

# Road Transport Legislation Amendment (Car Hoons) Act 2008 No 4

[2008-4]



New South Wales

## Status Information

### Currency of version

Historical version for 19 March 2008 to 30 June 2008 (accessed 1 July 2024 at 0:31)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

Some, but not all, of the provisions displayed in this version of the legislation have commenced.

### Notes—

- **See also**  
[Statute Law \(Miscellaneous Provisions\) Bill 2008](#)
- **Note**  
The Act is to be repealed by sec 6 (1) of this Act on the day following the day on which all of the provisions of this Act have commenced.

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 6 June 2008

# Road Transport Legislation Amendment (Car Hoons) Act 2008 No 4



New South Wales

## Contents

<b>Long title</b> .....	3
1 Name of Act .....	3
2 Commencement .....	3
3 Amendment of Road Transport (General) Act 2005 No 11 .....	3
4 Amendment of Road Transport (Safety and Traffic Management) Act 1999 No 20 .....	3
5 Other amendments .....	3
6 Repeal of Act .....	3
<b>Schedule 1 Amendment of Road Transport (General) Act 2005</b> .....	4
<b>Schedule 2 Amendment of Road Transport (Safety and Traffic Management) Act 1999</b> .....	15
<b>Schedule 3 Other amendments</b> .....	17

# Road Transport Legislation Amendment (Car Hoons) Act 2008 No 4



New South Wales

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.

## 1 Name of Act

This Act is the *Road Transport Legislation Amendment (Car Hoons) Act 2008*.

## 2 Commencement

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

## 3 Amendment of *Road Transport (General) Act 2005 No 11*

The *Road Transport (General) Act 2005* is amended as set out in Schedule 1.

## 4 Amendment of *Road Transport (Safety and Traffic Management) Act 1999 No 20*

The *Road Transport (Safety and Traffic Management) Act 1999* is amended as set out in Schedule 2.

## 5 Other amendments

The Act and regulations specified in Schedule 3 are amended as set out in that Schedule.

## 6 Repeal of Act

- (1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.
- (2) The repeal of this Act does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by this Act.

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

(Section 3)

### [1] Section 205 Immediate suspension of licence in certain circumstances

Omit “or 22 (2)” from section 205 (1) (b). Insert instead “, 22 (2), 40 or 41 (2)”.

### [2] Section 206 Suspension of driving privileges of visiting driver

Omit “or 22 (2)” from section 206 (2) (b).

Insert instead “, 22 (2), 40 or 41 (2)”.

### [3] Part 5.5, Division 2, heading

Insert “, wheel clamping” after “Detention”.

### [4] Section 217 Definitions

Insert in alphabetical order:

**clamp**, 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.

**clamping agent** means the following:

- (a) the Commissioner,
- (b) a person or body appointed as a clamping agent under section 219C.

**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 *Police Act 1990*.

**crash test** 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.

**suspension warning notice** is defined in section 219B.

### [5] Section 218 Removal or production of vehicles used for certain offences for clamping, impounding or forfeiture

Omit section 218 (1) (b). Insert instead:

- (b) is the subject of a period of clamping or impounding, or the subject of forfeiture, under section 219 or 219A,

**[6] Section 218 (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”.

Insert instead “take any one or more of the actions specified in subsection (1A)”.

**[7] Section 218 (1A)-(1D)**

Insert after section 218 (1):

(1A) The police officer may do any one or more of the following:

- (a) clamp the motor vehicle (if the police officer is a clamping agent) or cause the vehicle to be clamped by a clamping agent,
- (b) seize and take charge of the motor vehicle and cause it to be removed to a place determined by the Commissioner,
- (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 **production notice**).

(1B) A production notice may be given personally or by post and must state the ground on which it is being given.

(1C) A motor vehicle may be clamped under subsection (1A) at:

- (a) a road or public place, or
- (b) any place under the control of or used for the purposes of clamping motor vehicles by a clamping agent, or
- (c) the home address of the driver or registered operator.

**Note—**

**Home address** is defined in section 3.

(1D) Subsection (1C) (c) does not confer power to enter any place that could not otherwise lawfully be entered.

**[8] Section 218 (2)-(5)**

Omit “subsection (1)” wherever occurring. Insert instead “subsection (1A)”.

**[9] Section 218 (4)**

Insert “, or produced at,” after “removed to”.

**[10] Section 218 (6)**

Omit “towing” wherever occurring. Insert instead “clamping or movement”.

**[11] Section 218 (7)-(11)**

Insert after section 218 (6):

- (7) A driver or registered operator of a motor vehicle is guilty of an offence if:
- (a) the driver or registered operator is given a production notice in relation to the motor vehicle, and
  - (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.

Maximum penalty: 20 penalty units.

- (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:
- (a) is found guilty of an offence under subsection (7), or
  - (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
  - (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.

**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 *Crimes (Sentencing Procedure) Act 1999*.

- (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.
- (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).

- (11) A production notice ceases to have effect in relation to a motor vehicle:
- (a) if it is withdrawn by the Commissioner by notice in writing given to the registered operator of the motor vehicle, or
  - (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.

