

TASMANIA

**VEHICLE AND TRAFFIC AMENDMENT (DRIVER
DISTRACTION AND SPEED ENFORCEMENT)
BILL 2022**

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**VEHICLE AND TRAFFIC AMENDMENT (DRIVER
DISTRACTION AND SPEED ENFORCEMENT)
BILL 2022**

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.

SHANE DONNELLY, *Clerk of the House*
7 September 2022

*(Brought in by the Minister for Infrastructure and Transport,
the Honourable Michael Darrel Joseph Ferguson)*

A BILL FOR

**An Act to amend the *Vehicle and Traffic Act 1999* and the
*Traffic Act 1925***

Be it enacted by Her 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 *Vehicle and Traffic Amendment (Driver Distraction and Speed Enforcement) Act 2022*.

2. Commencement

This Act commences on a day to be proclaimed.

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Enforcement) Act 2022*
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**PART 2 – VEHICLE AND TRAFFIC ACT 1999
AMENDED**

3. Principal Act

In this Part, the *Vehicle and Traffic Act 1999** 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 definitions after the definition of *pilot vehicle*:

portable device includes, but is not limited to –

- (a) a mobile phone; and
- (b) another device, or item, that is prescribed for the purposes of this definition;

portable device offence means an offence under the *Traffic Act 1925* of a driver or rider –

- (a) operating a portable device while the display

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of the device is visible to the driver or rider; or

(b) holding a portable device; or

(c) having a portable device resting on the body of, or the clothing being worn by, the driver or rider; or

(d) intentionally looking at the display of a portable device being operated by another person; or

(e) performing, or failing to perform, a prescribed action in respect of a portable device;

(b) by inserting “or rider” after “driver” in the definition of *red light offence*;

(c) by inserting the following definition after the definition of *registration number*:

registration offence means one of the following offences:

(a) an offence under section 27, 31, 32 or 32A;

(b) an offence prescribed for the purposes of this definition;

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- (d) by inserting the following definition after the definition of *schedule of recognised interstate demerit points offences*:

seatbelt offence means an offence under the *Traffic Act 1925* of a driver or rider –

- (a) failing to wear a properly adjusted or fastened seatbelt; or
 - (b) failing to ensure that a passenger is restrained as required; or
 - (c) performing, or failing to perform, a prescribed action in respect of the restraint of a person in a vehicle;
- (e) by inserting “or rider” after “a driver” in the definition of *speeding offence*;
- (f) by inserting “or rider” after “to the driver” in paragraph (a) of the definition of *speeding offence*;
- (g) by inserting “or rider” after “where the driver” in paragraph (a) of the definition of *speeding offence*;
- (h) by inserting “or rider” after “driver” in paragraph (b) of the definition of *speeding offence*.

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5. Section 21 amended (Award of demerit points on conviction)

Section 21(4) of the Principal Act is amended as follows:

- (a) by omitting “red light offence or speeding offence” and substituting “red light offence, speeding offence, portable device offence, seatbelt offence or registration offence”;
- (b) by omitting from paragraph (a)(ii) “person; and” and substituting “person; or”;
- (c) by inserting the following subparagraphs after subparagraph (ii) in paragraph (a):
 - (iii) in the case of a portable device offence, one of 2 or more portable device offences committed in succession by the convicted person; or
 - (iv) in the case of a seatbelt offence, one of 2 or more seatbelt offences committed in succession by the convicted person; or
 - (v) in the case of a registration offence, one of 2 or more registration offences committed in succession by the convicted person; and

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6. Section 22 amended (Award of demerit points on traffic infringement notice)

Section 22(3) of the Principal Act is amended as follows:

- (a) by omitting “red light offence or speeding offence” and substituting “red light offence, speeding offence, portable device offence, seatbelt offence or registration offence”;
- (b) by omitting from paragraph (a)(ii) “offender; and” and substituting “offender; or”;
- (c) by inserting the following subparagraphs after subparagraph (ii) in paragraph (a):
 - (iii) in the case of a portable device offence, one of 2 or more portable device offences committed in succession by the same offender; or
 - (iv) in the case of a seatbelt offence, one of 2 or more seatbelt offences committed in succession by the same offender; or
 - (v) in the case of a registration offence, one of 2 or more registration offences committed in succession by the same offender; and

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7. Section 42A amended (Offence detection devices)

Section 42A(1)(a)(i) of the Principal Act is amended by omitting “red light offences and speeding offences” and substituting “an offence including, but not limited to, a red light offence, speeding offence, portable device offence, seatbelt offence or registration offence”.

