
TRAFFIC ACT (No. 2) 1976

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TRAFFIC (No. 2)

No. 96 of 1976

AN ACT to amend the Traffic Act 1925, the Police Offences Act 1935, the Road Safety (Alcohol and Drugs) Act 1970, the Criminal Code, and certain other Acts.

[30 November 1976]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

1—(1) This Act may be cited as the *Traffic Act (No. 2) 1976*.

Short title,
citation, and
commencement.

(2) The *Traffic Act 1925*, as subsequently amended, is in this Act referred to as the Principal Act.

(3) This Act shall commence on a day to be fixed by proclamation.

Re-organization
of, and
references to,
certain sections
of the Act.

2—(1) The provisions of the Principal Act specified in Schedule I are amended in the manner set forth in the Schedule.

(2) Subject to this Act, references in any Act, other than the Principal Act, to a section that is renumbered by this Act shall be construed as a reference to that section as so renumbered and that Act is by force of this subsection amended to such extent as may be necessary to give effect to the provisions of this subsection.

Interpretation.

3 Section 3 of the Principal Act is amended—

(a) by inserting in subsection (1) after the definition of “horses” the following definition:—

“ ‘learner’s licence’ means a licence referred to in the regulations as a learner’s licence; ”; and

(b) by omitting from the definition of “provisional licence” in that subsection the words “or a driver’s licence that is ordered by a court to have effect as a provisional licence”.

Regulations:
Application to
the Crown.

4 Section 10 of the Principal Act is amended by omitting from subsection (8) the words “affording cover within the meaning of Part V of that Act”.

Provisional
licences.

5 Section 10AA of the Principal Act is amended—

(a) by inserting in subsection (1) after the word “licence” (third occurring) the words “not being a restricted licence issued under section 36”;

(b) by omitting from that subsection the words “3 years” and substituting the words “one year”; and

(c) by omitting subsection (2) and substituting the following subsections:—

“(2) In determining, for the purpose of subsection (1), the period for which a person has held a provisional licence the period elapsing between the issue of the licence and the date on which it first falls due to be renewed shall be deemed to be a period of one year.

“(2A) Where a person is disqualified for obtaining or holding a driver’s licence for a period of less than 3 months the continuity of the period for which he held a provisional licence shall be deemed not to have been broken by reason

of that disqualification but the period for which he was disqualified shall not be counted as part of the period for which he held a provisional licence.”.

6 Section 34 of the Principal Act (before the commencement of this Act numbered as section 36) is repealed and the following section is substituted:—

“ 34—(1) Where a person is convicted of an offence against this Act as the driver or person in charge of a motor vehicle, the court may order that he be disqualified for obtaining or holding a driver’s licence for such period as the court may specify. Disqualification of drivers, &c.

“(2) The powers of a court under subsection (1) in relation to the conviction of a person for an offence may be exercised in addition to or in lieu of the exercise of any other powers that the court may have in relation to that conviction.”.

7 After section 34 of the Principal Act (before the commencement of this Act numbered as section 36) the following section is inserted:—

“ 35—(1) Where a court orders a person to be disqualified for obtaining or holding a driver’s licence under this Act it may order that the period of disqualification shall commence at the expiration of any period of disqualification already imposed on that person. Commencement of period of disqualification.

“(2) Where a court orders a person to be disqualified for obtaining or holding a driver’s licence under this Act—

(a) it may, if it is satisfied that reasonable cause exists for doing so, order that the disqualification shall take effect from a day or hour subsequent to the time of the making of the order; and

(b) it shall, where an order of disqualification is made in the absence of that person, order that the commencement of that period be postponed for a period not less than 10 days.

“(3) Where the period of disqualification is postponed under subsection (2) the period shall be deemed to have commenced—

(a) at the date of the expiration of the period of postponement;
or

(b) if the licence is surrendered to the Commission during the period of postponement, on the date of surrender, and for the purposes of this subsection 'period of postponement' means the period for which the commencement of the period of disqualification is postponed.

