



## TRAFFIC (No. 3).

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 No. 119 of 1973.
 

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## ANALYSIS.

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AN ACT to amend the *Traffic Act 1925*.

[22 January 1974.]

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. 3) 1973*. 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 date to be fixed by proclamation.

2 After section thirty-six of the Principal Act the following section is inserted:—

Mitigation of effects of disqualification on grounds of hardship.

“36AAA—(1) Where, on conviction for an offence under this Act, a person is disqualified for obtaining or holding a driver’s licence and the appropriate court is satisfied—

- (a) that the disqualification would impose or is imposing severe and unusual hardship on that person or his dependants;
- (b) that the powers of this subsection 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,

the court may, by order (in this section referred to as a ‘special hardship order’), permit that person during the period of disqualification to drive a motor vehicle to the extent specified in the order.

“(2) For the purposes of this section the appropriate court means the court that convicted the person of the offence referred to in subsection (1) of this section, or a magistrate acting on an application by that person.

“(3) A special hardship order may specify the extent to which the person to whom it relates is permitted to drive a motor vehicle by reference to all or any of the following matters, namely:—

- (a) The type or class of the motor vehicle that he is permitted to drive;
- (b) The periods during which, or the times at which, it may be so driven;
- (c) The purposes for which, or the circumstances in which, it may or may not be so driven; and
- (d) Any other matters that, in the circumstances of the case, the court considers relevant.

“(4) The court in making a special hardship order may require the person to whom it relates to comply with such requirements as it may determine, and are specified in the order, with regard to all or any of the following matters, namely:—

- (a) His undergoing training or instruction in relation to the driving or use of motor vehicles; and
- (b) His submitting to examinations with respect to his ability to drive a motor vehicle.

“(5) Where a court imposes such requirements as are referred to in subsection (4) of this section it may order the person to whom

the requirements relate to pay such sum as the court, at the time it imposes those requirements, determines in respect of the cost of providing the training or instruction, or conducting the examinations, to which the requirements relate.

“(6) A sum ordered to be paid under subsection (5) of this section shall, in respect of proceedings for the recovery thereof, be regarded as costs awarded in favour of a complainant in a complaint made on behalf of the Crown.

“(7) Where on an application made by a police officer or an authorized officer a magistrate is satisfied that a person has, without reasonable excuse, refused or failed to comply with any requirements imposed under subsection (4) of this section he may revoke the special hardship order in force in respect of that person.

“(8) No person in respect of whom a special hardship order is in force shall drive a motor vehicle in a public street otherwise than as may be permitted by the order.

Penalty: Two hundred and fifty dollars or six months' imprisonment, or both such fine and imprisonment.

“(9) On the conviction of a person of an offence under subsection (8) of this section the order referred to in that subsection shall be deemed to be revoked and is of no further effect.

“(10) Where a person in respect of whom a special hardship order is in force is convicted of an offence and, on being so convicted is disqualified for obtaining or holding a driver's licence, the special hardship order is deemed to be revoked and is of no further effect.

“(11) Where, as a consequence of such a conviction as is referred to in subsection (9) or subsection (10) of this section, a special hardship order is revoked no special hardship order shall be made in respect of any disqualification for obtaining or holding a driver's licence imposed on that conviction.

“(12) Where a person in respect of whom a special hardship order is in force is convicted of an offence (whether an offence under this Act or under some other law) for which he may be disqualified for obtaining or holding a driver's licence, the court may revoke or vary that order as it considers it just in the circumstances so to do, and, if it varies the order, the order has effect as so varied.

“(13) Except as otherwise expressly provided in this Act, an order under this section does not affect the operation of any disqualification of a person for obtaining or holding a driver's licence nor does it authorize the driving of a motor vehicle contrary to any other provision of this Act.

“(14) The Director of Road Safety is responsible for arranging for such training, instruction, and examinations as are referred to in subsection (4) of this section.”.

Driving while disqualified.

**3** Section thirty-six AA of the Principal Act is amended by adding at the end of subsection (2) the words “, nor does it apply to a person in respect of whom an order made under section thirty-six AAA is in force.

Effect of disqualification.

**4** Section thirty-six A of the Principal Act is amended by inserting after subsection (4) thereof the following subsections:—

“(4A) The foregoing provisions of this section do not apply in respect of the disqualification of a person while a special hardship order under section thirty-six AAA in respect of him is in force, and on that order being revoked those provisions thereafter have effect as if the order had not been made.

“(4B) Where a special hardship order is made under section thirty-six AAA in respect of a person, that person—

- (a) shall deliver to the Commission within fourteen days of the order being made any driver's licence held by him; and
- (b) shall, unless it has already been delivered to the Commission, deliver any driver's licence held by him at the time the order was made to a police officer or an authorized officer on demand therefor being made by that officer.

“(4C) Where a special hardship order is made under section thirty-six AAA in respect of a person whose driver's licence is suspended under this section the Commission, on application made by him, shall, subject to section thirty-six B, restore that licence to him.”.

Endorsement of licences.

**5** Section thirty-six B of the Principal Act is amended by omitting subsection (2) and substituting therefor the following subsections:—

“(2) Forthwith on making a special hardship order under section thirty-six AAA in respect of a person the court shall cause the Commission to be notified of the contents of the order.

“(3) Forthwith on convicting a person of an offence, or imposing a disqualification, by virtue of which a special hardship order under section thirty-six AAA is revoked the court shall cause the Commission to be notified of the details of the conviction or disqualification.

“(4) Where the Commission is, in respect of a person, notified under this section of an order, conviction, or disqualification, it shall cause to be endorsed, on any driver’s licence held by that person that is produced to the Commission or that is at any time after the notification issued or restored to that person, particulars of the order so notified (specifying the conviction on which it was made) or particulars of the conviction or disqualification so notified, as the case may be.

“(5) Subsection (3) of this section does not apply to a driver’s licence that is cancelled.”.

**6** Section forty-three E of the Principal Act is amended by inserting after subsection (4) the following subsection:—

“(4A) Section thirty-six AAA applies in respect of a disqualification imposed under this section in like manner as if it were a disqualification imposed on conviction for an offence under this Act.”.

Liability for  
disqualification  
on accumulation  
of demerit  
points.