



# **Traffic and Crimes Amendment (Menacing and Predatory Driving) 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 increase the existing penalty for the summary offence of intentional menacing driving, and
  - (b) to create a similar summary offence of driving in a manner that the driver ought to know might menace (with a lesser penalty), and
  - (c) to create an indictable offence of predatory driving (with a maximum penalty of 5 years imprisonment).
-

Traffic and Crimes Amendment (Menacing and Predatory Driving) Bill 1997

Explanatory note

The maximum penalties applying to the relevant offences will be as follows:

Offences Traffic Act	Maximum penalty	
	First offence	Second or subsequent offence
Menacing driving—intentional menace	\$3,000 or 18 months imprisonment, or both	\$5,000 or 2 years imprisonment, or both
Menacing driving—possibility of menace	\$2,000 or 12 months imprisonment, or both	\$3,000 or 18 months imprisonment, or both
Offences Crimes Act	Maximum penalty	
	Jury trial	Summary trial
Predatory driving	5 years imprisonment (or \$100,000 fine)	18 months imprisonment (or \$10,000 fine)

The existing summary offence of menacing driving 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.

**Note.** The penalties described in this explanatory note are based on the current value of a penalty unit, namely \$100. The *Statute Law (Miscellaneous Provisions) Bill 1997* contains an amendment to increase the value of a penalty unit to \$110.

## 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.

**Clause 4** is a formal provision giving effect to the amendments to the *Crimes Act 1900* 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 Traffic Act 1909**

**Schedule 1 [1]** replaces the existing summary offence of menacing driving with 2 separate offences (with separate penalties). The first offence is the existing offence that is committed if:

- (a) a person drives a motor vehicle on a public street in a manner that menaces another person, and
- (b) the person intended to menace that other person.

The second offence is a new offence that is committed if:

- (a) a person drives a motor vehicle on a public street in a manner that menaces another person, and
- (b) the person ought to have known that the other person might be menaced.

**Schedule 1 [2]** applies to the proposed indictable offence of predatory driving (under the *Crimes Act 1900*) the provision relating to the disqualification of the offender from driving that currently applies to the existing 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 2      Amendment of Crimes Act 1900**

**Schedule 2** creates the proposed indictable offence of predatory driving (with a maximum penalty of 5 years imprisonment). The driver of a vehicle is to be guilty of an offence if the driver, while in pursuit of or travelling near another vehicle:

- (a) engages in a course of conduct that causes or threatens an impact involving the other vehicle, and
- (b) intends by that course of conduct to cause a person in the other vehicle actual bodily harm.

For the purposes of the offence, causing or threatening an impact involving the other vehicle will include an impact with any vehicle or with a person or object, or the vehicle overturning or leaving the road.



Explanatory note

---

Under section 440AA of the *Crimes Act 1900*, the Judge imposing a sentence on any person found guilty by a jury of an indictable offence has the option of imposing a fine not exceeding \$100,000 in addition to, or instead of, a term of imprisonment (see Schedule 3 for amendments relating to the penalty for the offence if dealt with summarily). Provision is inserted to avoid double jeopardy in connection with the offence and other driving offences (including menacing driving under the *Traffic Act 1909* and dangerous driving under the *Crimes Act 1900*).

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

**Schedule 3** enables the proposed indictable offence of predatory driving to be prosecuted summarily unless the prosecuting authority or the person charged elects otherwise. The maximum penalty that a Local Court may impose on summary conviction is imprisonment for 18 months or a fine of \$10,000.



