

TASMANIA

**POLICE MISCELLANEOUS AMENDMENTS BILL
2009**

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POLICE MISCELLANEOUS AMENDMENTS BILL 2009

This Public Bill originated in the House of Assembly, and, having this day passed, is now ready for presentation to the Legislative Council for its concurrence.

P. R. ALCOCK, *Clerk of the House*
18 August 2009

*(Brought in by the Minister for Police and Emergency
Management, the Honourable James Glennister Cox)*

A BILL FOR

**An Act to amend the *Police Offences Act 1935* and the
*Police Powers (Vehicle Interception) Act 2000***

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:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Police Miscellaneous Amendments Act 2009*.

2. Commencement

The provisions of this Act commence on a day or days to be proclaimed.

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Part 2 – Police Offences Act 1935 Amended

PART 2 – POLICE OFFENCES ACT 1935 AMENDED

3. Principal Act

In this Part, the *Police Offences Act 1935** is referred to as the Principal Act.

4. Section 3 amended (Interpretation)

Section 3(1) of the Principal Act is amended as follows:

- (a) by inserting the following definition after the definition of “liquor infringement notice”:

“motor vehicle” has the same meaning as in the *Vehicle and Traffic Act 1999*;

- (b) by inserting the following definition after the definition of “public place”:

“public street” has the same meaning as in the *Traffic Act 1925*;

- (c) by inserting the following definition after the definition of “town”:

“trailer” has the same meaning as in the *Vehicle and Traffic Act 1999*;

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5. Section 25 amended (Consumption of liquor in streets, &c.)

Section 25 of the Principal Act is amended by omitting subsection (1).

6. Section 37A amended (Interpretation)

Section 37A of the Principal Act is amended by omitting the definition of “motor vehicle” and substituting the following definition:

“owner”, when used in 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 41 of the *Vehicle and Traffic Act 1999* as the owner of the motor vehicle or trailer; or
- (b) a person who is a joint owner or part owner of the motor vehicle or trailer –

and includes –

- (c) any other person who has the use of the motor vehicle or trailer under a lease or hire-purchase agreement; and
- (d) a person to whom the motor vehicle or trailer has been sold or otherwise disposed of by a

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previous registered owner who has complied with the relevant provisions of the *Vehicle and Traffic Act 1999*; and

- (e) a person who a police officer reasonably believes is the owner of the motor vehicle or trailer;

7. Sections 37G, 37GA and 37GB inserted

After section 37F of the Principal Act, the following sections are inserted in Division 1:

37G. Requirement of owner or registered operator to provide details

- (1) Where a person is alleged to have committed an offence against any State or Commonwealth legislation as the driver or an occupant of a motor vehicle, the owner or registered operator of the motor vehicle, on demand by a police officer, must give to the officer all such information as the officer requires as to the identity and whereabouts of the driver or any occupant of the vehicle at any time relevant to the charge.

Penalty: Fine not exceeding 50 penalty units.

- (2) A demand for information may be made orally or by a notice of demand served in accordance with section 37GA.

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- (3) If a demand is made orally, a police officer is to serve a notice of demand in accordance with section 37GA as soon as practicable after making the demand.
- (4) If any information required under subsection (1) is not known to the owner or registered operator, he or she must take all reasonable steps to obtain that information, and must report to a police officer within 7 days the result of the steps so taken.

Penalty: Fine not exceeding 50 penalty units.

- (5) On demand being made to any person by a police officer for any information within the person's knowledge as to the identity of the driver or an occupant referred to in subsection (1), or as to any fact which may lead to the identification of the driver or occupant, the person must give the information to the officer.

Penalty: Fine not exceeding 50 penalty units.

37GA. Notice of demand

- (1) A police officer may serve a notice of demand on the owner or registered operator of a motor vehicle if the police officer is satisfied that the driver or an occupant of that motor vehicle has committed an offence.

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- (2) A notice of demand is to –
- (a) indicate the offence to which it relates; and
 - (b) specify the registration number of the motor vehicle that was involved in the offence; and
 - (c) specify that the owner or registered operator is to provide to a police officer, within 7 days after the owner or registered operator is served with the notice, a statutory declaration stating –
 - (i) the name, address and, if known, the date of birth and driver licence number of the driver or occupant of the motor vehicle at the time the offence was committed; or
 - (ii) if the owner or registered operator does not know the details referred to in subparagraph (i) –
 - (A) any information that may lead to the identification of the driver or occupant of the motor vehicle; or

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(B) the reasonable steps that the owner or registered operator has taken to obtain such information.

