

Explanatory Memorandum

Road Traffic Amendment (Hoons) Bill 2009

This Bill will amend Part V Division 4 of the *Road Traffic Act 1974* (“the RTA”), which provides for the impounding and confiscation of vehicles following the commission, or the suspected commission, of an impounding offence (driving) (colloquially known as a “hoon” offence) or an impounding offence (driver’s licence) (an unauthorised driving offence of a particular kind).

Part V Division 4 also enables a court to order the impounding or confiscation of a vehicle following a person’s conviction of a road rage offence.

The amendments contained in this Bill are, in the main, related to the impounding and confiscation of vehicles associated with the commission or suspected commission of “hoon” offences.

Some of the amendments are of a purely technical nature or are necessary to address operational difficulties that have been encountered in endeavours by the Western Australia Police to enforce the legislation.

The following amendments will implement key Government election commitments in response to community concerns about “hoons”. They are intended to provide a forceful deterrent to anyone contemplating driving recklessly in a manner that endangers not only the offender himself or herself, but also any passengers accompanying the offender, other road users and members of the community.

- Rather than empowering a member of the Police Force to impound a vehicle, if he or she reasonably suspects that a “hoon” offence or an impounding offence (driver’s licence) has been committed, the amendments will impose a duty upon the member to impound the vehicle unless it is not practicable in the circumstances to do so.
- The Bill will increase the duration of the impounding period for a first suspected “hoon” offence and a second or subsequent suspected “hoon” offence. For a first suspected offence, a member of the Police Force must impound the vehicle for 28 days. For a second or subsequent suspected offence, a member must impound the vehicle for 3 months.
- The Bill will provide that, for the purposes of determining that the longer impounding period applies in the case of a second or subsequent suspected “hoon” offence, a pending charge (that is, a charge that has been laid but not yet determined by a court) may be taken into account.
- The Bill will provide that a court must grant an application by the Commissioner of Police for an order for the confiscation of a vehicle used

in the commission of a third “hoon” offence, unless the court is satisfied that severe financial or physical hardship would be caused to a person other than the offender.

Part 1 - Preliminary

1. Short title

When the Parliament passes this Bill, its title will be the *Road Traffic Amendment (Hoons) Act 2009*.

2. Commencement

This clause details when the provisions of this Bill may commence operation.

It will provide that the various provisions do not all have to commence operation at the same time, and that they will commence operation on a day or days specified in one or more proclamations.

This will ensure that the provisions can commence operation as quickly as possible following passage of the Bill, while providing the Western Australia Police with any necessary lead-time it may require in order to be operationally prepared to enforce the provisions.

Because some of the amendments contained in this Bill rely upon the prior commencement of operation of sections 5(a) and 8 of the *Road Traffic Amendment Act 2008*, clause 2(2) will ensure that the provisions of this Bill cannot commence operation until those sections of the *Road Traffic Amendment Act 2008* have commenced operation. The commencement of operation of the latter provisions is scheduled to occur on 1 July 2009.

Part 2 – Road Traffic Act 1974 amended

3. Act amended

This clause confirms that all of the amendments contained in Part 2 of this Bill will amend provisions of the *Road Traffic Act 1974*.

4. Section 23A amended

This clause is necessary because of clause 12 of this Bill.

Clause 12 will insert a number of new sections into the *Road Traffic Act 1974* (“the RTA”). Amongst other matters, the new provisions will enable a member of the Police Force to issue a responsible person for a vehicle with a surrender notice because the vehicle is liable to be

impounded, on the basis of the member's reasonable suspicion that the vehicle was used in the commission of either a suspected impounding offence (driving) or a suspected impounding offence (driver's licence). (See proposed new section 79BA in clause 12.)

If the responsible person subsequently fails to surrender the vehicle, the member will have powers under section 78C of the RTA to bring about the impounding of the vehicle. (See clause 8.)

To deter a responsible person from failing to comply with the surrender notice or attempting to evade Police endeavours to impound the vehicle, the new provisions will also empower the Commissioner of Police to request the Director General to suspend the vehicle licence. (See proposed new section 79BD in clause 12.)

This clause will amend section 23A of the RTA to require the Director General to give effect to any request by the Commissioner for the suspension of a vehicle licence, and any request by the Commissioner for the revocation of such a suspension.

5. Section 60 amended

Clause 5(1) will insert a new subsection (1D) in section 60 of the *Road Traffic Act 1974* ("the RTA").

The new subsection will empower a member of the Police Force to arrest, without warrant, a person reasonably suspected of having committed a reckless driving offence.

The same power of arrest exists in the case of a person is reasonably suspected of having committed an offence against section 63 of the RTA (driving under the influence of alcohol and/or drugs).

An offence against section 60 is considered to be of comparable severity to an offence against section 63.

Empowering a member of the Police Force to arrest a person suspected of having committed such an offence enables an alleged offender to be charged and dealt with by a court far more quickly, as is desirable in the case of an offence of a more serious nature.

