



TASMANIA

TRAFFIC AMENDMENT ACT 1995

No. 86 of 1995

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**TRAFFIC AMENDMENT ACT 1995**

No. 86 of 1995

AN ACT to amend the *Traffic Act 1925***[Royal Assent 14 November 1995]**

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:—

Short title

1—This Act may be cited as the *Traffic Amendment Act 1995*.

Commencement

2—This Act commences on a day to be fixed by proclamation.

Principal Act

3—In this Act, the *Traffic Act 1925** is referred to as the Principal Act.

Section 3 amended (Interpretation)

4—Section 3 (1) of the Principal Act is amended by omitting the definition of “owner” and substituting the following definition:—

“owner”, when used with reference to a motor vehicle or trailer, means—

(a) a person registered in the record of motor vehicles and trailers kept in accordance with section 11 as the owner of such vehicle or trailer; or

(b) a person who is the owner, joint owner or part owner of the vehicle or trailer—

and includes any other person—

(c) who has the use of the vehicle or trailer under a lease or hire-purchase agreement; or

(d) to whom the vehicle or trailer has been sold or otherwise disposed of by a previous registered owner who has complied with the provisions of this Act applicable to him or her relating to the sale or disposal; or

(e) who the Commission reasonably believes is any such owner of a motor vehicle or trailer;

Section 9 amended (Administration of Act)

5—Section 9 (3) of the Principal Act is amended by omitting “parking” and substituting “prescribed”.

* 16 Geo. V No. 38. For this Act, as amended to 1 October 1979, see the continuing Reprint of Statutes. Subsequently amended by No. 76 of 1979, Nos. 10, 11, 74 and 107 of 1980, Nos. 13, 19, 34 and 69 of 1981, No. 99 of 1982, Nos. 9 and 19 of 1983, Nos. 29, 55 and 80 of 1984, Nos. 101 and 102 of 1985, Nos. 10, 35 and 108 of 1986, Nos. 34, 41 and 73 of 1987, Nos. 3, 5 and 40 of 1990, No. 9 of 1991, Nos. 54 and 62 of 1992, No. 58 of 1993 and Nos. 28, 30 and 71 of 1995.

Section 10 amended (Regulations: Application to the Crown)

6—Section 10 of the Principal Act is amended as follows:—

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

(1AA) In this section, “**registration fees**” means the fees, charges and premiums payable under this Act, the *Motor Vehicles Taxation Act 1981* or the *Motor Accidents (Liabilities and Compensation) Act 1973* for the registration and insurance of motor vehicles or trailers.

(b) by inserting after paragraph (c) of subsection (1) the following paragraph:—

(ca) providing for the registration of a motor vehicle or trailer to be effected by payment of a registration fee to a police officer or authorised officer and for the duties of the driver of the motor vehicle or trailer in any such case; and

(c) by inserting after subsection (3) the following subsection:—

(3A) The regulations may provide that, where an unregistered motor vehicle or trailer is parked, left standing or used on a public street—

(a) the owner is required to pay penalty fees in respect of a period not exceeding 2 years as if the registration had continued in force until notice of cancellation or transfer of registration is received by the registering authority; and

(b) the penalty fees may exceed the registration fees payable; and

(c) the penalty fees may be recovered by the Commission in a court of competent jurisdiction; and

(d) a court, on finding a person guilty of an offence against this Act, must, in addition to any other penalty, order the owner of the vehicle or trailer to pay any outstanding registration fees to the Commission.

Section 14 amended (Driving unregistered vehicles and driving without licence)

7—Section 14 of the Principal Act is amended by omitting subsections (1) and (2) and substituting the following subsections:—

(1) A person who drives, uses, parks or leaves standing on a public street a motor vehicle or trailer—

(a) without having the prescribed number-plate properly affixed to the motor vehicle or trailer, or having the number-plate or any number or letter on the number-plate altered, obscured or obliterated; or

(b) if the motor vehicle or trailer is required to be registered but is not registered—

is guilty of an offence against this Act.

