

Introduced by Mr P Debnam, MP

First print



New South Wales

Traffic Amendment (Street Racing) Bill 1996

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Traffic Act 1909* so as to prohibit dangerous practices associated with street racing, and to provide, as a form of deterrent, for the impounding and in some cases forfeiture of a vehicle used for such practices or for street racing itself. The Bill also amends certain regulations consequentially.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent.

Clause 3 is a formal provision giving effect to the amendments to the *Traffic Act 1909* set out in Schedule 1.

Clause 4 is a formal provision giving effect to a schedule of amendments to certain regulations necessary to give effect to the proposed Act.

Schedule 1 [1] inserts new sections 4BA, 4BB and 4BC into the Act.

Proposed section 4BA prohibits a person from operating a motor vehicle in such a manner as to cause the driving wheels of the vehicle to undergo sustained loss of traction on the road surface (that is, causing the tyres of a motor vehicle to spin against the road surface while the vehicle maintains a stationary, or virtually stationary, position). This includes the activity known colloquially as a “burnout” and the variation known as the “donut” (in which, while the driving wheels are made to lose traction, the steering of the vehicle is engaged so as to cause the rear portion of the vehicle to rotate about the front end of the vehicle). The proposed section further prohibits the carrying on of such activities in circumstances constituting an aggravation of the nuisance, namely the placement of fuel or other inflammable liquid beneath the surface of the vehicle’s tyres while they are spinning against the road surface.

Proposed section 4BB provides for the impounding of a vehicle used for any practice prohibited by proposed section 4BA or for actual street racing (prohibited by existing section 4B of the Act). The impounded car may be kept by police until the offence has been dealt with by law or until the statutory period prescribed under section 4BC in relation to the offence has expired, unless an owner of the vehicle comes forward to show that the offence was committed without his or her consent or knowledge (actual or constructive).

Proposed section 4BC provides for further measures against the offender if the offence is found proven in court or (in the case of an offence under proposed section 4BA) is dealt with by payment of the penalty under a penalty notice. For a first offence, the vehicle is automatically liable to impounding for a month (or, in the case of an offence under section 4B—that is, actual street racing—3 months). For a second or subsequent offence under section 4B or proposed section 4BA, the vehicle is automatically forfeited to the Crown. A court dealing with the offence has a discretion to reduce these measures if, in its opinion, there is good reason to do so.

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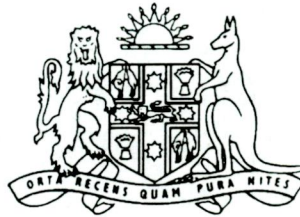
Schedule 1 [2] amends Schedule 1 to the Act to enable any savings or transitional provisions necessary as a consequence of the amendment of the Act in the manner proposed by this Bill to be made by regulation.

Schedule 1 [3] inserts a new Schedule 2 into the Act, which contains provisions regulating dealing with impounded vehicles, including the conditions on which they may be returned to owners who were not party to the offences.

Schedule 2 amends the *Justices (Short Descriptions of Motor Traffic and Other Offences) Regulation 1986* to facilitate the issue of penalty notices and legal process for offences created by the proposed Act and amends the *Motor Traffic Regulations 1935* to impose penalties for those offences if dealt with by penalty notice, and to impose 3 demerit points against the licence of the offender.