Clause 5(2) will enable a court to find a person charged with reckless driving guilty instead of an offence of either dangerous driving (section 61), careless driving (section 62) or wilfully driving a motor vehicle so as to cause excessive smoke or noise (section 62A).

There is a body of case law regarding what actions and behaviour constitute reckless driving, dangerous driving and careless driving. A member of the Police Force will charge an alleged offender with what

the member considers the relevant offence, based on the available evidence.

A court, however, must make a finding having regard to the evidence presented to it at hearing. Enabling a court to find a person guilty in the alternative of a lesser offence, where the evidence presented is conducive with such a finding, ensures that the person can be convicted.

6. Section 61 amended

This clause will enable a court to find a person charged with the offence of dangerous driving guilty instead of an offence against section 62 (careless driving) or section 62A (wilfully driving a motor vehicle so as to cause excessive noise or smoke).

There is a body of case law regarding what actions and behaviour constitute dangerous driving and careless driving. A member of the Police Force will charge an alleged offender with what the member considers the relevant offence, based on the available evidence.

A court, however, must make a finding having regard to the evidence presented to it at hearing. Enabling a court to find a person guilty in the alternative of a lesser offence, where the evidence presented is conducive with such a finding ensures that the person can be convicted.

7. Section 78A amended

Section 78A contains definitions used throughout Part V Division 4 of the *Road Traffic Act 1974* ("the RTA"). This clause will make various amendments to section 78A.

Clause 7(1) will delete the definitions of "circumstances of aggravation" and "impounding offence (driving)". A replacement definition of "impounding offence (driving)" will be inserted by clause 7(2). These changes will reform what constitutes an impounding offence (driving).

These amendments are of a technical nature and are intended to streamline the impounding of vehicles for impounding offences (driving).

Presently, an "impounding offence driving" is either:

- (a) an offence against section 59 (dangerous driving causing death or grievous bodily harm), 59A (dangerous driving causing bodily harm), 60(1) (reckless driving) or 61 (dangerous driving) that is committed in "circumstances of aggravation"; or
- (b) an offence against section 60(1a) (driving at a speed of 155 kilometres per hour or more), 60(1b) (exceeding the applicable

speed limit by 45 kilometres per hour or more) or 62A (wilfully driving a motor vehicle so as to cause excessive noise or smoke).

Various circumstances, all of which represent wilful, reckless and undesirable “hoon” conduct, constitute “circumstances of aggravation”.

An element of the section 60(1) offence of reckless driving is wilfulness. Wilfulness is not an element of an offence against section 59, 59A or 61.

These amendments will simplify the definition of what constitutes a “hoon” offence by providing that it is an offence against either section 60 or 62A, both of which involve wilful conduct. The definition of “circumstances of aggravation” will no longer be required and is to be deleted as a consequence.

This approach will adequately cover all instances of “hoon” driving behaviour. It will also have the benefit of making it easier for a member of the Police Force to determine when a “hoon” offence has occurred and when a person has been convicted of or charged with a previous “hoon” offence.

Clause 7(1) will also delete the existing definition of “impounding offence (driver’s licence)”, as clause 7(2) will insert a replacement definition.

The replacement definition will address an oversight that exists in the *Road Traffic Amendment Act 2008*. Sections 5(a) and 8 of that Act will commence operation on 1 July 2009 and will reform the definition of “impounding offence (driver’s licence)” so that more kinds of unauthorised driving will constitute an impounding offence (driver’s licence). The replacement definition will ensure that an “impounding offence (driver’s licence)” as per the current definition will continue to be able to be counted as a previous offence when the expanded definition of “impounding offence (driver’s licence)” commences operation on 1 July 2009.

Clauses 7(3) and 7(4) are necessary as a consequence of clause 17 of this Bill, which will repeal section 80 of the RTA. As a result, clauses 7(3) and 7(4) will remove obsolete references to section 80(1) from the definitions of “impounding or confiscation order” and “impounding order”.

Clause 7(5) contains a technical amendment only. It will amend the definition of “impounding period” to clarify that when the term is used, it is intended to mean the period for which the legislation specifies that a vehicle is to be impounded. In practice, the duration of an impounding period may be shorter than the specified period, where circumstances exist that require the earlier release of the impounded vehicle.

8. Section 78C amended

Section 78C provides members of the Police Force with certain powers intended to enable them to fulfil their responsibilities relating to the impounding and confiscation of vehicles.

This clause will make various amendments to section 78C, of a consequential nature.

Clause 8(1) will replace reference in section 78C(1) to section 79A with reference to section 79A(1), as a consequence of the restructuring of section 79A.

Clause 8(2) will insert a new section 78C(2A), that is necessary because of the proposed new section 79BA. Section 79BA will enable a member of the Police Force to give a surrender notice to bring about the impounding of a vehicle reasonably suspected to have been used in the commission of an impounding offence (driving) or an impounding offence (driver's licence). The new section 78C(2A) will empower a member of the Police Force to take possession of a vehicle that is surrendered by a responsible person pursuant to a surrender notice.

