



New South Wales

# **Traffic Amendment (Penalties and Disqualifications) Bill 1998**

## **Explanatory note**

This explanatory note relates to this Bill as introduced into Parliament.

### **Overview of Bill**

The object of this Bill is to amend the *Traffic Act 1909* so as:

- (a) to increase the maximum fines or periods of imprisonment that may be imposed by a court on persons convicted of various traffic offences, and
  - (b) to increase or impose automatic minimum periods of disqualification from driving arising from convictions for various traffic offences, including:
    - (i) doubling existing minimum periods of automatic disqualification,
    - (ii) the imposition of an automatic minimum disqualification of 1 month for a speeding offence of exceeding the limit by more than 30 kph (but not more than 45 kph),
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- (iii) the imposition of automatic minimum disqualification of 3 years on persons who are convicted of driving without ever having obtained a licence and who have previously been convicted of a major traffic offence or been convicted on a previous occasion for driving without a licence (or have been previously issued with a penalty notice for allegedly driving without a licence),
  - (iv) the mandatory imposition (with minor exceptions) of periods of 5 years' disqualification for certain habitual traffic offenders (generally persons convicted of major and certain other traffic offences on 3 occasions in 5 years), and
- (c) to make other changes with respect to penalties and licence cancellation.

### Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

**Clause 3** is a formal provision giving effect to the amendments to the *Traffic Act 1909* set out in Schedule 1.

### **Schedule 1      Amendments to the Traffic Act 1909**

#### **General increases in penalties and disqualifications**

**Schedule 1 [1]–[57]** and **[59]** give effect to the proposed increases in court imposed penalties and disqualifications. They are summarised in the Appendix to this Explanatory note.

#### **Habitual traffic offenders scheme**

**Schedule 1 [58]** gives effect to a scheme with respect to the declaration of habitual traffic offenders. The principal features of the scheme are as follows:

- (1) The scheme provides for an automatic declaration as a habitual traffic offender and a mandatory 5-year disqualification from driving on the third conviction (and on each subsequent conviction) in 5 years for relevant traffic offences.
- (2) The relevant traffic offences include offences under the *Crimes Act 1900* in which death or bodily harm is caused by the driving of a motor vehicle, negligent driving causing death or grievous bodily harm,

reckless or dangerous driving, driving when affected by alcohol or drugs, speeding by more than 45 kph over the limit, driving without a licence or while disqualified. The relevant offences include any offence for which a person is convicted in another State or Territory, so long as the offence is of the same kind as a relevant offence committed in this State.

- (3) There is no court appeal against the declaration of a habitual traffic offender or the disqualification imposed by the declaration.
- (4) The disqualification is in addition to the court penalty and mandatory disqualification for that third or subsequent conviction—the 5-year disqualification (and each additional 5-year disqualification) will not commence until all existing disqualifications are completed.
- (5) The scheme enables the court to remove the declaration or to reduce the disqualification to a period of not less than 2 years (but only in special cases where the 5-year disqualification would be disproportionate and unjust).
- (6) The scheme will apply to a third offence that would trigger a declaration of a habitual traffic offender even though the person is not convicted but the charge is only found to be proven under section 556A of the *Crimes Act 1900*.
- (7) The scheme requires the 3 traffic offences giving rise to the declaration to have occurred on different occasions.

## **Appendix      Summary of increased penalties and disqualifications**

### **Notes.**

- (1) A period of disqualification is a period of automatic disqualification from driving that is imposed by the Act by virtue of the conviction for the offence concerned (and generally without any specific order of the court).
- (2) Where the maximum court penalty is a fine of a specified number of penalty units or a period of imprisonment, the court may generally impose both that fine and period of imprisonment.
- (3) A reference to a second or subsequent offence is generally a reference to the second or subsequent occasion on which the offence was committed in the previous 5 years or the first occasion on which it was committed if the person had committed a major offence (referred to in section 10A of the Act) within the previous 5 years, eg major offences include offences under the *Crimes Act 1900* in which death or bodily harm is caused by the driving of a motor vehicle, negligent driving



