

# **ROAD TRANSPORT (GENERAL) AMENDMENT (VEHICLE SANCTIONS) BILL 2012**

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**Bill introduced, and read a first time and ordered to be printed on motion by the Hon. Michael Gallacher.**

## **Second Reading**

**The Hon. MICHAEL GALLACHER** (Minister for Police and Emergency Services, Minister for the Hunter, and Vice-President of the Executive Council) [2.56 p.m.]: I move:

That this bill be now read a second time.

I am pleased to introduce the Road Transport (General) Amendment (Vehicle Sanctions) Bill 2012. The bill seeks to make key improvements to the current vehicle sanctions scheme, which to date has been primarily designed to target hoon type offences. The scheme is designed to immediately separate dangerous drivers from their vehicles and, in line with this concept, the bill proposes that other serious driving offences be relevant for inclusion in the scheme. The bill introduces practical and administrative efficiencies into the scheme by including number plate confiscation as an alternative vehicle sanction option for police for new offences where a person misuses a vehicle that has had its number plates confiscated. The bill is the result of extensive officer level consultation between the Ministry for Police and Emergency Services, the New South Wales Police Force, Transport for NSW, Roads and Maritime Services and the Department of Attorney General and Justice. I thank those officers for their invaluable assistance.

The bill proposes that high-range speeding—that is, speeding by more than 45 kilometres an hour—and police pursuit offences be included as relevant offences for the vehicle sanctions scheme. It is well recognised that speeding contributes directly to the cause of crashes through loss of control and insufficient reaction time. It also significantly increases the severity of the crash. In total, in 2011, 225,401 legal actions for speeding were commenced in New South Wales. Current Australian research shows that the risk of being involved in a casualty crash whilst travelling at 90 kilometres an hour in a 60-kilometre speed zone is around 64 times that of travelling at the speed limit. The risk is even greater when speeding at more than 45 kilometres over the speed limit. In 2011 Roads and Maritime Services estimated that speeding was a factor in 150 of 376 recorded road deaths. This equates to 41 per cent of all road deaths. In 2011 the New South Wales Police Force commenced 3,079 legal actions for exceeding the speed limit by more than 45 kilometres.

According to figures taken from the website of the State Debt Recovery Office there were 302 camera-detected high-range speeding offences in the 2010-11 financial year. Despite already tough penalties, which include both immediate roadside licence suspension and fines of up to \$3,300, both sets of figures have remained relatively constant. For practical reasons it is proposed that vehicle sanctions will only be imposed where the high-range speeding offence is detected by a police officer and not by a camera. Camera-detected offences cannot result in the immediacy of a vehicle sanction because the actual offender is not spoken to or identified at the time of the offence. Camera offences must follow an administrative process to, first, identify the vehicle and serve a penalty notice on the registered owner. Then there is a separate process by which the registered operator identifies and nominates the offending driver.

For practical purposes vehicle sanctions for high-range speeding will not be imposed in variable speed zones with the exception—and let me make this very clear—of school zones. School zone speed limits are well understood by drivers and it would send an unacceptable child safety message to exempt offences committed in school zones from the vehicle sanction

regime. If a section of road is subject to a variable speed limit because of traffic volumes, road conditions or roadworks, for example, the applicable speed limit will be the highest speed limit that applies to that length of road, not the lower variable speed. But if the normal speed limit for a length of road is 100 kilometres per hour and the variable speed limit is, for example, 90 kilometres per hour, a vehicle sanction would only be imposed where the driver travelled at 146 kilometres per hour or more—that is, 100 plus 46—and not at 136 kilometres per hour, 90 plus 46.

Where an individual driver is subject to a lower speed limit then vehicle sanctions will apply when that lower speed limit has been exceeded by more than 45 kilometres per hour. For example, a provisional P2 driver has a speed limit of no more than 90 kilometres per hour even if the street speed limit is 100 kilometres per hour. Therefore if a P2 driver is doing 136 kilometres an hour—that is, 90 plus 46—he or she will be exceeding his or her limit by more than 45 kilometres per hour and the new vehicle sanctions will apply. The bill proposes that offences relating to a police pursuit will also be relevant for vehicle sanctions.

Where a person is charged under section 51B of the Crimes Act, which members will know as "Skye's law" in honour of little Skye Sassine, police may also apply a vehicle sanction. Skye's law recognises that even when pursuits do not end in a crash they are inherently risky for the police involved, the offending driver, their passengers or anyone else in the vicinity of the pursuit. Skye's law, advocated by the New South Wales Liberals and Nationals and introduced under the previous Government, brought in tougher penalties for engaging in a pursuit of up to three years imprisonment for a first offence and up to five years imprisonment for a second offence, regardless of whether or not a crash occurs. The new offences commenced in March 2010.