(2) In a prosecution for an offence against subsection (1) it is a defence if the person charged can show—

(a) that the offence was the result of a motor vehicle accident and occurred within a reasonable time after the accident; or

(b) that the motor vehicle or trailer was, at the time of the offence, being driven or towed for the purpose of being registered; or

(c) in the case of a motor vehicle or trailer which has not passed an inspection, that it was being driven or towed by the most direct route from the place of inspection to—

(i) the home or place of business of the owner or driver; or

(ii) the nearest place where it was practicable to carry out repairs for the purpose of registration of the motor vehicle or trailer.

(2A) Where a motor vehicle or trailer which is required to be registered but which is not registered is parked, left standing or used on a public street, the owner is guilty of an offence and is liable to a fine not exceeding 10 penalty units.

(2B) In a prosecution for an offence against subsection (2A) it is a defence if the person charged can show that the motor vehicle or trailer was parked, left standing or used without his or her authority or consent.

Section 41 amended (Refusing to give name and address, &c.)

8—Section 41 of the Principal Act is amended as follows:—

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

(ab) where that person is the owner of a vehicle, to give—

(i) the name and address of the place of residence of any person who on a specified occasion was the driver of the vehicle; or

(ii) the number of the driving licence held by any such person and the State or Territory in which it was issued; or

(b) by inserting “(ab) or” after “(1)” in subsection (2);

(c) by omitting subsection (4) and substituting the following subsections:—

(4) A police officer or authorised officer in the execution of his or her duty under this Act may require a person giving particulars under this section—

(a) to sign his or her name; or

(b) to provide any such particulars in writing supported by statutory declaration—

and a person who fails to comply with any such requirement is guilty of an offence against this Act.

(5) In the application of subsection (4) to a body corporate, the statutory declaration is to be made by—

(a) a director, secretary or manager of the body corporate; or

- (b) any other person who, in the opinion of the police officer or authorised officer—
- (i) substantially controls its affairs; or
 - (ii) is able to provide any information relating to the use of the vehicle at the time of the alleged offence.

Section 43H amended (Service and acceptance of traffic infringement notices)

9—Section 43H of the Principal Act is amended by inserting after subsection (5) the following subsections:—

(5A) Where a traffic infringement notice in respect of a prescribed offence has been served on a person and proceedings are brought against that person for that offence, he or she is not entitled to dispute the date of service of the notice unless, within 21 days after the date of service of the complaint and summons, he or she has given notice in writing of his or her intention to do so to the designated clerk of petty sessions or council clerk specified in that behalf in the notice.

(5B) A complaint and summons issued against a person as mentioned in subsection (5A) is to contain a statement as to the effect of that subsection.

Sections 43HA and 43HB inserted

10—After section 43H of the Principal Act, the following sections are inserted:—

Notification of driver by statutory declaration

43HA—Where a person on whom a traffic infringement notice has been served under section 43H—

- (a) within 28 days following the service of the notice, if that person has not been allowed an additional period under section 43H (4A); or

- (b) within 42 days following the service of the notice, if the person has been allowed such an additional period—

provides a statutory declaration to the relevant police officer or authorised officer stating the name and address of the person who was in charge of the vehicle at all relevant times relating to the alleged offence, the statutory declaration, if produced in any proceedings against the person named in the declaration and in respect of the offence to which the declaration relates, is evidence—

- (c) in the case of a parking offence, that the person was in charge of the vehicle at all times relevant to that offence; or
- (d) in the case of any other prescribed offence, that the person was the driver of the vehicle at the time when the offence occurred.

Bodies corporate and joint owners

43HB—(1) Where a traffic infringement notice is served on a person who is a joint owner or part owner of a motor vehicle or on a body corporate—

- (a) that service is taken to be a demand by a police officer under section 51 (3); and
- (b) the notice is to contain a statement of the obligations of that person or body corporate under section 51 (3) as affected by this subsection.