- causing death or grievous bodily harm, reckless or dangerous driving, and driving when affected by alcohol or drugs.
- (4) The Bill extends the category of major offences as referred to in section 10A of the Act to negligent driving under section 4 of the Act that causes death or grievous bodily harm (**Schedule 1 [42]**).
  - (5) The Bill extends the category of offences for which a court may under section 556A of the *Crimes Act 1900* find a charge for the offence proven (but not proceed to a conviction) to the offence of negligent driving under section 4 of the Act that causes death or grievous bodily harm (**Schedule 1 [41]**).
  - (6) At present the value of a penalty unit is \$110.

**1 Negligent driving—section 4**

**1.1 Maximum court penalty**

- (1) For a first offence
  - (a) if the negligent driving occasions death—30 penalty units or 18 months imprisonment [existing penalty: 20 penalty units or 12 months imprisonment],
  - (b) if the negligent driving occasions grievous bodily harm—20 penalty units or 9 months imprisonment [existing penalty: 15 penalty units or 6 months imprisonment],
  - (c) in any other case—10 penalty units [existing penalty: 5 penalty units].
- (2) For a second or subsequent offence
  - (a) if the negligent driving occasions death—50 penalty units or 2 years imprisonment [existing penalty: 20 penalty units or 12 months imprisonment],
  - (b) if the negligent driving occasions grievous bodily harm—30 penalty units or 12 months imprisonment [existing penalty: 15 penalty units or 6 months imprisonment],
  - (c) in any other case—10 penalty units [existing penalty: 5 penalty units].



## **1.2 Disqualification**

- (1) For a first offence
  - (a) if the negligent driving occasions death or grievous bodily harm—12 months minimum and 3 years maximum disqualification [existing disqualification: such period (if any) as determined by court],
  - (b) in any other case—such period (if any) as determined by court [existing disqualification: same].
- (2) For a second or subsequent offence
  - (a) if the negligent driving occasions death or grievous bodily harm—2 years minimum and 5 years maximum disqualification [existing disqualification: such period (if any) as determined by court],
  - (b) in any other case—such period (if any) as determined by court [existing disqualification: same].

## **2 Furious, reckless or dangerous driving—section 4**

### **2.1 Maximum court penalty**

- (1) For a first offence—20 penalty units or 9 months imprisonment [existing penalty: 15 penalty units or 9 months imprisonment].
- (2) For a second or subsequent offence—30 penalty units or 12 months imprisonment [existing penalty: 20 penalty units or 12 months imprisonment].

### **2.2 Disqualification**

- (1) For a first offence—12 months minimum and 3 years maximum disqualification [existing disqualification: 6 months minimum and 3 years maximum].
- (2) For a second or subsequent offence—2 years minimum and 5 years maximum disqualification [existing disqualification: 12 months minimum and 5 years maximum].

**3 Speeding offences—section 4A**

**3.1 Maximum court penalty**

- (1) If the speed exceeds the limit by more than 45 kph—30 penalty units in the case of a heavy motor vehicle or coach, and 20 penalty units for any other vehicle [existing penalty: 20 penalty units].
- (2) If the speed exceeds the limit by less than 45 kph—20 penalty units [existing penalty: same].

**3.2 Disqualification**

- (1) If the speed exceeds the limit by more than 45 kph—3 months minimum and any additional period determined by court [existing disqualification: same].
- (2) If the speed exceeds the limit by more than 30 kph but not more than 45 kph—1 month minimum and any additional period determined by court [existing disqualification: such period (if any) as determined by court].
- (3) If the speed exceeds the limit by less than 30 kph—such period (if any) as determined by court [existing disqualification: same].