"(4) Where an order of disqualification is postponed pursuant to subsection (2), section 38 does not apply until the period of disqualification commences."

8 Section 36 of the Principal Act (before the commencement of this Act numbered as section 36AAA) is repealed and the following section is substituted:—

Restricted
licences.

"36—(1) Where on conviction for an offence under this Act or pursuant to section 43E a person is disqualified for obtaining or holding a driver's licence, an order may be made under this section authorizing the granting to him of a driver's licence (in this section referred to as a 'restricted licence') that authorizes him to drive a motor vehicle subject to such conditions or restrictions as shall be specified in the order, and notwithstanding his being so disqualified but subject otherwise to the provisions of this Act a restricted licence may be issued to him that conforms with the terms of the order.

"(2) Notwithstanding anything in this Act a restricted licence shall contain such conditions or restrictions as are necessary to conform with an order made under subsection (1).

"(3) An order referred to in subsection (1) may be made by a magistrate on application, made in the prescribed manner, by the person disqualified.

"(4) No order shall be made under this section unless the magistrate is satisfied—

- (a) that the disqualification will impose or is imposing severe and unusual hardship on that person or his dependants;
- (b) that the powers of this section should be exercised for the purpose of mitigating or alleviating that hardship; and
- (c) that the exercise of those powers for that purpose would not be contrary to the public interest.

"(5) The holder of a restricted licence shall while driving or in charge of a motor vehicle have the restricted licence with him.

“(6) The holder of a restricted licence shall, while driving or in charge of a motor vehicle, produce his restricted licence to a police officer on demand being made therefor by that officer.

“(7) Where a person in respect of whom an order is in force under subsection (1) is convicted of an offence—

- (a) in respect of which he is disqualified for obtaining or holding a driver's licence, the court shall revoke that order; or
- (b) in respect of which he is not disqualified for obtaining or holding a driver's licence, the court may revoke or vary that order.

“(8) On an application made by a person to whom an order under subsection (1) relates a magistrate may vary that order.

“(9) Where an order is revoked or varied under subsection (7) or is varied under subsection (8) the person to whom the order relates—

- (a) shall deliver the restricted licence held by him to the registering authority within 14 days of the revocation or variation; and
- (b) shall, unless it has already been delivered to the registering authority, deliver the restricted licence to a police officer or an authorized officer on demand being made therefor by that officer.

“(10) Where an order is varied under subsection (7) or subsection (8) the restricted licence then in force pursuant to the order shall (until that licence is varied, cancelled, or otherwise ceases to have effect) be deemed to authorize the holder to drive a motor vehicle in accordance with the order as varied but not otherwise.

“(11) A restricted licence issued under this section takes effect as a provisional licence except where a person was the holder of a driver's licence other than a provisional licence immediately preceding his disqualification.

“(12) This section has effect subject to section 19 of the *Road Safety (Alcohol and Drugs) Act 1970*.

“(13) Nothing in this section prejudices or affects the powers of the registering authority under any of the provisions of this Act.”.

Effect of
disqualification.

9 Section 38 of the Principal Act (before the commencement of this Act numbered as section 36A) is amended—

(a) by inserting after subsection (1c) the following subsection:—

“(1CA) Subsection (1c) does not apply if during a period of disqualification a person has been granted a restricted licence after first having undertaken a practical driving demonstration to the satisfaction of the registering authority.”;

(b) by omitting from subsection (3) the words “, suspended, or ordered to take effect as a provisional licence” and substituting the words “or suspended”;

(c) by omitting from subsection (4) the word “No” (at the beginning of that subsection) and substituting the words “Except as provided in section 36, no”; and

(d) by omitting subsections (4A), (4B), (4C), and (7).

Endorsement of
licences.

