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KEYWORDS: road safety, traffic safety, traffic police, drag racing, street racing, high performance motor vehicles, street machines, burnouts, donuts, impoundment, forfeiture

STAYSAFE 35

THE TRAFFIC AMENDMENT (STREET AND ILLEGAL DRAG RACING) ACT 1996— A REPORT RELATING TO THE SUNSET PROVISION

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CHAIRMAN'S FOREWORD

Paul Gibson MP, Member for Londonderry
Chairman, STAYSAFE
Joint Standing Committee on Road Safety

This report is the first review of the operation of the Traffic Amendment (Street and Illegal Drag Racing) Act 1996.

The STAYSAFE Committee conducted hearings in which a representative section of those most directly affected by the Act were examined. These included the New South Wales Police Service, the Roads and Traffic Authority, members of car clubs and road safety experts. This report is necessarily brief, reflecting the short time in which the Act has been in force. In time, however, the Committee will be able to present to the Parliament a more comprehensive assessment.

Despite the fact the Act has been in operation for less than six months and many of its provisions remain untested, some conclusions can immediately be drawn. The most important is that the Act, and, one can safely assume, the threat of vehicle confiscation it provides, has successfully broken up large and regular congregations of car enthusiasts engaging in illegal, dangerous and disruptive activities such as racing and performing “burnouts”. While it is accepted that such behaviour will not cease entirely, Police testimony confirms that the Act has had a positive effect on the problem it sought to address. Coupled with the absence of complaints from those affected by the operation of the Act and its apparent acceptance by the general public, this initial review points toward the Act being a success.

The STAYSAFE Committee has formed the view that the Act should be confirmed, with minor amendment, and reviewed again in the next two to three years.

Acknowledgments

A significant aspect of the STAYSAFE Committee’s operation is the bipartisan manner in which the Committee members conduct their inquiries and deliberations. I am grateful for the hard work of my colleagues, be they Government Members, Opposition Members, or from the cross bench.

The STAYSAFE Committee has been ably served by its Director, Mr Ian Faulks, and the Secretariat: Project Officer, Mr David Emery; Committee Officer, Mr Chris Papadopoulos; and Assistant Committee Officers, Mrs Maria Tyrogalas and Ms Susan Want.

I commend this report to Parliament.

EXECUTIVE SUMMARY

The Traffic Amendment (Street and Illegal Drag Racing) Act came into force on 21 December 1996 in response to community concern over the behaviour of groups of car enthusiasts engaged in illegal, dangerous and disruptive activities such as street racing and performing “burnouts”.

The Traffic Amendment (Street and Illegal Drag Racing) Act was drafted to provide the New South Wales Police Service with the power to confiscate the vehicles of any persons engaged in such illegal activity. The provision of this power was specifically designed in response to the failure of existing laws and punishments to effectively dissuade offenders from repeatedly participating in these illegal activities. During debate on the Act in its draft form, Parliament acknowledged that confiscation as a punishment appeared somewhat anomalous when compared to fines and other punitive measures provided for other road traffic offences.

Nevertheless, Parliament accepted the argument that individuals involved in this specific activity would be more influenced by the threat of vehicle confiscation than any other available measure. As a safeguard, the Act included a “sunset” clause which provided for a review of the operation of the Act after six months, and required both Houses of Parliament to resolve to continue the operation of the Act. STAYSAFE was given the statutory power to inquire into the provisions of the Act and its workings. This report constitutes the review of the sunset provisions of the Act.

STAYSAFE conducted public meetings in April and May 1997 in which it took evidence from a representative section of the community most directly affected by the Act, including the New South Wales Police Service, the Roads and Traffic Authority, members of various car clubs with interests in “street machines”, and road safety consultants. STAYSAFE examined these witnesses on the effectiveness of the Act from the point of view of their respective interests.

On balance, STAYSAFE found that no negative effects, other than those intended, were produced by the enforcement of the Act. Rather, the bulk of the evidence presented indicated that the Act had produced positive effects. Some 380 offences under the Act have been detected and more than 130 vehicles impounded since December 1996. Police Service evidence suggests that the Act, and its threat of vehicle confiscation, has directly led to the reduction of what were regular large gatherings of car enthusiasts engaging in activities prohibited by the Act.

No specific complaints about the operation of the Act or its implementation by the New South Wales Police Service were uncovered by STAYSAFE. Based on advice from police witnesses and the Minister of Police, STAYSAFE recommends that a minor amendment be made to the Act to clearly define the time period after an offence has occurred in which police can act to fine an offender or confiscate a vehicle.