**4 Prescribed concentration of alcohol in blood—section 4E**

**4.1 Maximum court penalty**

- (1) For a first offence
  - (a) special and low range—10 penalty units [existing penalty: 5 penalty units],
  - (b) middle range—20 penalty units or 9 months imprisonment [existing penalty: 10 penalty units or 6 months imprisonment],
  - (c) high range—30 penalty units or 18 months imprisonment [existing penalty: 15 penalty units or 9 months imprisonment].

- (2) For a second or subsequent offence
  - (a) special and low range—20 penalty units [existing penalty: 10 penalty units],
  - (b) middle range—30 penalty units or 12 months imprisonment [existing penalty: 10 penalty units or 6 months imprisonment],
  - (c) high range—50 penalty units or 2 years imprisonment [existing penalty: 20 penalty units or 12 months imprisonment].

#### **4.2 Disqualification**

- (1) For a first offence
  - (a) special and low range—3 months minimum and 6 months maximum disqualification [existing disqualification: 3 months maximum for special range and 6 months maximum for low range],
  - (b) middle range—6 months minimum and 12 months maximum disqualification [existing disqualification: 3 months minimum and 12 months nominal maximum],
  - (c) high range—12 months minimum and 3 years maximum disqualification [existing disqualification: 6 months minimum and 3 years nominal maximum].
- (2) For a second or subsequent offence
  - (a) special and low range—6 months minimum and 12 months maximum disqualification [existing disqualification: 3 months minimum and 12 months nominal maximum],
  - (b) middle range—12 months minimum and 3 years maximum disqualification [existing disqualification: 6 months minimum and 3 years nominal maximum],
  - (c) high range—2 years minimum and 5 years maximum disqualification [existing disqualification: 12 months minimum and 5 years nominal maximum].

**Note.** For middle range alcohol offences, immediate licence suspension on being charged will apply as in the case with high range offences at present—see **Schedule 1** [56] and [57].



**5 Refuse breath analysis or alter concentration of alcohol in blood—sections 4E (7) and 4F (7)**

The proposed court penalties and disqualifications (and existing penalties and disqualifications) are at the same levels as for high range alcohol offences.

**6 Driving under influence of drugs and related offences of refusing blood test etc—sections 5 (2), 4E (7) and 4F (7)**

The proposed court penalties and disqualifications also increased in line with increases for similar offences relating to alcohol.

**7 Unlicensed driving or driving while disqualified or after refusal of licence—sections 6 (1) (a) and 7A**

**7.1 Maximum court penalty**

(1) For a first offence

- (a) if the person has never been licensed or otherwise does not have a licence for the relevant category of vehicle (s 6)—20 penalty units [existing penalty: same],
- (b) if the person has been refused a licence or has been disqualified (s 7A)—30 penalty units or 18 months imprisonment [existing penalty: 10 penalty units or 6 months imprisonment].

(2) For a second or subsequent offence

- (a) if the person has never been licensed (s 6)—30 penalty units or 18 months imprisonment [existing penalty: 20 penalty units],
- (b) if the person otherwise does not have a licence for the relevant category of vehicle (s 6)—20 penalty units [existing penalty: same],
- (c) if the person has been refused a licence or has been disqualified (s 7A)—50 penalty units or 2 years imprisonment [existing penalty: 10 penalty units or 6 months imprisonment].

## **7.2 Disqualification**

- (1) For a first offence
  - (a) if the person has never been licensed or otherwise does not have licence for the relevant category of vehicle (s 6)—such period (if any) as is determined by the court [existing disqualification: same],
  - (b) if the person has been refused a licence or has been disqualified (s 7A)—1 year minimum and any additional period determined by court [existing disqualification: 6 months minimum and any additional period determined by court].
- (2) For a second or subsequent offence
  - (a) if the person has never been licensed (s 6)—3 years fixed disqualification [existing disqualification: such period (if any) as is determined by court],
  - (b) if the person otherwise does not have a licence for the relevant category of vehicle (s 6)—such period (if any) as is determined by the court [existing disqualification: same],
  - (c) if the person has been refused a licence or has been disqualified (s 7A)—2 years minimum and any additional period determined by court [existing disqualification: 6 months minimum and any additional period determined by court].

