



New South Wales

Road Transport (General) Amendment (Vehicle Sanctions) Bill 2012

Explanatory note

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

Overview of Bill

Division 2 of Part 5.5 of the *Road Transport (General) Act 2005* (the *2005 Act*) contains certain sanctions relating to the detention, wheel clamping, impounding and forfeiture of motor vehicles used in connection with street racing and burnout offences under sections 40 and 41 of the *Road Transport (Safety and Traffic Management) Act 1999*.

The object of this Bill is to amend the 2005 Act:

- (a) to repeal the provisions of Division 2 of Part 5.5 of that Act relating to the wheel clamping of vehicles, and
- (b) to expand the operation of Division 2 of Part 5.5 of that Act by enabling the imposition of sanctions under that Division in relation to certain high range speed and police pursuit offences, and
- (c) to enhance the operation of Division 2 of Part 5.5 of that Act by enabling the confiscation of number plates from motor vehicles as an additional sanction.

The Bill also contains amendments to the 2005 Act and other legislation of a related, consequential or savings and transitional nature.

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 (other than Schedules 2 and 3) on the date of assent to the proposed Act. Schedules 2 and 3 (other than Schedule 3.1 [4], [16], [17] and [19]) are to commence on a day or days to be appointed by proclamation.

Schedule 1 Amendments to Road Transport (General) Act 2005 No 11 relating to clamping of vehicles

Schedule 1 repeals the provisions of the 2005 Act relating to wheel clamping of motor vehicles as referred to in paragraph (a) of the above Overview of the Bill. The provisions to be repealed will continue to apply to motor vehicles whose wheels are clamped before the commencement of the amendments (**Schedule 1 [30], proposed clause 23**).

Schedule 1 [29] provides for the making of savings and transitional regulations.

Schedule 1 [30] contains savings and transitional provisions (**proposed clauses 24 and 25**) concerning the operation of the proposed new sanctions provisions to be inserted by Schedule 2 in relation to offences occurring before the commencement of the provisions.

Schedule 2 Amendments to Road Transport (General) Act 2005 No 11 relating to number plate confiscation and other vehicle sanctions

Schedule 2 replaces Division 2 of Part 5.5 of the 2005 Act with a new Division (proposed sections 217–228) for the purposes described in paragraphs (b) and (c) of the above Overview of the Bill.

Proposed section 217 states the object of the new Division. It also makes it clear that the Division does not affect any discretion or power that a court or person has apart from the Division in respect of any sanctionable or other offence.

Proposed section 217A contains definitions used in the new Division. The Division enables sanctions to be imposed with respect to sanctionable offences as defined in proposed section 217A. These are high range speed offences, an offence under section 40 or 41 (2) of the *Road Transport (Safety and Traffic Management) Act 1999*, an offence under section 51B (Police pursuits) of the *Crimes Act 1900* and any other offence prescribed by the regulations. A high range speed offence is an offence (not being a camera recorded offence) of driving a vehicle at a speed more than 45 kilometres per hour over the designated speed limit applying to the driver for

the length of road at the time the offence is committed. Except in the case of a road in a school zone, the designated speed limit is defined to mean the normal speed limit applying to the length of road, not the variable speed limit applicable from time to time.

Proposed section 218 describes the circumstances in which a police officer may impose sanctions under the new Division.

Proposed section 218A describes the sanctions that may be imposed under the new Division. Proposed section 218A (1) (a) and (b) are similar to existing provisions in section 218 (1A) (b) and (c) of the 2005 Act which enable a police officer to either impound a vehicle or to give the driver a production notice requiring the driver to produce the vehicle at a specified place within a period of time. The new provisions will require production no later than on the first working day that is 5 days after the notice is given instead of the present 10 days.

