

Introduced by Mr A A Tink, MP

First print



New South Wales

# **Crimes and Traffic Amendment (Road-rage and Car-jacking) Bill 1997**

## **Explanatory note**

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

### **Overview of Bill**

The objects of this Bill are:

- (a) to create an indictable “road-rage” offence with a maximum penalty of 7 years imprisonment, that is, an offence of menacing (or intimidatory) driving of a vehicle, and
  - (b) to increase the maximum penalty for a “car-jacking” offence from 14 years to 20 years imprisonment, that is, an offence of robbery or stealing of a vehicle from the occupant of the vehicle.
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## 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 the day occurring 1 month after the date of assent.

**Clause 3** is a formal provision giving effect to the amendments to the *Crimes Act 1900* set out in Schedule 1.

**Clause 4** is a formal provision giving effect to the amendments to the *Traffic Act 1909* set out in Schedule 2.

**Clause 5** is a formal provision giving effect to the amendments to the *Criminal Procedure Act 1986* set out in Schedule 3.

### **Schedule 1      Amendment of Crimes Act 1900**

**Schedule 1 (1)** inserts proposed new section 51A. The proposed new section makes it an indictable offence (with a maximum penalty of 7 years imprisonment) if a person drives a vehicle in a manner that is intended to menace (or intimidate) another person, whether by a threat of personal injury or damage to property. The offence is currently only a summary offence under the *Traffic Act 1909*. The court is given the power, on conviction for the offence, of directing that the offender undertake counselling before the restoration of the offender's driving licence after the end of any period of licence disqualification imposed as a result of the conviction for the offence.

**Schedule 1 (2)** amends section 94 (Robbery or stealing from the person). Section 94 at present provides a maximum penalty of 14 years imprisonment for robbery. The amendment increases that maximum penalty to 20 years imprisonment in the case of robbery of a vehicle. Accordingly, the penalty for robbery of a vehicle will be the same as the penalty provided under section 95 for robbery in circumstances of aggravation, such as the use of corporal violence, malicious infliction of actual bodily harm or the deprivation of liberty.

### **Schedule 2      Amendment of Traffic Act 1909**

**Schedule 2 (1)** omits the existing summary offence of menacing driving as a result of the creation of the proposed indictable offence in the *Crimes Act 1900*. The existing summary offence carries a maximum penalty of \$1,500 or 9 months imprisonment (or both) for a first offence and \$2,000 or 12 months imprisonment (or both) for a second or subsequent offence.

Explanatory note

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**Schedule 2 (2) and (3)** apply to the proposed offence of menacing driving the provisions of the Act relating to seizure, impounding and forfeiture of an offender's vehicle that apply to offences of drag-racing, "burn-outs" etc on public streets. The provisions enable police officers to seize the vehicle if they reasonably believe that the offender is engaged in menacing driving. A vehicle so seized is to be impounded until the court deals with the offence or the vehicle is released on application to the Commissioner of Police or the court and the payment of any applicable storage fees. In the case of a first offence, the vehicle is liable to be impounded for a period of 3 months (less any period it has been impounded by the police before the matter is heard by the court). In the case of a second or subsequent offence, the vehicle is liable to be forfeited to the Crown.

**Schedule 2 (4)** applies to the proposed indictable offence of menacing driving the provision currently applying to the summary offence of menacing driving, namely, that the court cannot under section 556A of the *Crimes Act 1900* dispense with recording a conviction against a person found guilty of the offence if the offender has in the previous 5 years had the benefit of that section in respect of such an offence on a previous occasion or for certain other traffic offences.

**Schedule 2 (5) and (6)** applies to the proposed indictable offence of menacing driving the provision relating to disqualification of the offender's driving licence currently applying to the summary offence of menacing driving, namely, subject to the order of the court, disqualification for 3 years if the offender has not been convicted of any major traffic offences in the last 5 years or disqualification for 5 years if the offender has been so convicted.

**Schedule 3      Amendment of Criminal Procedure Act 1986**

**Schedule 3** enables the proposed indictable offence of menacing driving to be prosecuted summarily unless the prosecuting authority or the person charged elects otherwise. The maximum penalty that a Local Court may impose for a summary conviction is imprisonment for 2 years.