## **8 Failing to stop after an accident—section 8**

### **8.1 Maximum court penalty**

- (1) For a first offence—30 penalty units or 18 months imprisonment [existing penalty: 15 penalty units or 9 months imprisonment].
- (2) For a second or subsequent offence—50 penalty units or 2 years imprisonment [existing penalty: 20 penalty units or 12 months imprisonment].

**8.2 Disqualification**

- (1) For a first offence—12 months minimum and 3 years maximum disqualification [existing disqualification: 6 months minimum and 3 years nominal maximum].
- (2) For a second or subsequent offence—2 years minimum and 5 years maximum disqualification [existing disqualification: 12 months minimum and 5 years nominal maximum].

**9 Offences against Crimes Act 1900 resulting in death or harm from the driving of a motor vehicle**

Court penalties not changed. Disqualifications increased to same levels as for high range alcohol offences.



First print



New South Wales

# **Traffic Amendment (Penalties and Disqualifications) Bill 1998**

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New South Wales

## Traffic Amendment (Penalties and Disqualifications) Bill 1998

No. , 1998

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### **A Bill for**

An Act to amend the *Traffic Act 1909* to increase the penalties for offences under that Act and the period of licence disqualifications under that Act; and for other purposes.

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**The Legislature of New South Wales enacts:**

**1    Name of Act**

This Act is the *Traffic Amendment (Penalties and Disqualifications) Act 1998*.

**2    Commencement**

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

**3    Amendment of Traffic Act 1909 No 5**

The *Traffic Act 1909* is amended as set out in Schedule 1.

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## Schedule 1 Amendments

(Section 3)

### [1] Section 4 Negligent, furious or reckless driving

Omit section 4 (3). Insert instead:

- |      |  |    |
|------|--|----|
| (3)  | A person convicted of the offence under this section of driving a motor vehicle negligently is liable:   | 5  |
| (a)  | for driving occasioning death:   |    |
| (i)  | in the case of a first offence—to a penalty not exceeding 30 penalty units or to imprisonment for a period not exceeding 18 months or to both such penalty and imprisonment, or                | 10 |
| (ii) | in the case of a second or subsequent offence—to a penalty not exceeding 50 penalty units or to imprisonment for a period not exceeding 2 years or to both such penalty and imprisonment, or   | 15 |
| (b)  | for driving occasioning grievous bodily harm:  |    |
| (i)  | in the case of a first offence—to a penalty not exceeding 20 penalty units or to imprisonment for a period not exceeding 9 months or to both such penalty and imprisonment, or                 | 20 |
| (ii) | in the case of a second or subsequent offence—to a penalty not exceeding 30 penalty units or to imprisonment for a period not exceeding 12 months or to both such penalty and imprisonment, or | 25 |
| (c)  | for driving not occasioning death or grievous bodily harm—to a penalty not exceeding 10 penalty units.   | 30 |

Traffic Amendment (Penalties and Disqualifications) Bill 1998

Schedule 1 Amendments

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- (3A) A person convicted of the offence under this section of driving a motor vehicle furiously or recklessly, or at a speed or in a manner which is dangerous to the public, is liable:
- (a) in the case of a first offence—to a penalty not exceeding 20 penalty units or to imprisonment for a period not exceeding 9 months or to both such penalty and imprisonment, or 5
  - (b) in the case of a second or subsequent offence—to a penalty not exceeding 30 penalty units or to imprisonment for a period not exceeding 12 months or to both such penalty and imprisonment. 10

**[2] Section 4 (4)**

Insert “or (3A)” after “(3)”.

**[3] Section 4A Speed limits**

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Insert “and liable to a penalty not exceeding 20 penalty units” after “this Act” in section 4A (1).

