



New South Wales

# Road Transport Legislation Amendment (Car Hoons) Bill 2008

## Explanatory note

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

## Overview of Bill

Section 40 of the *Road Transport (Safety and Traffic Management) Act 1999* (the **1999 Act**) makes it an offence to organise, promote or take part in certain races, speed record attempts, speed trials or competitive trials of motor vehicles on roads or road related areas without the written approval of the Commissioner of Police (the **street racing offence**). Section 41 (1) of that Act contains an offence of operating a motor vehicle in a manner that causes it to undergo sustained loss of traction against the road surface (the **burnout offence**) and section 41 (2) contains an offence of so operating a motor vehicle knowing that any petrol, oil, diesel fuel or other inflammable liquid has been placed on the surface of the road (the **aggravated burnout offence**). Division 2 of Part 5.5 (sections 217–228) of the *Road Transport (General) Act 2005* (the **2005 Act**) contains certain sanctions relating to the detention, impounding and forfeiture of motor vehicles used in connection with these street racing and burnout offences. The object of this Bill is to amend the 1999 Act and the 2005 Act as follows:

- (a) to increase the penalty for a street racing offence from a maximum of 20 penalty units to a maximum of 30 penalty units (in the case of a first
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- offence) or 30 penalty units or imprisonment for 9 months or both (in the case of a second or subsequent offence),
- (b) to expand the ambit of the aggravated burnout offence and increase the maximum penalty for that expanded offence from a maximum of 7 penalty units to a maximum of 30 penalty units (in the case of a first offence) or 30 penalty units or imprisonment for 9 months or both (in the case of a second or subsequent offence),
  - (c) to provide for an automatic licence disqualification period of 12 months for a person convicted of the expanded aggravated burnout offence,
  - (d) to increase the maximum penalty for the burnout offence from a maximum of 5 penalty units to a maximum of 10 penalty units,
  - (e) to enhance the operation of Division 2 of Part 5.5 of the 2005 Act and to provide additional and more effective sanctions (such as wheel clamping and crash testing) in respect of the street racing offence and expanded aggravated burnout offence,
  - (f) to provide for the immediate suspension under section 205 or 206 of the 2005 Act of the driver licences and visitor driver privileges, respectively, of persons charged with the street racing offence or expanded aggravated burnout offence.

The Bill also contains amendments of a related, consequential or savings and transitional nature to the 1999 Act, the 2005 Act and other related legislation.

## 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 a day or days to be appointed by proclamation.

**Clause 3** is a formal provision that gives effect to the amendments to the *Road Transport (General) Act 2005* set out in Schedule 1.

**Clause 4** is a formal provision that gives effect to the amendments to the *Road Transport (Safety and Traffic Management) Act 1999* set out in Schedule 2.

**Clause 5** is a formal provision that gives effect to the amendments to the Act and regulations set out in Schedule 3.

**Clause 6** provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

## **Schedule 1      Amendment of Road Transport (General) Act 2005**

### **Suspension of licences and driving privileges**

Section 205 of the 2005 Act enables a police officer to immediately suspend the driver licence of a person charged with certain offences. **Schedule 1 [1]** amends section 205 to enable a police officer to suspend the licence of a person who is charged with a street racing offence or the expanded aggravated burnout offence.

Section 206 of the 2005 Act enables a police officer to immediately suspend the driving privileges of a visiting driver charged with certain offences. **Schedule 1 [2]** amends section 206 to enable a police officer to suspend the driving privileges of a visiting driver who is charged with a street racing offence or the expanded aggravated burnout offence.

### **Detention, impounding, forfeiture, wheel clamping and crash testing of motor vehicles**

Division 2 of Part 5.5 of the 2005 Act provides for the removal, impounding and forfeiture of motor vehicles used in connection with street racing and burnout offences. **Schedule 1** contains a number of amendments to enhance the operation of the Division and to provide additional and more effective sanctions for these offences.

Section 218 of the 2005 Act currently enables a police officer to impound a motor vehicle that is being or has been operated on a road so as to commit a street racing, burn out or aggravated burnout offence or that has been impounded or forfeited under section 219 of the 2005 Act. A vehicle may be seized from a public place or from a private property with the consent of the owner or under a search warrant.