Clause 8(3) will amend section 78C(2) to provide that a member of the Police Force and any person assisting the member may also exercise the powers set out in section 78C(2) for the purpose of impounding a vehicle that is the subject of a surrender notice that has not been complied with.

Clause 8(4) paragraph (a) will replace reference in section 78C(3) to section 79A with reference to section 79A(1), as a consequence of the restructuring of section 79A.

Clause 8(4) paragraph (b) will amend section 78C(3) to provide that a member of the Police Force is also empowered to seize the keys to a vehicle that is the subject of a surrender notice that has not been complied with.

Clause 8(5) will insert a replacement section 78C(4)(a) in order to provide that a member of the Police Force is also empowered to enter any premises, without warrant, for the purpose of seizing the keys to a vehicle that is the subject of a surrender notice that has not been complied with.

9. Section 78D amended

Section 78D empowers the Commissioner of Police to contract services relating to the impounding, storage and confiscation of vehicles under Part V Division 4.

This clause will make various amendments to section 78D.

Paragraph (a) will amend section 78D paragraph (a) to provide that the Commissioner may also contract services relating to the driving, towing or conveyance by other means of vehicles that are the subject of a surrender notice. (See clause 12.)

Paragraph (b) will insert a new paragraph (ba) in section 78D that will provide that the Commissioner may also contract services relating to the surrender of vehicles that are the subject of a surrender notice.

Paragraph (c) will insert a replacement paragraph (b) in section 78D, to provide that the Commissioner may also contract services relating to the storage and release of vehicles that are the subject of a surrender notice and that are or have been impounded.

Paragraph (d) will insert a new paragraph (ca) in section 78D that clarifies that the Commissioner may also contract services relating to the sale or disposal of confiscated vehicles, uncollected vehicles or “items” pursuant to section 80J.

10. Section 78E amended

This clause is necessary as a consequence of clause 25, which will insert a new section 80LA.

Section 80LA will ensure that the Commissioner of Police is able to recover any outstanding costs associated with the impounding, storage and/or sale of an “uncollected vehicle” by creating a liability for the payment of those costs.

Section 78E provides that, where Part V Division 4 creates a liability for certain costs, those costs may be recovered in a court of competent jurisdiction as a debt due to the Commissioner of Police.

This clause will amend section 78E to include reference in it to the new section 80LA.

11. Section 79 amended

Section 79 empowers a member of the Police Force to impound a vehicle where the member reasonably suspects a person has committed an impounding offence (driving) and the vehicle was used in the commission of the offence. It sets out the duration of the impounding period and provides that a longer impounding period will apply where the alleged offender has previously been convicted of an impounding offence (driving).

This clause will make various amendments to section 79.

Clause 11(1) will insert a new section 79(1A) and a replacement section 79(1).

The new sections 79(1A) and 79(1) will require a member of the Police Force to impound a vehicle, where the member reasonably suspects that a person has committed an impounding offence (driving) and the vehicle was used in the commission of that offence, unless it is not practicable in the circumstances for the member to impound the vehicle.

For example, it may not be practicable for the member to impound the vehicle if he or she:

- receives an urgent directive to attend a higher priority call;
- considers it inadvisable to do so, for reasons relating to an alleged offender's safety and that of any passengers, owing to the location in which, the time at which and/or other circumstances in which the alleged offender has been apprehended; or
- a contractor that provides the Commissioner of Police with towing and storage services in these circumstances is unable to attend to assist the member to give effect to the impounding.

As is currently the case, reasonable suspicion may be formed either on the basis of the member's observations and personal knowledge at the scene of the alleged offence, or following the receipt and investigation of a civilian complaint.

Because the replacement section 79(1) will impose a duty upon a member of the Police Force to impound a vehicle, it will also provide that, where the member is unable to fulfil that duty by impounding the vehicle within 28 days from the date of the commission of the alleged offence, the duty will cease.

The new section 79BA will provide, however, that in certain circumstances the member may instead issue a responsible person for the vehicle with a surrender notice during the 28 days following the date of the commission of the alleged offence.

The surrender notice will require the responsible person to surrender the vehicle to the Commissioner for impounding. The member will be empowered to enter premises without warrant to impound the vehicle if a responsible person fails to comply with a surrender notice. (See also clauses 8 and 12.)

In addition, the new section 79(1A) will provide that, for the purposes of determining whether or not a longer impounding period is to apply, a person will be considered to be a "previous offender" if the person either has a previous conviction for an impounding offence (driving), or if a person has been charged with an impounding offence (driving) that has yet to be determined by a court.

Clause 11(2) will increase the duration of the impounding period, where a member of the Police Force forms a reasonable suspicion that a person has committed an impounding offence (driving) and impounds the vehicle used in the commission of the alleged offence.

