



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

- 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.



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New South Wales

Road Transport Legislation Amendment (Car Hoons) Bill 2008

No. , 2008

A Bill for

An Act to amend the *Road Transport (General) Act 2005*, the *Road Transport (Safety and Traffic Management) Act 1999* and certain other road transport legislation to make further provision with respect to certain speeding and other dangerous driving offences; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Road Transport Legislation Amendment (Car Hoons) Act 2008</i> .	3 4
2 Commencement	5
This Act commences on a day or days to be appointed by proclamation.	6
3 Amendment of Road Transport (General) Act 2005 No 11	7
The <i>Road Transport (General) Act 2005</i> is amended as set out in Schedule 1.	8 9
4 Amendment of Road Transport (Safety and Traffic Management) Act 1999 No 20	10 11
The <i>Road Transport (Safety and Traffic Management) Act 1999</i> is amended as set out in Schedule 2.	12 13
5 Other amendments	14
The Act and regulations specified in Schedule 3 are amended as set out in that Schedule.	15 16
6 Repeal of Act	17
(1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.	18 19
(2) The repeal of this Act does not, because of the operation of section 30 of the <i>Interpretation Act 1987</i> , affect any amendment made by this Act.	20 21

Schedule 1	Amendment of Road Transport (General) Act 2005	1
		2
	(Section 3)	3
[1]	Section 205 Immediate suspension of licence in certain circumstances	4
	Omit “or 22 (2)” from section 205 (1) (b). Insert instead “, 22 (2), 40 or 41 (2)”.	5
[2]	Section 206 Suspension of driving privileges of visiting driver	6
	Omit “or 22 (2)” from section 206 (2) (b).	7
	Insert instead “, 22 (2), 40 or 41 (2)”.	8
[3]	Part 5.5, Division 2, heading	9
	Insert “, wheel clamping ” after “ Detention ”.	10
[4]	Section 217 Definitions	11
	Insert in alphabetical order:	12
	<i>clamp</i> , in relation to a motor vehicle, means immobilise the motor vehicle by means of wheel clamps or by means of any other device prescribed by the regulations.	13
	<i>clamping agent</i> means the following:	14
	(a) the Commissioner,	15
	(b) a person or body appointed as a clamping agent under section 219C.	16
	Note. The Commissioner may delegate all or any of the functions conferred on the Commissioner under this Division on a police officer or police officers of a specified class—see section 123 (2) of this Act. Also see section 31 of the <i>Police Act 1990</i> .	17
	<i>crash test</i> means a test to measure the effect of the impact of a motor vehicle that collides with another vehicle or other object, or a pedestrian, that is conducted by a person or body designated by the Authority.	18
	<i>suspension warning notice</i> is defined in section 219B.	19
[5]	Section 218 Removal or production of vehicles used for certain offences for clamping, impounding or forfeiture	20
	Omit section 218 (1) (b). Insert instead:	21
	(b) is the subject of a period of clamping or impounding, or the subject of forfeiture, under section 219 or 219A,	22
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Schedule 1 Amendment of Road Transport (General) Act 2005

[6] Section 218 (1)	1
Omit “seize and take charge of the motor vehicle and cause it to be removed to a place determined by the Commissioner of Police”.	2 3
Insert instead “take any one or more of the actions specified in subsection (1A)”.	4 5
[7] Section 218 (1A)–(1D)	6
Insert after section 218 (1):	7
(1A) The police officer may do any one or more of the following:	8
(a) clamp the motor vehicle (if the police officer is a clamping agent) or cause the vehicle to be clamped by a clamping agent,	9 10 11
(b) seize and take charge of the motor vehicle and cause it to be removed to a place determined by the Commissioner,	12 13
(c) immediately, or as soon as practicable afterwards, give the driver, and (if the driver is not the registered operator of the motor vehicle) the registered operator, a notice requiring the driver or registered operator to remove or cause the vehicle to be removed to, or produce or cause the motor vehicle to be produced at, a place specified in the notice within 10 days after the notice is given (a <i>production notice</i>).	14 15 16 17 18 19 20 21
(1B) A production notice may be given personally or by post and must state the ground on which it is being given.	22 23
(1C) A motor vehicle may be clamped under subsection (1A) at:	24
(a) a road or public place, or	25
(b) any place under the control of or used for the purposes of clamping motor vehicles by a clamping agent, or	26 27
(c) the home address of the driver or registered operator.	28
Note. Home address is defined in section 3.	29
(1D) Subsection (1C) (c) does not confer power to enter any place that could not otherwise lawfully be entered.	30 31
[8] Section 218 (2)–(5)	32
Omit “subsection (1)” wherever occurring. Insert instead “subsection (1A)”.	33
[9] Section 218 (4)	34
Insert “, or produced at,” after “removed to”.	35