From then until the end of January 2012 police commenced 1,168 legal actions for the new pursuit offences, 30 of which were for second or subsequent offences. In 2011 alone there were 1,781 police pursuits and 635 legal actions under Skye's law, including 20 for second or subsequent offences. High-range speeding and the offence of being involved in a police pursuit are very dangerous behaviours and present a high risk to the community. It is appropriate that these offences be brought within the vehicle sanction scheme and that the offenders are treated similarly to those who commit car hoon offences.

One of the sanctions created in the bill is a power for police to remove and confiscate number plates as an alternative option to impounding a vehicle. Number plate confiscation prevents a vehicle from being legally driven on a road or road-related area and has the same effect as vehicle impounding even though it does not physically remove the vehicle from the offender's possession. Number plate confiscation will be a quicker, easier and less costly sanction for police to apply. Police will not need to arrange and pay for the towing of a vehicle. Officers will not have to remain with the vehicle until it is towed away, which will mean they are released sooner to perform other duties. There will be no vehicle storage costs for police and no need for police to pursue operators to recover unpaid towing and storage fees, which are currently borne by the New South Wales Police Force.

In 2011, 137 vehicles were confiscated for car hoon offences. Expanding the vehicle sanction scheme to include additional offences will in turn increase the number of vehicles and offenders subject to vehicle sanctions. Number plate confiscation will offer police a cost-effective and practical alternative to vehicle impounding, which I will elaborate on shortly. The current provisions allow police to apply a vehicle sanction irrespective of whether the offender was the registered operator of the vehicle. The proposed amendments introduce a distinction in the way a vehicle sanction is applied, depending on whether the offender is the

registered operator of the vehicle or not.

For the purposes of the proposed amendments a "non-offending operator" is the registered operator of the vehicle used in the offence but who was not the driver who committed the offence. Non-offending operators will not incur roadside vehicle sanctions but will be subject to an administrative registration suspension scheme, which I will detail shortly. An "offending operator" is the registered operator of the vehicle used in the offence who is also the driver who committed the offence. Offending operators will face roadside vehicle sanctions, which will include the well-established practice of vehicle impoundment and forfeiture or the new number plate confiscation proposal.

I will now explain the revised scheme as it relates to an offending operator. For a first offence by an offending operator the sanctions available to police at the roadside will be vehicle impounding or number plate confiscation. In both cases the bill proposes that the sanction period will be three months. Where a vehicle is impounded it will be moved to and stored at a police holding yard, as is the current practice. Where number plates are confiscated, police will deliver the plates to Roads and Maritime Services. Roads and Maritime Services will hold the number plates for the duration of the three-month sanction. Applying a fixed three-month sanction period from the offence date is an improvement over the current arrangements. Currently a vehicle is impounded until the substantive driving charge is heard and determined by the court. This results in inconsistent sanction periods, which can be more or less than three months. The current arrangements also require the courts, when hearing the substantive driving charge, to also rule on whether the vehicle should be further impounded or returned. The proposed amendments will increase court efficiencies in view of the fixed three-month sanction period.

The fixed three-month sanction period will ensure that the sanction is applied equally to all offending operators. It will not matter whether the offence is dealt with by a penalty notice or attendance at court, nor whether the offence was for high-range speeding, a pursuit offence or for one of the existing street racing offences. For second or subsequent offences the vehicle sanction process for an offending operator will be the same as for a first offence. However, as is currently the practice, if the court determines that the offending operator is guilty the vehicle will be forfeited to the Crown, but if the offender can demonstrate to the court that forfeiture will result in extreme hardship then the court may instead order that a further period of vehicle or number plate confiscation is appropriate. If the court makes no such order a registered operator will continue to have the right to appeal the forfeiture at a later time.

As with the current arrangements, forfeited vehicles may be disposed of by police or crash-tested by Roads and Maritime Services. Operationally, it is expected that where police detect a second offence by an offending operator they will impound the vehicle rather than confiscate number plates as a prelude to possible vehicle forfeiture following conviction. Operationally, repeat high-range speeding offences will proceed by charge rather than penalty notice, given that the vehicle may be forfeited on conviction of the offence. For the purposes of determining whether a second or subsequent offence applies, a high-range speeding offence dealt with by way of a penalty notice will count as a first offence.

