



New South Wales

Traffic Amendment (Street and Illegal Drag Racing) Act 1996 No 145

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Traffic Act 1909 No 5	2
4 Expiry of amendments	2
5 Review of amendments	2
 Schedule 1 Amendments	 3



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Traffic Amendment (Street and Illegal Drag Racing) Act 1996 No 145

Act No 145, 1996

An Act to amend the *Traffic Act 1909* with respect to the use of vehicles in connection with illegal drag racing and other activities; to provide for the confiscation of vehicles in certain circumstances; and for other purposes. [Assented to 16 December 1996]

The Legislature of New South Wales enacts:

1 Name of Act

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

2 Commencement

This Act commences on a day to be appointed by proclamation.

3 Amendment of Traffic Act 1909 No 5

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

4 Expiry of amendments

Sections 4BA–4BC of the *Traffic Act 1909*, and Schedule 2 to that Act, expire at the end of the period of 6 months commencing with the commencement of those provisions, unless each House of Parliament has sooner resolved to continue those provisions in operation.

5 Review of amendments

The Joint Standing Committee upon Road Safety is to monitor generally, and from time to time review, the operation of the amendments made by this Act.

Schedule 1 Amendments

(Section 3)

[1] Sections 4BA–4BC

Insert after section 4B:

4BA Conduct associated with street and drag racing and other activities

- (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.

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.

Maximum penalty: 7 penalty units.

- (3) In any proceedings for an offence under subsection (1) or (2), 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.

- (4) A person who, on a public street, engages in conduct prescribed by regulations made for the purposes of this section, being conduct associated with the operation of a motor vehicle for speed competitions or other activities specified or described in the regulations, is guilty of an offence.

Maximum penalty: 5 penalty units.

- (5) 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.

4BB Removal and impounding of vehicles used for certain offences

- (1) A police officer who reasonably believes that a motor vehicle is being or has just been operated on a public street so as to commit an offence under 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.
- (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.
- (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.
- (4) A motor vehicle that may be removed under subsection (1) or (3):
 - (a) may be moved by its being driven, whether or not under power, or by its being towed or pushed, or in any other manner whatever, and
 - (b) may be moved by one or more police officers or, at the direction of a police officer, by persons engaged by the Commissioner of Police, and may be impounded at premises under the control of the Commissioner or of another authority or person.
- (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

- (1) A motor vehicle used in connection with an offence under section 4B or 4BA, being in either case the first offence by the offender under the provision 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 under subsection (3).

- (2) A motor vehicle used in connection with an offence under section 4B or 4BA, being in either case a second or subsequent offence by the offender under the provision 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 under subsection (3).
- (3) 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 direct that a period of impounding imposed by this section be reduced or dispensed with, or that a forfeiture imposed by this section be commuted to a period of impounding.
- (4) 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.
- (5) 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.
- (6) 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, that penalty.
- (7) For the purposes of this section, payment of the amount specified:
 - (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,

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.

- (8) Schedule 2 has effect with respect to a motor vehicle impounded or forfeited under this section.
- (9) Subsections (1) and (2) do not apply to or in respect of an offence committed before the commencement of this section.

[2] Schedule 2

Insert after Schedule 1:

Schedule 2 Impounded and forfeited vehicles

(Sections 4BB, 4BC)

1 Definitions

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*.

2 Registered owner and interested persons to be notified

- (1) The Commissioner is to give notice of
 - (a) the impounding of a vehicle under section 4BB, or
 - (b) the impounding, or continued or further impounding, or forfeiture, of a vehicle under section 4BC,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.
- (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 or in accordance with the regulations.
- (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

- (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.

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.
- (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 and the prescribed fees for storage of the vehicle by the Commissioner have (except to the extent that the Commissioner has waived payment of those fees) been paid, or
 - (b) although that period has not expired, the Commissioner is satisfied, on such evidence as the Commissioner may reasonably require, that:
 - (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,

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 impounded vehicle to be available for collection by a person entitled to its possession as soon as the person is entitled to it.
- (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) The Commissioner may remit the whole or any part of the prescribed fees for storage of a vehicle.

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.
- (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.
- (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.
- (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.

- (7) The Court may determine whether or not the prescribed fees for storage of the vehicle by the Commissioner, or some of those fees, are payable by the applicant to the Commissioner.

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.

8 Failure to prosecute

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, otherwise than in good faith, of a motor vehicle.

[Minister's second reading speech made in—
Legislative Assembly on 27 November 1996
Legislative Council on 5 December 1996]