

## 16. Immobilising and impounding motor vehicles

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## 16.1 Introduction

Chapter 4: 'Motor vehicle impounding and immobilising powers for prescribed offences and motorbike noise direction offences' of the PPRA allows officers to impound or immobilise motor vehicles to deter certain driving behaviours, particularly 'hoon' behaviour offences (**'type 1 offences'**).

The inclusion of type 2 offences into Chapter 4 of the PPRA allows for these powers to be used where drivers have committed offences that may not be directly related to 'hoon' type behaviour.

The legislation exposes repeat offenders to graduated sanctions by way of increasing impoundment or immobilisation periods, and ultimately forfeiture of vehicles used to commit offences.

The vehicle immobilisation and impoundment material contained in this chapter is to be read in conjunction with the Motor Vehicle Immobilisation and Impoundment webpage on the RP&RSC website on the Service Intranet.

For the purposes of this chapter, a reference to immobilisation of a motor vehicle is a reference to number plate confiscation.

This chapter outlines the requirements for frontline officers conducting duties that may require vehicle impoundment or immobilisation. Deviation from policy requirements may be authorised by district officers if necessary, to address district specific issues and nothing in this chapter prevents individual district instructions being enacted. Any deviation from policy within district instructions is to be clearly articulated, with the rationale for changes outlined. Legislative requirements are not to be deviated from at any time.

### 16.1.1 Issues relating to impoundment of motor vehicles

#### Cost recovery

Section 112: 'Liability to pay costs of impounding or immobilisation—adult driver' of the PPRA provides that an adult driver of a motor vehicle impounded for a prescribed offence is liable for the costs of removing or keeping the motor vehicle.

The Service is liable for costs if:

- (i) a vehicle is impounded from a child driver;
- (ii) the driver is found not guilty of the offence for which the vehicle was impounded; or,
- (iii) the proceedings are withdrawn.

Fees accrued due to a vehicle being impounded and held may outweigh the value of the vehicle. When a vehicle is forfeited to the State as a result of the offences committed, the vehicle may be disposed of. Generally, the sale or transfer of ownership of the disposed vehicle is used to recompense tow operators.

The value of the vehicle may be insufficient to cover accrued fees and tow operators may be unable to recoup their costs. The impoundment of vehicles of low or negligible value provides little deterrent to offenders but leads to disadvantage for tow operators and exposes the Service to risk of liability should the prosecution be unsuccessful.

The legislation allows the use of immobilisation as an alternative to impoundment and these issues are to be considered by officers when determining the preferred course of action.

To ensure appropriate use of Service resources, the use of immobilisation over impoundment is preferred in all instances of type 2 offending.

#### Where the driver is other than the owner

Owners (see s. 69: 'Definitions for ch 4' and Schedule 6: 'Dictionary' of the PPRA) of immobilised or impounded vehicles can apply for early release of the vehicle based on the vehicle being used to commit the offence without their consent. The impounding or immobilising of motor vehicles when an offence has been committed without the owner's consent not only disadvantages owners of vehicles but also adds to the administrative burden associated with the assessment of early release applications.

##### Type 1 Example

Where an owner gives permission to use their vehicle to another person who then uses the vehicle to commit a type 1 offence without permission, such as performing a burn out or making unnecessary noise.

##### Type 2 Example

The owner gives permission to use their vehicle to another person but is unaware that the person is unlicensed due to a SPER suspension.

#### ORDER

Officers are to make relevant enquiries when the driver of the vehicle is not the owner in order to establish if the offence happened with the owner's consent. If the offence happened without the owner's consent, the vehicle is not to be impounded or immobilised.

## Unlawfully used, stolen or rental motor vehicle

Where an officer immobilises or impounds an unlawfully used, stolen or rental motor vehicle, the vehicle is to be released to the owner as soon as reasonably practicable (see s. 76: 'Release of motor vehicle in particular circumstances' of the PPRA).

The impounding officer is to consider commencing an investigation of any relevant criminal offences. Subsequent withdrawal of a complaint does not necessarily prevent the commencement or continuation of the prosecution of an offender. See ss. 3.4.3 and 3.4.4 of the OPM.

An application for early release is not required if s. 76 of the PPRA applies.

## 16.2 Power to stop and move motor vehicles for immobilisation or impoundment

Divisions 1, 1A and 1B of Chapter 4, Part 2: 'Impounding and Immobilising motor vehicles and forfeiture of motor vehicles' of the PPRA provide officers with powers to immobilise and impound motor vehicles for type 1 and type 2 vehicle related offences (see ss. 16.7: 'Immobilisation of motor vehicles' and 16.8: 'Impounding of motor vehicles' of this chapter).

Section 75: 'Particular powers for impounding or immobilising motor vehicles' of the PPRA provides the power to stop a motor vehicle for the purpose of impounding or immobilising.

When an early release condition has been breached, s. 79P: 'Power to take certain action if breach of condition' of the PPRA allows an officer to use any of the powers under s. 75 of the Act to immobilise or impound the vehicle for the remainder of the original period.

### 16.2.1 Vehicle production notice

Section 74K: 'Power to require motor vehicle to be produced' of the PPRA provides where an officer may immobilise or impound a motor vehicle under Part 2, Division 1, 1A or 1B. The officer may require the production of the vehicle at a stated place and time for immobilisation or impoundment by issuing a Form 202: 'Vehicle production notice (vehicle related offence)' (available from Richland Supply Centre) to the vehicle's owner or driver.

Where it is not practicable to provide a Form 202, the requirement may be made verbally and confirmed by providing a Form 202 as soon as practicable (see s. 74K(4) of the PPRA).

Officers are to ensure the date stated in the Form 202 for production of the motor vehicle is a date no later than the first business day occurring 5 days after the notice is given.

The period of immobilisation or impoundment starts only when the motor vehicle has been produced at the place stated in the notice.

Examples of when an officer may be justified in using a Form 202 include where:

- (i) the immobilising or impounding officer has been called away to more urgent duties;
- (ii) the vehicle cannot be towed to a holding yard at the time due to circumstances beyond the control of police, e.g. tow truck unavailable; and
- (iii) officers have made a decision to immobilise or impound the vehicle at a time when the vehicle is not present, e.g. after investigating the offence.

Officers are to ensure the nominated 'stated place' is reasonable in all the circumstances.

Officers must ensure the stated place is a police station, or an approved holding yard at a place, and the stated time is when a police officer can be physically present to take possession of the vehicle from the person producing it, and make the necessary arrangements for the impoundment of the vehicle.

Where an officer is to issue a vehicle production notice for the owner or driver to produce the vehicle at a stated place and time for immobilisation or impounding in accordance with s. 74K of the PPRA, the officer is to:

- (i) complete the Form 202;
- (ii) serve and explain the Form 202 to the driver. Where it is considered more effective, officers may serve the Form 202 on the owner, when the driver is not the owner;
- (iii) complete the service details on the Form 202;
- (iv) upload the completed Form 202 into the relevant QPRIME occurrence; and
- (v) ensure suitable arrangements are made for the immobilisation or impoundment of the vehicle when produced.

Officers issuing a Form 202 on the driver or owner are also to complete and serve a Form 157 (impounding notice) or Form 201 (immobilising notice) (both available from Richland Supply Centre) in accordance with the procedures specified in s. 16.9 of this Manual, at the earliest opportunity on the driver and/or owner while they are in the company

of the officer commencing the proceeding for the type 1 or type 2 vehicle related offence. When completing the oath of service for the Form 157 issued in these circumstances, the time and date for the Oath of Service will be similar to that for the issuing of the Form 202, notwithstanding this may be before the vehicle is produced in accordance with the Form 202.

Where the vehicle is not produced, the officer is to have the matter investigated in relation to an offence against s. 105A: 'Failure to comply with requirement to produce motor vehicle' of the PPRA.

### 16.3 Alternatives to impounding motor vehicles (immobilisation powers)

Chapter 4, Part 2, Division 1B: 'Immobilising powers for type 1 and type 2 vehicle related offences' of the PPRA provides alternatives to impounding a motor vehicle under Division 1 or 1A, namely:

- (i) the removal and confiscation of number plates; or
- (ii) attaching an immobilising device to the motor vehicle (e.g. wheel clamp).

Although provided for in legislation, the Service does not use immobilising devices as an alternative to impounding motor vehicles.

Immobilisation of motor vehicles, rather than impounding, mitigates the financial risk associated with impounding costs for the State and tow operators. The use of immobilisation is the preferred process to deal with all type 2 vehicle related offences.