8. Section 56DA inserted

After section 56D of the Principal Act, the following section is inserted in Part 7B:

56DA. Use of photographic detection device to determine speed of vehicles in certain circumstances

(1) In this section –

detection point, in relation to a vehicle travelling on a road, means the point on the road where the vehicle triggers a photographic detection device to take a photograph of the vehicle for the purpose of determining the speed at which the vehicle is travelling on the road;

shortest practicable distance, between detection points on a road, means the shortest distance between the detection points that a driver of a vehicle is able to travel –

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- (a) while remaining on the road; and
 - (b) without travelling on a road-related area; and
 - (c) without contravening a law applicable to the driver or the vehicle.
- (2) A photographic detection device may be used, in relation to a road, to establish a detection point for the purpose of determining the average speed at which a vehicle is travelling on the road between two such detection points.
- (3) If two photographic detection devices are used to establish two detection points for the purpose of determining the average speed of a vehicle under this section –
 - (a) the average speed of the vehicle between the detection points is to be calculated as prescribed; and
 - (b) for the purposes of determining whether a speeding offence or an excessive speeding offence has been committed, the speed limit for the road between the detection points is –
 - (i) if a single speed limit applies on the road between the detection

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points, the displayed
speed limit for the road;
or

- (ii) if more than one speed limit applies on the road between the detection points, the speed limit prescribed, or calculated as prescribed, as the average speed limit for the part of that road between those detection points at the time when the offence is purported to have been committed.
- (4) An average speed of a vehicle between detection points that is calculated under this section in respect of a road –
- (a) may only be calculated in respect of the vehicle if the vehicle travelled between at least 2 detection points on the road; and
 - (b) is to be calculated as if the vehicle travelled the shortest practicable distance between the detection points.
- (5) In proceedings for a speeding offence, and in absence of proof to the contrary –
- (a) the average speed of a vehicle determined under this section is

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- admissible as the speed at which the vehicle travelled between the detection points used to calculate the average speed; and
- (b) the average speed limit between two detection points on a road is admissible as the average speed limit for that road under subsection (3)(b); and
 - (c) a certificate signed by the Registrar or the Commission, certifying that the speed limit for a road specified in the certificate was the speed limit for the road at the time so specified, is admissible as evidence, and proof, of the fact so certified; and
 - (d) a certificate signed by the Registrar or the Commission, certifying that a distance specified in the certificate is the shortest practicable distance between detection points on a road, is admissible as evidence, and proof, of the fact so certified.
- (6) For the avoidance of doubt, a single photographic detection device may be used simultaneously as a detection point in respect of 2 or more parts of a road for which an average speed is calculated.

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- (7) An average speed of a vehicle that is calculated in accordance with this section is admissible as evidence, and is proof of the speed of the vehicle in absence of evidence to the contrary, in respect of an offence under this Act or any other Act.

9. Section 56E amended (Facilitation of proof)

Section 56E of the Principal Act is amended as follows:

- (a) by inserting the following definitions before the definition of *information* in subsection (1):

average speed, in relation to a vehicle, means the average speed calculated for the vehicle under section 56DA;

driver includes rider;

- (b) by omitting the definition of *photograph* from subsection (1) and substituting the following definition:

photograph includes –

- (a) a set of photographs; and
- (b) a still taken, or derived, from a recording of visual images; and

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- (c) a recording of visual images;
- (c) by inserting the following subparagraphs after subparagraph (iii) in subsection (2)(a):
 - (iiia) for an offence where the average speed of a vehicle is relevant or in issue, is evidence that the photographed vehicle –
 - (A) was present at the time and location shown; and
 - (B) if an average speed is recorded on the photograph, was travelling at that speed at that time and location; and
 - (iiib) for a portable device offence, is evidence that, at the time and location shown, the driver of the photographed vehicle –
 - (A) was operating, holding or intentionally looking at the portable device shown; or
 - (B) had a portable device resting on his or her body or clothing; or