New South Wales

# Traffic and Crimes Amendment (Menacing and Predatory Driving) Bill 1997

## Contents

---

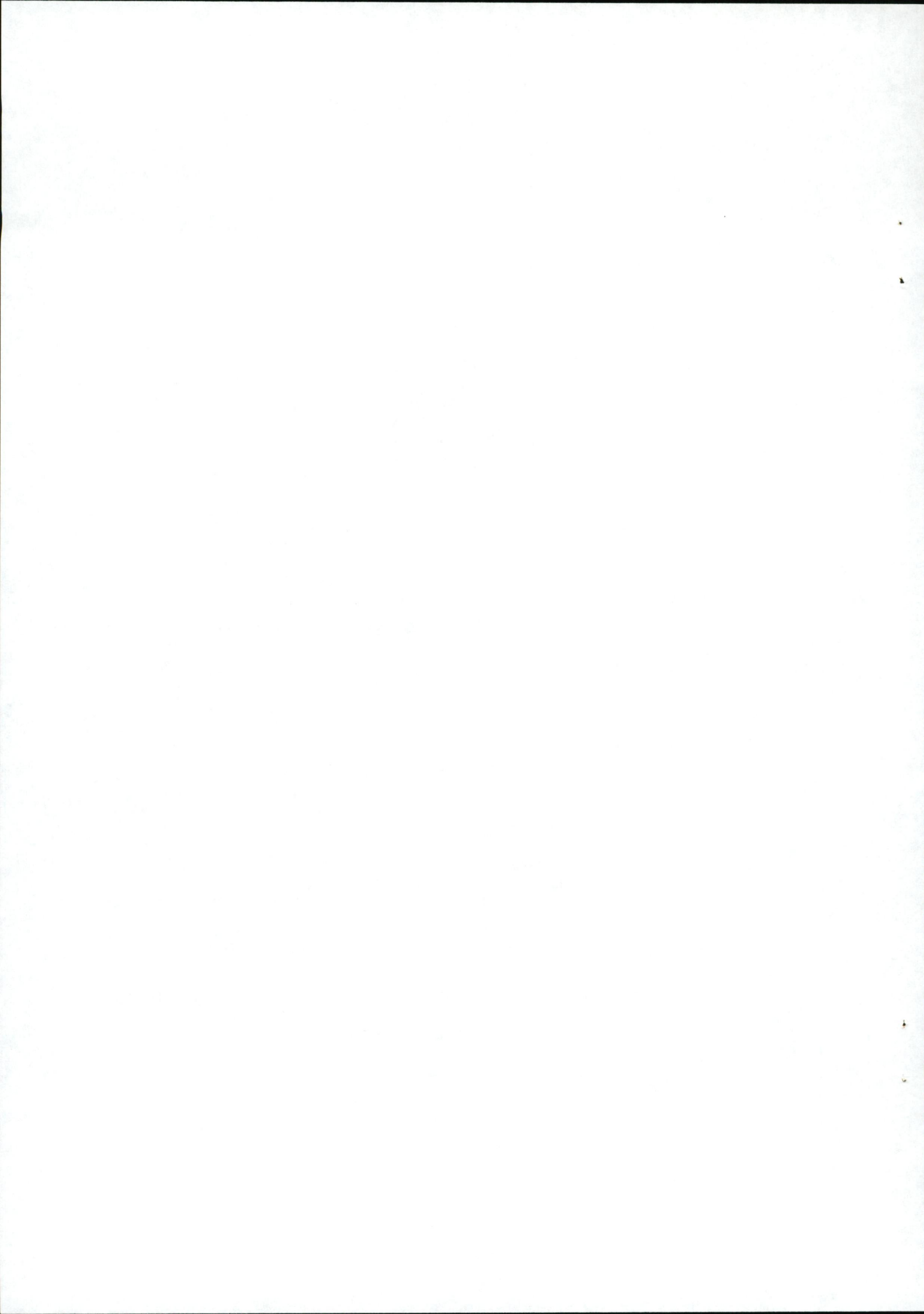
	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Traffic Act 1909 No 5	2
4 Amendment of Crimes Act 1900 No 40	2
5 Amendment of Criminal Procedure Act 1986 No 209	2

---

### Schedules

1 Amendment of Traffic Act 1909	3
2 Amendment of Crimes Act 1900	5
3 Amendment of Criminal Procedure Act 1986	6

---





New South Wales

# Traffic and Crimes Amendment (Menacing and Predatory Driving) Bill 1997

No. , 1997

---

## **A Bill for**

An Act to amend the *Traffic Act 1909*, the *Crimes Act 1900* and the *Criminal Procedure Act 1986* with respect to menacing and predatory driving.

---

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

**1 Name of Act**

This Act is the *Traffic and Crimes Amendment (Menacing and Predatory Driving) Act 1997*.

**2 Commencement**

5

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 Amendment of Crimes Act 1900 No 40**

10

The *Crimes Act 1900* 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.



---

## Schedule 1 Amendment of Traffic Act 1909

(Section 3)

### [1] Section 4AA

Omit the section. Insert instead:

- 4AA Menacing driving** 5
- (1) **Offence—intent to menace**  
A person is guilty of an offence against this Act if:
- (a) the person drives a motor vehicle on a public street in a manner that menaces another person, and 10
  - (b) the person intended to menace that other person.
- Maximum penalty:
- for a first offence—30 penalty units or imprisonment for 18 months, or both, and
  - for a second or subsequent offence—50 penalty units or imprisonment for 2 years, or both. 15
- (2) **Offence—possibility of menace**  
A person is guilty of an offence against this Act if:
- (a) the person drives a motor vehicle on a public street in a manner that menaces another person, and 20
  - (b) the person ought to have known that the other person might be menaced.
- Maximum penalty:
- for a first offence—20 penalty units or imprisonment for 12 months, or both, and
  - for a second or subsequent offence—30 penalty units or imprisonment for 18 months, or both. 25
- (3) **Application**  
This section applies: 30
- (a) whether the other person is menaced by a threat of personal injury or by a threat of damage to property, and

- (b) whether or not that person or that property is on a public street.
- (4) **Defence**  
A person is not guilty of an offence under this section if the person could not, in the circumstances, reasonably avoid menacing the other person. 5
- (5) **Double jeopardy**  
A person is not liable to be convicted of:
- (a) both an offence under subsection (1) and an offence under subsection (2), or 10
- (b) both an offence under this section and an offence under section 4,  
arising out of a single incident.
- (6) **Second or subsequent offences**  
An offence under this section is a second or subsequent offence for the purposes of this section if: 15
- (a) it is the second or subsequent occasion on which the person is convicted of that same offence, or
- (b) within the period of 5 years immediately before the person is convicted of the offence, the person was convicted of a major offence. 20
- [2] 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*, 25

---

## Schedule 2 Amendment of Crimes Act 1900

(Section 4)

### Section 51A

Insert before section 52A:

#### 51A Predatory driving

5

(1) The driver of a vehicle who, while in pursuit of or travelling near another vehicle:

(a) engages in a course of conduct that causes or threatens an impact involving the other vehicle, and

10

(b) intends by that course of conduct to cause a person in the other vehicle actual bodily harm,

is guilty of an offence and liable to imprisonment for 5 years.