#### ORDER

Officers dealing with type 2 vehicle related offences are not to impound the motor vehicle and are to prefer immobilisation in all instances (even when vehicle may be liable for forfeiture). When immobilising a vehicle for a third, fourth or subsequent type 2 vehicle related offence, the vehicle is to be immobilised for no longer than 90 days.

See s. 16.7: 'Immobilisation of motor vehicles' of this chapter for the process to immobilise a motor vehicle for a type 1 or type 2 offence.

Officers are not to use an immobilising device on a motor vehicle.

#### Impounding motor vehicles for first type 1 vehicle related offences

Where a motor vehicle is subject to impoundment in accordance with s. 74: 'Impounding motor vehicles for first type 1 vehicle related offence' of the PPRA, the investigating officer may choose to impound or immobilise the vehicle for 90 days, depending on the most appropriate circumstances.

Considerations are to include:

- (i) the nature of the offending;
- (ii) previous traffic offences committed;
- (iii) the nature of the vehicle used; and
- (iv) operational and resourcing issues.

### 16.4 Charging a person in relation to a prescribed offence

Officers wishing to issue a QNotice for a type 1 or type 2 vehicle related offence are to be aware that this does not record the occurrence correctly in QPRIME, as a vehicle related offence. The issuing of a QNotice does not automatically add the appropriate flags to the person record. Therefore, to ensure the offence will be counted for further action under Chapter 4 PPRA, it is more appropriate to commence proceedings through other means. Officers may, however, use their discretion to determine if it is suitable in the circumstances to issue a QNotice and record flags against the person record.

#### ORDER

Officers intending to immobilise or impound a motor vehicle for a prescribed type 1 or type 2 offence are to commence proceedings by:

- (i) issuing a PT56: 'Infringement notice' (available from Richland Supply Centre) (where applicable);
- (ii) serving a notice to appear; or
- (iii) arrest.

A person is deemed to have been charged with the prescribed offence when the PT56 or notice to appear is given to the person or when the person is arrested (see s. 71: 'When a person is charged for this chapter in relation to a prescribed offence' of the PPRA).

It is to be noted that the issuing of an arrest warrant does not constitute commencing proceedings under this section.

## ORDER

When commencing a proceedings for an offence against s. 78(1): 'Driving of motor vehicle without a driver licence prohibited' of the TO(RUM)A officers are to consider the provisions of ss. 78(1A)-(1E) of TO(RUM)A which prohibit the commencement of proceedings by infringement notice in certain circumstances (e.g. previous conviction against s. 78(1) in 5 years, never held a licence; interlock driver). If the provisions apply to the driver proceedings are to be commenced by notice to appear or, where justified, arrest not by issuing an infringement notice. If an infringement notice is issued contrary to the provisions of ss. 78(1A)-(1E), the infringement notice is to be withdrawn and a notice to appear issued as soon as practicable.

**Counting of occasions**

For the purposes of immobilising, impounding and forfeiting motor vehicles in accordance with ss. 74A, 74B, 74C, 74D, 74E, 74F and 101 of the PPRA, the counting of the commission of an offence must be in addition to another commission of an offence to be counted, i.e. an event or series of events that happened must be separate to each occasion (see s. 108: 'Counting the occasions – general' of the PPRA).

Where a number of vehicle related offences of the same type occur from one event, they are to be counted as one event of the same type. For example, where a person is intercepted for driving a vehicle whilst unlicensed and high-end speed offences, this is to be counted as one event for each type and only one type 2 flag may be entered.

Where a number of vehicle related offences of different types occur from one event, they are to be counted as one event of different types. For example, where a person is intercepted for driving a vehicle whilst evading police and high-end speed offences, this is to be counted as one event and one type 1 and one type 2 flag may be entered in QPRIME.

QPRIME flags added to a person record can provide a way to record the number of occasions a person has been charged with a type 1 or type 2 vehicle related offence. The presence or absence of flags may not adequately reflect a person's traffic history. Therefore, officers are to ensure they scrutinise a person's traffic history to ensure there have been the required number of offences committed to justify any impoundment or immobilisation action.

**Court Briefs (QP9)**

Where an officer has commenced a proceeding for a vehicle related offence and the vehicle has been impounded and is subject to forfeiture under s. 74A: 'Impounding motor vehicles for second or subsequent type 1 vehicle related offence' of the PPRA, the officer is to include in the summary of facts of the Court Brief (QP9), advice the vehicle was impounded and is subject to forfeiture (see s. 16.16: 'Disposal of impounded and forfeited vehicles' of this chapter).

**16.5 Deleted****16.6 First type 2 vehicle related offence (pre-impoundment offence)**

A motor vehicle can only be immobilised if the driver of the motor vehicle has been previously charged with having committed a type 2 vehicle related offence (of any kind) (see SMD) on more than one occasion within the previous five years (see s. 74C: 'Impounding motor vehicles for second or subsequent type 2 vehicle related offence' of the PPRA).

Where an officer is commencing a proceeding against a driver for a type 2 vehicle related offence, the officer is to determine whether the driver has been charged with committing one or more type 2 vehicle related offences within the previous five years.

Where a previous type 2 offence is identified, see s. 16.7: 'Immobilisation of motor vehicles' of this chapter.

Where the person has not been charged with a previous type 2 offence within the previous five years, the officer may:

- (i) issue an infringement notice, NTA or, where justified, arrest the person for the offence; and
- (ii) personally, or electronically serve a QP 0964: 'Notice of pre-impoundment/Notice of first type 2 vehicle related offence' on the driver; and
- (iii) prior to termination of their shift, ensure a QPRIME occurrence is created, which includes:
  - a 'Type 2' flag against the person; and
  - the narrative containing all elements of the offence and the officer action taken, including service of the QP 0964.

An officer may issue a QNotice for the type 2 offence, however it will not add a flag against the person record. Officers are to avoid the use of QNotices to commence proceedings where the offence is to be counted towards possible future immobilisation action.

## 16.7 Immobilisation of motor vehicles

Section 74H: 'Power to remove and confiscate number plates' of the PPRA provides, where a motor vehicle may be impounded for a type 1 or 2 offence, the officer may remove and confiscate the vehicle's number plates and attach a QP 0960: 'Number plate confiscation notice' (available from Richland Supply Centre) to the motor vehicle for the impoundment period.

Except when authorised by an officer under s. 74I: 'Moving motor vehicle to which number plate confiscation notice is attached' of the PPRA, a motor vehicle to which a QP 0960 is attached is prohibited from being operated for the period stated in the notice (the number plate confiscation period).

Where the vehicle cannot be lawfully driven on a road to where it may lawfully stand, the owner or driver may tow the vehicle at their expense to where it may stand in accordance with the number plate confiscation notice.

In accordance with s. 16.3: 'Alternatives to impounding motor vehicles (immobilising powers)' of this chapter motor vehicles are to be immobilised in accordance with this section when taking action for type 2 offences.

When an officer authorises a person to move a vehicle in accordance with s. 74I of the PPRA, the officer is to record on the Form 201: 'Immobilising notice (Vehicle related offence)' (available from Richland Supply Centre) the details of where the motor vehicle is allowed to be driven to (if applicable) and stand.

Where a QP 0960 is attached to a motor vehicle, a Form 201 is to be given to the driver and, where applicable, each owner of the vehicle (see s. 78: 'Impounding notice or immobilising notice for vehicle related offence' of the PPRA).

### Type 1 offences

Where the driver has not previously been charged with, or found guilty of a type one offence during the previous five years, officers are to immobilise or impound the motor vehicle for the prescribed impoundment period under s. 74: 'Impounding motor vehicles for first type 1 vehicle related offence' of the PPRA.

### Type 2 offences

Where the driver of a motor vehicle has been charged with a type 2 vehicle related offence and has previously been charged with (where the charge is not yet decided in accordance with s. 71A of the PPRA) or found guilty of any type 2 vehicle related offence on one or more occasions within the previous five years, officers are to immobilise the motor vehicle for the prescribed impoundment period under:

- (i) s. 74C: 'Impounding motor vehicles for second or subsequent type 2 vehicle related offence' of the PPRA, 7 days; or
- (ii) s. 74D: 'Impounding motor vehicles for third or subsequent type 2 vehicle related offence' of the PPRA, 90 days.