[10] Section 218 (6)	1
Omit “towing” wherever occurring. Insert instead “clamping or movement”.	2
[11] Section 218 (7)–(11)	3
Insert after section 218 (6):	4
(7) A driver or registered operator of a motor vehicle is guilty of an offence if:	5
(a) the driver or registered operator is given a production notice in relation to the motor vehicle, and	6
(b) without reasonable excuse, the driver or registered operator fails to remove the motor vehicle to or produce it at, or cause it to be removed to or produced at, the place specified in the notice within 10 days after being given the notice.	7
Maximum penalty: 20 penalty units.	8
(8) The Authority may suspend the registration of a registrable vehicle for a period not exceeding 3 months if the registered operator of the vehicle:	9
(a) is found guilty of an offence under subsection (7), or	10
(b) pays the whole or part of the amount specified in a penalty notice issued in respect of an offence under subsection (7), or in any process 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, or	11
(c) has not paid the amount so specified, has not elected to have the matter dealt with by a court and the time for electing to have the matter so dealt with has elapsed.	12
Note. Under this subsection, the Authority may suspend the registration of a vehicle even if the court does not proceed to conviction after finding the driver or registered operator guilty and makes an order under section 10 of the <i>Crimes (Sentencing Procedure) Act 1999</i> .	13
(9) Any suspension under subsection (8) is in addition to any penalty imposed by a court or prescribed by regulations under section 183 for the offence.	14
(10) The disposal of the motor vehicle within the period of 10 days after a production notice is given does not affect the requirement to produce the motor vehicle in accordance with the notice, except as provided by subsection (11).	15
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(11)	A production notice ceases to have effect in relation to a motor vehicle:	1 2
(a)	if it is withdrawn by the Commissioner by notice in writing given to the registered operator of the motor vehicle, or	3 4
(b)	if, after the notice is given, registration of the motor vehicle is transferred in good faith to another registered operator who, at the time of the transfer, had no notice of, or could not reasonably be expected to be aware that, the production notice had been given.	5 6 7 8 9
[12]	Sections 219–219G	10
	Omit section 219. Insert instead:	11
219	Impounding, clamping or forfeiture of vehicles on finding of guilt of driver who is a registered operator of the vehicle (cf former Act, s 40)	12 13 14
(1)	In this section: <i>offending operator</i> means an offender who, at the time of an offence in connection with which a motor vehicle was used, was both the driver, and a registered operator, of the motor vehicle.	15 16 17 18
(2)	A motor vehicle used in connection with an offence under section 40 or 41 (2) of the <i>Road Transport (Safety and Traffic Management) Act 1999</i> that is the first offence by the offending operator under the provision concerned is, by the finding of guilt by the court, liable to be impounded for a period of 3 months unless the court otherwise directs under subsection (3) or (5).	19 20 21 22 23 24
(3)	The court may, by order, direct that instead of being impounded the motor vehicle be clamped by a clamping agent at an appropriate place for a period of 3 months at a place specified in the order.	25 26 27 28
(4)	A motor vehicle used in connection with an offence under section 40 or 41 (2) of the <i>Road Transport (Safety and Traffic Management) Act 1999</i> that is a second or subsequent offence by the offending operator under the provision concerned is, by the finding of guilt by the court, forfeited to the Crown unless the court otherwise directs under subsection (5). Note. A forfeited motor vehicle may be crash tested—see section 227 (5).	29 30 31 32 33 34 35 36
(5)	The court may by order direct that a period of clamping or impounding imposed by this section be reduced or dispensed with, or that a forfeiture imposed by or under this section be commuted to a period of clamping or impounding specified in the	37 38 39 40