The positive results provided by this review must be assessed in light of the fact that none of the provisions of the Act have been challenged in a court of law, and as yet, the provision for forfeiture of a vehicle has not been tested.

While STAYSAFE does not expect any such challenge to be successful, it concedes that a truly comprehensive review of the act will only be possible after more time has elapsed and more experience in administering the Act is gathered by the New South Wales Police Service.

STAYSAFE recommends that the Parliament resolve to continue the operation of the Act.

RECOMMENDATIONS

RECOMMENDATION 1: Parliament resolve to confirm and continue the provisions of the Traffic Amendment (Street and Illegal Drag Racing) Act 1996 as provided for in Part 4 of the Act (Expiry of Amendments).

RECOMMENDATION 2: The Minister for Roads, in consultation with the Minister for Police, amend the Traffic Amendment (Street and Illegal Drag Racing) Act 1996 s.4BB (1) to the effect that the word “just” is removed, and a specific time period inserted.

RECOMMENDATION 3: The New South Wales Police Service ensure that appropriate, safe and convenient areas are established for the storage of impounded vehicles.

RECOMMENDATION 4: The New South Wales Police Service and the Roads and Traffic Authority jointly review the activities and requirements of local street racing groups with a view to assisting in the provision of safe legal alternatives for such activities where possible.

RECOMMENDATION 5: The New South Wales Police Service and the Roads and Traffic Authority jointly promote awareness of the provisions of the Traffic Amendment (Street and Illegal Drag Racing) Act 1996, particularly regarding the illegal street racing activities which it prohibits and the penalties provided for any breach of the Act.

RECOMMENDATION 6: The Roads and Traffic Authority undertake appropriate research into use of motor vehicle impoundment, confiscation and forfeiture as punitive sanctions for illegal road behaviours.

BACKGROUND

1.1 The Traffic Amendment (Street and Illegal Drag Racing) Act 1996 provides for new policing powers and penalties in dealing with instances of illegal street racing and illegal drag racing. The Act includes a statutory provision for STAYSAFE to review the operation of the Act.

1.2 In his Second Reading speech, the Minister for Police, the Hon. Paul Whelan MP, indicated that:

“[The]... Bill has been introduced by the Government to address serious and well-founded community concerns. In some parts of the State unlawful and extremely dangerous practices are engaged in by drivers of motor vehicles, often in large groups. These practices include illegal racing on public streets, burnouts, doughnuts and other dangerous practices which put at risk the lives of those undertaking them, spectators and, most importantly, other members of the public using those streets. The ordinary process for dealing with offenders using vehicles has proved to be an inadequate deterrent to these people despite the very positive efforts of the police and the Roads and Traffic Authority to address the problem”

1.3 The Minister then described the new powers police would be given, including the power to impound any motor vehicle which is used for unlawful street racing, either on the spot or if circumstances require the vehicle may be impounded later. Courts may also order a vehicle to be impounded. When impounded, the vehicle is to be taken by either police officers or a contractor to a holding yard. The vehicle can be impounded for a period of up to three months for a first offence. If the person is convicted of a subsequent offence the court will have the power to order the forfeiture of the vehicle, that is, the vehicle may be lost to the owner permanently.

1.4 The Minister stated:

“This is innovative legislation. It is designed to address a serious problem in our community in an innovative manner. Because of this, the bill provides a sunset clause six months after commencement. It also provides for ongoing monitoring of the effectiveness of the legislation by the STAYSAFE Committee. I commend the bill to the House.”

1.5 In line with this request, STAYSAFE has undertaken a review of the operation of the Traffic Amendment (Street and Illegal Drag Racing) Act 1996. The review has involved the taking of evidence from a wide spectrum of parties who are affected by the Act or who have an interest in its operation.

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REVIEW FINDINGS

The operation of the Traffic Amendment (Street and Illegal Drag Racing) Act 1996 - Comments from drag racing enthusiasts and car club members - Comments from the New South Wales Police Service - Comments from the Roads and Traffic Authority - Comments from road safety consultants - Other jurisdictions - Some notes about drag racing

2.1 In undertaking the review of the Traffic Amendment (Street and Illegal Drag Racing) Act 1996, STAYSAFE sought to examine drag racing enthusiasts and car club members, the New South Wales Police Service, the Roads and Traffic Authority, and comments from road safety consultants.

The operation of the Traffic Amendment (Street and Illegal Drag Racing) Act 1996

2.2 STAYSAFE examined police witnesses regarding the operation of the Traffic Amendment (Street and Illegal Drag Racing) Act 1996.