Paragraph (a) will increase the impounding period from 7 days to 28 days, if the alleged offence is the person's first suspected impounding offence (driving).

Paragraphs (b) and (c) will increase the impounding period from 28 days to 3 months, if the alleged offence is the person's second or subsequent suspected impounding offence (driving).

Clause 11(3) will delete the existing section 79(3) and insert a replacement section 79(3) and new sections 79(3A) and 79(3B).

The proposed new section 79(3A) will require a member of the Police Force to impound a vehicle for the longer impounding period, if the member reasonably believes that the alleged offender is a "previous offender".

The proposed new section 79(3) will require the Commissioner of Police to extend the impounding period to the longer impounding period, if subsequent to the vehicle being impounded for the shorter impounding period, the Commissioner becomes aware that the alleged offender is a "previous offender".

These amendments are in keeping with other amendments in this Bill that will impose a duty upon a member of the Police Force to impound a vehicle reasonably suspected of having been used in the commission of an impounding offence.

The proposed new section 79(3B) is a technical provision intended to clarify when the impounding period that applies to a vehicle impounded for 3 months will come to an end, and how the 3-month period is to be calculated.

12. Section 79A replaced

This clause will replace the existing section 79A with a new section 79A, and will also provide for the insertion of new sections 79BA, 79BB, 79BC and 79BD.

Replacement section 79A

Presently, section 79A empowers a member of the Police Force to impound a vehicle, where the member reasonably suspects that a person has committed an impounding offence (driver's licence) and the vehicle was used in the commission of that offence.

This clause will replace the existing section 79A to require a member of the Police Force to impound a vehicle, where the member reasonably suspects that a person has committed an impounding offence (driver's licence) and the vehicle was used in the commission of that offence, unless it is not practicable in the circumstances for the member to impound the vehicle.

For example, it may not be practicable for the member to impound the vehicle if he or she:

- receives an urgent directive to attend a higher priority call;
- considers it inadvisable to do so, for reasons relating to an alleged offender's safety and that of any passengers, owing to the location in which, the time at which and/or other circumstances in which the alleged offender has been apprehended; or
- a contractor that provides the Commissioner of Police with towing and storage services in these circumstances is unable to attend to assist the member to give effect to the impounding.

As is currently the case, reasonable suspicion may be formed either on the basis of the member's observations and personal knowledge at the scene of the alleged offence, or following the receipt and investigation of a civilian complaint.

Because the replacement section 79A will impose a duty upon a member of the Police Force to impound a vehicle, it will also provide that, where the member is unable to fulfil that duty by impounding the vehicle within 28 days from the date of the commission of the alleged offence, the duty will cease.

The new section 79BA will provide, however, that in certain circumstances the member may instead issue a responsible person for the vehicle with a surrender notice during the 28 days following the date of the commission of the alleged offence.

The surrender notice will require the responsible person to surrender the vehicle to the Commissioner for impounding. The member will be empowered to enter premises without warrant to impound the vehicle if a responsible person fails to comply with a surrender notice. (See also both the explanation below relating to the new section 79BA and clause 8.)

New section 79BA

This section will empower a member of the Police Force to give a responsible person for a vehicle a surrender notice for the surrender of a vehicle that is reasonably suspected to have been used in the commission of an impounding offence (driving) or an impounding offence (driver's licence).

A member may give a surrender notice to effect the impounding of a vehicle reasonably suspected to have been used in the commission of an impounding offence, where the member:

- did not impound the vehicle at the roadside because it was not practicable to do so; or
- formed the reasonable suspicion regarding the commission of the alleged offence following the making and investigation of a civilian complaint; or
- formed the reasonable suspicion regarding the commission of the alleged offence on the basis of evidence gathered by a camera (for example, in the case of an offence against section 60(1b), of exceeding the speed limit by 45 kilometres per hour or more).

The surrender notice may only be given within 28 days of the commission of the alleged offence.

It must contain all of the information detailed in sections 79BA(4) and 79BA(5). This information is to include details of:

- the alleged offence that gives rise to the member's duty to impound the vehicle;
- to where and by when the vehicle is to be surrendered; and
- the consequences of a failure to surrender the vehicle.

New section 79BB

This section will set out the different consequences that may result following the giving of a surrender notice.

Section 79BB(1) will enable the vehicle to be impounded by the responsible person for the vehicle surrendering the vehicle to be impounded.

Section 79BB(2) will enable the vehicle to be impounded by a member of the Police Force, if the responsible person fails to comply with the surrender notice. The member will have recourse to powers under section 78C of the *Road Traffic Act 1974* to effect the impounding. (See also clause 8.)

Section 79BB(3) will provide that, where a member of the Police Force is to impound a vehicle pursuant to section 79BB(2), the member is not subject to any time constraint within which he or she must give effect to the impounding.

Section 79BB(4) will stipulate the duration of the applicable impounding period, where a vehicle is impounded pursuant either to section 79BB(1) or 79BB(2). In both cases, the applicable impounding period

will reflect the impounding period that would have applied if the vehicle had been impounded pursuant either to section 79 or 79A.

