

TASMANIA

POLICE OFFENCES AMENDMENT BILL 2024

CONTENTS

1. Short title
2. Commencement
3. Principal Act
4. Section 3 amended (Interpretation)
5. Section 14B amended (Unlawful entry on land, &c.)
6. Section 15C amended (Dangerous articles)
7. Section 35 amended (Common assault and aggravated assault)
8. Section 37 amended (Offences relating to property)
9. Section 37E amended (Penalty)
10. Section 37FA inserted
37FA. Road rage
11. Section 37GA amended (Notice of demand)
12. Section 37J amended (Excessive noise, smoke, &c., from vehicles)
13. Section 37K amended (Interpretation of Division)
14. Section 37N amended (Clamping and confiscation of vehicles)
15. Section 37O amended (Period of clamping or confiscation for first prescribed offence)
16. Section 37P amended (Period of clamping or confiscation for second prescribed offence)
17. Section 37Q amended (Period of clamping or confiscation for third or subsequent prescribed offence)

18. Section 37QA amended (Period of clamping or confiscation for evasion vehicle)
19. Section 37QB substituted
37QB. Evasion vehicle forfeited
20. Section 37S amended (Unlawful interference with, or removal of, confiscated vehicle)
21. Section 37Y amended (Forfeiture of vehicles)
22. Section 37Z amended (Defence to show no knowledge and consent)
23. Section 37ZB amended (Third party protection from forfeiture order)
24. Section 37ZH amended (Disposal of confiscated vehicle)
25. Section 43AA inserted
43AA. Interpretation
26. Section 48 amended (No motor-vehicle race to be held without a permit)
27. Section 55 amended (Arrest)
28. Section 67A substituted
67A. Evidentiary provisions
29. Repeal of Act

POLICE OFFENCES AMENDMENT BILL 2024

(Brought in by the Minister for Police, Fire and Emergency Management, the Honourable Felix Ashton Ellis)

A BILL FOR

An Act to amend the *Police Offences Act 1935*

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:

1. Short title

This Act may be cited as the *Police Offences Amendment Act 2024*.

2. Commencement

This Act commences on the day on which this Act receives the Royal Assent.

3. Principal Act

In this Act, 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 by inserting after

*No. 44 of 1935

Police Offences Amendment Act 2024
Act No. of 2024

s. 5

any vehicle plying for hire;

in the table in the definition of *public place* the following item:

any vehicle that is being used in the operation of a passenger transport service within the meaning of the *Passenger Transport Services Act 2011*;

5. Section 14B amended (Unlawful entry on land, &c.)

Section 14B of the Principal Act is amended by omitting subsection (2A) and substituting the following subsections:

(2A) Despite subsection (2), if the court that convicts a person of an offence under this section is satisfied that the person was in possession of a firearm during the actual commission of the offence, the person is liable to a penalty not exceeding three times that provided for by subsection (2).

(2BA) Despite subsection (2), if the court that convicts a person of an offence under this section is satisfied that the person made any use of an aircraft, vehicle or vessel during the actual commission of the offence, the person is liable to a penalty not exceeding twice that provided for by subsection (2).

6. Section 15C amended (Dangerous articles)

Section 15C 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 3 years, or both.

- (b) by inserting in subsection (2) “in relation to” after “place”;
- (c) by omitting from subsection (2) “reasonably believes” and substituting “forms a reasonable suspicion that the person”.

7. Section 35 amended (Common assault and aggravated assault)

Section 35 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1A) “a penalty not exceeding 20 penalty units or to imprisonment for a term not exceeding 12 months” and substituting “a fine not exceeding 50 penalty units or to imprisonment for a term not exceeding 18 months”;
- (b) by omitting from subsection (1B) “50 penalty units or to imprisonment for a

Police Offences Amendment Act 2024
Act No. of 2024

s. 8

term not exceeding 2 years” and substituting “100 penalty units or to imprisonment for a term not exceeding 3 years”;

- (c) by omitting from subsection (2) “50 penalty units or to imprisonment for a term not exceeding 2 years” and substituting “100 penalty units or to imprisonment for a term not exceeding 3 years”;
- (d) by omitting from subsection (3) “50 penalty units or to imprisonment for a term not exceeding 2 years” and substituting “100 penalty units or to imprisonment for a term not exceeding 3 years”.

8. Section 37 amended (Offences relating to property)

Section 37 of the Principal Act is amended as follows:

- (a) by omitting from subsection (2A) “a penalty not exceeding 10 penalty units or to imprisonment for a term not exceeding 12 months” and substituting “a fine not exceeding 50 penalty units or to imprisonment for a term not exceeding 2 years”;
- (b) by omitting from subsection (3A) “penalty” first occurring and substituting “fine”;

- (c) by omitting from subsection (5) “penalty” first occurring and substituting “fine”.

9. Section 37E amended (Penalty)

Section 37E of the Principal Act is amended by omitting “a penalty not exceeding 50 penalty units” and substituting “a fine not exceeding 100 penalty units”.

10. Section 37FA inserted

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

37FA. Road rage

- (1) A person who, without reasonable excuse, drives or uses a vehicle, or performs a driving-related act, on a public street, in a manner that –
- (a) the person knows or ought to know, is likely to cause alarm, distress, apprehension, or fear, in another person; and
 - (b) results in –
 - (i) damage to property; or
 - (ii) injury to a person; or
 - (iii) a collision with another vehicle; or

Police Offences Amendment Act 2024
Act No. of 2024

s. 11

(iv) a risk of danger to a person; or

(v) alarm, distress, apprehension, or fear, in another person –

is guilty of the offence of road rage.

Penalty: Fine not exceeding 50 penalty units or imprisonment for a term not exceeding 6 months.