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- (C) had performed, or failed to perform, an action prescribed for the purpose of paragraph (e) of the definition of a *portable device offence*; and
- (iiic) for a seatbelt offence, is evidence that, at the time and location shown –
 - (A) the driver of the photographed vehicle was not wearing a seatbelt; or
 - (B) the driver of the photographed vehicle was wearing an improperly adjusted or fastened seatbelt; or
 - (C) a passenger in the photographed vehicle was not restrained as required; or
 - (D) the driver of the photographed vehicle had performed, or failed to perform, an action prescribed for the purpose of paragraph (c) of the definition of a *seatbelt offence*; and

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10. Section 56EA inserted

After section 56E of the Principal Act, the following section is inserted in Part 7B:

56EA. Alternative verdicts

(1) If –

- (a) a defendant in proceedings for a seatbelt offence is charged with an offence that relates to a passenger of a specified age; and
- (b) evidence is produced in respect of the seatbelt offence, in accordance with section 56E, from a photographic detection device; and
- (c) the seatbelt offence so charged does not apply in respect of the passenger due to the age of the passenger –

the defendant may be found guilty of another seatbelt offence if the evidence in the proceedings establishes that the other seatbelt offence applies in respect of the age of the passenger.

(2) If –

- (a) a defendant in proceedings for a portable device offence is charged with an offence that

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relates to a licence of a particular kind or class; and

- (b) evidence is produced in respect of the portable device offence, in accordance with section 56E, from a photographic detection device; and
- (c) the portable device offence so charged does not apply to the defendant due to the kind of licence, or class of licences, held by the defendant –

the defendant may be found guilty of another portable device offence if the evidence in the proceedings establishes that the other portable device offence applies in respect of the kind of licence, or class of licences, held by the defendant.

- (3) For the avoidance of doubt, if a defendant is found guilty of another offence under this section, the number of demerit points to be awarded in respect of the finding of guilt is the number of demerit points for the other offence.

11. Section 56F amended (Authorisation of persons to install and operate photographic detection devices)

Section 56F(1) of the Principal Act is amended as follows:

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- (a) by omitting “A senior police officer” and substituting “The Commission, or a senior police officer,”;
- (b) by omitting “person” and substituting “person, in writing,”.

12. Section 67 amended (Evidentiary certificates)

Section 67 of the Principal Act is amended by inserting after subsection (2C) the following subsection:

- (2D) A certificate signed by the Commission, or a senior police officer, certifying that a specified police officer, or person, was authorised at a specified time to install or operate, or install and operate, photographic detection devices is admissible in legal proceedings as evidence of the fact so certified and, in the absence of evidence to the contrary, as proof of that fact.

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Part 3 – Traffic Act 1925 Amended

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PART 3 – TRAFFIC ACT 1925 AMENDED

13. Principal Act

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

14. Section 3 amended (Interpretation)

Section 3(1) of the Principal Act is amended by inserting after the definition of *horses* the following definition:

issuing authority, in relation to a notice of demand or traffic infringement notice, includes –

- (a) the Police Service; and
- (b) a police officer; and
- (c) an authorised officer;

15. Section 43G amended (Notice of demand)

Section 43G of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “A police officer or an authorised officer” and substituting “An issuing authority”;

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- (b) by omitting from subsection (1) “officer” third occurring and substituting “issuing authority”;
- (c) by omitting from subsection (2)(c) “a police officer, or an authorised officer” and substituting “the issuing authority specified on the notice”.

16. Section 43GB amended (Withdrawal of notice of demand)

Section 43GB(2)(a) of the Principal Act is amended by omitting “a police officer” first occurring and substituting “the Police Service or a police officer”.

17. Section 43H amended (Traffic infringement notices)

Section 43H(1) of the Principal Act is amended as follows:

- (a) by omitting “a police officer or an authorised officer” and substituting “an issuing authority”;
- (b) by omitting “he” and substituting “the issuing authority”.

18. Section 43HA amended (Notification of driver by statutory declaration)

Section 43HA(1) of the Principal Act is amended by omitting “relevant police officer or

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authorised officer” and substituting “issuing authority specified on the notice”.

19. Section 43L amended (Service of notices)

Section 43L(1AA) of the Principal Act is amended by omitting “red light offence or speeding offence” and substituting “red light offence, speeding offence, portable device offence, seatbelt offence or registration offence”.

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Part 4 – Miscellaneous

PART 4 – MISCELLANEOUS

20. Repeal of Act

This Act is repealed on the first anniversary of the day on which this Act commenced.