

Road Obstructions (Special Provisions) Act 1979 No 9

[1979-9]



New South Wales

Status Information

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Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Does not include amendments by**
Miscellaneous Acts (Local Court) Amendment Act 2007 No 94 (not commenced)

Authorisation

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Road Obstructions (Special Provisions) Act 1979 No 9



New South Wales

An Act with respect to the removal from public roads of motor vehicles causing obstruction.

1 Name of Act

This Act may be cited as the *Road Obstructions (Special Provisions) Act 1979*.

2 Commencement

- (1) This section and section 1 shall commence on the date of assent to this Act.
- (2) Except as provided in subsection (1), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

2A Operation of Act

- (1) The road obstruction powers under this Act may be exercised only during a period specified in an order in force under subsection (2).
- (2) The Governor, by order published in the Gazette, may, from time to time, declare that the road obstruction powers under this Act may be exercised during such period (not exceeding 3 months) as is specified in the order.
- (3) Any period so specified in an order is to commence on the date of publication of the order or such later date as is specified in the order.
- (4) In this section, **the road obstruction powers under this Act** means the powers conferred on the Commissioner or an authorised officer by sections 4 (1), 5 (1) and 5 (3).

3 Definitions

- (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires:

authorised officer means a member of the police force who is of or above the rank

of sergeant or who is for the time being in charge of a police station.

Commissioner means Commissioner of Police.

motor vehicle means a motor vehicle or trailer within the meaning of the *Road Transport (General) Act 2005*.

owner, in relation to a motor vehicle, means:

- (a) any person who is the owner or joint owner or part owner thereof,
- (b) any person who has the use thereof under a hiring or hire-purchase agreement, or
- (c) any person in whose name the vehicle is registered under the *Road Transport (Vehicle Registration) Act 1997*, or under any legislation providing for the registration of motor vehicles of any State or Territory of the Commonwealth,

but does not include any unpaid vendor of the vehicle under a hire-purchase agreement.

public road means a road or road related area within the meaning of the *Road Transport (General) Act 2005* (other than a road that is the subject of a declaration made under section 15 (1) (b) of that Act relating to all of the provisions of that Act).

regulations means regulations under this Act.

- (2) A reference in this Act to a motor vehicle includes a reference to any goods on the motor vehicle.

4 Penalty for not moving a motor vehicle obstructing a public road

- (1) Where the Commissioner or any authorised officer is of the opinion that any motor vehicle is on a public road and ought to be moved in order to prevent it obstructing or continuing to obstruct a public road, the Commissioner or authorised officer may cause to be affixed to a conspicuous part of the motor vehicle a notice in or to the effect of the form contained in Schedule 1 containing such directions relating to the movement of the vehicle within such time as the Commissioner or authorised officer, as the case may be, thinks fit.
- (2) Where a notice is affixed to a motor vehicle in accordance with subsection (1):
 - (a) the person who last drove the motor vehicle before the notice was affixed to it shall forthwith move the vehicle in accordance with the directions contained, and within the time specified, in the notice, and
 - (b) the person shall not, before the directions contained in the notice have been complied with, do anything to render the motor vehicle immobile.
- (3) A person who contravenes subsection (2) is guilty of an offence and liable to a fine not

exceeding 10 penalty units.

- (4) Where a person is convicted of an offence under subsection (3), the person is by the conviction, disqualified from holding any driver licence under the *Road Transport (Driver Licensing) Act 1998*, or the regulations thereunder, for a period of 1 month, but may be disqualified by the court by which the person is convicted for such longer period, not exceeding 3 years, as may be ordered by that court.
- (5) Where an offence in relation to any motor vehicle is committed under subsection (3) by any person (whether or not the person has been convicted of the offence), the owner of the motor vehicle is guilty of an offence and liable to a penalty not exceeding 10 penalty units.
- (6) Where a person is convicted of an offence under subsection (3) or (5), the court may, in addition to imposing the penalty provided by either of those subsections, make an order for the forfeiture to the Crown of the motor vehicle in respect of which the offence was committed if the notice, referred to in the information for the offence, was affixed to the motor vehicle within 3 months after another notice was affixed to the motor vehicle in accordance with subsection (1).
- (7) An offence referred to in subsection (3) is an offence of absolute liability.

5 Removal of a motor vehicle obstructing a public road

- (1) Where a motor vehicle to which a notice is affixed in accordance with section 4 (1) is not moved in accordance with the directions contained, and within the time specified, in the notice, the Commissioner or that authorised officer may seize and take charge of the motor vehicle and cause it or any part of it:
 - (a) to be moved to such place as may be determined by the Commissioner or authorised officer, as the case may be, or
 - (b) to be modified, dismantled, unloaded, interfered with or replaced in any manner considered necessary by the Commissioner or authorised officer to enable the motor vehicle or any part thereof to be moved to such place as may be so determined,or may cause any combination of those things to be done or, where the Commissioner or authorised officer is of the opinion that it is not practicable to do any of those things, may cause the motor vehicle or any part of it to be destroyed.
- (2) For the purpose of exercising the powers conferred by subsection (1), the Commissioner or an authorised officer may take possession of any land, whether or not it is privately owned.
- (3) Any motor vehicle or part of a motor vehicle moved 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 or an authorised officer.