An offending operator who has had a vehicle impounded or number plates confiscated for the fixed three months will continue to have the opportunity to apply to the Local Court for the earlier return of the vehicle or number plates. However, in approving an application the court must have regard to such things as the safety of the public and the public interest with respect to the likelihood of the vehicle being used for further dangerous driving offences. The court

may also consider any hardship that the confiscation may impose on another person other than the offender. The court cannot order the release of the vehicle or number plates earlier than five business days from the date of the initial confiscation.

I would now like to talk in detail about the new vehicle sanction of the number plate confiscation. Where an offence is detected by police and the driver is the offending operator, police will arrange for the vehicle to be parked in the most convenient legal street location at the time of the offence. Police will remove the number plates and affix a number plate confiscation notice to the vehicle. Confiscated plates will be delivered by police to a nominated motor registry. Police and Roads and Maritime Services [RMS] will develop operating procedures so that plates will be available for collection after five business days in the event that the local court approves an application for the earliest release of the plates; otherwise the plates will be available for collection at the end of the three-month confiscation period.

A vehicle that has had its number plates removed may no longer be driven on a road or a road-related area. It is the offending operator's responsibility rather than that of police to arrange and pay for the vehicle to be towed home or to another location where it may be legally parked. The number plate confiscation notice will be A4 in size and affixed to the inside of the windscreen. It must remain in place for the duration of the confiscation period and the number plate confiscation notice will clearly state that the vehicle is subject to a sanction and that the number plates have been removed. It will advise that the vehicle cannot be driven during the vehicle's sanction period and that the vehicle may be impounded and forfeited if operated during the sanction period. Other information on the notice will include the date on which the confiscation period ends, the name of the local area command of the police officer who issued the notice, the address from which number plates can be collected, information about the right to apply to the local court for early release of number plates and penalties for removing or tampering with the confiscation notice.

Some motor cycles and scooters have small windscreens which police could affix the notice to. Where motor cycles do not have a windscreen the notice can be affixed elsewhere, such as over the fuel tank or seat. Where this is not feasible or may cause damage to the vehicle police may elect to impound the motor cycle rather than confiscate the number plates. The offending operator will be issued with a receipt for the number plates, which will include similar information to the confiscation notice. The receipt will also advise of the right to make an application to the local court for the early release of plates but that plates will be released no earlier than five business days from the confiscation date.

The number plate confiscation notice will address the issue of other users of the vehicle being potentially unaware of the sanction and inadvertently driving the vehicle without noticing the missing number plates. It would be difficult to argue a failure to notice a large sticker affixed to the windscreen. The notices will be similar to defect notices currently used by police, which are also difficult to remove. Currently a vehicle without number plates may not be parked on a road or road-related area. The other purpose of a number plate confiscation notice is to enable the vehicle to be parked but not driven on the street. The removal of the confiscation notice would mean that the vehicle could be treated by authorities—police, Roads and Maritime Services and the local council—as if it were unregistered or abandoned and it could be impounded or disposed of.

To support this new sanction of number plate confiscation appropriate offences and penalties have also been provided for in the bill. Given that vehicles are not physically impounded or immobilised, there is a risk that a vehicle may be driven contrary to a number plate

confiscation sanction: that is, if the number plate confiscation notice is removed a person may drive with no number plates or may affix false number plates. The risk of a proliferation of unregistered vehicles and vehicles with false number plates or plates taken from other vehicles must be acknowledged and managed through appropriate enforcement and penalties. Police advise that a vehicle being driven with no number plates would be detected and stopped very quickly and the New South Wales Liberals and Nationals Government commitment to the continuing rollout of automatic number plate recognition throughout the Highway Patrol fleet is continually increasing the ability of police to detect vehicles fitted with false number plates.

The bill introduces new offences to reduce the risk of driving contrary to a number plate confiscation sanction. The first involves removing, tampering with, altering or modifying a number plate confiscation notice. The second involves operating a vehicle that is subject to a number plate confiscation sanction. The third involves driving a vehicle fitted with a number plate that is not issued by Roads and Maritime Services or that is not issued for the specific vehicle. The fourth involves driving a vehicle displaying an altered number plate, a representation of a number plate or anything that is likely to be mistaken for a number plate. The fifth involves causing, permitting, allowing or failing to take reasonable precautions to prevent the vehicle from being operated contrary to a number plate confiscation sanction or falsely fitted with number plates. The sixth involves making a false statement or misrepresentation to obtain an impounded vehicle or confiscated number plates or to secure their early release by the court. The seventh involves possession of unauthorised number plates without lawful excuse.