**[12] Sections 219-219G**

Omit section 219. Insert instead:

**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)

(1) In this section:

**offending operator** 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.

- (2) 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* 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).
- (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.
- (4) 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* 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).

- (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 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.

- (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.
- (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) 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.

### **219A Impounding, clamping or forfeiture of vehicles on finding of guilt of driver who is not the registered operator of the vehicle**

- (1) In this section:

***offending driver*** 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.

- (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 *Road Transport (Safety and Traffic Management) Act 1999*, the Authority is to give the registered operator of the motor vehicle a suspension warning notice in accordance with section 219B.
- (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 *Road Transport (Safety and Traffic Management) Act 1999* 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:
  - (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
  - (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 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.



- (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).

**Note—**

A forfeited motor vehicle may be crash tested—see section 227 (5).

- (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.
- (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.
- (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.
- (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.
- (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.

## **219B Suspension warning notices**

- (1) A **suspension warning notice** 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) 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.
- (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.
- (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.

### **219C Clamping agents**

- (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.

- (2) A clamping agent has the functions conferred on clamping agents by or under this Division.
- (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.
- (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.

### **219D Identification of clamping agents**

- (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) The identification card must:
  - (a) contain a photograph of the person to whom it is issued and the person's name and signature, and
  - (b) identify the person as a clamping agent.

- (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.

### **219E Return of identification cards**

- (1) A person is guilty of an offence if:
  - (a) the Commissioner has issued an identification card to the person, and
  - (b) the person was, but has stopped being, a clamping agent or an employee or agent of a clamping agent, and
  - (c) the Commissioner has requested the person to return the card to the Commissioner within a specified period, and
  - (d) the person does not return the card during the period.

Maximum penalty: 20 penalty units.

- (2) Subsection (1) does not apply if the person has a reasonable excuse.
- (3) The onus of proof of reasonable excuse in proceedings for an offence under this section lies on the defendant.

### **219F Fees for clamping of motor vehicles**

- (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.
- (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 determined in accordance with the regulations for the clamping of the vehicle.
- (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.

#### **Note—**

An impounded or forfeited motor vehicle may be sold under section 227.

### **219G Offence relating to wheel clamping**

- (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.

(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:

(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

(b) to protect the motor vehicle from a risk of imminent harm.

**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.

**[13] Section 220 Registered operator and interested persons to be notified**

Omit “impounding” from section 220 (1) (a) and (b) wherever occurring.

Insert instead “clamping or impounding”.

**[14] Section 220 (1A)**

Insert after section 220 (1):

(1A) The Commissioner is to give the holder of any registered interest in a motor vehicle notice of:

(a) the giving of a production notice in relation to the motor vehicle under section 218, and

(b) the clamping or impounding, or continued or further clamping or impounding, or forfeiture of a motor vehicle under section 219A.

**[15] Section 220 (3)**

Omit “stands impounded or forfeit”.

Insert instead “is clamped or impounded or has been forfeited”.

**[16] Section 221 Retention of motor vehicle impounded, and period of clamping, under section 218**

Insert after section 221 (1):

(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.

**[17] Section 221 (2)**

Insert “or clamped” after “retained”.

**[18] Section 221 (3)**

Insert “or clamped” after “impounded”.

**[19] Section 223 Release of impounded vehicle or removal of clamps**

Omit section 223 (1) and (2). Insert instead:

(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] Section 224 Release of motor vehicle on application to Local Court**

Insert “or for the removal of clamps from a motor vehicle” after “custody” in section 224 (1).

**[21] Section 224 (3)-(4A)**

Omit section 224 (3) and (4). Insert instead:

- (3) In determining whether to make an order under this section the Local Court is entitled to have regard to the following:
- (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,
  - (b) any alleged extreme hardship or other circumstances of the case.
- (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.

(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:

- (a) that the registered operator did not consent to the driver concerned using the vehicle, and
- (b) the registered operator had taken all reasonable steps to prevent any person using the vehicle without the consent of the registered operator.

**[22] Section 225 Safe keeping of motor vehicles**

Insert “(otherwise than by crash testing under this Division)” after “damage”.

**[23] Section 225 (2)**

Insert at the end of section 225:

- (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.

**[24] Section 225A**

Insert after section 225:

**225A Protection from liability with respect to clamping, impounding and crash testing**

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 this Division.

**[25] Section 227 Disposal and crash testing of vehicles**

Insert after section 227 (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.
- (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.

**[26] Schedule 1 Savings, transitional and other provisions**

Insert at the end of clause 1 (1):

*Road Transport Legislation Amendment (Car Hoons) Act 2008*, to the extent that it amends this Act

**[27] Schedule 1**

Insert after Part 5:

## **Part 6 Provisions consequent on enactment of Road Transport Legislation Amendment (Car Hoons) Act 2008**

### **13 Definition**

In this Part:

**amending Act** means the *Road Transport Legislation Amendment (Car Hoons) Act 2008*.

### **14 Impounding, forfeiture, clamping and other penalties for certain speeding and other dangerous driving offences**

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

## **Schedule 2 Amendment of Road Transport (Safety and Traffic**

## Management) Act 1999

(Section 4)

### [1] Section 40 Races, attempts on speed records and other speed trials

Omit “Maximum penalty: 20 penalty units.” from section 40 (1).

