



New South Wales

Law Enforcement (Powers and Responsibilities) Amendment Regulation 2005

under the

Law Enforcement (Powers and Responsibilities) Act 2002

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Law Enforcement (Powers and Responsibilities) Act 2002*.

BOB DEBUS, M.P.,
Attorney General

Explanatory note

The object of this Regulation is to make further provision with respect to the detention and return of vehicles that have been seized by police in connection with the public disorder emergency powers under Part 6A of the *Law Enforcement (Powers and Responsibilities) Act 2002*. The provisions include the payment of towing and storage fees in relation to seized vehicles.

This Regulation is made under the *Law Enforcement (Powers and Responsibilities) Act 2002*, including sections 87M (4) and 238 (the general regulation-making power).

2005 No 858

Clause 1

Law Enforcement (Powers and Responsibilities) Amendment Regulation
2005

**Law Enforcement (Powers and Responsibilities)
Amendment Regulation 2005**

under the

Law Enforcement (Powers and Responsibilities) Act 2002

1 Name of Regulation

This Regulation is the *Law Enforcement (Powers and Responsibilities) Amendment Regulation 2005*.

2 Amendment of Law Enforcement (Powers and Responsibilities) Regulation 2005

The *Law Enforcement (Powers and Responsibilities) Regulation 2005* is amended as set out in Schedule 1.

Schedule 1 Amendment

(Clause 2)

Part 3A

Insert after Part 3:

Part 3A Public disorder emergency powers— seizure, detention and return of vehicles

36A Definitions

In this Part:

drive a vehicle and *driver* of a vehicle have the same meanings as in the *Road Transport (General) Act 2005*.

public disorder has the same meaning as in section 87A of the Act.

responsible person for a vehicle has the same meaning as in the *Road Transport (General) Act 2005*.

seized vehicle means a vehicle that has been seized by a police officer under section 87M (1) (a) of the Act.

36B Powers in relation to removal and detention of seized vehicles

- (1) A police officer may cause any locking device or other feature of a seized vehicle 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.
- (2) A seized vehicle may:
 - (a) be detained at the place where it is seized, or
 - (b) be moved to, and detained, at any other place determined by the Commissioner.
- (3) A seized vehicle that is removed under subclause (2) (b):
 - (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, and may be detained at premises under the control of the Commissioner or of another authority or person.

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Schedule 1 Amendment

36C Towing fee for seized vehicles

- (1) If a seized vehicle is towed under clause 36B, a fee is payable to the Commissioner by the responsible person for the vehicle, except as otherwise provided by this clause.
- (2) The fee payable is whichever is the lesser of the following:
 - (a) the actual cost of towing the vehicle,
 - (b) the maximum charge for the time being determined under section 54 of the *Tow Truck Industry Act 1998* (including any surcharge chargeable, in the circumstances of the case, in accordance with a determination under that section) for:
 - (i) in the case of the Sydney metropolitan area—a 50-kilometre tow, or
 - (ii) in any other case—a 100-kilometre tow.
- (3) A fee is not payable under this clause by the responsible person for the seized vehicle if the person furnishes the Commissioner of Police with a statutory declaration stating:
 - (a) that the responsible person did not know, and could not reasonably be expected to have known, that the vehicle would be used to convey any person to participate in a public disorder, and
 - (b) that:
 - (i) at the time the vehicle was stopped under section 87J of the Act it was being driven by a person whose name and address are supplied in the declaration, or
 - (ii) the responsible person does not know and could not with reasonable diligence have ascertained the name and address of the person who was driving the vehicle at that time.
- (4) A fee that, by virtue of subclause (3), is not payable by the responsible person for the vehicle is payable by the person driving the vehicle at the time it was stopped under section 87J of the Act.
- (5) The whole or any part of a towing fee that is unpaid may be recovered from the person required to pay it by the Commissioner as a debt due to the State in any court of competent jurisdiction.
- (6) A statutory declaration referred to in subclause (3) that is produced in any proceedings for recovery of a fee under this clause that alleges that any person was the driver of the vehicle at

the time of the offence is evidence of the driver's identity (unless evidence to the contrary is adduced).

36D Storage fees and release of seized vehicles

- (1) If a seized vehicle is detained under section 87M of the Act at a place other than where it is seized, a fee for the storage of the vehicle at that place is payable to the Commissioner. The fee is \$16 for each day (or part of a day) that the vehicle is so detained.
- (2) A seized vehicle that is detained under section 87M of the Act may be released into a person's custody only if:
 - (a) the Commissioner is satisfied, on such evidence as the Commissioner may reasonably require, that the applicant is lawfully entitled to possession of the vehicle, and
 - (b) the fee under subclause (1) for the storage of the vehicle has been paid (except to the extent that the Commissioner has waived payment of that fee).
- (3) A person to whom a vehicle is released under this clause must in writing acknowledge receipt of the vehicle from the custody of the Commissioner.
- (4) The Commissioner may waive or remit the whole or any part of the fee payable under this clause for the storage of a seized vehicle.
- (5) If a seized vehicle is not claimed by any person after the expiration of the period for which the vehicle may be detained under section 87M of the Act, the vehicle may be dealt with in accordance with Division 2 of Part 17 of the Act.

36E Safe keeping of seized vehicles

The Commissioner has (in the Commissioner's official capacity) a duty to take all reasonable steps to secure a seized vehicle against theft or damage while it is being detained under section 87M of the Act.

36F Directions by court as to fees payable under this Part

- (1) A court may, in any proceedings (including proceedings before a Local Court under section 87M (2) of the Act), direct that any fee payable under this Part in relation to the towing or storage of a seized vehicle be reduced by such amount as the court may specify or that, in the circumstances of the case, no such fee is required to be paid.

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Schedule 1 Amendment

- (2) Any such direction by a court:
 - (a) may be given for reasons of avoidance of any undue hardship to any person or other injustice perceived by the court, and
 - (b) has effect according to its tenor.

BY AUTHORITY