**Schedule 1 [6] and [7]** amend section 218 to provide a police officer with two other options. The vehicle may be clamped or the driver, and (if the driver is not the registered operator for the motor vehicle) the registered operator of the vehicle, may be given a notice (called a *production notice*) requiring the driver or operator to produce the vehicle at a specified place within 10 days after being given such a notice.

**Schedule 1 [11]** amends section 218 to make it an offence to fail, without reasonable excuse, to comply with the requirements of a production notice. It also enables the Authority to suspend the registration of a registrable vehicle for a period not exceeding 3 months if the registered operator is found guilty of such an offence, pays the whole or part of the amount specified in a penalty notice issued in respect of such an offence or fails to pay the amount so specified or to elect to have the matter dealt with by a court.

**Schedule 1 [8], [9] and [10]** are consequential amendments to section 218.

**Schedule 1 [5]** substitutes section 218 (1) (b) as a consequence of the enactment of proposed sections 219 and 219A.

Section 219 of the 2005 Act currently enables measures to be taken against a driver if a street racing or burnout offence is found proven in court or is dealt with by the payment of a penalty under a penalty notice. For a first offence, the vehicle is automatically liable to impounding for 3 months. For a second or subsequent offence, the vehicle used in connection with the offence is automatically forfeited to the Crown. A court has a discretion to reduce or dispense with these measures to avoid undue hardship to any person or other injustice perceived by the court.

**Schedule 1 [12]** replaces section 219 with proposed sections 219 and 219A.

Proposed section 219 enables measures to be taken against the driver of a motor vehicle used in connection with a street racing or expanded aggravated burnout offence who is also the registered operator of the motor vehicle (the *offending operator*). As in existing section 219, for a first offence the vehicle is automatically liable for impounding for 3 months. However, the court is given the option of instead ordering that the vehicle be clamped for a period of 3 months at a place specified in the order. For a second or subsequent offence by the offending operator the vehicle used in connection with the offence is automatically forfeited to the Crown. The discretion of the court to reduce or dispense with these matters is limited to cases where clamping or impounding would cause extreme hardship to the offender or any other person. Difficulty in carrying out employment or in travelling to a place of employment or business or to any place for the purposes of education, training or study are specifically excluded as grounds of hardship for exercising the discretion.

Under proposed section 227 (5) and (6) (as to be inserted by **Schedule 1 [25]**) a forfeited motor vehicle may be released to the Roads and Traffic Authority (the *Authority*) and may be used by the Authority for the purposes of crash testing and any educational program for drivers established by the Authority.

Proposed section 219A enables measures to be taken where a motor vehicle used in connection with a street racing or expanded aggravated burnout offence is driven by a driver who is not the registered operator of the motor vehicle (the *offending driver*). As soon as possible after a motor vehicle is used by an offending driver in connection with such an offence the Authority is required to give the registered operator of the vehicle a notice warning the registered operator of the sanctions that may be taken against vehicles for which the registered operator is the registered operator if further such offences are committed using the same or another vehicle (a *suspension warning notice*). If any offending driver is found guilty of a second street racing or aggravated burnout offence in a vehicle registered in the name of the registered operator within a 5 year period after the suspension warning notice is given, the Authority may take action with respect to suspension of the registration of the vehicle or, if it is unregistered, registration is suspended or the expiry date of the registration is within 28 days of the finding of guilt, the Commissioner must cause it to be clamped or impounded. If an offending driver is found guilty of a third or subsequent offence within that 5 year period the vehicle is automatically forfeited to the Crown. However, the court is given the option of instead ordering that the vehicle be impounded or clamped for a period, and at a place, specified in the order or of

dispensing with the forfeiture. The discretion of the court to reduce or dispense with these matters is limited to cases where forfeiture would cause extreme hardship to the offending driver or any other person.

The sanctions do not operate in respect of a motor vehicle that at the relevant time was stolen or illegally taken or used.

Under proposed section 227 (5) and (6) (**Schedule 1 [25]**) a forfeited motor vehicle may be released to the Authority and may be used by the Authority for the purposes of crash testing and any educational program for drivers established by the Authority.