(2) Where a traffic infringement notice is served on a person who is a joint owner or a part owner of a motor vehicle, all such joint owners or part owners are required to make the relevant statutory declaration but it is sufficient compliance with this section if any one of them makes a statutory declaration disclosing the name and address of the driver of the vehicle at the time of the alleged offence.

(3) For the removal of doubts it is declared that a traffic infringement notice may be served on a body corporate.

Section 43L amended (Service of notices)

11—(1) Section 43L of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:—

(1) A traffic infringement notice is to be served by a police officer or an authorised officer delivering it to the person to whom it relates but the notice may be served—

(a) by post; or

(b) by fixing the notice to the vehicle or other thing in respect of which the offence occurred—

if in either case the regulations so provide.

(2) Section 43L of the Principal Act is further amended as follows:—

(a) by omitting from subsection (1AA) “and may be served by post”;

(b) by omitting subsection (1A);

(c) by omitting “(1A)” from subsection (1B) and substituting “(1)”.

Section 43LA inserted

12—After section 43L of the Principal Act, the following section is inserted:—

Duties of clerks of petty sessions

43LA—Where, at the time when a statutory declaration is provided under this Part, payment of the relevant penalty is tendered to a clerk of petty sessions, the clerk must not accept the payment unless the person making the statutory declaration has identified himself or herself as the driver of the vehicle at the time of the alleged offence.

Section 43M amended (Application of penalties in respect of traffic infringement notices)

13—Section 43M (2) of the Principal Act is amended by omitting “a parking” and substituting “an”.

Section 43P inserted

14—Before section 44 of the Principal Act, the following section is inserted in Part V:—

Complaint for offence detected by speed camera

43P—Where—

- (a) an offence against this Act is detected by a photographic detection device; and
- (b) the driver of the vehicle at the relevant time was not the registered owner of the vehicle—

a complaint in respect of that offence may, notwithstanding section 26 of the *Justices Act 1959*, be laid at any time within 6 months after the date on which the identity of the driver is established.

Section 51 amended (Facilitation of proof of certain matters)

15—Section 51 (1) of the Principal Act is amended by omitting paragraphs (j) and (k) and substituting the following paragraphs:—

- (j) the production of a certificate in the prescribed form purporting to be signed by a person having the prescribed qualifications and specifying the time when a photographic detection device was tested is evidence of the facts stated in the certificate;
- (k) the production of a photograph that was taken by a photographic detection device and that contains such information as may be prescribed is evidence—
 - (i) that at a particular time and place the speed of a motor vehicle or trailer shown in the photograph was the speed endorsed on that photograph; and
 - (ii) that at a particular time and place a motor vehicle or trailer shown in the photograph was used on a public street.

Section 54 amended (Proceedings in relation to certain offences)

16—(1) Section 54 of the Principal Act is amended by omitting subsection (1AA) and substituting the following subsection:—

(1AA) This section applies to such offences as may be specified in the regulations.

(2) Section 54 of the Principal Act is further amended as follows:—

- (a) by inserting after “vehicle”, wherever occurring in subsections (1) to (6) (both inclusive), “or trailer”;
- (b) by omitting from subsection (4) “under subsection (1)”;
- (c) by inserting after “vehicle” in the definition of “owner” in subsection (8) “or trailer”;
- (d) by inserting after “vehicles”, wherever occurring in the definition of “owner” in subsection (8), “or trailers”.

Schedule 2 amended (Maximum fees that may be prescribed in respect of vehicles and drivers)

17—(1) Schedule 2 to the Principal Act is amended by inserting after the heading the following heading:—

PART 1**MAXIMUM FEES**

(2) Schedule 2 to the Principal Act is further amended by inserting after item 3 the following Part:—

PART 2

UNREGISTERED VEHICLES

1—Where, 2 months after the commencement of the *Traffic Amendment Act 1995*, a motor vehicle or trailer is unregistered, the maximum fees under Part 1 may be increased by 3% in respect of each month during which it remains unregistered.

*[Second reading presentation speech made in:—
House of Assembly on 26 September 1995
Legislative Council on 10 October 1995]*