Although s. 74E: 'Impounding motor vehicles for fourth or subsequent type 2 vehicle related offence' of the PPRA allows for a vehicle to be impounded until the end of proceedings, officers are to immobilise these vehicles for no longer than 90 days, as per s. 74D of the PPRA.

### Immobilisation procedures

When immobilising a motor vehicle for a type 1 or 2 offence, the officer is to:

- (i) where applicable, issue a PT 56: 'Infringement notice', (available from Richland Supply Centre) notice to appear or, where justified, arrest the person for the relevant vehicle related offence;
- (ii) remove the number plate(s) from the motor vehicle;
- (iii) complete a QP 0960 and attach the appropriate notice (front or rear):
  - (a) for a vehicle other than a motorcycle, to the outside of the front windscreen (front notice) and the rear or side window or other appropriate location (rear notice); or
  - (b) for a motorcycle, attach the front notice in the most practical manner;
- (iv) complete a Form 201 and serve a copy personally on the driver. A copy is to be either personally served or posted via normal postal methods to all owners as soon as reasonably practical (see s. 16.9: 'Service of impounding notices and immobilising notices' of this chapter);
- (v) advise the owner of the vehicle that at the expiration of the number plate confiscation period they may collect the number plate(s) from the respective property point;
- (vi) complete the service details on the Form 201;
- (vii) complete a QPB 32A: 'Field Property Receipt' (available from Richland Supply Centre) and issue to the driver;
- (viii) prior to termination of their shift:
  - (a) ensure a QPRIME occurrence is created and:
    - a 'Type 1' or 'Type 2' flag is created against the person;

- the 'narrative' is completed and contains all elements of the offence and the officer action taken; and
  - the QP 0960 notice number is entered into the 'Miscellaneous ID number'; and
- (b) upload the:
- Form 201 and record the number plate confiscation notice number as a MISC ID against the vehicle in QPRIME; and
  - QPB 32A; and
  - infringement notice or NTA (where applicable),
- into the occurrence; and
- (c) lodge the number plate/s at a property point.

Cancelled number plates (except personalised number plates) are not to be lodged at a property point unless they are an exhibit. Cancelled number plates are to be returned to the DTMR (see s. 11.3.1: 'Seizing and disposing cancelled number plates' of this Manual).

Cancelled personalised number plates are to be lodged at a property point for eventual return to the owner.

## 16.8 Impounding of motor vehicles

### ORDER

Unless exceptional circumstances exist, vehicles are not to be impounded for type 2 offences (see ss. 16.3: 'Alternatives to impounding motor vehicles (immobilising powers)' and 16.7: 'Immobilisation of motor vehicles' of this chapter).

### Extraordinary circumstances

In some extraordinary circumstances involving recidivist type 2 offenders, it may be necessary to impound a vehicle to disrupt and prevent further offending. In these instances, consideration is to be given to using the powers provided under s. 74C 'Impounding motor vehicles for a second or subsequent type 2 vehicle related offence' of the PPRA and impound for 7 days. Short term impoundment minimises the financial risk to tow operators or the State. Once the impoundment period finishes, if the vehicle is not recovered by the owner within 30 days, the Commissioner may sell the vehicle and anything in it as per s. 118 'Sale of motor vehicle if not recovered after impounding ends' of the PPRA.

### ORDER

Officers who impound vehicles for a 7-day period must ensure all required documents are served on all owners (including security interests) as soon as possible. Failure to serve documents in a timely manner may compromise the potential for administrative forfeiture and disposal of the vehicle.

### Impounding procedure

Where a motor vehicle is to be impounded, the impounding officer is to:

- (i) issue an NTA or, where justified, arrest the person for the offence;
- (ii) complete a QP 157: 'Impounding Notice (Vehicle related offence)' (available from Richland Supply Centre) and serve a copy of the form personally on the driver. A copy is to be either personally served or posted via normal postal methods to all owners as soon as reasonably practical (see s. 16.9: 'Service of impounding notices and immobilising notices' of this chapter);
- (iii) complete a QP 0907: 'Towing authority for impounded vehicles' (available from Richland Supply Centre) and serve a copy of the QP 0907 on the:
  - (a) driver of impounded vehicle; and
  - (b) tow truck operator;
- (iv) direct the driver of a tow truck to tow the impounded vehicle to a particular holding yard (see s. 77: 'Police officer may authorise tow' of the PPRA);
- (v) complete a QPB 32A: 'Field Property Receipt' (available from Richland Supply Centre) and issue to the driver of the impounded vehicle;
- (vi) prior to shift termination, ensure that a QPRIME occurrence is created and:
  - (a) a flag is created against the person; and
  - (b) the narrative is completed and contains all elements of the offence and the officer action taken (including enquiry details) if the driver is not the owner of the vehicle; and
  - (c) where the vehicle is impounded for a type 2 offence include sufficient information to justify why the vehicle was impounded instead of being immobilised; and



(d) upload the:

- Form 157;
- QP 0907; and
- QPB 32A,

into the occurrence.

### Child offenders

The Service is liable for the towing and holding yard fees when a vehicle driven by a child is impounded. Officers are not to impound a motor vehicle when a child is driving. In these instances, immobilisation is the preferred option.

#### 16.8.1 Deleted

#### 16.8.2 Deleted

## 16.9 Service of immobilising notices and impoundment notices

If a motor vehicle is impounded or immobilised for a type 1 or type 2 vehicle related offence, as soon as reasonably practicable, the impounding or immobilising officer is to complete a Form 157: 'Impounding notice (Vehicle related offence)' or where applicable, Form 201: 'Immobilising notice (Vehicle related offence)' (both available from Richland Supply Centre) and:

- (i) personally serve the driver with a copy of the Form 157 or Form 201;
- (ii) where the driver is not the owner or only owner of the vehicle, either personally or by post, provide a copy of the Form 157 or where applicable, Form 201 to every owner of the vehicle;
- (iii) if the driver is a child, either personally or by post, provide a copy of the Form 157 or Form 201 to the child's parent or guardian (a motor vehicle must not be impounded when a child is driving); and
- (iv) ensure the copies of each of the served Form 157 or Form 201 are endorsed as to service, as appropriate.

Officers serving any required notice pursuant to Chapter 4 of the PPRA are to record details and proof of service of the relevant document(s) in the relevant QPRIME occurrence. Officers are to record details in QPRIME about the actions taken to identify any and all owners of the vehicle.

See s. 39: 'Service of documents' of the *Acts Interpretation Act* and s. 78: 'Impounding notice or immobilising notice for vehicle related offence' of the PPRA.

It is to be noted that there is no power to detain a person for the service of notices (see *Walker v State of Queensland* [2020] QCA 137).

## 16.10 Service of impounding notice or immobilising notice on a child (additional responsibilities)

Where a child is to be served with a Form 157: 'Impounding notice (Vehicle related offence)' or Form 201: 'Immobilising notice (Vehicle related offence)' (both available from Richland Supply Centre), the impounding/immobilising officer is to, in addition to giving the impounding notice or immobilising notice:

- (i) complete a Form 156: 'Statement of Explanation' (Type 1 or Type 2 Vehicle Related Offence and Motorbike Noise Offence) (available from Richland Supply Centre); and
- (ii) ensure the child and the child's parent or guardian are given copies of the explanation notice (either personally or by post, see s. 39: 'Service of a documents' of the *Acts Interpretation Act*).

The officer giving the explanation notice is to endorse copies of each of the explanation notices given as to service.

See ss. 78(5) and (6): 'Impounding notice or immobilising notice for vehicle related offence' and 81(6) and (7): 'Impounding notice for motorbike noise direction offence or motorbike noise order offence' of the PPRA.

## 16.11 Application for early release of immobilised or impounded motor vehicles

Section 16.11 is intended for use by the relevant delegated commissioned officer.

See Appendix 16.3: 'Application for early release of impounded or immobilised motor vehicle flow chart' of this chapter.

Chapter 4, Part 2, Division 2: 'Other provisions relating to impounded or immobilised motor vehicles' of the PPRA provides for the early release of motor vehicles impounded or immobilised under Division 1, 1A, or 1B, after the eligible person (see s. 79: 'Definitions for div 2' of the PPRA) has made an application in the approved form to the Commissioner, and supported with enough information to enable the Commissioner to decide the application. The Commissioner has delegated this authority to all commissioned officers (see Delegations D 24.56 to D 24.59).