New section 79BC

Where a person is reasonably suspected of having committed an impounding offence (driving), a longer impounding period will apply if the person is a “previous offender”.

Clause 11 will provide that an alleged offender will be considered a “previous offender” if he or she either:

- has a previous conviction of an impounding offence (driving); or
- has been charged with an impounding offence (driving) that is yet to be determined by a court.

Section 79BC will set out what is to occur in the event that a vehicle is impounded for a longer impounding period, on the basis of a pending charge, and a court subsequently acquits an alleged offender of that pending charge.

Sections 79BC(2) and 79BC(3) will provide that, in this event, the impounding period is reduced to the shorter impounding period. Section 79BC(2) contemplates the acquittal occurring prior to the end of the shorter impounding period. Section 79BC(3) contemplates the acquittal occurring after the end of the shorter impounding period has already occurred.

Section 79BC(4) will require the Commissioner of Police to notify each person to whom a notice of impounding was given of the reduction in duration of the impounding period.

Section 79BC(5) will limit the liability for impounding costs in this situation to those costs incurred in relation to the shorter impounding period.

Section 79BC(6) will provide that, where a person has paid impounding costs in excess of the costs incurred in relation to the shorter impounding period, that person is entitled to a refund of the balance.

New section 79BD

Section 79BD will empower the Commissioner of Police to request the Director General to suspend the licence of a vehicle the subject of a surrender notice that has not been complied with.

This is intended to strongly deter a responsible person from electing not to comply with a surrender notice or attempting to evade Police endeavours to impound the vehicle.

Section 79BD(2) will empower the Commissioner to request the Director General to revoke the suspension for any reason the Commissioner considers appropriate. In addition, it will require the Commissioner to request the Director General to revoke the suspension, if the Commissioner becomes aware of the existence of any of the circumstances set out in section 79D that would require the Commissioner to ensure the release of a vehicle that has been impounded.

13. Section 79B amended

This clause will make various consequential amendments to section 79B.

Section 79B(1) requires the Commissioner of Police to give a notice of impounding to each responsible person for a vehicle that has been impounded by a member of the Police Force because of a reasonable suspicion that the vehicle was used in the commission of an impounding offence (driving) or an impounding offence (driver's licence). If the driver is not a responsible person, the driver must also be given a notice of impounding.

Clause 13(1) will replace section 79B(1) with a new section 79B(1).

The replacement section 79B(1) maintains the current requirements, but provides in addition that a notice of impounding must also be given where a vehicle has been impounded as a result of the giving of a surrender notice.

The replacement section 79B(1) will also require the Commissioner to give the notice of impounding to the Director General, in a case where the Commissioner has previously requested the Director General to suspend the licence of a vehicle pursuant to the proposed new section 79BD. (See clause 12.)

Section 79BD will empower the Commissioner to request the Director General suspend the licence of a vehicle the subject of a surrender notice that has not been complied with.

The proposed notification of the Director General regarding the impounding will have the effect of advising the Director General that the vehicle licence suspension, imposed because of non-compliance with the surrender notice, may now be revoked because the Police have since been successful in impounding the subject vehicle.

Clause 13(2) paragraph (a) will replace section 79B(2)(ca).

The existing section 79B(2)(ca) provides that, if a longer impounding period applies in the case of an impounding offence (driving), because the alleged offender has been previously convicted of such an offence,

the notice of impounding must include details of the previous conviction.

The replacement section 79B(2)(ca) will maintain the existing position, however will reflect the fact that an alleged offender will also be considered to be a “previous offender” if he or she has a pending impounding offence (driving) charge that is yet to be determined by a court. (See clause 11(1).)

Clause 13(2) paragraph (b) will delete reference in section 79B(2) to section 80, as a consequence of clause 17 which will delete section 80.

Clause 13(3) paragraph (a) will insert reference in section 79B(4) to a “charge” that may give rise to a longer impounding period. This amendment is necessary because clause 11(1) will provide that an alleged offender will also be considered to be a “previous offender” if he or she has a pending impounding offence (driving) charge that is yet to be determined by a court.

Clause 13(3) paragraph (b) will delete reference in section 79B(4) to section 80, as a consequence of clause 17 which will delete section 80.

14. Section 79C amended

Section 79C requires a senior police officer to be informed of, and to review, a decision by a member of the Police Force to impound a vehicle, where the member forms a reasonable suspicion that a person has committed an impounding offence (driving) or an impounding offence (driver’s licence) and the vehicle was used in the commission of the alleged offence.

This clause will make various amendments to section 79C, all of which are of a consequential nature.

Clause 14(1) paragraphs (a) and (b) will amend section 79C(1) so as also to require a senior police officer to be informed of and to review a decision to give a surrender notice under the proposed new section 79BA. (See clause 12.) Paragraph (a) will also amend reference to section 79A to reference to section 79A(1), as a consequence of the restructuring of section 79A.