These offences are intended to cover a wide range of sanctions that contravene or facilitate the contravention of number plate confiscation sanctions. To counter a possible upsurge in number plate related crime and to prevent number plate confiscation being seen as a soft option compared with the current impounding regime, the penalties will be significant. As all of these offences may equally facilitate the breach of a number plate confiscation sanction, they will all carry the same penalties, proceeding with a charge rather than by penalty notice with the court having the option to order vehicle forfeiture. There is one exception to these penalties, the proposed offences of possession of unauthorised number plates without lawful excuse. All other proposed new offences are directly related to a vehicle that is subject to a number plate confiscation sanction. However, it may be the case that this offence will be committed by those who own a vehicle that has not been sanctioned but who have supplied substitute plates to others whose vehicles have been. Accordingly, this offence should not carry the possible penalty of vehicle forfeiture, nor should it always proceed to a charge.

A further offence of falsely displaying a number plate confiscation notice is also being introduced to cover situations that may arise where a person manufactures a false notice or gives a legitimate notice to enable an unregistered vehicle or vehicles with no number plates to be parked on a road or road-related area. This offence is not directly related to the number plate confiscation sanction but will address offenders who may try to misuse the number plate confiscation notice to avoid prosecution or vehicle impounding for parking an unregistered vehicle on a road. Police will continue to have the option of issuing a production notice requiring the registered operator to deliver the vehicle to a designated place at a designated time. The production notice may also be used for number plates if that is the vehicle sanction that police wish to apply. A production notice can be issued for operational or safety reasons. It is impractical to confiscate the vehicle or the number plates at the roadside, for example, if there are young children in the car or if it is in a very remote location.

The option for police to use wheel clamping as a sanction commenced on 26 September

2008. From this date police commenced a 12-month trial in the Liverpool and Wollongong local area commands to assess its effectiveness as a vehicle sanction and identify any issues or concerns before rolling it out across New South Wales. It was envisaged that clamping would be a cheaper and administratively easier sanction than impounding vehicles because vehicles could be parked at the offender's address rather than stored in police or commercial facilities and because it could be outsourced to private contractors. During the 12-month trial there were 2,122 legal actions by police for all car hoon offences. Of these, 219 involved vehicles being impounded by police but only 12 were wheel clamped. No clamping was ordered by the courts.

In practice, wheel clamping raised a number of unanticipated practical issues for police and clamping agents, including the need to rely on third-party contractors. The lack of availability of clamping agents, particularly in rural and remote areas, seriously impeded this initiative. Additionally, where wheel clamping was used it resulted in no time saving for police as they had to attend the address of the offender to ascertain whether the site would be suitable for accommodating a clamped vehicle. The trial showed that clamping was not an effective sanction. Accordingly, the bill makes the necessary amendments to remove wheel clamping from the vehicle sanctions regime.

I now turn to the proposals in the bill which give effect to the actions that will be taken in cases of non-offending operators. The vehicles used by non-offending operators will no longer be subject to roadside vehicle sanctions. These vehicles will instead be subject to registration suspension, but only after repeated violations. To give effect to the registration suspension proposal police will provide Roads and Maritime Services with details of a vehicle that has been used in a relevant offence where the offender was not the registered operator. Roads and Maritime Services will maintain a register of these events. New systems will need to be developed by police and the Roads and Maritime Services to give effect to this.

For a first offence Roads and Maritime Services will send the non-offending operator a warning notice. This will warn the non-offending operator that a person driving the vehicle was detected committing a relevant offence and that action may be taken to suspend the registration of the vehicle if it is used to commit further offences. In the case of a second offence Roads and Maritime Services will serve a notice of registration suspension under clause 41 (2) of the Road Transport (Vehicle Registration) Regulation 2007. This existing power provides that a registration may be suspended for up to three months if Roads and Maritime Services is satisfied on the balance of probabilities that a registered operator of a vehicle has failed to use or manage the vehicle so as to effectively prevent repeated violations of the traffic law, whether by the operator or by another person authorised to use the vehicle.

This change is proposed because concerns exist about the impact of vehicle sanctions on non-offending operators who have not themselves committed any offence and because it is operationally simpler for police and Roads and Maritime Services to administer than the current legislative-based arrangements. Vehicle sanctions are more visible than individual driver sanctions and are harder to conceal from family and friends. They can often have an impact on people other than the individual offending driver. This may help to reduce the social acceptability of the relevant offences and the road trauma caused by these high-risk driving behaviours. Vehicle sanctions are supported by road safety stakeholders. For example, at a 2009 road safety roundtable convened by the then Roads and Traffic Authority there was strong support for vehicle impounding and number plate confiscation for high-range speeding, particularly for repeat offenders. I commend the bill to the House.

**Debate adjourned on motion by the Hon. Adam Searle and set down as an order of the day for a future day.**