An eligible person can apply to the Commissioner for the release of an impounded or immobilised motor vehicle due to:

- (i) severe hardship (see s. 79A: 'Application for release of impounded or immobilised motor vehicle on basis of severe hardship' of the PPRA);
- (ii) the prescribed offence happened without the owner's consent (see s. 79C: 'Application for release of impounded or immobilised motor vehicle on basis prescribed offence happened without owner's consent' of the PPRA);
- (iii) the circumstances giving rise to the offence have been rectified – type 2 unregistered motor vehicle and type 2 unlicensed driving (see s. 79E: 'Application for release of impounded or immobilised motor vehicle on basis that circumstances giving rise to offence have been rectified' of the PPRA); and
- (iv) the grounds for impoundment or immobilisation were unreasonable (see ss. 79G: 'Application for release of impounded or immobilised motor vehicle on basis that grounds for impoundment or immobilisation unreasonable' and 79H: 'Decision on application for release of impounded or immobilised motor vehicle on basis that grounds for impoundment or immobilisation unreasonable' of the PPRA and s. 16.18: 'Infringement notice or charges withdrawn or dismissed' of this chapter).

The application must be supported by sufficient information to enable the delegated commissioned officer to decide the application.

Eligible persons can submit their applications:

- (i) online on the QPS internet; or
- (ii) by completing a Form 203: 'Application for early release of vehicle from impoundment/immobilisation' (available from the QPS internet and Forms Select).

Policelink will receive and task all applications and task them to the appropriate organisational unit for action.

Where a member at a station or establishment receives a completed Form 203, they are to ensure the application and any supporting documents are scanned into the relevant occurrence and a task sent to Policelink.

The delegated commissioned officer must consider an application after receiving all necessary information relevant to the application and either:

- (i) grant the application with or without conditions; or
- (ii) refuse to grant the application.

The delegated commissioned officer must, if reasonably practicable, decide the application within five business days of receiving the application and where applicable other supporting documents required.

If a person is aggrieved by the decision of the Commissioner, they may appeal to a magistrates court (see s. 79K: 'How to start appeal' of the PPRA).

Where a delegated commissioned officer receives a completed application from an eligible person for the early release of an impounded or immobilised vehicle, the officer is to:

- (i) consider the application and supporting documentation and make any necessary inquiries to reach a decision. Where further information is required from the applicant, advise them as soon as practicable;
- (ii) if satisfied, grant the application with or without conditions:
  - (a) ensure as soon as practicable the applicant is given a QP 0962: 'Vehicle release notice (Vehicle related offence)' for the motor vehicle;
  - (b) where the vehicle has been impounded, ensure the relevant vehicle impoundment coordinator (VIC) is advised that the vehicle can be released; and
  - (c) where the vehicle has been immobilised by having the number plates removed and confiscated, advise the relevant OIC and/or property officer that number plates can be returned to the owner; or
- (iii) where the application is refused, as soon as practicable, ensure the applicant is given a QP 0963: 'Information notice (Vehicle related offence)'; and
- (iv) update the relevant QPRIME occurrence providing:
  - (a) reference to any inquiries made to reach the decision;

(b) reference to any documents relied upon to reach the decision. Where such documents are not already part of the occurrence or scanned into the occurrence, ensure the documents relied upon are scanned into the occurrence; and

(c) sufficient details of the reasons for the decision.

### 16.11.1 Consequences of granting an application for early release

Granting an application for early release entails that the vehicle will not be subject to forfeiture on conviction for a relevant type 1 vehicle related offence (pursuant to s. 74B of the PPRA), unless the application has been granted with conditions. If those conditions have been breached prior to the end of the impoundment period and action has been taken pursuant to s. 79P of the PPRA to immobilise or impound the vehicle for the remainder of the impoundment period the vehicle may be subject to forfeiture.

### 16.11.2 If an application for early release is received after the vehicle has been forfeited

If an application for early release is received after the vehicle has been forfeited pursuant to:

- ss. 74B or 74F of the PPRA (on conviction or the relevant type 1 or type 2 vehicle related offence);
- s. 118 of the PPRA (administrative forfeiture) or;
- s. 118A of the PPRA (forfeiture on issue of a fail to appear warrant)

then the application cannot properly be made and there is no power to grant the application for early release: Commissioner of the QPS v Gough [2015] QDC 254 at [14]-[15].

In those circumstances, the delegated commissioned officer is to advise the person attempting to make an application pursuant to ss. 79A, 79C, 79E or 79G of the PPRA in writing that the application cannot be made, and there is no power to grant the application where the vehicle has already been forfeited according to law (see QP1201 'Letter – Early Release Application (ERA) Made After Forfeiture' as a template) (available from Richland Supply Centre).

### 16.11.3 Deleted

### 16.11.4 Deleted

## 16.12 Release and recovery of motor vehicle after impoundment period ends

Unless ss. 76: 'Release of motor vehicle in particular circumstances' or 111: 'State's liability to pay costs of impounding or immobilisation' of the PPRA apply, the owner of the motor vehicle is liable for the costs of removing and keeping the motor vehicle (see s. 116: 'Release of motor vehicle impounded or immobilised under this chapter' of the PPRA). Motor vehicles are not to be released until the costs of removing and keeping the motor vehicle are paid (see s. 16.13: 'Costs of storage of impounded vehicles' of this chapter).

### ORDER

If a motor vehicle is impounded in a property point and the owner of the motor vehicle is entitled to recover the motor vehicle because:

- (i) the impoundment period has ended; or
- (ii) a delegated commissioned officer has ordered its early release and the owner has produced a QP 0962: 'Vehicle release notice (Vehicle related offence)' (see s. 16.11: 'Application for early release of impounded or immobilised motor vehicle' of this chapter),

at the request of the owner, the relevant property officer is to ensure the release of the motor vehicle to the owner, or a person appointed in writing by the owner as soon as reasonably practicable. The vehicle is to be released during business hours on a business day, after the request is made (see s. 116 of the PPRA).

The owner or person appointed in writing to accept the released vehicle is to sign a QP 0034: 'Indemnity receipt' prior to release of the vehicle. The QPRIME occurrence is to be updated to record the release of the vehicle to the owner or their agent. The QP 0034 is to be uploaded and wherever practicable, accompanied by a copy of the receipt for payment of the towing and holding yard fees.

If the owner fails to recover the motor vehicle, see ss. 16.15: 'Recovering payment for storage of impounded vehicle' and 16.16: 'Disposal of impounded and forfeited motor vehicles for vehicle related offences' of this chapter.

## 16.13 Costs of storage of impounded vehicles

Chapter 4, Part 6, Division 1: 'Liability for costs of impounding or immobilisation' of the PPRA, states who is liable to pay the costs of impounding or immobilising a vehicle.

Whilst s. 112: 'Liability to pay the costs of impounding or immobilisation—adult driver' of the PPRA provides the adult driver is liable for the costs of removing an impounded or immobilised motor vehicle and keeping it, s. 116: 'Release of motor vehicle impounded or immobilised under this chapter' of the PPRA provides the owner of the motor vehicle is liable for payment of the fees prior to retrieving the vehicle.

However, in accordance with s. 111(2): 'State's liability to pay costs of impounding or immobilisation' of the PPRA, the Service is liable to pay the costs of removing an impounded or immobilised motor vehicle and keeping it, if:

- (i) the driver of the motor vehicle is found not guilty of the offence for which the motor vehicle was impounded or immobilised; or
- (ii) the proceeding for the offence for which the motor vehicle was impounded or immobilised is withdrawn; or
- (iii) the driver of the motor vehicle was a child when they committed the offence for which it was impounded or immobilised (see s. 16.14: 'Order for payment of costs to the Service (child driver)' of this chapter and s. 113: 'Liability to pay costs of impounding or immobilisation—child driver' of the PPRA).

Any costs of impoundment paid by someone else on the driver's behalf become a debt to the other person by the driver (see ss. 112 or 113 PPRA). For procedures regarding the recovery of money owed to the Service see s. 16.15: 'Recovering payment for storage of impounded vehicle' of this chapter.

If any of the circumstances in s. 111(2) of the PPRA exist then the region or command to which the impounding or immobilising officer is attached, unless other formal arrangements have been made, (e.g. Road Policing Task Force performing an operation in a region that has agreed to meet the costs of the operation) is responsible for the payment of the costs of removing and keeping the motor vehicle for the impounding only. Finance managers are to ensure that the costs incurred for impounding and keeping of the motor vehicle are paid as required.

See also s. 116(3): 'Release of motor vehicle impounded or immobilised' of the PPRA.

