

TASMANIA

**POLICE POWERS AND RELATED LEGISLATION
(EVASION) BILL 2017**

CONTENTS

PART 1 – PRELIMINARY

1. Short title
2. Commencement
3. Repeal of Act

**PART 2 – POLICE POWERS (VEHICLE INTERCEPTION) ACT 2000
AMENDED**

4. Principal Act
5. Section 11A amended (Evading police)

PART 3 – POLICE OFFENCES ACT 1935 AMENDED

6. Principal Act
7. Section 37G amended (Requirement of owner or registered operator to provide details)
8. Section 37N amended (Clamping and confiscation of vehicles)
9. Section 37O amended (Period of clamping or confiscation for first prescribed offence)
10. Section 37P amended (Period of clamping or confiscation for second prescribed offence)
11. Section 37Q amended (Period of clamping or confiscation for third or subsequent prescribed offence)
12. Sections 37QA and 37QB inserted

- 37QA. Period of clamping or confiscation for evasion vehicle
- 37QB. Evasion vehicle may be forfeited
- 13. Section 37T amended (Notice of clamping or confiscation to be given)
- 14. Section 37VA inserted
 - 37VA. Content of notice for evasion offence
- 15. Section 37ZC amended (Unclamping or recovery of vehicle clamped or confiscated for prescribed offence)

PART 4 – YOUTH JUSTICE ACT 1997 AMENDED

- 16. Principal Act
- 17. Section 3 amended (Interpretation)

**POLICE POWERS AND RELATED LEGISLATION
(EVASION) BILL 2017**

*(Brought in by the Minister for Police, Fire and Emergency
Management, the Honourable Marinus Theodoor Hidding)*

A BILL FOR

**An Act to amend the *Police Powers (Vehicle Interception)
Act 2000*, the *Police Offences Act 1935* and the *Youth
Justice Act 1997***

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 *Police Powers and
Related Legislation (Evasion) Act 2017*.

2. Commencement

This Act commences on a day to be proclaimed.

3. Repeal of Act

This Act is repealed on the three hundred and
sixty fifth day from the day on which it
commences.

Police Powers and Related Legislation (Evasion) Act 2017
Act No. of

s. 4

Part 2 – Police Powers (Vehicle Interception) Act 2000 Amended

**PART 2 – POLICE POWERS (VEHICLE
INTERCEPTION) ACT 2000 AMENDED**

4. Principal Act

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

5. Section 11A amended (Evading police)

Section 11A of the Principal Act is amended as follows:

- (a) by omitting the penalty from subsection (1) and substituting the following penalty:

Penalty: In the case of –

- (a) a first offence, either or both of the following:
- (i) a fine of not less than 10 penalty units and not more than 100 penalty units;
 - (ii) imprisonment for a term of not more than 2 years; and

*No. 46 of 2000

Police Powers and Related Legislation (Evasion) Act 2017
Act No. of

Part 2 – Police Powers (Vehicle Interception) Act 2000 Amended

s. 5

(b) a second offence, either or both of the following:

(i) a fine of not less than 20 penalty units and not more than 100 penalty units;

(ii) imprisonment for a term of not more than 2 years; and

(c) a third or subsequent offence, either or both of the following:

(i) a fine of not less than 20 penalty units and not more than 100 penalty units;

(ii) imprisonment for a term of not less than 6 months and not more than 2 years.

(b) by inserting the following subsection after subsection (2):

(2A) 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

Police Powers and Related Legislation (Evasion) Act 2017
Act No. of

s. 5

Part 2 – Police Powers (Vehicle Interception) Act 2000 Amended

functions under any Act, if, at the time the driver takes the action –

- (a) the vehicle being driven by the driver is stolen; or
- (b) the driver is driving the vehicle recklessly, or negligently, within the meaning of section 32 of the *Traffic Act 1925*; or
- (c) the driver is driving the vehicle –
 - (i) while alcohol is present in his or her breath or blood in contravention of section 6 of the *Road Safety (Alcohol and Drugs) Act 1970*; or
 - (ii) while an illicit drug is present in his or her breath or blood in contravention of section 6A of the *Road Safety (Alcohol and Drugs) Act 1970*; or

Police Powers and Related Legislation (Evasion) Act 2017
Act No. of

Part 2 – Police Powers (Vehicle Interception) Act 2000 Amended

s. 5

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- (d) the driver is driving the vehicle –
- (i) while his or her driver licence has been suspended or cancelled; or
 - (ii) while he or she is disqualified from driving; or
- (e) the driver is taking the action to avoid apprehension, or interception, by a police officer as a result of the driver having –
- (i) committed an offence within Appendix A or Appendix B of the *Criminal Code*; or
 - (ii) breached an FVO or PFVO under the *Family Violence Act 2004*; or
 - (iii) contravened a bail order under the *Bail Act 1994*; or
- (f) other prescribed circumstances apply.