	order, if the court is satisfied that the clamping or impounding of the motor vehicle will cause extreme hardship to the offending operator or any other person.	1 2 3
(6)	For the purposes of subsection (5), difficulty in carrying out employment (whether paid or unpaid) or in travelling to a place of employment or business or to any place for the purposes of education, training or study does not constitute extreme hardship.	4 5 6 7
(7)	The period for which a motor vehicle was clamped or impounded under section 218 is to be reckoned as counting towards a period of clamping or impounding imposed by or under this section.	8 9 10
(8)	Any impounding, clamping 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, clamping or forfeiture is taken to be, or to be part of, that penalty.	11 12 13 14 15 16
219A	Impounding, clamping or forfeiture of vehicles on finding of guilt of driver who is not the registered operator of the vehicle	17 18
(1)	In this section: <i>offending driver</i> means an offender who, at the time of the offence, was the driver of a motor vehicle but was not a registered operator of the vehicle.	19 20 21 22
(2)	As soon as reasonably practicable after a motor vehicle is used for the first time in connection with an offence for which an offending driver is found guilty under section 40 or 41 (2) of the <i>Road Transport (Safety and Traffic Management) Act 1999</i> , the Authority is to give the registered operator of the motor vehicle a suspension warning notice in accordance with section 219B.	23 24 25 26 27 28
(3)	If a registered operator of a motor vehicle who was given a suspension warning notice is the registered operator of the same or another motor vehicle that is used in connection with a second offence under section 40 or 41 (2) of the <i>Road Transport (Safety and Traffic Management) Act 1999</i> for which an offending driver is found guilty during the period of 5 years after the suspension warning notice was given to the registered operator:	29 30 31 32 33 34 35
(a)	the Authority may suspend the registration of the motor vehicle used in connection with the second offence for a period not exceeding 3 months, or	36 37 38
(b)	if the motor vehicle is unregistered, registration of the vehicle is suspended or the expiry date of the registration is within 28 days after a person is found guilty of the	39 40 41

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Schedule 1 Amendment of Road Transport (General) Act 2005

- offence concerned, the Commissioner is to cause the vehicle to be clamped by a clamping agent at an appropriate place or impounded for a period of 3 months. 1
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- (4) If the registered operator of a motor vehicle who was given a suspension warning notice is the registered operator of the same or another motor vehicle used in connection with an offence under section 40 or 41 (2) of the *Road Transport (Safety and Traffic Management) Act 1999* that is a third or subsequent offence under either of those provisions for which an offending driver is found guilty in the period of 5 years after the suspension warning notice was given, the motor vehicle used in connection with the third or subsequent offence is, by the finding of guilt by the court, forfeited to the Crown, unless the court otherwise directs under subsection (5). 4
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- Note.** A forfeited motor vehicle may be crash tested—see section 227 (5). 15
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- (5) The court may by order direct that a forfeiture imposed by this section be dispensed with or commuted to a period of clamping or impounding specified in the order if the court is satisfied that the forfeiture of the motor vehicle will cause extreme hardship to the offending driver or any other person. 17
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- (6) The period for which a motor vehicle was clamped or impounded under section 218 is to be reckoned as counting towards a period of clamping or impounding imposed by or under this section. 22
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- (7) Subsections (2), (3) and (4) do not operate in respect of a motor vehicle if the Authority, Commissioner or court (as the case requires) is satisfied that the vehicle was at the relevant time a stolen vehicle or a vehicle illegally taken or used. 25
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- (8) Subsections (3) and (4) operate in respect of a motor vehicle used in connection with an offence under section 40 or 41 (2) of the *Road Transport (Safety and Traffic Management) Act 1999* even if, at the time of the offence, there is more than one registered operator for that motor vehicle and one or more of those registered operators were not given the suspension warning notice concerned. 29
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- (9) If the registration of a motor vehicle expires during a period of suspension under this section, the registration is taken to be suspended during the unexpired portion of the suspension period for the purposes of any offence provision under any law in relation to operating a motor vehicle while its registration is suspended. 36
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219B	Suspension warning notices	1
(1)	A <i>suspension warning notice</i> is a written notice warning a registered operator of a motor vehicle that was used in connection with an offence under either of the provisions referred to in section 219A (2) that, if the registered operator is the registered operator of the same or another motor vehicle that is used in connection with any further offence under either of those provisions, the Authority may suspend registration of the motor vehicle used in connection with the further offence, or the Commissioner may take other action, under section 219A (3) in respect of the motor vehicle.	2 3 4 5 6 7 8 9 10 11
(2)	A suspension warning notice has effect for a period of 5 years after it is given, unless it sooner ceases to have effect under this Division.	12 13 14
(3)	A suspension warning notice ceases to have effect if it is withdrawn by the Authority by notice in writing given to the registered operator concerned.	15 16 17
(4)	The Authority must withdraw a suspension warning notice if it is satisfied that at the time the motor vehicle was used in connection with the offence concerned it was a stolen vehicle or a vehicle illegally taken or used.	18 19 20 21
219C	Clamping agents	22
(1)	The Commissioner may, by instrument in writing, appoint a person (other than a police officer) or body to be a clamping agent for the purposes of this Division. Note. The Commissioner is also a clamping agent.	23 24 25 26
(2)	A clamping agent has the functions conferred on clamping agents by or under this Division.	27 28
(3)	The functions of a clamping agent may be exercised by any employee or agent of the clamping agent authorised to do so by the clamping agent.	29 30 31
(4)	The Commissioner may, by instrument in writing, restrict the functions that a clamping agent may exercise, including (for example) by limiting the places, or manner or circumstances, in which the clamping agent may exercise any functions conferred. Note. The Commissioner may, for example, limit the power to clamp to a specified part of NSW or for a specified period only.	32 33 34 35 36 37