(3) An owner or registered operator must comply with the notice of demand.

Penalty: Fine not exceeding 50 penalty units.

37GB. Statutory declaration naming driver or occupant of vehicle

A statutory declaration provided under section 37GA(2)(c) and naming the driver or an occupant of the motor vehicle at the time of the offence is *prima facie* evidence that the person so named was the driver or an occupant of the motor vehicle at that time.

8. Section 37K amended (Interpretation of Division)

Section 37K of the Principal Act is amended as follows:

(a) by omitting the definition of “prescribed offence” from subsection (1) and substituting the following definition:

“**prescribed offence**” means an offence –

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- (a) against section 14B involving the use of a vehicle, vessel or aircraft; or
 - (b) against section 15B involving the use of a vehicle; or
 - (c) against section 37J; or
 - (d) against section 48; or
 - (e) against section 32 of the *Traffic Act 1925*; or
 - (f) against section 11A of the *Police Powers (Vehicle Interception) Act 2000*; or
 - (g) that is prescribed by the regulations for the purposes of this Division.
- (b) by omitting subsection (2) and substituting the following subsection:
- (2) In the application of this Division to the offence referred to in paragraph (a) of the definition of “prescribed offence” in subsection (1) –
 - “**vehicle**” includes vessel and aircraft.

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9. Section 37N amended (Confiscation of vehicles)

Section 37N of the Principal Act is amended as follows:

- (a) by omitting from subsection (2) “10 days” and substituting “14 days”;
- (b) by omitting from subsection (7) “10” and substituting “14”.

10. Section 37O substituted

Section 37O of the Principal Act is repealed and the following section is substituted:

37O. Period of confiscation for first prescribed offence

- (1) If –
 - (a) a person is found offending in respect of a prescribed offence that is not an offence against section 14B or 15B; and
 - (b) the person has not been found offending in respect of a prescribed offence in the preceding 12 months –

the vehicle used in connection with the offence may be confiscated for a period of 28 days.

- (2) If –

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(a) a person is found offending in respect of an offence against section 14B or 15B; and

(b) the person has not been found offending in respect of a prescribed offence in the preceding 12 months –

the vehicle used in connection with the offence may be confiscated for a period of 7 days.

11. Section 37U amended (Content of notice for first offence)

Section 37U(a) of the Principal Act is amended by omitting “48 hours” and substituting “the period for which the vehicle may be confiscated under section 37O”.

12. Section 37ZC amended (Recovery of vehicle confiscated for first prescribed offence)

Section 37ZC of the Principal Act is amended by omitting “48 hours” and substituting “the period for which the vehicle may be confiscated under section 37O”.

13. Section 47 amended (Interpretation)

Section 47 of the Principal Act is amended by omitting the definition of “motor vehicle”.

PART 3 – POLICE POWERS (VEHICLE INTERCEPTION) ACT 2000 AMENDED

14. Principal Act

In this Part, the *Police Powers (Vehicle Interception) Act 2000** is referred to as the Principal Act.

15. Section 3 amended (Interpretation)

Section 3 of the Principal Act is amended by omitting the definition of “owner” and substituting the following definition:

“owner”, when used in reference to a vehicle, means –

- (a) a person registered in the record of motor vehicles and trailers kept in accordance with section 41 of the *Vehicle and Traffic Act 1999* as the owner of the vehicle; or
- (b) a person who is a joint owner or part owner of the vehicle –

and includes –

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

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- (d) a person to whom the vehicle has been sold or otherwise disposed of by a previous registered owner who has complied with the relevant provisions of the *Vehicle and Traffic Act 1999*; and
- (e) a person whom a police officer reasonably believes is the owner of the vehicle;

16. Section 11A inserted

After section 11 of the Principal Act, the following section is inserted in Part 2:

11A. Evading police

- (1) The driver of a vehicle must not take action to avoid apprehension or interception by a police officer who is exercising his or her powers or performing his or her functions under any Act.

Penalty: Fine not exceeding 50 penalty units or imprisonment for a period not exceeding 12 months, or both.

- (2) A police officer may arrest, without warrant, any person found offending against this section.
- (3) A court that convicts a person of an offence under subsection (1) may, in

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addition to the penalty specified in that subsection, disqualify the person from driving for a period not exceeding 2 years.

- (4) When a court imposes a disqualification from driving under this section, it must suspend or cancel any Australian driver licence held by the person on whom the disqualification is imposed as required by section 17 of the *Vehicle and Traffic Act 1999*.