2.3 As of the end of March 1997 there had been a total of 384 offences detected by police regarding illegal street racing. Police had impounded 136 vehicles. About two-thirds of the impoundments were for offences in the Sydney metropolitan area, and the remainder throughout the rest of New South Wales. As at the end of April 1997, 66% of the vehicles impounded remained in police custody, and 34% had been released.

2.4 Vehicles were released from police custody after the full three month impoundment had elapsed (38%), after application to a local court and the granting of an order to release (23%), or after a successful application to the Commissioner of Police or the local patrol commander (38%). In the main, the vehicles released by the courts or by police involved incidents where the vehicle's owner was not the illegal street racing offender.

Comments from drag racing enthusiasts and car club members

2.6 STAYSAFE spoke to number of persons who were either members of car clubs or participated

or supported legal variations of the activities which the Traffic Amendment (Street and Illegal Drag Racing) Act 1996 has sought to control on suburban streets. Witnesses were uniform in their acceptance of the need to regulate or prohibit potentially dangerous or unnecessarily noisy behaviour related to motor vehicle racing or “burnouts” in suburban areas, noting that individuals who indulged in this behaviour were generally not members of organised clubs. In defence of such behaviour, it was suggested to STAYSAFE that much of today’s street activity could be blamed on a lack of off-street facilities. While the car club members suggested to STAYSAFE that the provisions in the Act for impoundment and forfeiture of vehicles were unnecessarily harsh, they clearly iterated that their members would not engage in the kinds of activities which might lead to impoundment.

2.7 STAYSAFE also heard evidence from the editor of a popular street-machine magazine who had editorialised in response to the Act that it constituted an infringement of the civil rights of car enthusiasts. In the same editorial, he had invited comments from his readers on the issue. Despite his expectation that he would be flooded by complaints, only one letter critical of the provisions of the Traffic Amendment (Street and Illegal Drag Racing) Act 1996 has been published by the magazine.

2.8 Evidence from these groups reinforced STAYSAFE’s view that the legislation had gained broad acceptance from the drag racing and car club interest groups, and that the Act had successfully targeted only those persons engaged in illegal activities.

Comments from the New South Wales Police Service

2.9 Evidence from the New South Wales Police Service was very positive. Police witnesses examined by STAYSAFE recounted the practical experience of enforcing the Traffic Amendment (Street and Illegal Drag Racing) Act 1996 and provided STAYSAFE Members with a clear understanding of its strengths and weaknesses. While police clearly endorsed the effect of the Act, they pointed out two areas in particular in which it might be refined.

2.10 The first area of concern was the lack of safe and convenient locations to store impounded or confiscated. STAYSAFE has noted this concern and has recommended in this report that the New South Wales Police Service ensures that appropriate steps are taken to provide such locations.

2.11 The second and more pressing matter related to the wording of section 4BB (1) of the Traffic Amendment (Street and Illegal Drag Racing) Act 1996. This section states, in part:

“...a motor vehicle is being or has **just** been operated on a public street so as to commit an offence...” [bold emphasis added]

2.12 The clause was intended to give police the power to seize a vehicle *after* an offence where clear evidence of the offence existed. However, legal opinion obtained by the New South Wales Police Service concluded that the term “just” was sufficiently vague as to be open to challenge by an alleged offender. Police witnesses indicated to STAYSAFE that their legal advice was that the term “just” should be replaced by a specific period of time. Police should be able to impound a vehicle in the situation where they had not actually observed an illegal street racing offence but had obtained sufficient evidence to form a reasonable view that an offence had, in fact, just occurred. Police

witnesses were equivocal about what the appropriate time period should be, suggesting twelve or twenty-four hours.

2.13 It was also suggested that STAYSAFE might consider recommending the complete removal of the provision to impound a motor vehicle in the circumstance where police had not actually observed an illegal street racing offence but had obtained sufficient evidence to form a reasonable view that the offence had occurred. STAYSAFE, however, believes that police should retain the power to impound a motor vehicle if there is sufficient evidence of an illegal street racing offence, even if police did not actually observe the offence.

2.14 It was clear to STAYSAFE that the New South Wales Police Service's priority was to ensure that police officers were able to enforce the provisions of the Traffic Amendment (Street and Illegal Drag Racing) Act 1996 with certainty.