10 Section 39 of the Principal Act (before the commencement of this Act numbered as section 36B) is amended—

(a) by omitting subsection (1) and substituting the following subsection:—

“(1) Where a court orders that a person be disqualified for obtaining or holding a driver’s licence it shall forthwith cause the Commission to be notified of the making of the order.”;

(b) by omitting subsections (2), (3), and (5) and substituting the following subsection:—

“(2) Forthwith on making an order under section 36 in respect of a person the court shall cause the Commission to be notified of the contents of the order.”; and

(c) by inserting in subsection (4) after the word “order” (first occurring) the words “or the variation of an order”.

Award of
demerit points
on conviction.

11 Section 43c of the Principal Act is amended—

(a) by omitting from subsection (3) the words “in the special circumstances of the case” and substituting the words “having regard to the circumstances in which the offence was committed”; and

(b) by adding at the end of that section the following subsection:—

“(5) Where on conviction for an offence a person has been disqualified for obtaining or holding a driver’s licence for any period, no demerit points shall be awarded against that person in respect of that offence.”.

12—(1) Section 43E of the Principal Act is amended—

(a) by inserting after subsection (1) the following subsection:—

“(1A) Where in respect of the offences committed by a person while he is the holder of a provisional licence the aggregate number of demerit points awarded against him is 4 or more, that person is liable to be disqualified under this section for obtaining or holding a driver’s licence.”;

Liability for
disqualification
on accumulation
of demerit
points.

(b) by omitting subsection (3) and substituting the following subsection:—

“(3) Where a person has been disqualified under this section for obtaining or holding a driver’s licence, there shall be disregarded for the purposes of subsection (1) or subsection (1A) any offence of which he was convicted, or in respect of which he accepted a traffic infringement notice (not being a notice that has been withdrawn), before he became so disqualified.”; and

(c) by omitting subsection (4A).

(2) The new subsection (1A) inserted in section 43E of the Principal Act by subsection (1) (a) of this section does not apply in respect of an offence committed before the commencement of this Act.

13 Section 43H of the Principal Act is amended—

(a) by inserting after subsection (1) the following subsection:—

“(1A) A traffic infringement notice that is served on a person who is the holder of a learner’s licence or who does not hold a driver’s licence is of no effect.”; and

(b) by inserting after subsection (6) the following subsection:—

“(6A) Any sum paid by a person who held a learner’s licence or who did not hold a driver’s licence at the time a traffic infringement notice was served on him shall be refunded to that person.”.

Service and
acceptance of
traffic
infringement
notices.

14 Schedule IV to the Principal Act is repealed.

Repeal of
Schedule IV.

Amendment of
certain Acts.

15 The Acts that are specified in Schedule II are amended as respectively set forth in that Schedule.

Transitional
provisions.

16—(1) A special hardship order made in respect of any person under section 36AAA of the Principal Act that is in force immediately before the commencement of this Act has effect as an order made under section 36 of the Principal Act (as amended by this Act) and on that commencement a restricted licence shall be deemed to have been issued to that person authorizing him to drive a motor vehicle in accordance with the terms of the order.

(2) An order made under section 19 of the *Road Safety (Alcohol and Drugs) Act 1970* before the date of commencement of the *Road Safety (Alcohol and Drugs) Act 1974* that is in force immediately before the commencement of this Act continues to have effect as an order made under section 36 of the Principal Act (as amended by this Act) and a licence granted in pursuance of such an order has effect as a restricted licence.

(3) An order made under section 37H of the *Police Offences Act 1935* that is in force immediately before the commencement of this Act continues to have effect as an order made under section 36 of the Principal Act (as amended by this Act) and a licence granted in pursuance of such an order has effect as a restricted licence.

(4) The provisions of this Act apply to any provisional licence in force at the commencement of this Act but if at that commencement the provisional licence had been in force for at least 12 months the licence takes effect on that commencement as a driver's licence that is not a provisional licence.