219D	Identification of clamping agents	1
(1)	The Commissioner may issue a clamping agent appointed under section 219C, or an employee or agent of a clamping agent authorised to exercise the functions of the clamping agent, with an identification card.	2 3 4 5
(2)	The identification card must:	6
(a)	contain a photograph of the person to whom it is issued and the person's name and signature, and	7 8
(b)	identify the person as a clamping agent.	9
(3)	A clamping agent (other than a police officer in uniform) who is exercising or about to exercise a function with respect to the clamping of a motor vehicle is required to comply with a request to identify himself or herself by producing his or her identification card.	10 11 12 13 14
219E	Return of identification cards	15
(1)	A person is guilty of an offence if:	16
(a)	the Commissioner has issued an identification card to the person, and	17 18
(b)	the person was, but has stopped being, a clamping agent or an employee or agent of a clamping agent, and	19 20
(c)	the Commissioner has requested the person to return the card to the Commissioner within a specified period, and	21 22
(d)	the person does not return the card during the period.	23
	Maximum penalty: 20 penalty units.	24
(2)	Subsection (1) does not apply if the person has a reasonable excuse.	25 26
(3)	The onus of proof of reasonable excuse in proceedings for an offence under this section lies on the defendant.	27 28
219F	Fees for clamping of motor vehicles	29
(1)	If a court directs that a motor vehicle be clamped under section 219, the offending operator must pay the Commissioner, or a clamping agent nominated by the Commissioner for the purposes of this subsection, a fee determined in accordance with the regulations with respect to the clamping of the vehicle.	30 31 32 33 34
(2)	If the Commissioner causes a motor vehicle to be clamped under section 219A, the registered operator must pay the Commissioner, or a clamping agent nominated by the Commissioner for the purposes of this subsection, a fee	35 36 37 38

	determined in accordance with the regulations for the clamping of the vehicle.	1 2
(3)	If the whole or any part of the fee is not paid, the court may, on application by the Commissioner or the clamping agent nominated by the Commissioner concerned, order that the motor vehicle be impounded for a period of 3 months or be forfeited to the Crown.	3 4 5 6 7
	Note. An impounded or forfeited motor vehicle may be sold under section 227.	8 9
219G	Offence relating to wheel clamping	10
(1)	A person must not, except in accordance with this Division, tamper with, modify or remove a wheel clamp or any other device used to immobilise a motor vehicle during a period of clamping imposed under this Division. Maximum penalty: 20 penalty units.	11 12 13 14 15
(2)	It is a defence to a prosecution under subsection (1) if the defendant establishes that the wheel clamp or other device was tampered with, modified or removed:	16 17 18
	(a) from a motor vehicle that was obstructing access to any property and that it was necessary to move the motor vehicle to protect any person or property from a risk of imminent harm, or	19 20 21 22
	(b) to protect the motor vehicle from a risk of imminent harm.	23
	Note. For example, if an immobilised motor vehicle is located outside a burning house, emergency service personnel may move it if necessary to gain access to the property or to ensure the safety of the vehicle.	24 25 26 27
[13]	Section 220 Registered operator and interested persons to be notified	28
	Omit “impounding” from section 220 (1) (a) and (b) wherever occurring.	29
	Insert instead “clamping or impounding”.	30
[14]	Section 220 (1A)	31
	Insert after section 220 (1):	32
(1A)	The Commissioner is to give the holder of any registered interest in a motor vehicle notice of:	33 34
	(a) the giving of a production notice in relation to the motor vehicle under section 218, and	35 36

