the proceeds from the sale of a confiscated motor cycle can be credited to the Road Trauma Trust Account.

#### ***Division 3 – Road Traffic Legislation Amendment Act 2016 amended***

##### **53. Act amended**

This clause provides that this Division amends the *Road Traffic Legislation Amendment Act 2016*.

##### **54. Section 42 amended**

This provision is an alternative to clause 4 and applies if the *Road Traffic Legislation Amendment Act 2016* section 42 has not come into operation on or before the day on which clause 4 and Part 3 Division 3 comes into operation.

(1) The clause will insert the required definitions into section 42 of the act.

(2) The section is amended to include “vehicle;”

#### **Division 4 – *Young Offenders Act 1994* amended**

##### **55. Act amended**

This clause provides that this Division amends the *Young Offenders Act 1994*.

##### **56. Schedule 1 amended**

This reflects the proposed changes to the offences of reckless driving and reckless driving speeding under Clauses 7 and 8.

#### **Division 4 – Repeals**

##### **57. Certain provisions of this Act repealed if not commenced**

(1) If section 42 of the *Road Traffic Legislation Amendment Act 2016* comes into operation on or before the day that section 4 comes into operation this section will repeal section 5 and Part 3 Division 3 of this Act.

(2) If section 42 of the *Road Traffic Legislation Amendment Act 2016* has not come into operation on or before the day that section 4 and Part 3 division 3 comes into operation will repeal section 4 of this Act.