Police Powers and Related Legislation (Evasion) Act 2017
Act No. of

s. 5

Part 2 – Police Powers (Vehicle Interception) Act 2000 Amended

Penalty: In the case of –

- (a) a first offence, either or both of the following:
 - (i) a fine of not less than 20 penalty units and not more than 100 penalty units;
 - (ii) imprisonment for a term of not less than 3 months and not more than 2 years; and
- (b) a second or subsequent offence, either or both of the following:
 - (i) a fine of not less than 20 penalty units and not more than 100 penalty units;
 - (ii) imprisonment for a term of not less than 6 months and

Police Powers and Related Legislation (Evasion) Act 2017
Act No. of

Part 2 – Police Powers (Vehicle Interception) Act 2000 Amended

s. 5

not more than
2 years.

- (c) by omitting from subsection (3) “section.” and substituting “section or any person who the police officer has reasonable grounds for believing has committed an offence against this section.”;
- (d) by inserting the following subsections after subsection (3):
 - (3A) In any proceedings for an offence under subsection (2A) in respect of a person, if the court determining the proceedings is not satisfied that the person is guilty of that offence but is satisfied that the person committed an offence under subsection (1), the court may find the person guilty of an offence under subsection (1) and the person is liable to punishment accordingly.
 - (3B) In any proceedings for an offence under subsection (1) in respect of a person, if the court determining the proceedings is satisfied that the person is guilty of that offence, the court is to take into account when sentencing the person any convictions the person has for an offence under

Police Powers and Related Legislation (Evasion) Act 2017
Act No. of

s. 5

Part 2 – Police Powers (Vehicle Interception) Act 2000 Amended

subsection (2A) as if it were a conviction under subsection (1).

(3C) If a court convicts a person of an offence under this section and is imposing a sentence for the offence at the same time as imposing a sentence for one or more other offences, the court –

(a) is not to include a sentence for the offence under this section as part of a general sentence, or mixed sentence, imposed under section 11 of the *Sentencing Act 1997* in respect of the other offences; and

(b) is to impose a separate sentence in respect of the offence under this section.

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

(4) Subject to subsection (4B), a court that convicts a person of an offence under subsection (1) must, in addition to the penalty specified in that subsection, disqualify the person from driving for –

(a) in the case of a first offence, a period of not

Police Powers and Related Legislation (Evasion) Act 2017
Act No. of

Part 2 – Police Powers (Vehicle Interception) Act 2000 Amended

s. 5

less than 6 months and
not more than 3 years; or

- (b) in the case of a second offence, a period of not less than 12 months and not more than 5 years; or
 - (c) in the case of a third or subsequent offence, a period of not less than 2 years and not more than 5 years.
- (4A) Subject to subsection (4B), a court that convicts a person of an offence under subsection (2A) must, in addition to the penalty specified in that subsection, disqualify the person from driving for a period of not less than 2 years and not more than 5 years.
- (4B) If the court convicts a person of an offence under this section and, at the time of committing the offence, the person had not attained the age of 17 years –
- (a) subsections (4) and (4A) do not apply in respect of the sentencing of the person for the offence; and

Police Powers and Related Legislation (Evasion) Act 2017
Act No. of

s. 5

Part 2 – Police Powers (Vehicle Interception) Act 2000 Amended

- (b) the court, when determining a sentence for the offence in respect of the person –
 - (i) must disregard that a minimum amount of money, or term of imprisonment, must be imposed in respect of the offence; and
 - (ii) may, in addition to any other penalty imposed in respect of the offence, disqualify the person from driving for a period not exceeding 2 years.

PART 3 – POLICE OFFENCES ACT 1935 AMENDED

6. Principal Act

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

7. Section 37G amended (Requirement of owner or registered operator to provide details)

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

- (a) by omitting the penalty from subsection (1) and substituting the following penalty:

Penalty: Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 12 months, or both.

- (b) by omitting subsection (4) and substituting the following subsection:

- (4) It is a defence in proceedings for an offence under subsection (1), if the owner or registered operator establishes that he or she has taken all reasonable steps to ascertain the information required under that subsection but has been unable to ascertain the information.

*No. 44 of 1935

Police Powers and Related Legislation (Evasion) Act 2017
Act No. of

s. 8

Part 3 – Police Offences Act 1935 Amended

8. Section 37N amended (Clamping and confiscation of vehicles)

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

- (a) by omitting from subsection (2) “14-day” and substituting “28-day”;
- (b) by omitting from subsection (7) “14 days” and substituting “28 days”.