**[4] Section 4A (1A)**

Omit “20 penalty units”.

Insert instead “30 penalty units in the case of a heavy motor vehicle or coach, or 20 penalty units in any other case,”. 20

**[5] Section 4A (1B)**

Insert after section 4A (1A):

- (1B) A person who on any length of road or road related area drives a motor vehicle at a speed which exceeds, by more than 30 kilometres per hour but not more than 45 kilometres per hour, the speed limit applicable to that 25



length of road or road related area is guilty of an offence under this Act and liable to a penalty not exceeding 20 penalty units and, in addition:

- (a) the person is disqualified by a conviction for the offence (and without any specific order) for 1 month from holding a driver's licence, or 5
- (b) where the court on the conviction thinks fit to order a longer period of disqualification, the person is disqualified for the period specified in the order. 10

**[6] Section 4A (2A)**

Insert “, or under subsection (1B) if satisfied that it was exceeded by more than 30 kilometres per hour” after “subsection (1)”.

**[7] Section 4A (2B)**

Insert after section 4A (2A): 15

- (2B) If, on a prosecution of a person for an offence under subsection (1B), the court is satisfied that the person exceeded the relevant speed limit, but is not satisfied that it was exceeded by more than 30 kilometres per hour, the court may convict the person of an offence under subsection (1). 20

**[8] Section 4A (5BA)**

Insert after section 4A (5B):

- (5BA) A person who drives a motor vehicle on a road or road related area at a speed that exceeds, by more than 30 kilometres per hour but not more than 45 kilometres per hour, a speed fixed by the regulations as the maximum speed: 25
- (a) at which motor vehicles of a class that includes that motor vehicle may be driven, or 30

- (b) at which any motor vehicle, or any motor vehicle of a class that includes that motor vehicle, may be driven by drivers of a class that includes that person,

is guilty of an offence under this Act and liable to the same penalties, and to be dealt with in the same manner, as for an offence under subsection (1B). This subsection applies only where the maximum speed limit fixed by the regulations is below the speed limit applicable to the length of road or road related area on which the vehicle is being driven.

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**[9] Section 4A (5C)**

Insert "convict the person of an offence under subsection (5BA) if satisfied that it was exceeded by more than 30 kilometres per hour or may" after "the court may".

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**[10] Section 4A (5D)**

Insert after section 4A (5C):

- (5D) If, on a prosecution of a person for an offence under subsection (5BA), the court is satisfied that the person exceeded the relevant maximum speed limit fixed by the regulations, but is not satisfied that it was exceeded by more than 30 kilometres per hour, the court may, to the extent that exceeding the speed limit so fixed constitutes an offence against the regulations, convict the person of that offence instead.

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**[11] Section 4AAB Special provision—disqualification for speeding during holiday period**

Omit the section.

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**[12] Section 4E Prescribed concentration of alcohol in person's blood**

**Section 4E (1D) (d) and (1E) (c)**

Omit "5 penalty units" wherever occurring.  
Insert instead "10 penalty units".

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**[13] Section 4E (1D) (e) and (1E) (d)**

Omit "10 penalty units" wherever occurring.  
Insert instead "20 penalty units".

**[14] Section 4E (1F)**

Omit "be liable to a penalty not exceeding 10 penalty units or to imprisonment for a period not exceeding 6 months or to both such penalty and imprisonment."  
Insert instead:

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be liable:

- (a) in the case of a first offence—to a penalty not exceeding 20 penalty units or to imprisonment for a period not exceeding 9 months or to both such penalty and imprisonment, or
- (b) in the case of a second or subsequent offence—to a penalty not exceeding 30 penalty units or to imprisonment for a period not exceeding 12 months or to both such penalty and imprisonment.

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**[15] Section 4E (1G) (c) and (7) (c)**

Omit "15 penalty units" wherever occurring.  
Insert instead "30 penalty units".

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**[16] Section 4E (1G) (c) and (7) (c)**

Omit "9 months" wherever occurring. Insert instead "18 months".