Proposed section 219B (**Schedule 1 [12]**) provides for the giving, effect and withdrawal of suspension warning notices under proposed section 219A.

### **Wheel clamping**

Proposed sections 219C–219G (**Schedule 1 [12]**) make provision with respect to the clamping of motor vehicles. **Schedule 1 [4]** inserts definitions of *clamp* and *clamping agent*. Clamping agents include the Commissioner of Police and any person (other than a police officer) or body appointed as a clamping agent by the Commissioner under proposed section 219C. Proposed section 219C enables the Commissioner to limit the places, or manner or circumstances, in which clamping agents may exercise clamping functions. Effectively this enables the proposed clamping provisions to be limited to a trial period or area. Proposed sections 219D and 219E make provision with respect to the issue of identification cards to such clamping agents and their employees or agents. Proposed section 219F requires an offending operator or registered operator whose vehicle is clamped under proposed section 219 or 219A to pay fees for the clamping of the vehicle. If part or all of the fee is not paid a court may order the impounding of the vehicle for a period of 3 months, or its forfeiture to the Crown. Proposed section 219G makes it an offence, punishable by a maximum penalty of 20 penalty units, to tamper with, modify or remove a wheel clamp during a period of clamping.

**Schedule 1 [14]** amends section 220 of the 2005 Act to require the Commissioner to give certain notices about the clamping of a motor vehicle under proposed sections 219 and 219A to the registered operator or the holder of any registered interest in the motor vehicle. **Schedule 1 [13] and [15]** make consequential amendments.

**Schedule 1 [16]–[19]** amend sections 221 and 223 of the 2005 Act to provide for the retention of clamps on vehicles and for their removal at the end of the clamping period or if their removal is ordered by a court.

**Schedule 1 [19]** also omits the current power in section 223 (1) and (2) for application to be made to the Commissioner of Police for the release of an impounded motor vehicle.

**Schedule 1 [20] and [21]** amend section 224 of the 2005 Act to enable an application to be made to a Local Court for an order for the removal of clamps from a motor vehicle. In deciding whether to make an order the Local Court may have regard to the safety of the public and the public interest in preventing the use of a motor vehicle that the Court considers is reasonably likely in all the circumstances to be used for further dangerous driving offences, and any alleged extreme hardship or other

circumstances of the case. The Local Court may order the release of a motor vehicle that was impounded, or the removal of clamps from a motor vehicle that was clamped, under proposed section 219A if it is satisfied that the registered operator did not consent to the driver concerned using the vehicle, and the registered operator had taken all reasonable steps to prevent any person using the vehicle without the consent of the registered operator.

**Schedule 1 [23]** amends section 225 of the 2005 Act to require clamping agents to take all reasonable steps to ensure as little damage as possible is caused to a vehicle by the installation or removal of clamps.

**Schedule 1 [3]** is a consequential amendment to the heading to Division 2 of Part 5.5 of the 2005 Act.

### **Crash testing**

**Schedule 1 [4]** inserts a definition of *crash test* into section 217 of the 2005 Act.

**Schedule 1 [25]** amends section 227 of the 2005 Act to enable a forfeited motor vehicle to be released to the Authority and used by the Authority for the purposes of crash testing and any educational program for drivers established by the Authority.

**Schedule 1 [22]** makes a consequential amendment to section 225 of the 2005 Act.

### **Protection from liability**

**Schedule 1 [24]** inserts proposed section 225A. It provides that no action lies against the Crown, the Minister, the Commissioner, the Authority, any police officer or any clamping agent for any damage to, or theft of, a motor vehicle caused by, or arising from clamping, impounding or crash testing a motor vehicle in accordance with Division 2 of Part 5.5 of the 2005 Act.

### **Savings and transitional provisions**

**Schedule 1 [26]** amends Schedule 1 to the 2005 Act to enable the making of savings and transitional regulations.

**Schedule 1 [27]** amends that Schedule to make transitional provision in relation to the amendment to section 218 and substitution and insertion of sections 219 and 219A described above.