## 16.14 Order for payment of costs to the Service (child driver)

### ORDER

If a motor vehicle is impounded because of a prescribed offence or a motorbike noise direction offence and the driver of the motor vehicle was a child when they committed the offence for which it was impounded, the impounding officer must ensure, in the event the child driver is found guilty by a court of the prescribed offence, an order for payment of costs to the Service for moving and keeping the motor vehicle for the impoundment period is sought against the appropriate person (see ss. 103: 'Costs order for child drivers' and 113: 'Liability to pay costs of impounding or immobilisation – child driver' of the PPRA and s. 4.5: 'Credit Management Policy' of the Financial Management Practice Manual).

Officers are not to impound a motor vehicle when a child is driving. In these instances, immobilisation is the preferred option.

If it is necessary to impound a vehicle driven by a child and where a police holding yard declared as a property point exists, the impounded vehicle is to be stored at that location where practicable. This will reduce costs which may not be retrievable under s. 103 of the PPRA.

To obtain an order under s. 103 of the PPRA, the impounding officer is to include in the summary of facts section of the relevant Court Brief (QP9):

- (i) a subheading titled: 'Advice to Prosecutor – order for payment of costs to the Service sought – towing and keeping';
- (ii) details of costs owed to the Service as a result of the initial impoundment; and
- (iii) if an order for payment of costs is sought under s. 113 of the PPRA, against a person other than a child driver (e.g. the child driver's parent), that person's particulars.

Where the child driver is found guilty of the prescribed offence for which the motor vehicle was impounded, the relevant police prosecutor is to make a verbal application for an order for the payment of the costs owed to the Service. If the child does not have the capacity to pay, the police prosecutor may seek the court to require the parents/guardian to show cause why they should not pay the costs associated with the impoundment of the vehicle.

Where an order is made against the parent or guardian to pay the costs of impounding the motor vehicle, see s. 16.15: 'Recovering payment for storage of impounded vehicle' of this chapter.

## 16.15 Recovering payment for storage of impounded vehicle

Where a court order under s. 103: 'Costs order for child driver' of the PPRA is made in respect of the child driver (i.e. the parent or guardian are ordered to pay the costs for the impoundment period), the impounding officer is to submit a report to the VIC for the region where the vehicle is held through their supervising commissioned officer.

The report is to include full details of the person who is liable to pay the costs and be accompanied by:

- (i) a copy of the:
  - (a) Court Brief (QP9) for the relevant prescribed offence and the result of the court proceeding for the prescribed offence; or
  - (b) court order for payment of costs to the Service against the person, if an order was made; and
- (ii) copies of relevant invoices for costs of impounding and keeping of the vehicle; and
- (iii) any other relevant information.

### **Responsibilities of commissioned officers and vehicle impoundment coordinators**

Where a court order for payment of costs to the Service against a person exists (see s. 113(4): 'Liability to pay costs of impounding or immobilisation—child driver' of the PPRA), a commissioned officer is to forward a letter of demand together with a copy of the court order, to the person who is liable to pay the costs to the Service in an attempt to recover the debt directly from the person in accordance with s. 4.6: 'Debt management policy' of the Financial Management Practice Manual.

Where the debt is paid directly to the Service, the VIC is to provide evidence of payment to the relevant clerk of the court where the order was made.

In accordance with s. 115: 'Registration of costs under State Penalties Enforcement Act 1999' of the PPRA, if the person:

- (i) fails to pay the costs owing; or
- (ii) has made part-payment of the costs owing to the Service and an outstanding amount remains past the due date,

the commissioned officer is to complete a QP 0495: 'Referral of costs to the State Penalties Enforcement Registrar' and attach copies of:

- (i) invoice(s) for removing and keeping the impounded motor vehicle for the impoundment period indicating that payment has been made by the Service;
- (ii) the order for payment of costs to the Service against the person;
- (iii) the letter of demand issued by the Service to the person who is liable to pay the costs; and
- (iv) the details of any part-payments made by the person.

The completed QP 0495 and its attachments may be forwarded to the State Penalties Enforcement Register by email or mail (see SMCD).

For debts that cannot be referred to the State Penalties Enforcement Register, Finance is to attempt to recover the debt in accordance with ss. 4.4: 'Receivables Policy' and 4.6 of the Financial Management Practice Manual.

#### **PROCEDURE**

Where the Service is seeking repayment of a debt where a court order is issued, the VIC is to:

- (i) complete the relevant documentation for signing by a commissioned officer;
- (ii) scan and upload the signed documentation to the relevant QPRIME occurrence; and
- (iii) maintain oversight of the recovery of the outstanding debt.

## **16.16 Disposal of impounded and forfeited motor vehicles**

Section 120: 'Disposal of forfeited motor vehicles' of the PPRA provides that the Commissioner may dispose of a motor vehicle forfeited to the State under Chapter 4: 'Motor vehicle impounding and immobilising powers for prescribed offences and motorbike noise direction offences' of the PPRA in the way the Commissioner considers appropriate, including by selling it (see Delegation D 24.37).

The proceeds of any sale of an impounded or forfeited vehicle under s. 118: 'Sale of motor vehicle if not recovered after impounding ends', s.118A: 'Sale of impounded motor vehicle if driver fails to appear' or s. 120 of the PPRA are to be dealt with in accordance with s. 121: 'Application of proceeds of sale' of the PPRA.

Motor vehicles impounded or forfeited by a court order for an evasion offence under Chapter 22: 'Provisions about type 1 vehicle related offences' of the PPRA, whenever practicable, are to be disposed of in accordance with Chapter 4 of the PPRA.

### **Relinquishing motor vehicles and motorcycles**

In accordance with:

(i) s. 119: 'Voluntary transfer of ownership of motor vehicle to the State' of the PPRA, the owner of a motor vehicle that is impounded under Chapter 4 and held at a holding yard, or a motor bike subject of an application for an impounding order or a forfeiture order for a motorbike noise order offence; or

(ii) s. 784: 'Voluntary transfer of ownership of motor vehicle to State' of the PPRA, the owner of a motor vehicle, involved in an evasion offence for which a proceeding against the driver or owner is started,

may agree to transfer ownership of the vehicle to the State. The agreement may be completed on a QP 0368: 'Relinquishing order' (available in QPRIME), in another similar format or by completing the forfeiture order contained within a QPB 32A: 'Field Property Receipt' (available from Richland Supply Centre). If the delegated officer, on behalf of the Service, agrees in writing to the transfer of the vehicle, the vehicle becomes the property of the Service. The delegated officer may then sell or dispose of the vehicle and anything in it or on it in the way the delegated officer considers appropriate.

### 16.16.1 Vehicle not recovered after impounding period ends

Section 118: 'Sale of motor vehicle if not recovered after impounding ends' of the PPRA provides within 30 days after a period of impounding ends:

- (i) where the owner of the motor vehicle has not recovered it; or
- (ii) after making reasonable inquiries, a police officer cannot find out who owns the motor vehicle,

the Commissioner may:

- (i) sell the motor vehicle and anything in or on it by public auction; or
- (ii) dispose of it in the way the Commissioner considers appropriate.

Impounded motor vehicles not collected within 30 days after the period of impoundment ends are taken to have been forfeited to the State (see s. 118(3) of the PPRA).

Where a vehicle has not been recovered within 30 days of the impoundment period ending, the VIC seeking approval to dispose of the vehicle in accordance with s. 118 of the PPRA is to:

- (i) ensure a Personal Property Securities Register Check has been conducted on the motor vehicle and, where applicable, a copy of the impounding notice has been served on any owner (see Schedule 6 of PPRA for definition of 'owner') of the vehicle (see s. 16.16.4: 'Personal Property Securities Register check' of this chapter); and
- (ii) where the name of the owner is or becomes known, complete a draft letter (for signing by the delegated officer) to each owner advising in accordance with s. 118 of the PPRA, the motor vehicle and anything in or on it is to be sold by public auction or disposed of in the way the Commissioner considers appropriate; and
- (iii) upload the draft letter to the relevant QPRIME occurrence and forward a task to the delegated officer (see Delegation D 24.37) advising the vehicle has not been recovered within the designated period and approval is sought to send the letter to the owner and dispose of the vehicle in accordance with s. 118 of the PPRA.

The delegated officer approving the request to sell or dispose of a vehicle not recovered under s. 118 of the PPRA is to ensure:

- (i) if the name of the owner or financial interest holder is known, the signed letter is sent to the owner and financial interest holder of the vehicle;
- (ii) the QPRIME occurrence is updated; and
- (iii) notice of the proposed sale or disposal of the vehicle is published on the QPS website.