2.15 STAYSAFE recommends that the Traffic Amendment (Street and Illegal Drag Racing) Act 1996 be amended to clarify the uncertainty over the term "just". Although the actual time period it is the prerogative of the Minister for Roads and the Minister for Police, STAYSAFE stresses that it is important to allow the New South Wales Police Service some latitude in approaching offenders after an illegal street racing offence has been committed. STAYSAFE is aware that at times public safety may be compromised if police action to impound a motor vehicle used for illegal street racing is taken in the context of a large crowd of onlookers and participants in an illegal gathering. STAYSAFE therefore suggests that consideration of a time period of a 24 hours may be appropriate.

Comments from the Roads and Traffic Authority

2.16 The Roads and Traffic Authority regarded the provisions of the Traffic Amendment (Street and Illegal Drag Racing) Act 1996 as being more appropriate to general policing than to road safety. For example, Mr Ford, the Director (Road Safety and Traffic Management), commented:

Mr FORD: "... We are talking about a public safety rather than a road safety issue here. You might recall my earlier comment, that while I considered the empowerment to be fairly Draconian, I would be sure it would be effective. However, it really is a matter for the [New South Wales] Police Service given that it is a public safety issue." (Minutes of Evidence, 21 April 1997, p.38)

2.17 However, the Roads and Traffic Authority witnesses acknowledged that for a number of years police had sought the assistance of Roads and Traffic Authority inspectors to examine motor vehicles to determine if the vehicles comply with the appropriate vehicle regulations as to roadworthiness. In particular, the relevant legislative basis for Roads and Traffic Authority roadworthiness inspections is provided in the Motor Traffic Regulations 1935, Clauses 93 (Inspection of vehicles), 94 (Vehicles to be produced as directed), and 94B (Defect notices).

2.18 In respect of vehicles used for illegal street racing, combined police-Roads and Traffic Authority-Environment Protection Authority operations are set up at or near known meeting places where large numbers of young drivers congregate with their vehicles. While these meetings

commonly feature more than 100 vehicles and several hundred spectators, the larger meetings have featured more than a thousand spectators with up to 500-600 vehicles.

2.19 Typically, during these combined operations police will direct the driver of a vehicle suspected of being defective to present to vehicle at a Roads and Traffic Authority inspection site within a specified time, usually 15-20 minutes. An inspection by Roads and Traffic Authority (and Environment Protection Authority) staff is then conducted.

2.20 STAYSAFE asked Roads and Traffic Authority witnesses to describe the nature of defective or unroadworthy vehicles. Mr McIver, Manager (Vehicle Regulations) commented:

Mr McIVER: “From my observations it would appear that vehicles inspected fall into roughly five categories.

In Category 1—the vehicle is not owned by the driver and is generally the family car, which has been borrowed for the evening. This vehicle is normally stock standard and may carry minor defects.

Category 2—these vehicles are in a poor state of repair, with very little care or money being spent on maintenance of the vehicle. The car is basically driven until it breaks down and stops. Serious and dangerous defects are often found in these vehicles.

Category 3—these vehicles may have a substantial amount of time and money expended on them in certain areas, for example, a larger engine, wider wheels and perhaps an expensive paint finishing. Again, serious and dangerous defects are often found. These modifications are not always compatible and completed to the required standard. For example, engine capacity may have been increased without the appropriate braking upgrade.

Category 4—these are vehicles bought for their high power and looks by a person not interested in actually modifying the vehicle past cosmetic changes.

Category 5—these are vehicles highly modified, both legally and illegally, by a dedicated enthusiast and could be described as a street machine. A great deal of thought, care, time and money goes into these cars. Many defects may be present. For example, the vehicle's engine performance may have been dramatically increased. The vehicle may not meet minimum ground clearance. Wheels and tyres may be too wide. These defects would not normally relate to poor maintenance, but are modifications deliberately made to the vehicle.” (Minutes of Evidence, 21 April 1997, pp. 33-34)

2.21 The Roads and Traffic Authority further indicated that there is no clear definition of what constitutes a street machine (as was indicated by the enthusiasts themselves) but indicated that the sorts of modifications generally seen include changes to the engine, transmission, drive line, suspension and braking system. Modifications within the occupant are include fitment of roll bars, racing seats and full harness seat belts. The Roads and Traffic Authority indicated that these modifications can often compromise Australian Design Rules, the roadworthiness standards contained within the Motor Traffic Regulations 1935, and emission control standards.

2.22 The Roads and Traffic Authority later provided information regarding three recent combined police-Roads and Traffic Authority-Environment Protection Authority operations: Operation Hoon 1 on 28 July 1996 resulted in 40 defective vehicle notices being issued; Operation Hoon 2 on 4 September 1996 resulted in 52 defective vehicle notices; and Operation Beachfront on 13 October 1996 resulted in 71 defective vehicle notices being issued.