New South Wales

# Crimes and Traffic Amendment (Road-rage and Car-jacking) Bill 1997

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New South Wales

# Crimes and Traffic Amendment (Road-rage and Car-jacking) Bill 1997

No. , 1997

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## **A Bill for**

An Act to amend the *Crimes Act 1900*, the *Traffic Act 1909* and the *Criminal Procedure Act 1986* with respect to road-rage and car-jacking offences.

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

**1 Name of Act**

This Act is the *Crimes and Traffic Amendment (Road-rage and Car-jacking) Act 1997*.

**2 Commencement**

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This Act commences on the day occurring 1 month after the date of assent.

**3 Amendment of Crimes Act 1900 No 40**

The *Crimes Act 1900* is amended as set out in Schedule 1.

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

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The *Traffic Act 1909* is amended as set out in Schedule 2.

**5 Amendment of Criminal Procedure Act 1986 No 209**

The *Criminal Procedure Act 1986* is amended as set out in Schedule 3.



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## Schedule 1 Amendment of Crimes Act 1900

(Section 3)

### [1] Section 51A

Insert before section 52A:

- 51A Menacing (or intimidating) driving** 5
- (1) **Offence**  
Any person who drives a vehicle in a manner that is intended to menace another person is guilty of an offence and liable to imprisonment for 7 years. 5
- (2) **Application** 10  
Subsection (1) applies:
- (a) whether the other person is menaced by a threat of personal injury or a threat of damage to property, and
- (b) whether or not the offence occurs on a public street. 15
- (3) **Counselling before restoration of driver's licence**  
A person who is disqualified from driving a vehicle as a result of a conviction for an offence under this section is not to be issued, after the end of the period of disqualification, with a licence to drive a vehicle unless the person has undertaken such counselling (if any) as the court directs when convicting the person of the offence. 20
- (4) **Double jeopardy** 25  
This section does not take away the liability of any person to be prosecuted for or found guilty of an offence under this Act or the *Traffic Act 1909* or of any other offence, or affect the punishment that may be imposed for any such offence. However, a person who: 30
- (a) has been convicted or acquitted of an offence under this section cannot be prosecuted for any other offence under this Act or the *Traffic Act 1909* on the same, or substantially the same, facts, or 35

(b) has been convicted or acquitted of any other offence under this Act or the *Traffic Act 1909* cannot be prosecuted for an offence under this section on the same, or substantially the same, facts.

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(5) **Definitions**  
In this section:

*menace* includes intimidate.

*vehicle* has the same meaning it has in section 52A.

**[2] Section 94 Robbery or stealing from the person**

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Insert at the end of section 94:

(2) **Penalty for car-jacking**

A person who commits an offence under subsection (1) is liable to penal servitude for 20 years if the offence involves the robbery or stealing of a vehicle within the meaning of section 52A. This subsection does not apply unless the charge for the offence indicates that the prosecution intends to rely on this subsection.

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**Schedule 2 Amendment of Traffic Act 1909**

(Section 4)

**[1] Section 4AA Menacing driving**

Omit the section.

**[2] Section 4BB Removal and impounding of vehicles used for certain offences** 5

Insert “, or under section 51A of the *Crimes Act 1900*,” after “section 4B or 4BA” in section 4BB (1).

**[3] Section 4BC Impounding or forfeiture of vehicles on proof or admission of offence** 10

Omit “, being in either case” wherever occurring in section 4BC (1) and (2).

Insert instead “or under section 51A of the *Crimes Act 1900*, being”.

**[4] Section 10 Court may impose penalty and disqualify driver on conviction** 15

Omit “section 4AA” from section 10 (5).

Insert instead “section 51A of the *Crimes Act 1900*”.

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

Insert after section 10A (1) (a):

(a1) is convicted of an offence under section 51A of the *Crimes Act 1900*, 20

**[6] Section 10A**

Omit “section 4AA” from section 10A (1) (b) (ii).

**Schedule 3 Amendment of Criminal Procedure  
Act 1986**

(Section 5)

**Table 1 to Part 9A (Summary disposal of indictable offences by  
Local Courts)**

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Insert "51A," after "49," in Part 1 of Table 1.