### 16.16.2 Forfeiting motor vehicles for type 1 and type 2 vehicle related offences

Sections:

(i) s. 74B: 'Forfeiture of motor vehicle if driver found guilty of second or subsequent type 1 vehicle related offence' of the PPRA provides where a motor vehicle has been impounded under s. 74A: 'Impounding motor vehicles for second or subsequent type 1 vehicle related offence' of the Act, and the driver of the motor vehicle:

- (a) has been found guilty of a type 1 vehicle related offence committed on 1 previous occasion within the relevant period; and
- (b) is found guilty of a second or subsequent type 1 vehicle related offence mentioned in s. 74A(1) of the PPRA; or

(ii) s. 74F: 'Forfeiture of motor vehicles if driver found guilty of fourth or subsequent type 2 vehicle related offence' of the PPRA provides where a motor vehicle has been impounded under s. 74E of the Act and the driver of the motor vehicle:

- (a) has been found guilty of the three type 2 vehicle related offences committed within the relevant period; and

(b) is found guilty of a fourth or subsequent type 2 vehicle related offence mentioned in s. 74E(1),

upon the driver being found guilty, the motor vehicle becomes the property of the State unless the vehicle has already been released (pursuant to s. 79I of the Act), and has not been re-impounded (under s. 79P of the Act); or alternatively has previously been forfeited to the State.

For the purpose of any vehicle forfeiture, found guilty of an offence means:

(i) for a vehicle related offence for which an infringement notice has been served under s. 71: 'When a person is charged for this chapter in relation to a prescribed offence' of the PPRA:

(a) ensuring there is payment of a penalty in full or by instalments under the *State Penalties Enforcement Act* (SPEA); or

(b) ensuring a default certificate for the infringement notice given to the person has been registered by the registrar under the SPEA; or

(ii) otherwise, there is a finding of guilt, or the acceptance of a plea of guilty, by a court, whether or not a conviction is recorded.

The definition of '**found guilty**' is located in Schedule 6: 'Dictionary' of the PPRA.

### **Vehicle impoundment coordinator (VIC)**

Where a motor vehicle is subject to forfeiture under s. 74B or s. 74E of the PPRA, the VIC is responsible for:

(i) monitoring the found guilty status of the driver of the motor vehicle for the offence/s relied upon to impound the motor vehicle;

(ii) where an infringement notice has been issued under s. 71 of the PPRA:

(a) ensuring there is payment of a penalty in full or by instalments under the SPEA;

The QPRIME traffic history status 'PAID' indicates that payment has been made in full. The status 'VIP' indicates a voluntary instalment plan has been entered into under the SPEA; or

(b) ensuring a default certificate for the infringement notice given to the person has been registered by the registrar under the SPEA.

The QPRIME traffic history status 'SPER FINALISED' indicates that a default certificate has been accepted and registered by the registrar under the SPEA;

(iii) where the person has had a finding of guilt, or the acceptance of a plea of guilty by a court for the relevant vehicle related offence, ensuring the person's court history outcome in QPRIME has been updated accordingly;

(iv) where the person failed to appear in court in relation to the relevant charge under s. 74A(1) or s. 74E(1) of the PPRA, and the court has issued a fail to appear warrant, ensuring the person's court history outcome in QPRIME has been updated accordingly. In such instances the vehicle is forfeited to the State (see s. 118A: 'Sale of impounded motor vehicle if driver fails to appear' of the PPRA);

(v) ensuring a Personal Property Securities Register Check has been conducted on the motor vehicle and, where applicable, a copy of the impounding notice has been served on any party with a financial interest in the vehicle (see s. 16.16.4: 'Personal Property Securities Register check' of this chapter); and

(vi) where a vehicle has been forfeited in accordance with s. 118 or s. 118A of the PPRA, VICs are to ensure notice of the proposed sale or disposal of the vehicle is published on the QPS internet website prior to disposal. Vehicles forfeited to the State may be disposed of under s. 120: 'Disposal of forfeited motor vehicle' of the PPRA.

### **Delegated officer**

A delegated officer who receives a request from a VIC to have a forfeited vehicle disposed of is to:

(i) consider the basis of forfeiture of the vehicle to substantiate the disposal request;

(ii) determine an appropriate means for the vehicle to be disposed of, having regard to all the relevant circumstances (in accordance with the Act and Delegation D 24.37); and

(iii) where the vehicle is to be disposed of, advise the VIC of the details of the decision.

See also s. 16.7: 'Procedures for type 1 vehicle related offences' of this chapter.

### **16.16.3 Deleted**

### **16.16.4 Personal Property Securities Register check**

Where a vehicle has been forfeited to the State under s. 74B, s. 74F, s. 118, s. 118A, s. 119, s. 120, or s. 785 of the PPRA, the relevant VIC is to ensure an extract from the Personal Property Securities Register is obtained by sending a QPRIME task requesting the extract to the Police Information Centre, Release Unit Police [Org Unit 3272].

Where the extract from the Personal Property Securities Register (PPSR) indicates there is a registered security interest recorded against the vehicle, the:

- (i) the VIC is to update QPRIME to add the entity as an 'interested party' against the vehicle (and remove the entity if information is received from the entity that it has no further interest in the vehicle).
- (ii) the VIC is also to send a task to notify the impounding officer of the entity, which falls within the definition of 'owner' in accordance with Schedule 6 of the PPRA.
- (iii) the impounding officer is then to ensure all necessary notices are served on the entity in accordance with the requirements of Chapter 4 of the PPRA to serve notices on the 'owner' (see ss. 16.8-16.10 of this chapter).
- (iv) members are not to sell the vehicle at auction or to a person unless the security interest has been removed prior to sale. In such instances, the entity that has the registered security interest is to be contacted to request removal of their interest from the register to enable the vehicle to be sold. The Australian Financial Security Authority (Cwlth) is empowered to remove registered interest under the *Personal Property Securities Act* (Cwlth). (VICs are to refer to the Motor Vehicle Impoundment webpage on the QPS intranet or contact the Program Lead, Motor Vehicle Impoundment for further guidance).

Where the registered security interest against the vehicle is not removed, the delegated officer may consider disposing of the forfeited vehicle by:

- (i) selling the vehicle to a licensed motor dealer (wrecker) for parts only. In such instances, a statutory declaration is to be obtained from an appropriate representative of the licensed motor dealer (wrecker) stating all identifying parts to the vehicle (engine number, chassis number etc.) will be destroyed by them and not sold or given to any person; or
- (ii) having the vehicle destroyed, for example, by crushing the vehicle.

## 16.17 Vehicles impounded or immobilised in error

Where a member identifies a motor vehicle has been impounded or immobilised in error (e.g. an officer waiving or cancelling an infringement notice for a type 1 or type 2 vehicle related offence or a police prosecutor withdrawing a charge) that member is to notify the OIC of the impounding officer's station/establishment. The OIC, upon being satisfied the vehicle was impounded or immobilised (number plate confiscation) in error, is to, as soon as practicable, ensure:

- (i) where the motor vehicle is still being held or immobilised:
  - (a) the motor vehicle is released (note this may include ensuring the costs of impounding the motor vehicle are paid by the Service if the vehicle is being held in a privately owned holding yard); and
  - (b) the owner of the vehicle is notified the vehicle may be collected or where the number plates have been removed and confiscated, the number plates can be collected; and/or
- (ii) where the owner has incurred costs to collect the motor vehicle, the owner is notified the vehicle was impounded in error and any claim for reimbursement is to be directed to the OIC of the relevant station/establishment; and
- (iii) where applicable, the relevant offence code flag created on the QPRIME system is deleted (not expired), by starting a workflow in QPRIME for the person 'QPS request correction to record' in QPRIME and requesting deletion of the person's incorrect type 1 or type 2 flag.

## 16.18 Infringement notice or charges withdrawn or dismissed

In circumstances where an infringement notice is withdrawn or cancelled in relation to a type 1 or type 2 vehicle related offence, or a charge for a type 1 or type 2 vehicle related offence is withdrawn, the impounding or immobilising officer is to ensure the relevant offence code flag created on the QPRIME system upon charging, is deleted (not expired) as soon as practicable.

In circumstances where a vehicle related offence is dismissed by the court, the relevant prosecutor is to ensure the relevant offence code flag created on the QPRIME system upon charging, is deleted (not expired) as soon as practicable.