Road Transport Legislation Amendment (Car Hoons) Bill 2008

Schedule 1 Amendment of Road Transport (General) Act 2005

	(b) the clamping or impounding, or continued or further clamping or impounding, or forfeiture of a motor vehicle under section 219A.	1 2 3
[15]	Section 220 (3)	4
	Omit “stands impounded or forfeit”.	5
	Insert instead “is clamped or impounded or has been forfeited”.	6
[16]	Section 221 Retention of motor vehicle impounded, and period of clamping, under section 218	7 8
	Insert after section 221 (1):	9
	(1A) A motor vehicle clamped under section 218 is to remain clamped until the offence for which it was clamped is dealt with by a court or by the offender under Part 5.3, unless it is sooner released under this Division or in accordance with the regulations.	10 11 12 13
[17]	Section 221 (2)	14
	Insert “or clamped” after “retained”.	15
[18]	Section 221 (3)	16
	Insert “or clamped” after “impounded”.	17
[19]	Section 223 Release of impounded vehicle or removal of clamps	18
	Omit section 223 (1) and (2). Insert instead:	19
	(1) Subject to section 219G (2), the clamping agent responsible for the clamping of a motor vehicle must remove the clamps from the motor vehicle at the end of the period of clamping imposed under this Division and, if the vehicle is clamped at a place under the control of or used for the purpose of clamping motor vehicles by the clamping agent, make the motor vehicle available for collection by a person entitled to possession of it as soon as the clamps are removed.	20 21 22 23 24 25 26 27
[20]	Section 224 Release of motor vehicle on application to Local Court	28
	Insert “or for the removal of clamps from a motor vehicle” after “custody” in section 224 (1).	29 30
[21]	Section 224 (3)–(4A)	31
	Omit section 224 (3) and (4). Insert instead:	32
	(3) In determining whether to make an order under this section the Local Court is entitled to have regard to the following:	33 34

(a)	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,	1 2 3 4
(b)	any alleged extreme hardship or other circumstances of the case.	5 6
(4)	Despite subsection (3), the Local Court is not to have regard to any alleged extreme hardship arising from the difficulty of carrying out employment (whether paid or unpaid) or of travelling to a place of employment or business or to any place for the purposes of education, training or study if the application relates to release of a motor vehicle that was clamped or impounded under section 219.	7 8 9 10 11 12 13
(4A)	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 section 219A if it is satisfied:	14 15 16
(a)	that the registered operator did not consent to the driver concerned using the vehicle, and	17 18
(b)	the registered operator had taken all reasonable steps to prevent any person using the vehicle without the consent of the registered operator.	19 20 21
[22]	Section 225 Safe keeping of motor vehicles	22
	Insert “(otherwise than by crash testing under this Division)” after “damage”.	23
[23]	Section 225 (2)	24
	Insert at the end of section 225:	25
(2)	Subsection (1) does not apply in the case of theft or damage to a motor vehicle that is clamped under this Division. However, the Commissioner (and any clamping agent) must ensure that all reasonable steps are taken to ensure as little damage as possible is caused to the vehicle by the installation or removal of clamps.	26 27 28 29 30
[24]	Section 225A	31
	Insert after section 225:	32
225A	Protection from liability with respect to clamping, impounding and crash testing	33 34
	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,	35 36 37

	or arising from clamping, impounding or crash testing a motor vehicle in accordance with this Division.	1 2
[25]	Section 227 Disposal and crash testing of vehicles	3
	Insert after section 227 (4):	4
	(5) At the request of the Authority, the Commissioner may dispose of a motor vehicle that is the subject of forfeiture under section 219 (4) or 219A (4) by releasing it to the Authority to be used for the purposes of crash testing and any educational program for drivers of motor vehicles established by the Authority.	5 6 7 8 9
	(6) The Authority may cause any motor vehicle released to it to be used for the purposes of crash testing and any educational program for drivers of motor vehicles established by the Authority.	10 11 12 13
[26]	Schedule 1 Savings, transitional and other provisions	14
	Insert at the end of clause 1 (1):	15
	<i>Road Transport Legislation Amendment (Car Hoons) Act 2008</i> , to the extent that it amends this Act	16 17
[27]	Schedule 1	18
	Insert after Part 5:	19
	Part 6 Provisions consequent on enactment of Road Transport Legislation Amendment (Car Hoons) Act 2008	20 21 22
13	Definition	23
	In this Part:	24
	<i>amending Act</i> means the <i>Road Transport Legislation Amendment (Car Hoons) Act 2008</i> .	25 26
14	Impounding, forfeiture, clamping and other penalties for certain speeding and other dangerous driving offences	27 28
	(1) An amendment made to section 218 by the amending Act does not apply to or in respect of a motor vehicle seized under section 218 as in force immediately before the commencement of the amendment.	29 30 31 32
	(2) Sections 219 and 219A, as substituted and inserted, respectively, by the amending Act, apply to and in respect of a motor vehicle used in connection with an offence under section 40 or 41 (2) of	33 34 35