**[17] Section 4E (1G) (d) and (7) (d)**

Omit "20 penalty units" wherever occurring.  
Insert instead "50 penalty units".

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**[18] Section 4E (1G) (d) and (7) (d)**

Omit "12 months" wherever occurring. Insert instead "2 years".

**[19] Section 4E (1H)**

Omit "or (1G)". Insert instead ", (1F) or (1G)".

**[20] Section 4F Blood samples to be taken in certain cases**

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Omit "10 penalty units" from section 4F (6).  
Insert instead "20 penalty units".

**[21] Section 4F (7) (c)**

Omit "15 penalty units". Insert instead "30 penalty units".

**[22] Section 4F (7) (c)**

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Omit "9 months". Insert instead "18 months".

**[23] Section 4F (7) (d)**

Omit "20 penalty units". Insert instead "50 penalty units".

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**[24] Section 4F (7) (d)**

Omit "12 months". Insert instead "2 years".

**[25] Section 4F (7A)**

Omit "guilty of an offence under this Act".

Insert instead "guilty of an offence under this Act and shall be liable to a penalty not exceeding 30 penalty units". 5

**[26] Section 5 Offences**

Omit "10 penalty units" wherever occurring from section 5 (2) (d) and (2) (e).

Insert instead "20 penalty units". 10

**[27] Section 5 (2) (e)**

Omit "6 months". Insert instead "9 months".

**[28] Section 5AC Offences related to testing for drugs**

Omit "15 penalty units" from section 5AC (2).

Insert instead "30 penalty units". 15

**[29] Section 5AC (2)**

Omit "9 months". Insert instead "18 months".

**[30] Section 5AC (8)**

Omit "10 penalty units". Insert instead "20 penalty units".

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**[31] Section 6 Driver must be licensed and vehicle numbered**

Insert after section 6 (1A):

- (1B) A person who is guilty of an offence under subsection (1) is, except as provided in subsection (1C), liable to a penalty not exceeding 20 penalty units. 5
- (1C) A person who is guilty of an offence under subsection (1) (a) is liable, if the person has never been licensed:
  - (a) in the case of a first offence—to a penalty not exceeding 20 penalty units, or
  - (b) in the case of a second or subsequent offence—to a penalty not exceeding 30 penalty units or to imprisonment for a period not exceeding 18 months or to both such penalty and imprisonment. 10
- (1D) If a person who has never been licensed is convicted of an offence under subsection (1) (a) (being a second or subsequent offence), the person is disqualified by the conviction (and without any specific order) for a period of 3 years from holding a driver's licence. The disqualification is in addition to any penalty imposed for the offence. 15  
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- (1E) For the purposes of subsections (1C), (1D) and (1G), a person has not been licensed in connection with an offence if the person has not held a driver's licence (or equivalent) of any kind in this State or elsewhere for the period of at least 5 years immediately before being convicted of the offence. 25
- (1F) For the purposes of subsections (1C) and (1D), an offence under subsection (1) (a) is a second or subsequent offence if:
  - (a) it is the second or subsequent occasion on which the person is convicted of the offence within the period of 5 years immediately before being convicted of the offence, or 30

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- (b) it is the first occasion on which the person is convicted of the offence, but within the period of 5 years immediately before being convicted of the offence:
      - (i) the person was issued with a penalty notice under section 18B in respect of an earlier occasion on which the person was alleged to have committed the offence (unless the court orders that the penalty notice should not be taken into account in the circumstances), or 5
      - (ii) the person was convicted of an offence under section 7A. 10
  - (1G) A person who has never been licensed cannot be convicted under both this section and section 7A in respect of driving on the same occasion, but nothing in this section prevents such a person from being convicted of an offence under section 7A in respect of driving that constitutes an offence under this section. 15
  - [32] Section 7A Offences committed by disqualified drivers etc 20**

Omit "shall be liable to a penalty not exceeding 10 penalty units or to imprisonment for a period not exceeding six months or to both such penalty and imprisonment." from section 7A (2).