2.23 In general, the types of vehicles defected as unroadworthy are not vehicles that could be regarded in Mr McIver's classification as Category 5 vehicles or Enthusiast/Street machines. Vehicles classified by Mr McIver as Categories 1-3 (Standard, Neglected, and Minor modifications) comprised the majority of vehicles issued with defective vehicle notices.

2.24 STAYSAFE also questioned the Roads and Traffic Authority witnesses regarding the continuing roadworthiness of vehicles which had passed roadworthiness inspections required for vehicle registration. STAYSAFE understands that it is a common practice for some vehicle owners who modify their vehicles into a form which might be termed a street machine to, immediately prior to a registration vehicle check, remove non-compliant fitments to the vehicle, such as fat tyres, exhaust systems, alterations to suspension and so on. The modified fitments are then replaced after the registration check has been carried out. STAYSAFE asked audit or other enforcement activities have been developed to address this kind of activity. Mr McIver replied:

Mr McIVER: "Currently there are over 2,700 authorised inspection stations in the Sydney metropolitan area. These stations are visited twice a year to monitor the station's general operations. Of that 2,700 we have a random audit programme of around 270 stations annually and this would involve the re-inspection of vehicles that have been recently passed for registration. In addition, audits of those authorised inspection stations are instigated following complaints from the public or the police regarding recently inspected vehicles that are found to be unroadworthy." (Minutes of Evidence, 21 April 1997, p.36)

2.25 The Roads and Traffic Authority later advised that if road users seek to make specialist modifications to vehicles, particularly those that can be easily disguised or reversed, then there is very little that vehicle regulators can do to effectively identify and control such modifications in everyday traffic situations.

2.26 The Roads and Traffic Authority witnesses indicated that specialist modifications to motor vehicles to assist burnouts and other 'show' street machine manoeuvres have not been detected as factors contributing to the cause of road crashes or the severity of road crashes involving these vehicles.

2.27 The Roads and Traffic Authority witnesses described some of the mechanical issues involved in using a motor vehicle for 'burn-outs' and 'donuts':

Mr GRIFFITHS: "... I am not a motor vehicle enthusiast, but, as a mechanical engineer and a person with mechanical engineering background, what I understand when a burn-out is being performed, or a donut, is that the driver is basically applying excessive

power to the wheels to the point where they lose traction and sometimes that loss of traction is assisted by spreading oil on the road and I understand sometimes that oil is a diesel fuel or something else so that it actually gets to a temperature where it ignites.”

Mr HARRISON (STAYSAFE): “And a donut?”

Mr GRIFFITHS: “I think it is a similar thing except that the vehicle is turning in a circle.”

Mr GIBSON (CHAIRMAN): “Is the braking system modified at all to be able to do that?”

Mr GRIFFITHS: “You do not need to modify the braking system, as I understand it, you just have to apply lots of power to the back wheels of the car, if it is a rear wheel drive car.”

Mr THOMPSON (STAYSAFE): “Mr Griffiths, based on your knowledge of the mechanical engineering of a motor vehicle, what are the likely areas of failure in a vehicle when a driver is performing a burn-out or a donut and what are the dangers associated with such failures for the driver, other vehicle occupants or other road users and pedestrians?”

Mr GRIFFITHS: “I understand the most likely outcome is rapid wear of the tyre. After that, if it is spun for long enough, I understand they can actually get a blow-out from the heat generated, but usually the vehicle is moving in a restricted area. I am not aware that there are enormous hazards associated with it.”

Mr SMALL (STAYSAFE): “Mr Griffiths, are there innovations in motor vehicle engineering that make the performance of burn-outs or donuts more difficult?”

Mr GRIFFITHS: “I understand that things like limited slip differentials can make it more difficult, but not necessarily impossible.” (Minutes of Evidence, 21 April 1997, p.36)

2.28 STAYSAFE questioned Roads and Traffic Authority witnesses extensively concerning the use of vehicle impoundment, confiscation and forfeiture as measures to deal with traffic offences. 2.29 It appears that there are no definitive research reviews on the use of vehicle impoundment, confiscation and forfeiture as measures to deal with traffic offences, but these issues, together with other actions involving vehicles such as seizure of car keys, vehicle immobilisation, impoundment of vehicle registration plates, etc., have been addressed in several reports that have appeared recently (see, e.g., STAYSAFE 20, 1993; Stewart, Voas & Taylor, 1995; Voas, Tippetts & Taylor, 1996; Ross, Simon & Cleary, 1996).

