



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).

* Amended in committee—see table at end of volume.

- (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.