## **Schedule 2      Amendment of Road Transport (Safety and Traffic Management) Act 1999**

**Schedule 2 [1] and [4]** amend sections 40 and 41, respectively, of the 1999 Act to make the penalty increases described in paragraphs (a) and (d) of the Overview.

Section 41 of the 1999 Act makes it an offence for a person to operate a motor vehicle in a manner that causes it to lose traction against the road surface or otherwise in connection with activities prescribed by the regulations, for example organised street and illegal drag racing. Section 41 (2) provides for the aggravated offence of

operating a motor vehicle to cause it to lose traction knowing that any petrol, oil, diesel fuel or other inflammable liquid has been placed on the surface of the road beneath one or more tyres of the vehicle.

**Schedule 2 [5]** substitutes section 41 (2) to substantially expand the aggravated offence so that it includes, for example, doing things that prolong, sustain, intensify or increase the loss of traction, operating a vehicle in that way in a place knowing that there is an appreciable risk that it would interfere with the amenity of the locality or make it unsafe for any person and participating, or urging others to participate, in group activities involving the operation of a vehicle in this way. The maximum penalty for the aggravated offence is increased from a maximum of 7 penalty units to a maximum of 30 penalty units (in the case of a first offence) or 30 penalty units or imprisonment for 9 months or both (in the case of a second or subsequent offence). The conviction of a person of the expanded aggravated offence under section 41 (2) (a), (b), (c) or (d) also automatically disqualifies the person from holding a driver licence for a period of 12 months (proposed section 41 (7) (**Schedule 2 [6]**)).

Proposed section 41 (6) (**Schedule 2 [6]**) requires a court to have regard to certain factors in considering whether an offence has been committed under proposed section 41 (2) (d). For example, in considering whether a vehicle has been operated in a locality so as to make it unsafe for any person the court may take into account the fact that the road is in a residential area or near a school.

**Schedule 2 [2] and [3]** are amendments to notes by way of statute law revision.

### **Schedule 3 Other amendments**

**Schedule 3.1** is a consequential amendment to ensure that the exercise of the new powers to clamping vehicles inserted by Schedule 1 is not an offence under section 651B of the *Local Government Act 1993*.

**Schedule 3.2** amends the *Road Transport (Driver Licensing) Regulation 1999* so that the new aggravated burnout offence will not be a demerit point offence.

**Schedule 3.3 [1]** amends the *Road Transport (General) Regulation 2005* to enable persons to appeal to the Local Court against a decision of the Authority to suspend the registration of, or to crash test, a vehicle under Division 2 of Part 5.5 of the 2005 Act.

**Schedule 3.3 [2]** amends that Regulation to enable a Local Court to take into account certain factors (for example, whether or not a registered operator consented to the use of the vehicle by a driver who committed an aggravated burnout offence) in determining an appeal by the registered operator against action taken by the Authority under proposed section 219A of the 2005 Act.

**Schedule 3.3 [3]–[5]** are consequential on amendments contained in **Schedule 1 [12] and [19]**.

A vehicle that is forfeited under proposed section 219 or 219A of the 2005 Act may be sold under section 227 of the Act. **Schedule 3.3 [6]** amends the Regulation to require a clamping agent to be paid the balance of the proceeds of the sale of a motor vehicle clamped by it if the motor vehicle was impounded or forfeited for failure to pay fees to which the clamping agent was entitled under proposed section 219F of the Act.

**Schedule 3.3 [7] and [8]** amend that Regulation to, respectively, make the new offence of failing to comply with a production notice issued under section 218 of the 2005 Act a penalty notice offence, and to omit a provision that makes the aggravated burnout offence a penalty notice offence.

**Schedule 3.4 [1]** amends the *Road Transport (Vehicle Registration) Regulation 2007* to require the Authority to record certain matters relevant to proposed sections 219 and 219A and to section 218 on a register. **Schedule 3.4 [2]** is a consequential amendment.

**Schedule 3.4 [3]** amends the Regulation so that the machinery provisions set out in the Regulation about suspension of registration will apply when a vehicle is clamped under the new provisions. **Schedule 3.4 [4]** is a consequential amendment.