

Clamping and confiscating motor vehicles

Anyone can talk to a lawyer for free at Tasmania Legal Aid.

To get free legal information call 1300 366 611, drop into our Hobart or Launceston office (no appointment necessary) or use the Legal Talk chat function on our website. We are open Monday to Friday, 9am to 5pm.

A lawyer can listen to your story and help identify the next steps you can take.

Police can lawfully clamp or confiscate a vehicle if it has been involved in a criminal offence.

When can a car be clamped or confiscated?

If you are charged with one of the following offences, police may clamp or confiscate the vehicle.

- Reckless or dangerous driving
- Street racing or time trials
- Making unnecessary and unreasonable noise
- An exhibition of speed, acceleration or loss of traction (burn-outs or donuts)
- Speeding at, or in excess of, 45 kilometres per hour over the speed limit
- Driving while disqualified, when caught on a second or subsequent occasion
- Evading police under the *Police Powers (Vehicle Interception) Act 2000*
- Trespassing on the property of another with the vehicle
- Refusing to leave an area, or returning to an area, after being told by a police officer to leave.

What if the car I was driving wasn't mine?

A vehicle can still be clamped or confiscated even if the driver doesn't own the vehicle, such as when you borrow someone else's vehicle. However, if the vehicle isn't yours, the police must notify the registered owner that the vehicle has been clamped or confiscated, as soon as is reasonably practicable. They must do this in writing.

What else can police do?

If you have been charged with one of the above traffic offences, police can:

- direct you to stop the vehicle and direct you or anyone in possession of the keys to hand them over
- use whatever force is necessary and reasonable to enter the vehicle
- provide any direction or action necessary to enable that officer to either clamp or confiscate the vehicle.

Even if the police don't clamp or confiscate your vehicle on the spot, they may still do so at any time during the 14day period immediately following the time of the offence. Police can also direct that you or the owner of the vehicle make it available on a certain day, time and place so that clamping or confiscation can occur.

What happens if my vehicle is confiscated?

Police may arrange for the vehicle to be moved and transported to a holding yard.

At the end of the confiscation period, the vehicle will not be released until the costs of moving, storing and releasing the vehicle are paid. If the costs are not paid, the vehicle will not be released.

If the owner does not collect the vehicle within 2 months of the end of the confiscation period, police have the power to sell or dispose of the vehicle.

If you are found not guilty of the traffic offences as charged and your vehicle was confiscated, these costs will be covered by the police.

What if my car was confiscated and I wasn't driving?

In situations where a vehicle is not immediately clamped or confiscated, police may contact the registered owner of the vehicle to find out who was driving at the time.

If you own the vehicle, you must tell police any information you know as to who was driving and where they are now. If you don't know this information, you must take all reasonable steps to find out and tell the police within 7 days.

If you don't give this information to police, you could be charged with an offence of failing to provide information. If you are convicted, you could receive a large fine or even go to jail.

How long can the police clamp or confiscate my vehicle?

The period a vehicle can be clamped or confiscated for will depend on whether this is your first offence or whether you have done it more than once.

The consequences of committing an offence include that:

- the vehicle may be clamped or taken away to a holding yard for at least 28 days
- you may be arrested
- you may be required to appear in court
- if you're convicted, you may be fined a large sum of money and pay a special compulsory penalty of \$600
- you may lose your licence
- you may go to jail for up to 3 months.

If you commit any of the relevant traffic offences for a second or subsequent time:

- the vehicle can be clamped or confiscated for a period of 3 months or longer
- police may take the vehicle to a holding yard where it will stay until all existing charges are resolved
- police may seek a forfeiture order, which means the vehicle becomes the property of the government
- if you are not the owner of the vehicle, the court may impose a significant monetary penalty on you.

The clamping time has expired, how do I have my vehicle's clamp removed?

Once the authorised period of clamping has expired, the vehicle clamp may be removed by collecting a key to the clamping device from a police station during normal business hours. The clamp may then be released and removed from the vehicle and both the key and the clamp must be returned to the police station within 4 days of collecting the key.

If you fail to return the key, damage the key, or attempt to make a copy of the key, you could be charged and face significant fines.

Once a clamping order has expired, if after 10 days no person seeks to have the vehicle unclamped, police may unclamp the vehicle and retrieve the clamping device.

What is a forfeiture order?

A forfeiture order is an order made by the court permanently confiscating property, in this case a motor vehicle.

If a court makes a forfeiture order, the vehicle becomes the property of the Crown (the government). This means that the original owner no longer has a claim on the vehicle.

If a vehicle is given up to the Crown, they may sell or dispose of it in any way that they consider appropriate.

What if my stuff is in the car?

The registered owner has the right to remove any contents of the vehicle that are not part of the vehicle or attached to the vehicle before it is sold or disposed.

Can I challenge the forfeiture order?

If the offending driver was not the registered owner, the owner can defend the forfeiture order by showing that the offence occurred without their knowledge. If this defence is successful, the vehicle will be returned to the registered owner upon payment of any storage or removal costs.

What if I interfere with a clamped or confiscated vehicle

If a vehicle has been clamped or confiscated by police, you must not:

- attempt to drive the clamped vehicle
- interfere with the clamping device
- paint or mark the clamping device
- damage the clamping device
- destroy the clamping device
- release or attempt to release the clamping device
- remove a confiscated vehicle from a holding yard
- take a confiscated vehicle from the person transporting it to a holding yard.

If you interfere with or try to remove a vehicle which has been clamped or confiscated, you could be charged.

This is written for people who live in or who are affected by the laws of Tasmania, Australia. The law changes all the time – this information is not legal advice. If you have a legal problem, you should talk to a lawyer before making a decision about what to do.