9. Section 37O amended (Period of clamping or confiscation for first prescribed offence)

Section 37O(2) of the Principal Act is amended by inserting after paragraph (a) the following paragraph:

- (ab) 6 months if the prescribed offence is an offence against section 11A(2A) of the *Police Powers (Vehicle Interception) Act 2000*; or

10. Section 37P amended (Period of clamping or confiscation for second prescribed offence)

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

- (a) by omitting from subsection (2) “The vehicle” and substituting “Subject to subsection (3), the vehicle”;

Police Powers and Related Legislation (Evasion) Act 2017
Act No. of

Part 3 – Police Offences Act 1935 Amended

s. 11

- (b) by inserting in subsection (2) “unless otherwise extended under section 37T(3)(b)” after “months”;
- (c) by inserting the following subsection after subsection (2):

(3) If –

- (a) the new prescribed offence is an offence under section 11A(2A) of the *Police Powers (Vehicle Interception) Act 2000*; and

- (b) the prescribed offence that the person has previously been proceeded against was also under that subsection –

the vehicle used in connection with the new prescribed offence is to be clamped or confiscated for a period of 12 months unless otherwise extended under section 37T(3)(b).

11. Section 37Q amended (Period of clamping or confiscation for third or subsequent prescribed offence)

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

Police Powers and Related Legislation (Evasion) Act 2017
Act No. of

s. 11

Part 3 – Police Offences Act 1935 Amended

- (a) by omitting from subsection (2) “The vehicle” and substituting “Subject to subsection (3), the vehicle”;
- (b) by inserting the following subsections after subsection (2):
 - (3) If the new prescribed offence is an offence under section 11A of the *Police Powers (Vehicle Interception) Act 2000* –
 - (a) the vehicle used in connection with the new prescribed offence is to be clamped or confiscated until the resolution of all existing charges against the person for the new prescribed offence; and
 - (b) if the person –
 - (i) is found guilty of the new prescribed offence; and
 - (ii) has previously been proceeded against by way of complaint under the *Justices Act 1959* in respect of 2 or more offences under section 11A of the *Police Powers (Vehicle*

Police Powers and Related Legislation (Evasion) Act 2017
Act No. of

Part 3 – Police Offences Act 1935 Amended

s. 12

Interception) Act
2000 –

the vehicle used in connection with the new prescribed offence is forfeited to the Crown and the Commissioner may sell or dispose of the vehicle, and anything in or on it, in a way the Commissioner considers appropriate.

- (4) Subdivisions 3 and 5 do not apply in respect of a vehicle forfeited to the Crown by virtue of subsection (3)(b).

12. Sections 37QA and 37QB inserted

After section 37Q of the Principal Act, the following sections are inserted in Subdivision 2:

37QA. Period of clamping or confiscation for evasion vehicle

- (1) This section applies if a police officer reasonably believes that a vehicle has been used in respect of section 11A of the *Police Powers (Vehicle Interception) Act 2000* (referred to in this section as *the evasion offence*).
- (2) The vehicle used in connection with the evasion offence may be clamped or

Police Powers and Related Legislation (Evasion) Act 2017
Act No. of

s. 12

Part 3 – Police Offences Act 1935 Amended

confiscated until the first of the following occurs:

- (a) the driver of the vehicle at the time of the evasion offence is identified;
 - (b) an application made under section 37QB in respect of the vehicle has been determined;
 - (c) a period of 9 months has elapsed since the vehicle was clamped or confiscated under this section and an application has not been made under section 37QB in respect of the vehicle.
- (3) If the driver of the vehicle at the time of the evasion offence has not been identified and a period of 6 months has elapsed since the vehicle was clamped or confiscated under this section, a police officer may apply to the Court for the vehicle to be forfeited to the Crown in accordance with section 37QB.
- (4) Nothing in this section prevents the operation of this Part in respect of a person or a vehicle if –
- (a) the person is the driver of the vehicle at the time of the evasion offence; and

Police Powers and Related Legislation (Evasion) Act 2017
Act No. of

Part 3 – Police Offences Act 1935 Amended

s. 12

- (b) section 37O, 37P or 37Q applies in respect of the person and the evasion offence.
- (5) Subdivisions 3 and 5 do not apply in respect of a vehicle to which this section applies.

37QB. Evasion vehicle may be forfeited

- (1) In this section –

evasion offence has the same meaning as in section 37QA;

affected vehicle means a vehicle to which section 37QA(3) applies.