2.30 The primary application of measures such as vehicle immobilisation, impoundment, confiscation and forfeiture has been to deal with recidivist drink-drivers and to deal with unlicensed drivers.

2.31 STAYSAFE recommends that the Roads and Traffic Authority review the use of vehicle impoundment, confiscation and forfeiture as measures to deal with traffic offences, and draws specific attention to the findings and recommendations on these measures made in STAYSAFE 20 (1993).

Comments from road safety consultants

2.32 STAYSAFE noted that eminent road safety workers were also troubled by the provisions of the Traffic Amendment (Street and Illegal Drag Racing) Act 1996. For example, Dr Henderson, an eminent road safety researcher, stated:

Dr HENDERSON: “It is probably the first time that I have appeared before STAYSAFE where my views are likely to be contrary to that of the majority of the Members....

What it boils down to, in my view, is that impoundment of a motor vehicle, or even confiscation for three months, puts the whole system of penalties in road safety out of kilter, especially after a second offence. There is nothing of even anywhere near the same order of magnitude of this severity of penalty, losing a motor vehicle.

As was noted in the [Parliamentary] debate, these motor vehicles can be worth up to \$50,000. My estimate is that the average would be far less than that and I would put a nominal \$10,000 on the average value of these vehicles. That is a huge impost, not only for young people, but if it was applied across the board it would be an impost for any citizen. There is no offence at the moment which carries seven penalty points. There is no offence that carries a penalty that you lose your vehicle, whether it be a Mercedes or a clapped out Torana. The Act puts the system out of kilter.

I do not condone this behaviour, as I said in my submission. Like some of the previous people, I am an active participant right now, this last weekend in motor sport. I do not wish to be tarred with the same brush.

As a road safety person, I cannot accept the validity of using this type of Draconian penalty for an offence which overtly does not have a very dangerous effect. Clearly there is a hazard, but so has jet skiing and hang gliding and a whole host of other things. But clearly it has a high nuisance effect.

If we want to put aside the option of using these kinds of Draconian penalties for persons who are a serious threat to mankind, such a recidivist drink drivers, I think we lose something by using this type of penalty for essentially what is a nuisance activity.” (Minutes of Evidence, 21 April 1997, pp.19-20)

2.33 In general, road safety workers supported the concept of vehicle impoundment, noting that it was being used in several States in the United States of America and appeared to be a very successful measure for recidivist drinking drivers. Not only does vehicle impoundment stop drink-drivers from immediately driving while drunk again—at least in the same car—it also seems to have a longer term effect in that drink-drivers who have had their car impounded are less likely to offend again. The road

safety workers argued that vehicle impoundment, confiscation and forfeiture can be effective measure for dealing with serious traffic offenders such as recidivist drinking drivers, but emphasised their view that it should only be used for serious crimes not for what they regarded as minor offences such as illegal street racing.

Other jurisdictions

2.34 The law in New South Wales regarding illegal street racing and vehicle impoundment and forfeiture is not unique.

2.35 For example, in Victoria there is no specific Act to address illegal street racing, but police powers to seize motor vehicles used for illegal street racing rests in the more general provisions of the Crimes (Confiscation of Proceeds of Crime) Act in 1988. Under the Victorian Act, motor vehicles that seized from a convicted offender are subject to forfeiture. It seems that the use of the vehicle forfeiture provisions of the Victorian Act has achieved a significant reduction in illegal street racing.

2.36 In overseas jurisdictions, particularly in the United States of America, vehicle impoundment is more common. STAYSAFE notes that California has recently adopted a new motor vehicle law providing that motorists caught racing are subject to arrest and impoundment of their vehicle—previously, a driver had to be convicted of the offence of street racing (or engaging in a speed contest) before any impoundment could take place.

2.37 While the New South Wales Act appears to be unique in Australia in its specificity to illegal street racing, the use of powers to immobilise, impound, confiscate or forfeit motor vehicles is being proposed as a punitive sanction for other traffic offences, including vehicle emission offences, repeat drink-driving offences and driving while unlicensed (see, e.g., Stewart, Voas & Taylor, 1995; Voas, Tippetts & Taylor, 1996; Ross, Simon & Cleary, 1996).

Some notes about drag racing

2.38 In the simplest terms, a drag race is an acceleration contest between two vehicles racing from a standing start over a straight, precisely measured quarter-mile or eighth mile course. The main object for each competitor is to reach the finish line ahead of his or her opponent, either directly, or on handicap. A typical drag racing event is comprised of a series of individual races and involves a wide variety of vehicles which are divided into classes and categories according to weight, engine size, allowable modifications, fuel type and so on. Because of the vast difference existing between cars and motor-cycles competing in drag racing, it is necessary that a large number of classes are maintained.