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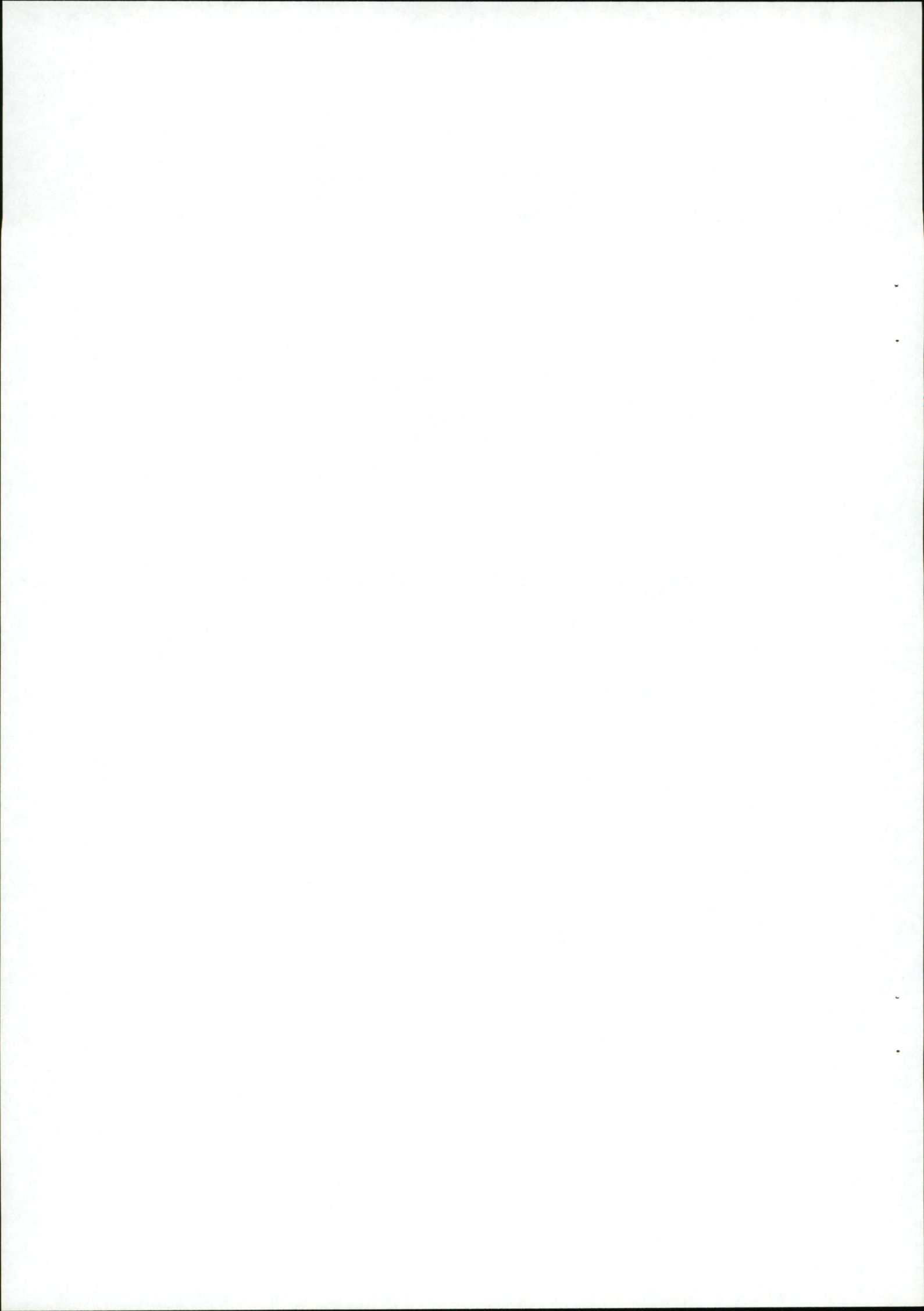
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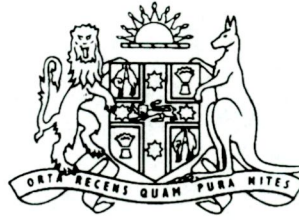
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New South Wales

Traffic Amendment (Street Racing) Bill 1996

No. , 1996

A Bill for

An Act to amend the *Traffic Act 1909* with respect to street racing and associated dangerous practices; to provide for impounding and forfeiture of motor vehicles used in connection with certain offences; and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Traffic Amendment (Street Racing) Act 1996*.

2 Commencement

This Act commences on the date of assent.

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3 Amendment of Traffic Act 1909 No 5

The *Traffic Act 1909* is amended as set out in Schedule 1.

4 Amendment of regulations

- (1) Each regulation specified in Schedule 2 is amended as set out in that Schedule.
- (2) The amendment of a regulation by this Act does not prevent the subsequent amendment or repeal of that regulation.

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Schedule 1 Amendment of Traffic Act 1909

(Section 3)

[1] Sections 4BA–4BC

Insert after section 4B:

4BA Conduct associated with street racing

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- (1) A person who, on a public street, operates a motor vehicle in such a manner as to cause the vehicle to undergo sustained loss of traction by the driving wheels (or, in the case of a motor cycle, the driving wheel) of the vehicle is guilty of an offence.

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Maximum penalty: 5 penalty units.