Insert instead:

    - is guilty of an offence and is liable: 25
    - (g) in the case of a first offence—to a penalty not exceeding 30 penalty units or to imprisonment for a period not exceeding 18 months, or to both such penalty and imprisonment, or
    - (h) in the case of a second or subsequent offence—to a penalty not exceeding 50 penalty units or to imprisonment for a period not exceeding 2 years, or to both such penalty and imprisonment. 30
-



**[33] Section 7A (2B)**

Insert after section 7A (2A):

- (2B) For the purposes of subsection (2), an offence under subsection (2) is a second or subsequent offence if:
- (a) it is the second or subsequent occasion on which the person is convicted of the offence within the period of 5 years immediately before being convicted of the offence, or 5
  - (b) within that 5-year period, the person was convicted of a major offence or an offence under section 6 (1) (a) (being an offence committed by a person who has never been licensed as referred to in section 6 (1E)). 10

**[34] Section 7A (3)**

Omit "for a period of six months". 15  
Insert instead "for the relevant disqualification period".

**[35] Section 7A (3A)**

Insert after section 7A (3):

- (3A) The relevant disqualification period referred to in subsection (3) is: 20
- (a) in the case of a first offence under subsection (2)—12 months, or
  - (b) in the case of a second or subsequent offence under subsection (2)—2 years.

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**[36] Section 8 Requirements in case of accidents**

Omit "15 penalty units" from section 8 (2) (a).  
Insert instead "30 penalty units".

**[37] Section 8 (2) (a)**

Omit "9 months". Insert instead "18 months".

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**[38] Section 8 (2) (b)**

Omit "20 penalty units". Insert instead "50 penalty units".

**[39] Section 8 (2) (b)**

Omit "12 months". Insert instead "2 years".

**[40] Section 10 Court may impose penalty and disqualify driver on conviction**

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Insert ", 6" after "4B" in section 10 (2).

**[41] Section 10 (5)**

Insert "section 4 of driving negligently (being driving occasioning death or grievous bodily harm)," before "section 4".

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**[42] Section 10A Disqualification for certain major offences**

**Section 10A (1) (b) (ia)**

Insert after section 10A (1) (b) (i):

- (ia) the offence under section 4 of driving a motor vehicle negligently (being driving occasioning death or grievous bodily harm),  
or

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Traffic Amendment (Penalties and Disqualifications) Bill 1998

Schedule 1 Amendments

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**[43] Section 10A (2) (a1)**

Omit the paragraph.

**[44] Section 10A (2) (a)**

Insert “(1D) or” after “4E”.

**[45] Section 10A (2) (a) (ii)**

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Insert “(but not shorter than 3 months)” after “shorter period” where firstly occurring.

**[46] Section 10A (2) (b) (ii)**

Omit “3 months”. Insert instead “6 months”.

**[47] Section 10A (2) (c)**

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Omit “(a1),”.

**[48] Section 10A (2) (c) (ii)**

Omit “6 months”. Insert instead “12 months”.

**[49] Section 10A (3) (a1)**

Omit the paragraph.

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**[50] Section 10A (3) (a)**

Insert “(1D) or” after “4E”.

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**[51] Section 10A (3) (a) (ii)**

Omit "3 months". Insert instead "6 months".

**[52] Section 10A (3) (b) (ii)**

Omit "6 months". Insert instead "12 months".

**[53] Section 10A (3) (c)**

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Omit "(a1),".

**[54] Section 10A (3) (c) (ii)**

Omit "12 months". Insert instead "2 years".

**[55] Section 10A (4) (c)**

Omit "6 months" and "12 months".  
Insert instead "12 months" and "2 years", respectively.

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**[56] Section 10C Immediate suspension of licence in certain circumstances**

Insert "(1F)," after "4E" in section 10C (1).