2.39 Drag racing of a kind existed in Australia as far back as 1930, when Mrs. J. Jones set an official time of 18.25 seconds for the standing start quarter-mile in her supercharged Alfa, at Bondi Beach near Sydney. It was not until the early fifties that drag racing emerged in the United States, as people who raced each other on the street began to organise themselves and build special cars for the purpose. Organised drag racing came to Australia in the early sixties, using airstrips and closed public roads, and later, suburban and beach side roads.

2.40 The better known episodes of illegal street racing occurred around the Sydney metropolitan area at various times since the early 1970's, including the so-called 'brickies'—Underwood Road at Homebush, at Tempe, at Bondi beach, and in the Dolls Point-Ramsgate-Port Botany areas along the foreshores of Botany Bay.

CONCLUDING COMMENTS

3.1 Following this first review of the Traffic Amendment (Street and Illegal Drag Racing) Act 1996 STAYS SAFE recommends that Parliament should resolve to confirm and continue the provisions of the Traffic Amendment (Street and Illegal Drag Racing) Act 1996 as provided for in part 4 of the Act (Expiry of Amendments).

3.2 STAYS SAFE's review of the Traffic Amendment (Street and Illegal Drag Racing) Act 1996 has indicated that a minor amendment is required. STAYS SAFE recommends that Traffic Amendment (Street and Illegal Drag Racing) Act 1996 s.4BB (1) be amended to the effect that the word "just" is removed, and a specific time period is inserted.

3.3 Several other matters were subject to comment and recommendations by STAYS SAFE, including:

- the need for the New South Wales Police Service to ensure that there are appropriate, safe and convenient areas available for the storage of impounded vehicles.
- the New South Wales Police Service and the Roads and Traffic Authority should jointly review the activities and requirements of local street racing groups with a view to assisting in the provision of safe legal alternatives for such activities where possible.
- the New South Wales Police Service and the Roads and Traffic Authority jointly promote awareness of both the activities prohibited by the Traffic Amendment (Street and Illegal Drag Racing) Act 1996 and the penalties provided for any breach of the Act.
- the Roads and Traffic Authority undertake appropriate research into the use of motor vehicle impoundment, confiscation and forfeiture to deal with illegal road behaviour.

3.4 STAYS SAFE also recognises that the Traffic Amendment (Street and Illegal Drag Racing) Act 1996 provides police with a significant power to seize motor vehicles in situations where they reasonably believe illegal street racing offences have occurred. The exercise of this power must be beyond reproach, and STAYS SAFE looks forward to the development of a body of relevant case law on this question. The question of these powers being used in an excessive or punitive manner was raised by individuals and organisations who forwarded submissions to STAYS SAFE, and was also raised during the Parliamentary debate in the Bill stages. For example, Hunter Valley Street Machines suggested in its submission that it was desirable for police to adduce photographic or video evidence in prosecutions for illegal street racing.

3.5 STAYS SAFE will review the operation of the Traffic Amendment (Street and Illegal Drag Racing) Act 1996 as part of its annual reporting process and make further reports to the Parliament as necessary. In particular, STAYS SAFE notes the need to examine the motor vehicle forfeiture provisions of the Traffic Amendment (Street and Illegal Drag Racing) Act 1996 at some time in the

future.

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SUBMISSIONS RECEIVED BY THE STAYSAFE COMMITTEE

- SDR 1 Mr Anthony Younes
- SDR 2 Hunter Valley Drag Racing Association—Ms Bev Woodman
- SDR 3 Dr Michael Henderson
- SDR 4 Ian Luff Advanced Driving Australia—Mr Ian Luff
- SDR5 Mr Stephen Shaw
- SDR 6 Hunter Valley Street Machine—Ms Sandra Wickham
- SDR 7 Australian National Street Machine Association—Mr Graham Stubbs

WITNESSES APPEARING BEFORE THE STAYSAFE COMMITTEE

Monday 21 April 1997

Mr Mark Duncan Oastler, Editor, 'Street Machine' magazine, ACP Syme Publishing Pty Limited