- (2) A police officer may apply to the Court for an affected vehicle to be forfeited to the Crown if –
 - (a) the driver of the affected vehicle at the time of the evasion offence has not been identified; and
 - (b) a period of 6 months has elapsed since the vehicle was clamped or confiscated under section 37QA.
- (3) If the Court is satisfied that the driver of the affected vehicle at the time of the evasion offence has not been identified, the Court may make an order forfeiting the affected vehicle to the Crown.
- (4) If the Court makes an order under subsection (4) –

Police Powers and Related Legislation (Evasion) Act 2017
Act No. of

s. 12

Part 3 – Police Offences Act 1935 Amended

- (a) the affected vehicle becomes the property of the Crown; and
 - (b) any right of a person to enforce a charge or other security interest registered under the *Personal Property Securities Act 2009* of the Commonwealth against a person other than the State, by taking possession of the affected vehicle, is extinguished.
- (5) An order under subsection (4) may be applied for even though the value of the affected vehicle may be more than the monetary jurisdiction of the Court.
- (6) Before an application for an order under subsection (4) has been determined, the owner or registered operator of the relevant affected vehicle may make a submission to the Court in respect of the application that the vehicle should not be forfeited under the order as the owner or registered operator has provided all such information that he or she has as to the whereabouts of the driver of the affected vehicle at the time of the evasion offence.
- (7) When determining an application for an order under subsection (4), the Court is to take into account all submissions made under subsection (6) in respect of the application.

Police Powers and Related Legislation (Evasion) Act 2017
Act No. of

Part 3 – Police Offences Act 1935 Amended

s. 13

- (8) Subdivisions 3, 4 and 5 do not apply in respect of a vehicle forfeited to the Crown by virtue of this section.

13. Section 37T amended (Notice of clamping or confiscation to be given)

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

- (a) by omitting from subsection (2) “section 37U or 37V” and substituting “section 37U, 37V or 37VA”;
- (b) by inserting in subsection (3)(a) “in respect of the offence” after “section 37P”.

14. Section 37VA inserted

After section 37V of the Principal Act, the following section is inserted in Subdivision 2:

37VA. Content of notice for evasion offence

A notice of clamping or confiscation in respect of a vehicle clamped or confiscated under section 37QA is to state the following:

- (a) the authorised period of clamping or confiscation;
- (b) that each owner and registered operator of the vehicle is required to provide all such information

Police Powers and Related Legislation (Evasion) Act 2017
Act No. of

s. 14

Part 3 – Police Offences Act 1935 Amended

that he or she has as to the whereabouts of the driver of the vehicle at the time of the offence in respect of which the car has been clamped or confiscated;

- (c) that an application may be made to the Court under section 37QB for an order for the forfeiture of the vehicle if the driver of the vehicle is not identified;
- (d) that the owner or registered operator of the vehicle may, at any time before an application under section 37QB is heard and determined in respect of the vehicle, make a submission that the vehicle should not be forfeited under that section;
- (e) in the case of a clamping –
 - (i) that, before the vehicle may be unclamped, the person seeking to have it unclamped will be required to produce to a police officer satisfactory evidence of identity; and
 - (ii) notice of the offences (and penalties) under section 37SA(2) and (3);
- (f) in the case of a confiscation –

Police Powers and Related Legislation (Evasion) Act 2017
Act No. of

Part 3 – Police Offences Act 1935 Amended

s. 14

- (i) that, before the vehicle may be recovered, the person seeking to recover it will be required to –
 - (A) produce to the person responsible for the holding yard satisfactory evidence of identity and, if applicable, written authority from the owner or registered operator of the vehicle to collect it; and
 - (B) pay the costs of moving the vehicle to, keeping the vehicle in and releasing the vehicle from the holding yard; and
- (ii) notice of the offences (and penalties) under section 37S(1) and (2).

Police Powers and Related Legislation (Evasion) Act 2017
Act No. of

s. 15

Part 3 – Police Offences Act 1935 Amended

15. Section 37ZC amended (Unclamping or recovery of vehicle clamped or confiscated for prescribed offence)

Section 37ZC(1)(a) of the Principal Act is amended by omitting “section 37U or 37V” and substituting “section 37U, 37V or 37VA”.

PART 4 – YOUTH JUSTICE ACT 1997 AMENDED

16. Principal Act

In this Part, the *Youth Justice Act 1997** is referred to as the Principal Act.

17. Section 3 amended (Interpretation)

Section 3(1) of the Principal Act is amended by inserting after subparagraph (vi) in paragraph (b) of the definition of *prescribed offence* the following subparagraph:

- (via) an offence under section 11A of the *Police Powers (Vehicle Interception) Act 2000*; and

*No. 81 of 1997