Clause 14(1) paragraph (c) will amend references to section 79(1)(a) and (b) and 79A(a) and (b), as a consequence of the restructuring of sections 79 and 79A.

Clause 14(1) paragraph (d) will replace section 79C(1)(b), as a consequence of clause 11 which, amongst other matters, will increase the duration of the impounding period in the case of a second or subsequent suspected impounding offence (driving) from 28 days to

3 months. The replacement section 79C(1)(b) will reflect the increased period.

Clause 14(2) paragraph (a) will amend section 79C(2) to reflect that a senior police officer will also be required to be informed of and to review a decision by a member of the Police Force to give a surrender notice.

Clause 14(2) paragraph (b) will amend references to section 79(1)(a) and (b) and 79A(a) and (b), as a consequence of the restructuring of sections 79 and 79A.

Clause 14(2) paragraph (c) will replace section 79C(2)(b), as a consequence of clause 11 which, amongst other matters, will increase the duration of the impounding period in the case of a second or subsequent suspected impounding offence (driving) from 28 days to 3 months. The replacement section 79C(2)(b) will reflect the increased period.

Clause 14(3) will replace section 79C(3) with a new section 79C(3).

Presently, section 79C(3) provides for the release of an impounded vehicle, where a senior police officer reviews a decision by a member of the Police Force to impound a vehicle and is not satisfied that reasonable grounds existed for the decision.

The replacement section 79C(3) will maintain the current position, but also provide that following a review of a decision by a member of the Police Force to give a surrender notice, the surrender notice is to be cancelled if the senior police officer is not satisfied that reasonable grounds existed for the giving of the surrender notice.

Clause 14(4) will amend section 79C(4), which deals with the review of a decision to impound a vehicle for a longer period, because the alleged offender has been convicted of a previous impounding offence (driving).

Presently, where a review by a senior police officer determines that a decision to impound a vehicle was founded, however he or she is not satisfied that there are reasonable grounds to believe the alleged offender has been committed a previous impounding offence (driving) giving rise to a longer impounding period, section 79C(4) requires the senior police officer to alter the impounding period to the shorter impounding period.

Clause 14(4) paragraph (a) will amend section 79C(4) to reflect that the duration of the impounding period in the case of a first suspected impounding offence (driving) is to be increased from 7 days to 28 days by clause 11(2).

Clause 14(4) paragraph (b) will amend section 79C(4) to require a senior police officer also to alter the impounding period to a shorter impounding period, where the impounding is proposed to be effected by the giving of a surrender notice.

15. Section 79D amended

This clause contains a technical amendment. It will replace the reference in section 79D(1) to “section 79(1) or 79A” with a reference to “Subdivision 2”.

Section 79D requires the Commissioner of Police to ensure that an impounded vehicle is released in certain circumstances set out in section 79D.

This amendment is necessary because, following the passage of this Bill (and in particular clause 12), a vehicle will be able to be impounded pursuant to section 79(1), 79A(1), 79BB(1) or 79BB(2).

A reference to “Subdivision 2” will more simply cover all of the circumstances in which impounding can occur.

16. Section 79E amended

This clause contains a technical amendment. It will replace the reference in section 79E to “section 79(1) or 79A” with a reference to “Subdivision 2”.

Section 79E confers liability for the Commissioner of Police’s costs incurred relating to the impounding of a vehicle.

This amendment is necessary because, following the passage of this Bill (and in particular clause 12), a vehicle will be able to be impounded pursuant to section 79(1), 79A(1), 79BB(1) or 79BB(2).

A reference to “Subdivision 2” will more simply cover all of the circumstances in which impounding can occur.

17. Section 80 deleted

This clause is necessary as a consequence of clause 11(2) of this Bill.

In part, clause 11(2) will amend section 79 of the *Road Traffic Act 1974* to provide that, where a member of the Police Force forms a reasonable suspicion that a person has committed a second or subsequent suspected impounding offence (driving), the duration of the impounding period is to be 3 months.

In light of this amendment, section 80 is considered obsolete and is to be repealed by this clause.

Presently, section 80 provides that, where a person is convicted of a second or subsequent impounding offence (driving) within a 3-year period, a court may order the impounding of the vehicle used in the second or subsequent offence for a period of up to 3 months.

The amendments contained in clause 11(2) will provide a similar outcome without the need for an application to a court.

18. Section 80E amended

This clause contains a technical amendment that is necessary because of clause 17.

Section 80E contains reference to section 80(1). Clause 17 will delete section 80. As a consequence, this clause will delete reference in section 80E to the obsolete section 80(1).

19. Section 80FA amended

This clause is necessary because of clause 20(6).

Presently, section 80FA empowers a court that is determining an application seeking the confiscation of a vehicle to order, in the alternative, that the vehicle be impounded for a period of up to 6 months.

