



New South Wales

# Motor Traffic Amendment (Impounded Vehicles) Regulation 1997

under the  
Traffic Act 1909

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Traffic Act 1909*.

CARL SCULLY, MP  
Minister for Roads

## Explanatory note

The objects of this Regulation are:

- (a) to prescribe a towing fee payable by the owner of a motor vehicle that has been towed under section 4BB of the Act, and
- (b) to prescribe the circumstances in which a vehicle that has been impounded under section 4BB or 4BC of the Act or forfeited to the Crown under section 4BC of the Act may be offered for sale by the Commissioner of Police.

This Regulation is made under section 4BB of the *Traffic Act 1909* and Schedule 2 to that Act.

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Clause 1            Motor Traffic Amendment (Impounded Vehicles) Regulation 1997

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**Motor Traffic Amendment (Impounded Vehicles)  
Regulation 1997**

**1 Name of Regulation**

This Regulation is the *Motor Traffic Amendment (Impounded Vehicles) Regulation 1997*.

**2 Commencement**

This Regulation commences on 10 October 1997.

**3 Amendment of Motor Traffic Regulations 1935**

The *Motor Traffic Regulations 1935* are amended as set out in Schedule 1.

**4 Notes**

The explanatory note does not form part of this Regulation.

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## Schedule 1 Amendment

(Clause 3)

### Regulations 143, 144

Insert after Regulation 142:

#### 143 Towing fee for impounded vehicles

- (1) A fee is payable to the Commissioner of Police by the owner of a vehicle that is towed under section 4BB of the Act, except as otherwise provided by this Regulation.
- (2) The fee payable is whichever is the lesser of the following:
  - (a) the actual cost of towing the vehicle,
  - (b) the maximum charge for the time being determined under section 59 of the *Tow Truck Act 1989* (including any surcharge chargeable, in the circumstances of the case, in accordance with a determination under that section) for:
    - (i) in the case of the Sydney metropolitan area—a 50-kilometre tow, or
    - (ii) in any other case—a 100-kilometre tow.
- (3) A fee is not payable under this Regulation (and if paid, is refundable) if no person is convicted of the relevant offence under section 4B or 4BA, unless a penalty notice, issued under section 18B of the Act in relation to the alleged offence, is dealt with by payment of the penalty prescribed under that section or by an enforcement order under section 100L of the *Justices Act 1902* that is not subsequently quashed or set aside.
- (4) No fee is payable under this Regulation by the owner of the vehicle if the owner furnishes the Commissioner of Police with a statutory declaration stating:
  - (a) that the offence concerned was not committed with the owner's consent, and

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Schedule 1 Amendment

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- (b) that the owner did not know, and could not reasonably be expected to have known, that the vehicle would be used for the commission of the offence, and
  - (c) that:
    - (i) at the time of the offence, the vehicle was being driven by a person whose name and address are supplied in the declaration, or
    - (ii) the owner does not know and could not with reasonable diligence have ascertained the name and address of the person who was driving the vehicle at that time.
- (5) A fee that, by virtue of clause (4), is not payable by the owner of the vehicle is payable by the person driving the vehicle at the time of the relevant offence.
- (6) A statutory declaration referred to in clause (4) that is produced in any proceedings for recovery of a fee under this Regulation from the driver of a vehicle, in so far as it alleges that any person was the driver of the vehicle at the time of the offence, is prima facie evidence of the driver's identity.
- (7) A court:
  - (a) before which proceedings for an alleged offence under section 4B or 4BA are brought, or
  - (b) to which application is made under clause 6 of Schedule 2 to the Act following the impounding of a vehicle for an alleged offence,that finds the offence proven may, for reasons of the avoidance of any undue hardship to any person or other injustice perceived by the court, by order direct that the fee prescribed by clause (2) in relation to the towing of a vehicle in connection with the alleged offence be reduced by such amount as the court may specify or that, in the circumstances of the case, no fee is payable.

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- (8) The Commissioner is to give notice of any fee payable under this Regulation to the owner of the vehicle concerned and, except as otherwise provided by this Regulation, the fee is due and payable 14 days after service of the notice.

**144 Disposal of impounded vehicles or vehicles forfeited to the Crown**

- (1) If a vehicle that was impounded under section 4BB or 4BC of the Act has not been released, in accordance with Schedule 2 to the Act, at the end of the period for which it was liable to be impounded, the Commissioner may, by notice served personally or by post on the registered owner of the vehicle and on every person having a registered interest (as defined in Schedule 2 to the Act), warn the owner and every such person that the vehicle is liable to be offered for sale unless appropriate steps are taken to procure the release of the vehicle.
- (2) For the purposes of clause 9 (1) of Schedule 2 to the Act, a vehicle that has been forfeited to the Crown under section 4BC of the Act, or that remains duly impounded for 28 days after service of notices under clause (1), may be offered for sale, except as provided by clause (3) or by the order of any court.
- (3) A vehicle may not be offered for sale while any application under clause 5 of Schedule 2 to the Act remains undetermined by the Commissioner or while any application under clause 6 of that Schedule, or any subsequent proceedings arising out of such an application, are pending.
- (4) At any time within 12 months after a vehicle has been sold in accordance with this Regulation, a person may apply to the Commissioner for payment to the person of the balance of the proceeds of sale of the vehicle, after deduction of any storage fees payable under the Act and the reasonable costs of or incidental to the sale.

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- (5) The balance of the proceeds of sale may be paid by the Commissioner to any applicant who satisfies the Commissioner, on such evidence as the Commissioner may reasonably require, that:
  - (a) the applicant was lawfully entitled to the vehicle immediately before its sale, and
  - (b) there was a reasonable excuse for the applicant's failure to obtain the release of the vehicle before it was sold.