Insert instead:

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).

### [2] Section 40 (2), Note

Omit “Section 48 (1) of the *Road Transport (General) Act 1999*”.

Insert instead “Section 241 of the *Road Transport (General) Act 2005*”.

### [3] Section 40 (4), Note

Omit “Section 26 of the *Road Transport (General) Act 1999*”.

Insert instead “Section 189 of the *Road Transport (General) Act 2005*”.

### [4] Section 41 Conduct associated with road and drag racing and other activities

Omit “Maximum penalty: 5 penalty units” from section 41 (1).

Insert instead “Maximum penalty: 10 penalty units”.

### [5] Section 41 (2)

Omit the subsection. Insert instead:

(2) A person must not:

- (a) operate a motor vehicle contrary to subsection (1) knowing that any petrol, oil, diesel fuel or other inflammable liquid has been placed on the surface of the road or road related area beneath one or more tyres of the vehicle, or
- (b) do, or omit to do, any other thing that prolongs, sustains, intensifies or increases loss of traction as referred to in subsection (1), or
- (c) repeatedly operate a motor vehicle contrary to subsection (1), or
- (d) operate a motor vehicle contrary to subsection (1) at a time, or on a road or road related area in a place, knowing that there is an appreciable risk that operation of the 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
- (e) willingly participate in any group activity involving the operation of one or more vehicles contrary to subsection (1), or
  - (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
  - (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.

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).

**[6] Section 41 (6)-(8)**

Insert after section 41 (5):

- (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:
  - (a) the nature and use of the road or road related area in which the offence is alleged to have been committed,
  - (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.
- (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.
- (8) Any disqualification under this section is in addition to any penalty imposed for the offence.

**Schedule 3 Other amendments**

(Section 5)

**3.1 Local Government Act 1993 No 30**

**Section 651B Immobilisation of vehicles**

Insert at the end of section 651B (2):

, or

(d) under Division 2 of Part 5.5 of the *Road Transport (General) Act 2005*.

### **3.2 Road Transport (Driver Licensing) Regulation 1999**

#### **Schedule 2 Additional demerit point offences**

Omit the matter relating to section 41 (2) of the *Road Transport (Safety and Traffic Management) Act 1999* from Columns 1, 2, 3 and 4.

### **3.3 Road Transport (General) Regulation 2005**

#### **[1] Clause 15 Appeals against certain registration decisions**

Insert after clause 15 (1) (e):

(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.

#### **[2] Clause 16 Determination of appeals against certain registration decisions**

Insert after clause 16 (3):

(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:

(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 *Road Transport (Safety and Traffic Management) Act 1999*, or

(b) knew, or could reasonably be expected to have known, that a suspension warning notice had been given in respect of the vehicle, or

(c) had consented to the use of the vehicle or had taken all reasonable steps to prevent any person using the vehicle without consent.

#### **[3] Clause 38 Disposal of impounded vehicles or vehicles forfeited to the Crown**

Omit “or 219” from clause 38 (1). Insert instead “, 219 or 219A”.

#### **[4] Clause 38 (2)**

Insert “or 219A” after “section 219”.

**[5] Clause 38 (3)**

Omit “under section 223 of the Act remains undetermined by the Commissioner or while any application under section 224”.

Insert instead “under section 224 of the Act”.

**[6] Clause 38 (6)**

Insert after clause 38 (5):

- (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.

**[7] Schedule 3 Penalty notice offences**

Insert in appropriate order in Columns 1, 2 and 3 of the matter relating to the *Road Transport (General) Act 2005*:

Section 218 (7)

Class 1

Level 13

**[8] Schedule 3**

Omit the matter relating to section 41 (2) of the *Road Transport (Safety and Traffic Management) Act 1999* from Columns 1, 2 and 3.

### **3.4 Road Transport (Vehicle Registration) Regulation 2007**

**[1] Clause 14 Maintenance of the Registers**

Insert after clause 14 (2):

- (2A) **Use of vehicle in connection with offences** The Authority must record the following in the Register or another register kept by the Authority:
- (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 *Road Transport (Safety and Traffic Management) Act 1999*,
  - (b) details of any suspension warning notice given under section 219A of the *Road Transport (General) Act 2005*,
  - (c) details of any finding of guilt under section 218 (7) of the *Road Transport (General) Act 2005*.

**[2] Clause 14 (6)**

Insert “or other register kept under subclause (2A)” after “Register” wherever occurring.

**[3] Clause 41 Suspension or cancellation of registration by Authority**

Insert at the end of clause 41 (1) (l):

, or

(m) the vehicle is clamped under Division 2 of Part 5.5 of the *Road Transport (General) Act 2005*.

**[4] Clause 41**

Insert at the end of clause 41 (1):

**Note—**

The Authority may also suspend the registration of a registrable vehicle under section 218 of the *Road Transport (General) Act 2005*.