Clause 20(6) will insert a new section 80G(6A) that will apply if a confiscation order is sought because a person has been convicted of a third “hoon” offence. It will require a court to grant the confiscation order, unless it is satisfied that to do so would result in severe financial or physical hardship to a person other than the offender.

As a consequence of clause 20(6), this clause will amend section 80FA to remove the court’s ability to make an impounding order as an alternative to ordering the vehicle’s confiscation.

20. Section 80G amended

Section 80G deals with applications for orders for the impounding or confiscation of vehicles, what notice the Commissioner of Police must give of his or her intention to apply for such orders and to whom, what a court must consider in determining such applications, and related matters.

This clause will make various amendments to section 80G.

Clause 20(1) will enable the Commissioner of Police to authorise another person to perform functions that the Commissioner has under section 80G. The inclusion of this power is considered necessary

because some doubt has been expressed regarding whether or not an application for the impounding or confiscation of a vehicle must be signed by the Commissioner himself or herself, or by another member of the Police Force acting on behalf of the Commissioner.

Clause 20(2) is necessary as a consequence of clause 17 of this Bill, which will repeal section 80 of the *Road Traffic Act 1974* (“the RTA”). As a result, clause 20(2) will remove the obsolete reference to section 80(1) from the definition of “order” contained in section 80G(1).

Clause 20(3) contains a technical amendment only. It will amend section 80G(2), which sets out the time limits within which an application, for an order for the impounding or confiscation of a vehicle pursuant to Part V Division 4, must be made and may be heard by a court. Section 80G(2)(b)(ii) currently provides that an application may be heard either as part of the proceedings in which the person is convicted of the offence because of which the order is sought, or in separate proceedings “brought” within 3 months of the relevant conviction.

The view has been expressed that section 80G(2)(b)(ii), in particular the use of the word “brought”, is not clear. The intention is that the Commissioner may make an application for the impounding or confiscation of the vehicle within 3 months of the date of the relevant conviction. It has been argued, however, that the section could be read as meaning that an application must be both made and dealt with by the court within 3 months following the relevant conviction.

It is considered that the amendment contained in clause 20(3) will clarify the intended position.

Clause 20(4) will amend section 80G(4) of the RTA, however the proposed amendment is of a technical nature only. Section 80G(4) is intended to require a court, that is determining an application for an order for the impounding or confiscation of a vehicle, to give parties who may be affected by such an order the opportunity to be heard before making a decision. This amendment will not alter this position, however has been included by Parliamentary Counsel to improve the clarity of section 80G(4).

Clauses 20(5) and 20(6) will give effect to a key Government election commitment, regarding the confiscation of vehicles following a person’s conviction of a third impounding offence (driving) (that is, a third “hoon” offence).

Presently, a court retains complete discretion in determining whether or not to grant an application for the impounding or confiscation of a vehicle. Section 80G(5) provides that it may have regard to any relevant matter, including whether making the order would cause severe financial or physical hardship to a person with an interest in the

vehicle or who is the usual driver of the vehicle. This would extend to consideration of the offender, and whether or not the confiscation of the vehicle would cause severe physical or financial hardship to the offender.

Clause 20(6) will insert a new section 80G(6A) that will apply if a confiscation order is sought because a person has been convicted of a third “hoon” offence. It will require a court to grant the confiscation order, unless it is satisfied that to do so would result in severe financial or physical hardship to a person other than the offender.

Clause 20(5) will amend section 80G(5) as a consequence to provide that the court’s usual discretion will apply when it is considering applications for the impounding or confiscation of vehicles, other than those relating to the confiscation of a vehicle following a person’s conviction of a third “hoon” offence.

Clause 20(7) will amend section 80G(6), which provides that a person will commit an offence if he or she disposes of an interest in a vehicle that is the subject of an application for an impounding or confiscation order, before a court has determined the application.

Recently, there have occurred instances in which a person has removed and disposed of parts of a vehicle the subject of an application, significantly devaluing it. Such actions do not presently constitute an offence under section 80G(6).

Clause 20(7) will therefore amend section 80G(6) to provide that a person will commit an offence if he or she does a “restricted act” in respect of a vehicle the subject of an application.

Clause 20(8) will insert a definition of “restricted act”. The definition will provide that a “restricted act” includes disposing of an interest in the vehicle, or doing, or causing or permitting another person to do, anything that will result in a reduction in the value of the vehicle.

21. Section 80IA amended

This clause contains a technical amendment. It will replace the reference in section 80IA(1) to “section 79(1) or 79A” with a reference to “Subdivision 2”.

Section 80IA deals with the release of an impounded vehicle at the end of an impounding period.

This amendment is necessary because, following the passage of this Bill (and in particular clause 12), a vehicle will be able to be impounded pursuant to section 79(1), 79A(1), 79BB(1) or 79BB(2).

A reference to “Subdivision 2” will more simply cover all of the circumstances in which impounding can occur.