(2) 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 of any other offence, or affect the punishment that may be imposed for any such offence. However, a person who:

15

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

20

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

25

(3) In this section:

*impact* involving a vehicle includes:

(a) an impact with any other vehicle or with a person or object, or

30

(b) the vehicle overturning or leaving a road.

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

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

(Section 5)

**[1] Section 33J Maximum penalties for Table 1 offences**

Insert "51A," after "section" in section 33J (4) (a).

5

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

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





New South Wales

# Traffic and Crimes Amendment (Menacing and Predatory Driving) Act 1997 No 75

## Contents

---

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Traffic Act 1909 No 5	2
4 Amendment of Crimes Act 1900 No 40	2
5 Amendment of Criminal Procedure Act 1986 No 209	2

---

## Schedules

1 Amendment of Traffic Act 1909	3
2 Amendment of Crimes Act 1900	5
3 Amendment of Criminal Procedure Act 1986	6

---







New South Wales

# **Traffic and Crimes Amendment (Menacing and Predatory Driving) Act 1997 No 75**

Act No 75, 1997

---

An Act to amend the *Traffic Act 1909*, the *Crimes Act 1900* and the *Criminal Procedure Act 1986* with respect to menacing and predatory driving.  
[Assented to 10 July 1997]

---

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

**1 Name of Act**

This Act is the *Traffic and Crimes Amendment (Menacing and Predatory Driving) Act 1997*.

**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 Amendment of Crimes Act 1900 No 40**

The *Crimes Act 1900* 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.

---

## Schedule 1 Amendment of Traffic Act 1909

(Section 3)

### [1] Section 4AA

Omit the section. Insert instead:

#### **4AA Menacing driving**

(1) **Offence—intent to menace**

A person is guilty of an offence against this Act if:

- (a) the person drives a motor vehicle on a public street in a manner that menaces another person, and
- (b) the person intended to menace that other person.

Maximum penalty:

- for a first offence—30 penalty units or imprisonment for 18 months, or both, and
- for a second or subsequent offence—50 penalty units or imprisonment for 2 years, or both.

(2) **Offence—possibility of menace**

A person is guilty of an offence against this Act if:

- (a) the person drives a motor vehicle on a public street in a manner that menaces another person, and
- (b) the person ought to have known that the other person might be menaced.

Maximum penalty:

- for a first offence—20 penalty units or imprisonment for 12 months, or both, and
- for a second or subsequent offence—30 penalty units or imprisonment for 18 months, or both.

(3) **Application**

This section applies:

- (a) whether the other person is menaced by a threat of personal injury or by a threat of damage to property, and

(b) whether or not that person or that property is on a public street.

(4) **Defence**

A person is not guilty of an offence under this section if the person could not, in the circumstances, reasonably avoid menacing the other person.

(5) **Double jeopardy**

A person is not liable to be convicted of:

(a) both an offence under subsection (1) and an offence under subsection (2), or

(b) both an offence under this section and an offence under section 4,

arising out of a single incident.

(6) **Second or subsequent offences**

An offence under this section is a second or subsequent offence for the purposes of this section if:

(a) it is the second or subsequent occasion on which the person is convicted of that same offence, or

(b) within the period of 5 years immediately before the person is convicted of the offence, the person was convicted of a major offence.

**[2] 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*,



---

## Schedule 2 Amendment of Crimes Act 1900

(Section 4)

### Section 51A

Insert before section 52A:

#### 51A Predatory driving

- (1) The driver of a vehicle who, while in pursuit of or travelling near another vehicle:
  - (a) engages in a course of conduct that causes or threatens an impact involving the other vehicle, and
  - (b) intends by that course of conduct to cause a person in the other vehicle actual bodily harm,

is guilty of an offence and liable to imprisonment for 5 years.

- (2) 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 of any other offence, or affect the punishment that may be imposed for any such offence. However, a person who:
  - (a) has been convicted or acquitted of an offence under this section cannot be prosecuted for any other offence under this Act on the same, or substantially the same, facts, or
  - (b) has been convicted or acquitted of any other offence under this Act cannot be prosecuted for an offence under this section on the same, or substantially the same, facts.

- (3) In this section:

**impact** involving a vehicle includes:

- (a) an impact with any other vehicle or with a person or object, or
- (b) the vehicle overturning or leaving a road.

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

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

(Section 5)

**[1] Section 33J Maximum penalties for Table 1 offences**

Insert "51A," after "section" in section 33J (4) (a).

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

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

[Minister's second reading speech made in—  
Legislative Assembly on 19 June 1997  
Legislative Council on 27 June 1997]

BY AUTHORITY