**[57] Section 10D Suspension of driving privileges of visiting driver**

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Insert "(1F)," after "4E" in section 10D (1) (a).



**[58] Section 10EA**

Insert after section 10E:

**10EA Habitual traffic offenders—mandatory disqualifications  
after 3 convictions within 5 years**

- (1) In this section, a *relevant offence* means an offence 5  
committed after the commencement of this section,  
being:
- (a) any of the following offences of which a person  
has been convicted by a court in this State:
- (i) a major offence, 10
- (ii) an offence under section 4A (1A) or (5B),
- (iii) an offence under section 6 (1) (a) (being an  
offence committed by a person who has  
never been licensed as referred to in section  
6 (1E)), 15
- (iv) an offence under section 7A (2) (a), (b) or  
(c), or
- (b) an offence of which a person has been convicted  
by a court in another State or Territory that would  
be an offence of the kind referred to in paragraph  
(a) if it had been committed in this State. 20

A relevant offence includes an offence of the kind  
referred to in paragraph (a) in respect of which the  
charge is found proven (but without proceeding to a  
conviction) under section 556A of the *Crimes Act 1900* 25  
if the offence would, if it were a relevant offence, give  
rise to the declaration of the person under this section as  
a habitual traffic offender. In that case, a reference in this  
section to the conviction of the person for a relevant  
offence includes a finding that the charge for the offence 30  
is proven.

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- (2) A person is, by this section, declared to be a habitual traffic offender if:
- (a) a court in this State convicts the person of a relevant offence, and
  - (b) the person has, in the period of 5 years before the conviction, also been convicted of at least 2 other relevant offences committed on different occasions. 5
- (3) The declaration of a person as a habitual traffic offender by this section may be quashed by a court that convicts the person of a relevant offence (at the time of the conviction or at a later time) if it determines that the disqualification imposed by the declaration is a disproportionate and unjust consequence having regard to the total driving record of the person and the special circumstances of the case. 10 15
- (4) If a person is declared by this section to be a habitual traffic offender, the person is disqualified by the declaration (and without any specific order of a court) for a period of 5 years from holding a driver's licence. However, if the court that convicts the person of the offence giving rise to the declaration determines that a 5-year disqualification is a disproportionate and unjust consequence having regard to the total driving record of the person and the special circumstances of the case, the court may order a shorter period of disqualification (but not shorter than 2 years). 20 25
- (5) If a court quashes a declaration or orders a shorter period of disqualification, the court must state its reasons for doing so. 30
- (6) A declaration or disqualification under this section cannot be appealed to any court whether under this or any other Act.

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- (7) A disqualification under this section is in addition to any penalty imposed for the offence giving rise to the declaration.
- (8) A declaration of a habitual traffic offender ceases to be in force when the period of disqualification imposed by the declaration is completed. 5
- (9) The period of any disqualification under this section does not commence until all other disqualifications, and all other periods of licence cancellation or suspension, imposed on the person by or under this or any other Act have been completed. 10
- (10) Further declarations have effect by this section even though they occur while an existing declaration is in force, and the consequent periods of disqualification do not commence until all existing disqualifications under this section have been completed. It does not matter that some of the relevant offences giving rise to a further declaration also gave rise to an earlier declaration. 15
- (11) If, while an existing disqualification under this section is in force, the person is disqualified by a court or automatically under another provision of this or any other Act, that further disqualification does not commence until all existing disqualifications under this section have been completed. 20
- (12) The Authority is required to give a written warning to the holders of driver's licences who are liable to be declared to be habitual traffic offenders if they are convicted of another relevant offence. The declaration of a habitual traffic offender is not invalid merely because of a failure to give the warning, but any such failure may be taken into account by a court when determining whether a declaration should be quashed. 25  
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**[59] Section 11AB Suspension or cancellation of driver's licences by Authority**

Insert "or (5BA)" after "section 4A (5B)" in section 11AB (4).