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- the *Road Transport (Safety and Traffic Management) Act 1999* 1
that is committed on or after the insertion of those sections. 2
- (3) However, if a motor vehicle was used in connection with an 3
offence under section 40 or 41 (2) of the *Road Transport (Safety 4*
and Traffic Management) Act 1999 for which a person was found 5
guilty before the substitution of section 219, that finding may be 6
taken into account in deciding whether the motor vehicle has 7
been used in connection with a second or subsequent such 8
offence for the purposes of determining any penalty that may be 9
imposed by a court or the Authority under section 219. 10

Schedule 2	Amendment of Road Transport (Safety and Traffic Management) Act 1999	1
		2
	(Section 4)	3
[1] Section 40 Races, attempts on speed records and other speed trials		4
Omit “Maximum penalty: 20 penalty units.” from section 40 (1).		5
Insert instead:		6
Maximum penalty: 30 penalty units (in the case of a first offence)		7
or 30 penalty units or imprisonment for 9 months or both (in the		8
case of a second or subsequent offence).		9
[2] Section 40 (2), Note		10
Omit “Section 48 (1) of the <i>Road Transport (General) Act 1999</i> ”.		11
Insert instead “Section 241 of the <i>Road Transport (General) Act 2005</i> ”.		12
[3] Section 40 (4), Note		13
Omit “Section 26 of the <i>Road Transport (General) Act 1999</i> ”.		14
Insert instead “Section 189 of the <i>Road Transport (General) Act 2005</i> ”.		15
[4] Section 41 Conduct associated with road and drag racing and other activities		16
		17
Omit “Maximum penalty: 5 penalty units” from section 41 (1).		18
Insert instead “Maximum penalty: 10 penalty units”.		19
[5] Section 41 (2)		20
Omit the subsection. Insert instead:		21
(2) A person must not:		22
(a) operate a motor vehicle contrary to subsection (1) knowing		23
that any petrol, oil, diesel fuel or other inflammable liquid		24
has been placed on the surface of the road or road related		25
area beneath one or more tyres of the vehicle, or		26
(b) do, or omit to do, any other thing that prolongs, sustains,		27
intensifies or increases loss of traction as referred to in		28
subsection (1), or		29
(c) repeatedly operate a motor vehicle contrary to subsection		30
(1), or		31
(d) operate a motor vehicle contrary to subsection (1) at a		32
time, or on a road or road related area in a place, knowing		33
that there is an appreciable risk that operation of the		34

vehicle in that manner at that time and place is likely to interfere with the amenity of the locality or the peaceful enjoyment of any person in the locality or make the place unsafe for any person in the locality, or	1 2 3 4
(e) willingly participate in any group activity involving the operation of one or more vehicles contrary to subsection (1), or	5 6 7
(f) organise, promote or urge any person to participate in, or view, any group activity involving the operation of one or more vehicles contrary to subsection (1), or	8 9 10
(g) photograph or film a motor vehicle being operated contrary to subsection (1) for the purpose of organising or promoting the participation of persons in any such group activity.	11 12 13 14
Maximum penalty: 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).	15 16 17
[6] Section 41 (6)–(8)	18
Insert after section 41 (5):	19
(6) In considering whether an offence has been committed under subsection (2) (d), the court is to have regard to all the circumstances of the case, including the following:	20 21 22
(a) the nature and use of the road or road related area in which the offence is alleged to have been committed,	23 24
(b) the nature and use of any premises in the locality of the road or road related area in which the offence is alleged to have been committed.	25 26 27
(7) A person who is convicted by a court of an offence under subsection (2) (a), (b), (c) or (d) in relation to a motor vehicle is disqualified from holding a driver licence by the conviction and without any specific order of the court for 12 months.	28 29 30 31
(8) Any disqualification under this section is in addition to any penalty imposed for the offence.	32 33