Proposed section 218A (1) (c)–(e) contain the new sanctions relating to confiscation of number plates. A police officer has several options. The police officer may remove the vehicle's number plates and attach a number plate confiscation notice so that the vehicle will immediately be prohibited from being operated for a period of 3 months (proposed section 218A (1) (c)). Alternatively, the police officer may (either immediately or as soon as practicable afterwards) give the offending operator a number plate production notice requiring the offending operator to produce the number plates at a specified place by a date and time specified in the notice and attach a number plate confiscation notice to the vehicle. The production date must be no later than the first working day occurring 5 days after the notice is given (proposed section 218B). The motor vehicle will be prohibited from being operated for a period of 3 months commencing from the production date (proposed section 218A (1) (d) and (3) (b)). A number plate production notice may also be sent (together with a number plate confiscation notice) to an offending operator at the garage address of the motor vehicle. In this case, the offending operator is required to attach the number plate confiscation notice to the vehicle (proposed section 218A (1) (e), (2) and (3) (b)).

Proposed section 218B contains provisions relating to the giving and withdrawal of motor vehicle and number plate production notices.

Proposed section 218C specifies the powers and duties of police officers in relation to the exercise of powers under proposed section 218A. It also makes it clear that the registered operator of a motor vehicle which has had its number plates removed is responsible for the safe and legal parking of the vehicle, any fees for removal or towing and any other costs and financial loss incurred (including any parking fines and any fees for the issue of any number plate to replace a number plate damaged when removed under the proposed section).

Proposed section 218D enables the Commissioner of Police to impound vehicles moved to or produced at a place in accordance with proposed section 218A.

Proposed section 218E makes it an offence to fail to comply with a motor vehicle or number plates production notice. It also enables the registration of vehicles to be suspended for a period not exceeding 3 months and provides for the automatic forfeiture to the Crown of motor vehicles of repeat offenders against the section.

Proposed section 218F creates various offences concerning the confiscation of number plates and operation of motor vehicles during the period in which a vehicle from which number plates have been confiscated is prohibited from being operated.

Proposed section 219 provides for the automatic forfeiture to the Crown of motor vehicles used in connection with sanctionable offences on repeat occasions during a 5 year period.

Proposed section 219A enables a court to direct that the automatic forfeiture of a motor vehicle under proposed section 218E (5) or 219 (2) be commuted to a period of impounding or confiscation of number plates in certain circumstances.

Proposed section 220 requires an offending operator to give the holder of any registered interest in the motor vehicle used in connection with the offence notice of the imposition of any sanction in relation to the motor vehicle under proposed section 218A.

Proposed section 221 provides for the retention of impounded motor vehicles and confiscated number plates.

Proposed section 222 enables a person to apply to the Local Court for early release of a motor vehicle impounded or number plates confiscated under the proposed Division. The Local Court may only order the release after payment of all movement, towing and storage fees.

Proposed section 223 provides for the release of a motor vehicle impounded or number plates confiscated under the proposed Division after payment of all movement, towing and storage fees.

Proposed section 224 provides for the safe keeping of a motor vehicle impounded under the proposed Division.

Proposed section 225 enables a forfeited motor vehicle to be released to Roads and Maritime Services (*the Authority*) and used by the Authority for the purposes of crash testing and any educational program for drivers of motor vehicles. It also provides for the disposal of forfeited and unclaimed impounded motor vehicles.

Proposed section 226 protects the Crown, the Minister, the Commissioner of Police, the Authority, Transport for NSW and police officers from liability with respect to action taken under the proposed Division.

Proposed section 227 protects the Crown, the Minister, the Commissioner of Police and police officers from liability with respect to failure to prosecute for offences against the proposed Division.

Proposed section 228 provides for the issue of search warrants for the purpose of investigating contraventions of certain provisions under the proposed Division.

Schedule 3 Amendment of regulations

Schedule 3 contains consequential amendments to certain regulations. **Schedule 3.2 [3]** amends the *Road Transport (Vehicle Registration) Regulation 2007* to put it beyond doubt that it is an offence to drive a vehicle registered by the Authority without number plates issued by the Authority.