- (4) A motor vehicle that may be moved under subsection (1) or (3) may be moved by its being driven, whether or not under power, by its being towed or pushed, whether forwards, backwards or in any other direction, or in any other manner whatsoever.
- (5) A person who obstructs, hinders, assaults or resists another person engaged in doing any thing pursuant to the purported exercise of the powers conferred on the Commissioner or an authorised officer by subsection (1) or pursuant to subsection (3) is guilty of an offence and liable to imprisonment for a term not exceeding 6 months.

6 Liability under other Acts etc not affected

Nothing in this Act affects the liability of any person for an offence under any other Act or any regulation, by-law or ordinance.

7 Exculpation of Crown, Commissioner, authorised officers and other persons

Where any thing is done pursuant to the purported exercise of the powers conferred on the Commissioner or an authorised officer by section 5 (1) or pursuant to section 5 (3), the Crown, the Commissioner, any authorised officer or any person engaged in the doing of any thing pursuant to the purported exercise of those powers or pursuant to section 5 (3) is not, subject to the regulations, liable:

- (a) in respect of any damage, howsoever caused and whether or not due to negligence, to the motor vehicle in respect of which those powers purported to be exercised, or
- (b) in respect of any loss or damage of any kind suffered by any person in respect of the loss of the use of the motor vehicle.

8 Costs and expenses recoverable by Minister

Where the Commissioner or an authorised officer causes anything to be done pursuant to section 5 (1) or (3) in relation to a motor vehicle, the Minister may in any court of competent jurisdiction recover, as a debt due to the Crown by the owner of that motor vehicle, any amount certified (which certificate is admissible in any proceedings and is conclusive of the matters certified in and by the certificate) by the Commissioner to be:

- (a) costs and expenses incurred by the Commissioner or the authorised officer, as the case may be, in respect of the doing of that thing, and
- (b) an amount for which the Commissioner, the authorised officer or any person engaged in the doing of any such thing is liable, whether by reason of his or her negligence or otherwise.

9 Proceedings

Proceedings for an offence under this Act may be taken before a Local Court constituted

by a Magistrate sitting alone.

10 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed for carrying out or giving effect to this Act and, in particular, for or with respect to:
 - (a) the release of any motor vehicle or part of a motor vehicle impounded under this Act,
 - (b) the moving of any motor vehicle or part of a motor vehicle for the purposes of this Act,
 - (c) the disposal, whether by way of sale, destruction or otherwise, of any motor vehicle or part of a motor vehicle impounded under this Act, and
 - (d) the payment of compensation to any person where goods are damaged by virtue of the exercise of any powers pursuant to this Act or any person having an interest in any land of which possession is taken under section 5 (2).
- (2) A provision of a regulation may:
 - (a) apply generally or be limited in its application by reference to specified exceptions or factors,
 - (b) apply differently according to different factors of a specified kind,
 - (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body, or
 - (d) impose a penalty not exceeding 5 penalty units for any breach of the regulations, or may do any combination of those things.
- (3) Notwithstanding section 39 of the *Interpretation Act 1987*, a regulation shall, if expressed to do so, take effect from any date specified in the regulation that is the date of, or a date that is after, the date appointed and notified under section 2 (2), but nothing in this subsection shall cause any person to be guilty of any offence by reason of any act or omission occurring before the date on which the regulation is published in the Gazette.

11 Savings and transitional provisions

Schedule 2 has effect.

Schedule 1 Form

(Section 4)

Road Obstructions (Special Provisions) Act 1979

The person who last drove this motor vehicle:

(a) must forthwith move it in accordance with the following directions:

* Here insert directions
for the movement of the
motor vehicle.

(b) must not render the motor vehicle immobile.

The maximum penalty for failing to do so is a fine of 10 penalty units (that is, \$1,100). The offender will also be disqualified from driving any motor vehicle for at least 1 month or for up to 3 years. The owner of the motor vehicle will also be liable to a maximum fine of 10 penalty units (that is, \$1,100).

If another notice under section 4 of the *Road Obstructions (Special Provisions) Act 1979* has been affixed within 3 months before this notice was affixed, in addition to those penalties, this motor vehicle is liable to be forfeited to the Crown.

Schedule 2 Savings and transitional provisions

(Section 11)

1 Regulations

(1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

Traffic Legislation Amendment Act 1997, but only in relation to the amendments made to this Act

(2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.

(3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or

(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.