Schedule 3	Other amendments	1
	(Section 5)	2
3.1	Local Government Act 1993 No 30	3
	Section 651B Immobilisation of vehicles	4
	Insert at the end of section 651B (2):	5
	, or	6
	(d) under Division 2 of Part 5.5 of the <i>Road Transport (General) Act 2005</i> .	7 8
3.2	Road Transport (Driver Licensing) Regulation 1999	9
	Schedule 2 Additional demerit point offences	10
	Omit the matter relating to section 41 (2) of the <i>Road Transport (Safety and Traffic Management) Act 1999</i> from Columns 1, 2, 3 and 4.	11 12
3.3	Road Transport (General) Regulation 2005	13
[1]	Clause 15 Appeals against certain registration decisions	14
	Insert after clause 15 (1) (e):	15
	(f) a decision of the Authority to suspend the registration of, or to crash test, a registrable vehicle under Division 2 of Part 5.5 of the Act.	16 17 18
[2]	Clause 16 Determination of appeals against certain registration decisions	19 20
	Insert after clause 16 (3):	21
	(4) Despite clause 16 (2), the Court may, in determining an appeal against the suspension of registration of a motor vehicle under section 219A of the Act, take into account whether or not the registered operator of the motor vehicle:	22 23 24 25
	(a) knew, or could reasonably be expected to have known, that the motor vehicle had been used or was likely to be used in connection with an offence under section 40 or 41 (2) of the <i>Road Transport (Safety and Traffic Management) Act 1999</i> , or	26 27 28 29 30
	(b) knew, or could reasonably be expected to have known, that a suspension warning notice had been given in respect of the vehicle, or	31 32 33

(c)	had consented to the use of the vehicle or had taken all reasonable steps to prevent any person using the vehicle without consent.	1 2 3
[3]	Clause 38 Disposal of impounded vehicles or vehicles forfeited to the Crown	4 5
	Omit “or 219” from clause 38 (1). Insert instead “, 219 or 219A”.	6
[4]	Clause 38 (2)	7
	Insert “or 219A” after “section 219”.	8
[5]	Clause 38 (3)	9
	Omit “under section 223 of the Act remains undetermined by the Commissioner or while any application under section 224”.	10 11
	Insert instead “under section 224 of the Act”.	12
[6]	Clause 38 (6)	13
	Insert after clause 38 (5):	14
	(6) A clamping agent is 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 section 219F of the Act.	15 16 17 18
[7]	Schedule 3 Penalty notice offences	19
	Insert in appropriate order in Columns 1, 2 and 3 of the matter relating to the <i>Road Transport (General) Act 2005</i> :	20 21
	Section 218 (7) Class 1 Level 13	
[8]	Schedule 3	22
	Omit the matter relating to section 41 (2) of the <i>Road Transport (Safety and Traffic Management) Act 1999</i> from Columns 1, 2 and 3.	23 24
3.4	Road Transport (Vehicle Registration) Regulation 2007	25
[1]	Clause 14 Maintenance of the Registers	26
	Insert after clause 14 (2):	27
	(2A) Use of vehicle in connection with offences	28
	The Authority must record the following in the Register or another register kept by the Authority:	29 30

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Schedule 3 Other amendments

(a)	each use of the vehicle in connection with an offence in respect of which a court finds a person guilty under section 40 or 41 (2) of the <i>Road Transport (Safety and Traffic Management) Act 1999</i> ,	1 2 3 4
(b)	details of any suspension warning notice given under section 219A of the <i>Road Transport (General) Act 2005</i> ,	5 6
(c)	details of any finding of guilt under section 218 (7) of the <i>Road Transport (General) Act 2005</i> .	7 8
[2]	Clause 14 (6)	9
	Insert “or other register kept under subclause (2A)” after “Register” wherever occurring.	10 11
[3]	Clause 41 Suspension or cancellation of registration by Authority	12
	Insert at the end of clause 41 (1) (l):	13
	, or	14
	(m) the vehicle is clamped under Division 2 of Part 5.5 of the <i>Road Transport (General) Act 2005</i> .	15 16
[4]	Clause 41	17
	Insert at the end of clause 41 (1):	18
	Note. The Authority may also suspend the registration of a registrable vehicle under section 218 of the <i>Road Transport (General) Act 2005</i> .	19 20