



New South Wales

Traffic Amendment (Penalties and Disqualifications) Act 1998 No 70

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Traffic Amendment (Penalties and Disqualifications) Act 1998 No 70

Act No 70, 1998

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. [Assented to 2 July 1998]

The Legislature of New South Wales enacts:

1 Name of Act

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

2 Commencement

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.

4 Use of proceeds from increased fines imposed under Act

- (1) It is the wish of Parliament that the increased revenue arising from the increased level of fines imposed under the amendments made by this Act is to be used for the purpose of the road safety black spots program.
- (2) The road safety black spots program is the program of road improvement works to remove or reduce traffic hazards that are a serious risk to the safety of road users.
- (3) The increased revenue is taken to be the amount by which the total amount of fines imposed by courts for offences under the *Traffic Act 1909* during each financial year after the commencement of this Act exceeds the total amount of fines imposed by courts for those offences in the last financial year before that commencement.

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:
 - (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
 - (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
 - (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
 - (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
 - (c) for driving not occasioning death or grievous bodily harm—to a penalty not exceeding 10 penalty units.

(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
- (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.

[2] Section 4 (4)

Insert “or (3A)” after “(3)”.

[3] Section 4A Speed limits

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,”.

[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

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
- (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.

[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):

- (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).

[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:

- (a) at which motor vehicles of a class that includes that motor vehicle may be driven, or

- (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.

[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”.

[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.

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

Omit the section.

[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".

[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:

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.

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

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

[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".

[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

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)

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

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

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

[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".

[26] Section 5 Offences

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

Insert instead "20 penalty units".

[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".

[29] Section 5AC (2)

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

[30] Section 5AC (8)

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

[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.
- (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.
- (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.
- (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.
- (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

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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
 - (ii) the person was convicted of an offence under section 7A.
- (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.

[32] Section 7A Offences committed by disqualified drivers etc

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:

- (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.

[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
 - (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)).

[34] Section 7A (3)

Omit "for a period of six months".

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:
- (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.

[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".

[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

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".

[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

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

Omit the paragraph.

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

Insert “(1D) or” after “4E”.

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

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)

Omit “(a1),”.

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

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

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

Omit the paragraph.

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

Insert “(1D) or” after “4E”.

[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)

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.

[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

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 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,
 - (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)),
 - (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.

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* 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 is proven.

- (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.
- (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.
- (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, except as provided by this section.
- (5) If the court that convicts the person of the offence giving rise to the declaration thinks fit, the court may order a longer period of disqualification (including disqualification for life).
- (6) 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).
- (7) If a court quashes a declaration or orders a shorter or longer period of disqualification, the court must state its reasons for doing so.
- (8) A declaration or disqualification under this section cannot be appealed to any court whether under this or any other Act.

- (9) A disqualification under this section is in addition to any penalty imposed for the offence giving rise to the declaration.
- (10) A declaration of a habitual traffic offender ceases to be in force when the period of disqualification imposed by the declaration is completed.
- (11) 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.
- (12) 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.
- (13) 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.
- (14) 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.

[59] Section 11AB Suspension or cancellation of driver's licences by Authority

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

[Minister's second reading speech made in—
Legislative Assembly on 21 May 1998
Legislative Council on 24 June 1998]