Mr Kenneth Graham Stock, Hunter Valley Drag Racing Association

Mr Anthony Thomas Clark, Hunter Valley Street Machines

Ms Sandra Ellen Wickman, Hunter Valley Street Machines

Mr Anthony Kevin Roarty, Hunter Valley Street Machines

Dr John Michael Henderson

Mr Barry John Elliott, Elliott & Shanahan Research Psychologists

Mr Christopher Patrick Ford, Director, Road Safety and Traffic Management Directorate, Roads and Traffic Authority

Ms Lori Elyse Mooren, General Manager, Road Safety, Roads and Traffic Authority

Mr Michael Griffiths, Manager, Vehicle and Equipment Safety, Roads and Traffic Authority

Dr David Gilbert Saffron, Manager, Road User Safety, Roads and Traffic Authority

Mr Mark Stephen McIver, Manager, Vehicle Regulations, Roads and Traffic Authority

Superintendent Ronald Alexander Sorrenson, Commander, Traffic Services, New South Wales Police Service

Inspector David John Evans, Traffic Services, New South Wales Police Service

Senior Sergeant Barry Hayston, New South Wales Police Service

Senior Constable Paul Thomas Lyth, New South Wales Police Service

WITNESSES

Monday 5 May 1997

Mr Christopher Patrick Ford, Director, Road Safety and Traffic Management
Directorate, Roads and Traffic Authority

Ms Lori Elyse Mooren, General Manager, Road Safety, Roads and Traffic Authority

WITNESSES

STAYSAFE Committee Reports, 1982-1997

STAYSAFE 1 (1982)	Alcohol, drugs and road safety.
STAYSAFE 2 (1984)	Car driver licensing and road safety.
STAYSAFE 3 (1984)	Motorcycling safety.
STAYSAFE 4 (1985)	Is there a police quota system?
STAYSAFE 5 (1985)	Traffic law enforcement.
STAYSAFE 6 (1985)	The administration of random breath testing.
STAYSAFE 7 (1986)	Police hot pursuits.
STAYSAFE 8 (1986)	Speed control.
STAYSAFE 9 (1986)	DISCUSSION PAPER: Safe speed and overtaking on 100 km/h roads.
STAYSAFE 10 (1986)	Radar detectors and jammers.
STAYSAFE 11 (1987)	Safety of 2-lane country roads.
STAYSAFE 12 (1988)	Bicycle safety.
STAYSAFE 13 (1989)	Immediate and certain loss of licence for extreme drink-driving.
STAYSAFE 14 (1989)	Malpractice in driver licence testing.
STAYSAFE 15 (1989)	Alert drivers, and safe speeds for heavy vehicles.
STAYSAFE 16 (1990)	B-Doubles.
STAYSAFE 17 (1990)	DISCUSSION PAPER: Novice drivers: the student's view.
STAYSAFE 18 (1990)	Steering novice drivers towards safety.
STAYSAFE 19 (1992)	Alcohol and other drugs on New South Wales roads. I. The problem and countermeasures.
STAYSAFE 21 (1992)	DISCUSSION PAPER: Culpable driving.
STAYSAFE 22 (1992)	Towing caravans and trailers safely.
STAYSAFE 23 (1992)	A decade of the STAYSAFE Committee 1982-1992.
STAYSAFE 24 (1992)	Livestock warning signs: Road safety implications of the draft Rural Lands Protection (Amendment) Bill 1992.
STAYSAFE 20 (1993)	Alcohol and other drugs on New South Wales roads. II. Offences, penalties, and the management of convicted drivers.
STAYSAFE 25 (1994)	Death and serious injury on New South Wales roads: An examination of the provisions of the Crimes Act 1900 (NSW) regarding dangerous driving.
STAYSAFE 26 (1994)	Pedestrian safety. I. School children around buses.
STAYSAFE 27 (1994)	Traffic stops, police chases and police pursuits of motor vehicles.
STAYSAFE 28 (1995)	SEMINAR: Sleep disorders, driver fatigue and safe driving.
STAYSAFE 29 (1995)	Pedestrian safety. II. Cleaning windscreens and other itinerant commercial activities on or alongside the roadway.
STAYSAFE 30 (1996)	Pedestrian safety. III. Bicycle courier activities in the Sydney central business district.
STAYSAFE 31 (1996)	Review of the road safety situation in New South Wales in 1994.
STAYSAFE 32 (1996)	Aspects of road safety administration in New South Wales.
STAYSAFE 33 (1996)	Responses to recommendations in STAYSAFE reports of the 50th Parliament.
STAYSAFE 34 (1996)	A 50 km/h general urban speed limit for New South Wales.
STAYSAFE 35 (1997)	The Traffic Amendment (Street and Illegal Drag Racing) Act 1996—A report relating to the sunset provision