- (2) A person who operates a motor vehicle contrary to subsection (1) knowing that any petrol, oil, diesel fuel or other inflammable liquid has been placed on the street surface beneath one or more tyres of the vehicle is guilty of an offence.

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Maximum penalty: 7 penalty units.

- (3) In any proceedings for an offence under this section, it is a defence if the person charged satisfies the court that the vehicle, although operated as referred to in subsection (1), was not so operated deliberately.

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- (4) Nothing in this section applies to the operation of a motor vehicle for the purposes of a race, attempt or trial undertaken in accordance with an approval given under section 4B by the Commissioner of Police.

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4BB Removal and impounding of vehicles used for racing etc

- (1) A police officer who reasonably believes that a motor vehicle is being or has just been operated on a public street in contravention of section 4B or 4BA may seize and take charge of the motor vehicle and cause it to be removed to a place determined by the Commissioner of Police.

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- (2) For the purpose of exercising the powers conferred by subsection (1), a police officer may cause any locking device or other feature of the motor vehicle concerned that is impeding the exercise of those powers to be removed, dismantled or neutralised and may, if the driver or any other person will not surrender the keys to the vehicle, start the vehicle by other means. 5
- (3) Any motor vehicle removed to a place in accordance with subsection (1) may, subject to the regulations, be impounded at that place or may be moved to and impounded at any other place determined by the Commissioner of Police. 10
- (4) A motor vehicle that may be moved under subsection (1) or (3) may be moved by its being driven, whether or not under power, or by its being towed or pushed, or in any other manner. 15
- (5) Schedule 2 has effect with respect to a motor vehicle impounded under this section.

4BC Impounding or forfeiture of vehicles on proof or admission of offence 20

- (1) A motor vehicle used in connection with an offence under section 4B, being the first such offence by the offender concerned, that is found to be proven before any court is by the finding liable to be impounded for a period of 3 months, unless the court by order otherwise directs. 25
- (2) A motor vehicle used in connection with an offence under section 4BA, being the first such offence by the offender concerned, that is found to be proven before any court is by the finding liable to be impounded for a period of 1 month, unless the court by order otherwise directs. 30
- (3) A motor vehicle used in connection with an offence under section 4B or 4BA, being the second or a subsequent such offence by the offender concerned, that is found to be proven before any court is by the finding liable to be forfeited to the Crown, unless the court by order otherwise directs. 35

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- (4) The court before which an offence under section 4B or 4BA is found to be proven may, for reasons of the avoidance of any undue hardship to any person or other injustice perceived by the court, by its order reduce or dispense with a period of impounding imposed by this section, or commute a forfeiture imposed by this section into a period of impounding. 5
 - (5) The period for which a vehicle was impounded under section 4BB is to be reckoned as counting towards a period of impounding imposed by or under this section. 10
 - (6) A motor vehicle that is forfeited to the Crown under this section may be sold or disposed of in such manner as the Minister may direct.
 - (7) Any impounding or forfeiture under this section is in addition to any other penalty that may be imposed for the offence concerned, but for the purposes of any rights of appeal against a penalty so imposed by the court finding the offence to be proven, the impounding or forfeiture is taken to be, or to be part of, such a penalty. 15
 - (8) For the purposes of this section, payment of the amount specified: 20

 - (a) in a penalty notice prescribed under section 18B and issued in respect of an offence under section 4BA, or
 - (b) in any process issued subsequent to such a penalty notice, 25

as the amount that is payable in order to dispose of the alleged offence without having it dealt with by a court, has the same effect as a finding by a court that the offence was proven. 30
 - (9) Schedule 2 has effect with respect to a motor vehicle impounded or forfeited under this section.

[2] Schedule 1 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Traffic Amendment (Street Racing) Act 1996 35

[3] Schedule 2

Insert after Schedule 1:

Schedule 2 Impounded and forfeited vehicles

(Sections 4BB, 4BC)

1 Definitions

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In this Schedule:

Commissioner means the Commissioner of Police.

registered interest, in relation to a motor vehicle, means an interest in the vehicle that is registered under the *Registration of Interests in Goods Act 1986*.

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2 Registered owner and interested persons to be notified

(1) The Commissioner of Police is to give notice of:

(a) the impounding of a vehicle under section 4BB, or

(b) the impounding, or continued impounding, or forfeiture, of a vehicle under section 4BC,

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to the registered owner of the vehicle and to the holder of any registered interest in the vehicle.