To delete the relevant flag in QPRIME, start a workflow for the person 'QPS request correction to record' and request deletion of the person's incorrect type 1 or type 2 flag.

## 16.19 Regional and command responsibilities

Vehicle impoundment coordinators (VIC) are to assist and support districts in the management of immobilised, impounded and forfeited vehicles and their disposal. VICs are responsible for the quality assurance and audits of type



1 and type 2 offences as they relate to immobilised and impounded vehicles. VICs may send tasks to officers to rectify anomalies and/or make corrections to ensure compliance with legislation and policy.

The OIC of each district is responsible for:

- (i) ensuring delegated commissioned officer(s) within the district consider and determine to grant or refuse an application for early release;
- (ii) financial responsibility for immobilised, impounded and forfeited vehicles;
- (iii) assistance in making available appropriately trained staff to perform duties of VIC within their respective district when the substantive VIC is on an extended period of leave;
- (iv) where applicable, station/establishment instructions are developed dealing with immobilised, impounded or forfeited motor vehicles subject to this policy (see s. 1.5.3: 'Regional, District and Station/Establishment Instructions' of the OPM).

## 16.20 Obtaining a court order to impound or forfeit a motor vehicle for evasion offences

When a person commits an evasion offence, officers have the option of impounding or immobilising the relevant motor vehicle at the time of charging the offender under Chapter 4: 'Motor vehicle impounding and immobilisation powers for prescribed offences and motor bike noise direction offences' of the PPRA (see s. 16.7: 'Impounding procedures for type 1 vehicle related offences' of this chapter).

Officers who commence a prosecution for an evasion offence and have not impounded or immobilised the vehicle at the time of charging the offender are to consider the provisions of Part 3: 'Obtaining impounding and forfeiture orders' and Part 4: 'Deciding applications' of Chapter 22 of the PPRA.

The application for an impounding order or a forfeiture order depends on whether the offender has previously been charged and/or convicted of an evasion offence.

Where a person has:

- (i) not been charged or found guilty of an evasion offence within the relevant period (within 3 years before the offence date), an application to impound the motor vehicle is to be commenced (see s. 16.20.1: 'Application for an impounding order for an evasion offence' of this chapter); or
- (ii) has been:
  - (a) found guilty of 1 evasion offence committed on a previous occasion within the relevant period; or
  - (b) charged with an evasion offence committed within the relevant period and the charge of that offence has not been decided,

an application to forfeit the motor vehicle is to be commenced (see s. 16.20.2: 'Application for a forfeiture order for an evasion offence' of this chapter).

### Factors to be considered before applying for impounding or forfeiture orders

Prior to making an application for an impounding or forfeiture order, officers are to consider if the:

- (i) owner of the motor vehicle was involved in the commission of the evasion offence;
- (ii) motor vehicle is still in possession of the owner;
- (iii) condition and value of the motor vehicle would support such application, e.g. the motor vehicle may be heavily damaged and irreparable at the time of applying for an impounding or forfeiture order;
- (iv) owner of the motor vehicle involved in the evasion offence has agreed to transfer ownership of the vehicle to the State under s. 784: 'Voluntary transfer of ownership of motor vehicle to State' of the PPRA (see s. 16.16: 'Disposal of impounded and forfeited motor vehicles' of this chapter); and
- (v) motor vehicle is the subject of a registered security interest in the Personal Property Securities Register (see s. 16.16.4: 'Personal Property Securities Register check' of this chapter).

### Evidentiary provisions

Section 757: 'Evidentiary provision' of the PPRA provides for:

- (i) the issuing of an evidentiary certificate under the hand of the Commissioner; and
- (ii) certain statements within the notice to appear or complaint and summons regarding:
  - (a) ownership of the motor vehicle at the time of the offence;
  - (b) whether a named person was of, over or under a certain age at the time of the offence; or

(c) whether a thing is or was a motor vehicle or of a particular class or description of motor vehicle; to be evidence of what is being stated or alleged.

When starting a proceeding for an evasion offence against a person by notice to appear or complaint and summons, officers are to include the appropriate allegation or statement in the relevant notice to appear or complaint and summons.

#### PROCEDURE

Where an evidentiary certificate under s. 757 of the PPRA is required for court purposes, requesting officers are to forward an e-mail to the Investigations and Functional Support Unit, Police Information Centre (see the Police Information Centre webpage on the Service intranet), including the:

- (i) motor vehicle identifying particulars (e.g. type of vehicle, registration number, VIN, engine number);
- (ii) date and time the motor vehicle's ownership details are to be certified;
- (iii) date the certificate is required by the requesting officer; and
- (iv) postal address for mailing.

The Manager, Information Service Centre, Police Information Centre has been delegated by the Commissioner (see Delegation D 24.12) to complete and forward a QP 0688: 'Evidentiary certificate (Evasion Offence)' to the requesting officer by e-mail and post.

#### Defence provisions

Section 772: 'Defence' of the PPRA provides that in a proceeding for an impounding or forfeiture order under Chapter 22, it is a defence for an owner of the vehicle to prove that the evasion offence happened without the knowledge and consent of the owner.

Section 767: 'Community service instead of impounding or forfeiture order' of the PPRA allows a court to order the person to perform community service where it is satisfied impounding or forfeiting a motor vehicle will cause severe financial hardship to an owner or usual driver of the motor vehicle.

When an officer starts a proceeding for an evasion offence, the officer is to question the:

- (i) owner about their knowledge and involvement in relation to the evasion offence; and
- (ii) owner and, if applicable, the usual driver of the motor vehicle, about any financial hardship that any impounding or forfeiture of the motor vehicle may cause,

and where appropriate, obtain a statement.

#### 16.20.1 Application for an impounding order for an evasion offence

An officer making application for an impounding order under s. 758: 'Application for impounding order for evasion offence' of the PPRA is to:

- (i) complete a Form 110: 'Application for Impounding Order (Evasion Offence)';
- (ii) lodge the completed application with the Registrar of the relevant court and, if the proceeding on the relevant evasion offence charge has:
  - (a) not been decided, where practicable, the application hearing date is to coincide with the next date set down for mention or hearing for the evasion offence charge; or
  - (b) been decided, a hearing date is to be sought as soon as possible after the person has been found guilty of the evasion offence.

#### ORDER

As soon as reasonably practicable after a date is set for the hearing of an impounding order application, the applicant officer is to ensure that a QP 0692: 'Advice to owner of date of hearing (written notice)' is given to each owner of the relevant motor vehicle. Where the owner of the motor vehicle is a child, and it is reasonably practicable to do so, the applicant officer is to ensure a QP 0692 is given to the child's parent or guardian (see s. 762: 'Advice to owner of date of hearing' of the PPRA).

The officer serving the QP 0692 is to:

- (i) advise the owner of the motor vehicle of the provisions of s. 770: 'Motor vehicle not to be sold etc. before application is decided' of the PPRA and record that advice was given in their notebook; and
- (ii) complete the service details on the form and return it to the applicant officer for inclusion with the impounding order application documentation.

#### Hearing of an impounding order application

The following documentation is to be provided to the relevant police prosecutions corps or to the ODPP, as appropriate, in sufficient time prior to the hearing of the application:

- (i) an affidavit:
  - (a) outlining the grounds for the application, including the owner's knowledge and involvement in relation to the evasion offence and statements made by the owner or, if applicable, the usual driver of the motor vehicle, as to any financial hardship that any impounding of the motor vehicle may cause; and
  - (b) seeking authorisation for a police officer, without warrant, to enter any place the police officer reasonably suspects is a place that the motor vehicle may be found, and search for and impound the motor vehicle;
- (ii) a copy of the Form 110: 'Application for Impounding Order (Evasion Offence)';
- (iii) a copy of the QP 0692: 'Advice to owner of date of hearing (written notice)' including service details;
- (iv) a copy of the QP9 (Court Brief) for the relevant evasion offence;
- (v) any other statement/affidavit taken from the owner/s of the motor vehicle or other witnesses;
- (vi) any criminal and/or traffic histories of the driver of the motor vehicle; and
- (vii) a completed QP 0687: 'Impounding Order' for issuance by the relevant court.