SCHEDULE I

(Section 2)

PART I

RE-ORGANIZATION AND RENUMBERING OF THE PRINCIPAL ACT

1. Section 36 is renumbered as section 34.
2. Section 36AAA is renumbered as section 36.
3. Section 36AA is renumbered as section 37.
4. Section 36A—
 - (a) is renumbered as section 38; and

(b) is amended by adding at the end of that section the following subsections:—

“(9) For so long as a person is disqualified under this or any other Act for obtaining or holding a driver’s licence, any licence or authority issued elsewhere than in this State by virtue of which, if he were not so disqualified, he would be authorized to drive a vehicle in this State is of no effect for the purposes of this Act.

“(10) Where a licence or other authority is of no effect for the purposes of this Act pursuant to subsection (9) the person by whom it is held shall, on demand being made to him by a police officer or an authorized officer, deliver that licence or other authority to that police officer or authorized officer or to the Commission.

“(11) So long as a licence or authority is, pursuant to this section, of no effect for the purposes of this Act it may be retained in the possession of the Commission.”.

5. Section 36AB is repealed.

6. Section 36B is renumbered as section 39.

7. Section 38 is renumbered as section 40.

8. Section 39—

(a) is renumbered as section 41; and

(b) is amended by adding at the end of that section the following subsection:—

“(3) Every person who obstructs any police officer or authorized officer in the execution of his duty under this Act shall be guilty of an offence against this Act.”.

9. Section 40 is repealed.

PART II

CONSEQUENTIAL AMENDMENTS TO PRINCIPAL ACT

1. Section 14 (3) is amended by omitting “ 38 ” and substituting “ 40 ”.

2. Section 37 (before the commencement of this Act numbered as section 36AA) is amended by omitting subsection (2) and substituting the following subsection:—

“(2) This section does not apply in respect of a disqualification for holding or obtaining a licence imposed under the *Road Safety (Alcohol and Drugs) Act 1970* or under section 41 of this Act as it had effect before the commencement of that Act, nor does it apply to a person in respect of whom an order made under section 36 is in force.”.

SCHEDULE II

(Section 15)

AMENDMENTS OF ACTS

Police Offences Act 1935

(26 Geo. V No. 44)

Section 37H is repealed and the following section is substituted:—

Application of
section 36 of
the *Traffic Act*
1925.

“37H Section 36 of the *Traffic Act* 1925 applies to the conviction of a person for an offence under section 37B or section 37C as it would apply if that offence were an offence under that Act.”

Road Safety (Alcohol and Drugs) Act 1970

(No. 77 of 1970)

Section 17 is amended by inserting in subsection (2) after the words “*Traffic Act* 1925” the words “(as that Act had effect before the commencement of this Act)”.

Section 19 is amended—

- (a) by omitting from subsection (1) “36AAA” and substituting “36”;
- (b) by omitting from subsection (2) “36AAA (1) (c)” and substituting “36 (4) (c)”;
- (c) by omitting from that subsection the words “a special hardship order in respect of ” and substituting the words “an order authorizing the granting of a restricted licence to”; and
- (d) by inserting in that subsection after the words “*Traffic Act* 1925” (second occurring) the words “(as that Act had effect before the commencement of this Act)”.

Section 19A is amended by omitting “36AAA” and substituting “36”.

Section 20 is amended by inserting after the words “*Traffic Act* 1925” the words “(as that Act had effect before the commencement of this Act)”.

Criminal Code

(14 Geo. V No. 69)

Section 391A is amended—

- (a) by omitting from subsection (4) “thirty-six B” and substituting “39”;
- and
- (b) by inserting after subsection (5) the following subsections:—

“(5A) Section 36 of the *Traffic Act* 1925 applies to the conviction of a person for a crime to which this section applies as it would apply if that offence were an offence under that Act.

“(5B) In relation to a crime to which this section applies the trial judge may exercise the powers of a magistrate under section 36 of the *Traffic Act 1925*.”.

Motor Accidents (Liabilities and Compensation) Act 1973

(No. 71 of 1973)

Section 29 is amended by omitting from subsection (2) “ thirty-six ” and substituting “ 34 ”.

Justices Act 1959

(No. 77 of 1959)

Section 92B is amended by omitting from subsection (4) “ 36B ” and substituting “ 39 ”.