22. Section 80IB amended

This clause contains a technical amendment. It will replace the references in sections 80IB(1) and 80IB(5) to “section 79(1) or 79A” with references to “Subdivision 2”.

Section 80IB deals with the payment of impounding costs.

This amendment is necessary because, following the passage of this Bill (and in particular clause 12), a vehicle will be able to be impounded pursuant to section 79(1), 79A(1), 79BB(1) or 79BB(2).

References to “Subdivision 2” will more simply cover all of the circumstances in which impounding can occur.

23. Section 80I amended

This clause contains a technical amendment. It will replace the reference in section 80I to “section 79(1) or 79A” with a reference to “Subdivision 2”.

Section 80I deals with the payment of impounding costs incurred following the end of an impounding period.

This amendment is necessary because, following the passage of this Bill (and in particular clause 12), a vehicle will be able to be impounded pursuant to section 79(1), 79A(1), 79BB(1) or 79BB(2).

A reference to “Subdivision 2” will more simply cover all of the circumstances in which impounding can occur.

24. Section 80J amended

This clause contains a number of amendments to section 80J, most of which are of a technical nature.

Clauses 24(1) and (2) will replace references in section 80J(1) to “section 79(1) or 79A” with references to “Subdivision 2”.

Section 80J(1) defines “uncollected vehicle” and “item”. An uncollected vehicle is a vehicle that has been impounded and remains uncollected following the end of the applicable impounding period. An item is an item in or on a confiscated vehicle or an uncollected vehicle.

The amendments in clauses 24(1) and (2) are necessary because, following the passage of this Bill (and in particular clause 12), a vehicle

will be able to be impounded pursuant to section 79(1), 79A(1), 79BB(1) or 79BB(2).

A reference to “Subdivision 2” will more simply cover all of the circumstances in which impounding can occur.

Clause 24(3) will clarify that the Commissioner of Police must not sell or otherwise dispose of an uncollected vehicle or an item unless each and every one of the matters set out in sections 80J(4)(a) through (d) have occurred.

Clause 24(4) will amend section 80J(7) which, in part, sets out how proceeds are to be disbursed following the sale or disposal of a vehicle that has been confiscated because of an impounding offence (driving) or an impounding offence (driver’s licence).

After certain costs (including those incurred in storing and selling the vehicle) have been paid, section 80J(7)(j)(i) provides for any balance to be paid to the Treasurer for the public uses of the State.

Clause 24(4) will amend section 80J(7)(j)(i) to provide instead that any balance is to be paid into the Road Trauma Trust Account established under section 12 of the *Road Safety Council Act 2002*.

Monies credited to the Road Trauma Trust Account may be expended for road safety purposes, determined by the Minister on the recommendation of the Road Safety Council established under the *Road Safety Council Act 2002*.

25. Section 80LA inserted

This clause will ensure that the Commissioner of Police is able to recover any outstanding costs associated with the impounding, storage and/or sale of an “uncollected vehicle”.

An “uncollected vehicle” is a vehicle that has been impounded and has not been collected within 28 days following the end of the applicable impounding period.

Section 80J(7) sets out how any proceeds from the sale or disposal of a confiscated vehicle or an uncollected vehicle are to be disbursed.

Where the proceeds from the sale of a confiscated vehicle are insufficient to cover the Commissioner’s expenses in confiscating and selling the vehicle, section 80K provides that the person because of whose conviction the vehicle was confiscated is liable for any outstanding costs. The Commissioner may then recover those costs in a court of competent jurisdiction.

This clause will insert a new section 80LA that provides the same outcome where an uncollected vehicle is sold and the proceeds from the sale are insufficient to meet the Commissioner's costs in impounding and selling the vehicle.

Part 3 – Road Safety Council Act 2002 amended

26. Act amended

This clause confirms that the amendments contained in Part 3 of this Bill will amend provisions of the *Road Safety Council Act 2002*.

27. Section 12 amended

This clause is necessary because of clause 24(4) of this Bill.

Clause 24(4) will amend section 80J(7) of the *Road Traffic Act 1974* ("the RTA") which, in part, sets out how proceeds are to be disbursed following the sale or disposal of a vehicle that has been confiscated because of an impounding offence (driving) or an impounding offence (driver's licence).

After certain costs (including those incurred in storing and selling the vehicle) have been paid, section 80J(7)(j)(i) provides for any balance to be paid to the Treasurer for the public uses of the State.

Clause 24(4) will amend section 80J(7)(j)(i) to provide instead that any balance is to be paid into the Road Trauma Trust Account established under section 12 of the *Road Safety Council Act 2002*.

As a consequence, this clause will amend section 12 of the *Road Safety Council Act 2002* to provide that the monies referred to in section 80J(7)(j)(i) of the RTA are to be credited to the Road Trauma Trust Account.

Monies may be expended from the Road Trauma Trust Account for road safety purposes, determined by the Minister on the recommendation of the Road Safety Council established under the *Road Safety Council Act 2002*.