(2) The notice may be given personally or by post, and must be given within 14 days after the occurrence the subject of the notice.

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(3) The notice is to state the offence for which the vehicle stands impounded or forfeit, as the case may be.

3 Retention of vehicle impounded under section 4BB

(1) The Commissioner is to retain a vehicle impounded under section 4BB until such time as the offence for which it was impounded is dealt with by a court or by the offender under section 18B, unless it is sooner released under clause 5 or 6.

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- (2) A vehicle that is retained in accordance with this clause until an offence is dealt with is thereafter to be dealt with as required by or under section 4BC.

4 Retention of vehicle impounded or forfeited under section 4BC

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- (1) A vehicle impounded under section 4BC is to be retained by the Commissioner for the time required by or under that section, unless it is sooner released under clause 5 or 6.

- (2) A vehicle forfeited under section 4BC is to be retained by the Commissioner until further directed by the Minister, unless it is sooner released under clause 5 or 6.

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5 Release of vehicle on application to Commissioner

- (1) Application may be made by any person to the Commissioner for the release of an impounded vehicle into the person's custody.

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- (2) The Commissioner may release the vehicle to the applicant if:

- (a) the period for which the vehicle would be liable to be impounded under section 4BC as a result of a conviction for the offence that gave rise to its impounding has expired, or

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- (b) although that period has not expired, the Commissioner is satisfied, on such evidence as the Commissioner may reasonably require, that:

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- (i) the offence concerned was not committed with the consent of the applicant, and

- (ii) the applicant did not know, and could not reasonably be expected to have known, that the vehicle would be used for the commission of the offence,

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and if the Commissioner is satisfied, on such evidence as the Commissioner may reasonably require, that the applicant is lawfully entitled to possession of the vehicle.

- (3) It is the duty of the Commissioner to endeavour to cause any application duly made under this clause to be determined, so far as is reasonably practicable, within 5 working days.
- (4) An applicant to whom a vehicle is released under this clause must in writing acknowledge receipt of the vehicle from the custody of the Commissioner. 5

6 Release of vehicle on application to Local Court

- (1) Application may be made by any person to a Local Court for the release of an impounded vehicle into the person's custody. 10
- (2) An application under this clause stays any order or direction for forfeiture or disposal of the vehicle.
- (3) An application under this clause may be made whether or not an application has been made to the Commissioner under clause 5. 15
- (4) The Local Court is not limited by the provisions of clause 5, and is entitled in any case to have regard not only to the public interest but to any alleged hardship or other circumstances of the case. 20
- (5) Subclause (4) applies even though the Commissioner may have refused an application under clause 5, and the Court may affirm, quash or vary the decision of the Commissioner as justice requires.
- (6) An applicant to whom a vehicle is released by order of the Court must in writing acknowledge receipt of the vehicle from the custody of the Commissioner. 25

7 Safe keeping of vehicles

The Commissioner has (in the Commissioner's official capacity) a duty to take all reasonable steps to secure an impounded vehicle against theft or damage while impounded. 30

8 Failure to prosecute

- (1) No action lies against the Crown, the Minister, the Commissioner or any police officer in respect of the seizure or impounding, under section 4BB, of a vehicle for an alleged offence for which no proceedings or process are taken or issued.
- (2) This clause does not protect a police officer from liability in respect of the seizure of a motor vehicle otherwise than in good faith.

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Schedule 2 Amendment of regulations

(Section 4)

2.1 Justices (Short Descriptions of Motor Traffic and Other Offences) Regulation 1986

Insert in numerical order under the heading "Traffic Act 1909" in Schedule 1: 5

Section 4BA (1)—cause loss of traction burnout

Section 4BA (2)—operate vehicle contrary to s 4BA (1) knowing that inflammable liquid placed beneath tyres aggravated burnout 10

2.2 Motor Traffic Regulations 1935

[1] Schedule K Prescribed offences and penalties for the purposes of section 18B of the Act 15

Insert in numerical order in Table B of Part 1:

Section 4BA (1) 350

Section 4BA (2) 450

[2] Schedule L Offences for the purposes of Regulations 10B, 12A (6) and 12B (4)

Insert before the matter relating to offences under section 8 (5):

Conduct associated with
street racing—Section 4BA
(1) or (2)

3

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