### 16.20.2 Application for a forfeiture order for an evasion offence

An officer making application for a forfeiture order under s. 759: 'Application for forfeiture order for evasion offence' of the PPRA is to:

- (i) complete a Form 111: 'Application for Forfeiture Order (Evasion Offence)';
- (ii) lodge the completed application with the Registrar of the relevant court and:
  - (a) if the proceeding on the relevant evasion offence charge or previous charge within the relevant period has not been decided, where practicable, the application hearing date is to coincide with the next date set for mention or hearing for the not yet decided evasion offence charge; or
  - (b) if all proceedings relating to evasion offences have been decided, a hearing date is to be sought as soon as possible after the person charged has been found guilty of the evasion offence/s.

#### ORDER

As soon as reasonably practicable after a date is set for the hearing of a forfeiture order application, the applicant officer is to ensure that a QP 0692: 'Advice to owner of date of hearing (written notice)' is completed and given to each owner of the relevant motor vehicle. Where the owner of the motor vehicle is a child, and it is reasonably practicable to do so, the applicant officer is to ensure a QP 0692 is given to the child's parent or guardian (see s. 762: 'Advice to owner of date of hearing' of the PPRA).

The officer serving the QP 0692 is to:

- (i) advise the owner of the provisions of s. 770: 'Motor vehicle not to be sold etc. before application is decided' of the PPRA and record that advice was given in their notebook; and
- (ii) complete the service details on the form and return it to the applicant officer for inclusion with the forfeiture order application documentation.

#### Hearing of a forfeiture order application

The following documentation is to be provided to the relevant police prosecutions corps or to the ODPP, as appropriate, in sufficient time prior to the hearing of the application:

- (i) an affidavit:
  - (a) outlining the grounds for the application, including the owner's knowledge and involvement in relation to the evasion offence and statements made by the owner or, if applicable, the usual driver of the motor vehicle as to any financial hardship that forfeiture of the motor vehicle may cause; and
  - (b) seeking authorisation for a police officer, without warrant, to enter any place the police officer reasonably suspects is a place that the motor vehicle may be found, and search for and take possession of the motor vehicle for the State;
- (ii) a copy of the Form 111: 'Application for Forfeiture Order (Evasion Offence)';
- (iii) a copy of the QP 0692: 'Advice to owner of date of hearing (written notice)' including service details;
- (iv) a copy of the QP9 (Court Brief) for the relevant evasion offence;
- (v) any other statement/affidavit taken from the owner/s of the motor vehicle or other witnesses;
- (vi) any criminal and/or traffic histories of the driver of the motor vehicle; and
- (vii) a completed QP 0689: 'Forfeiture Order' for issuance by the relevant court.

### 16.20.3 Impounding and seizing motor vehicles by court order for evasion offences

Section 775: 'Powers for enforcing court order' and s. 776: 'Duties of police after impounding or seizing motor vehicle' of the PPRA provides specific powers for police when a relevant court makes an impounding order or a forfeiture order.

When an officer takes possession of a motor vehicle impounded or forfeited to the State by a court order issued under Chapter 22 of the PPRA, the officer is to:

- (i) sign a towing authority for the motor vehicle and direct the driver of the tow truck to tow the motor vehicle to a:
  - (a) private holding yard designated as a property point; or
  - (b) police holding yard which is designated as a property point (where available) if it is not practicable to move the motor vehicle to a private holding yard;
- (ii) where the vehicle has been impounded for 90 days, give a QP0690: 'Recovery Details for Impounded Motor Vehicle (Evasion Offence)' to each owner of the vehicle; and
- (iii) prior to the termination of their shift:
  - (a) ensure that a copy of the relevant court order is scanned and attached as an external document to the relevant QPRIME occurrence; and
  - (b) send a QPRIME task to the VIC for the region/district advising of the impounding or forfeiture.

The Superintendent, RP&RSC is to ensure that the information received is collated and appropriately maintained.

### 16.20.4 Disposal of motor vehicles impounded or forfeited to the State for evasion offences

Whilst Chapter 22, Part 5: 'Other provisions' of the PPRA includes provisions for the disposal of vehicles impounded or seized by way of a court order for an evasion offence, whenever practicable vehicles are to be disposed under Chapter 4, Part 6: 'Other provisions' of the Act and in accordance with sections:

- (i) 16.12: 'Release and recovery of motor vehicle after impoundment period ends';
- (ii) 16.13: 'Costs of storage of impounded vehicles';
- (iii) 16.14: 'Order for payment of costs to the Service (child driver)';
- (iv) 16.15: 'Recovering payment for storage of impounded vehicle'; and
- (v) 16.16: 'Disposal of impounded and forfeited motor vehicles'

of this chapter.

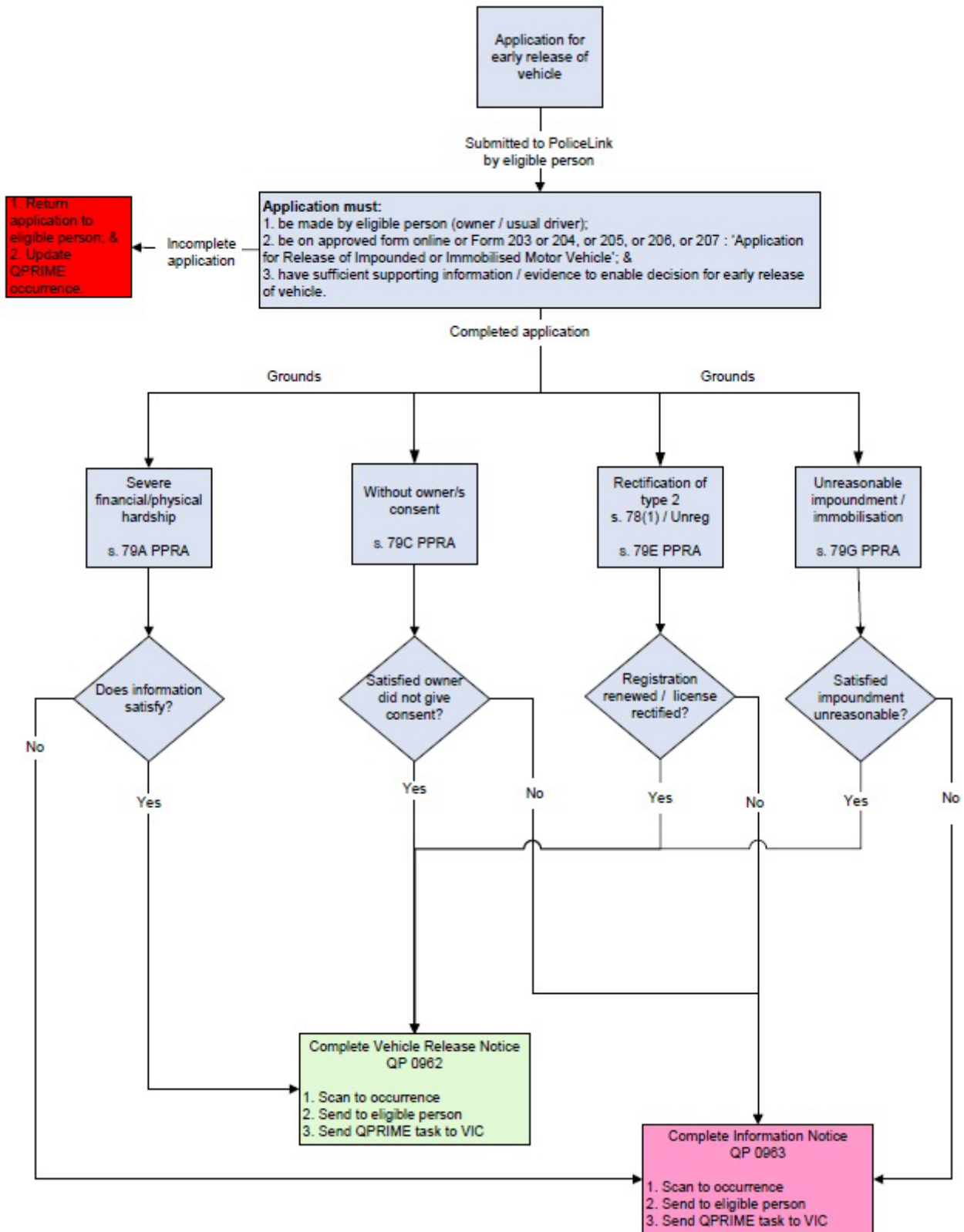
**Appendix 16.1 Deleted**

**Appendix 16.2 Deleted**

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# Appendix 16.3 Application for early release of impounded or immobilised vehicles flow chart

(s. 16.12)



PPRA: Police Powers and Responsibilities Act  
VIC: Vehicle Impoundment Coordinator