(2) For the purposes of subsection (1), a *driving-related act* includes verbal abuse and threatening or obscene gestures made by a person while that person is driving or using a vehicle.

11. Section 37GA amended (Notice of demand)

The penalty under section 37GA(3) of the Principal Act is amended by omitting “50 penalty units” and substituting “100 penalty units”.

12. Section 37J amended (Excessive noise, smoke, &c., from vehicles)

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

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

Police Offences Amendment Act 2024
Act No. of 2024

s. 13

Penalty: Fine not exceeding 40 penalty units or imprisonment for a term not exceeding 6 months, or both.

- (b) by omitting from subsection (2) “2 years” and substituting “4 years”.

13. Section 37K amended (Interpretation of Division)

Section 37K(1) of the Principal Act is amended by inserting after paragraph (b) in the definition of *prescribed offence* the following paragraph:

- (ba) against section 37FA; or

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

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

- (a) by omitting from subsection (1) “finds a person committing” and substituting “has reasonable grounds for believing that a person is committing, or has committed,”;

- (b) by omitting subsection (2) and substituting the following subsection:

- (2) Where a police officer has reasonable grounds for believing that a prescribed offence involving a vehicle has occurred, and does not immediately clamp or confiscate the vehicle and its

Police Offences Amendment Act 2024
Act No. of 2024

s. 15

keys, the vehicle may be clamped or confiscated and its keys confiscated by a police officer at any time during the 90-day period immediately following the time at which the police officer believes that the offence occurred.

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

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

- (a) by omitting from subsection (1)(a) “finds a person offending in respect of” and substituting “has reasonable grounds for believing that a person is committing, or has committed,”;
- (b) by inserting in subsection (2)(ab) “section 167A, 167B or 172A of the *Criminal Code*, or” after “against”;
- (c) by omitting from subsection (2)(b) “28 days” and substituting “3 months”.

16. 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 (1)(a) “finds a person offending in respect of” and substituting “has reasonable grounds for

Police Offences Amendment Act 2024
Act No. of 2024

s. 17

believing that a person is committing, or has committed,”;

- (b) by omitting from subsection (2) “3 months” and substituting “6 months”.

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

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

- (a) by omitting from subsection (1)(a) “finds a person offending in respect of” and substituting “has reasonable grounds for believing that a person is committing, or has committed,”;
- (b) by omitting from subsection (2) “–” and substituting “the resolution of all existing charges against the person for those prescribed offences.”;
- (c) by omitting paragraphs (a) and (b) from subsection (2).

18. Section 37QA amended (Period of clamping or confiscation for evasion vehicle)

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

- (a) by omitting paragraphs (b) and (c) from subsection (2) and substituting the following paragraphs:

Police Offences Amendment Act 2024
Act No. of 2024

s. 19

(b) the Court makes an order under section 37QB(4);

(c) the vehicle is forfeited to the Crown under section 37QB(2).

(b) by omitting subsection (3).

19. Section 37QB substituted

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

37QB. Evasion vehicle forfeited

(1) In this section –

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

(2) Subject to subsection (3), if the driver of a vehicle at the time of an evasion offence has not been identified and a period of 6 months has elapsed since the vehicle was clamped or confiscated under section 37QA –

(a) the vehicle is forfeited to the Crown and the Commissioner may sell or dispose of the vehicle, and anything in or on it, in a way that the Commissioner considers appropriate; and

(b) any right of a person to enforce a charge or other security interest registered under the *Personal*

Police Offences Amendment Act 2024
Act No. of 2024

s. 20

Property Securities Act 2009 of the Commonwealth against a person other than the State, by taking possession of the vehicle, is extinguished.

- (3) Before the 6-month period specified in subsection (2) has elapsed, the owner or registered operator of the relevant vehicle may make an application to the Court that the vehicle should not be forfeited under this section, as the owner or registered operator has provided all such information as the owner or registered operator has in relation to the whereabouts of the driver of the vehicle at the time of the evasion offence.
- (4) If the Court grants an application made under subsection (3), the Court is to order that the relevant vehicle be unclamped, or returned to its owner or registered operator, as soon as reasonably practicable during normal business hours.
- (5) Subdivisions 3, 4 and 5 do not apply in respect of a vehicle forfeited to the Crown by virtue of this section.

20. Section 37S amended (Unlawful interference with, or removal of, confiscated vehicle)

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

Police Offences Amendment Act 2024
Act No. of 2024

s. 21

- (a) by omitting from the penalty under subsection (1) “20 penalty units” and substituting “40 penalty units”;
- (b) by omitting from the penalty under subsection (2) “40 penalty units” and substituting “80 penalty units”.

21. Section 37Y amended (Forfeiture of vehicles)

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

- (a) by omitting paragraph (a) from subsection (1) and substituting the following paragraph:
 - (a) a police officer has reasonable grounds for believing that a person (*offending driver*) is committing, or has committed, a prescribed offence; and
- (b) by omitting subsection (2);
- (c) by omitting from subsection (3) “may –” and substituting “must make a forfeiture order, to take effect 14 days after the making of the order.”;
- (d) by omitting paragraphs (a) and (b) from subsection (3);
- (e) by omitting from subsection (4) “If the Court makes the forfeiture order” and substituting “Upon the forfeiture order made under subsection (3) taking effect”;

Police Offences Amendment Act 2024
Act No. of 2024

s. 21

- (f) by omitting from subsection (5) “applied for and”;
- (g) by omitting from subsection (6) “application for the forfeiture order is heard and determined” and substituting “forfeiture order takes effect”;
- (h) by omitting from subsection (6) “unclamping or” and substituting “quashing of the forfeiture order and the”;
- (i) by omitting subsections (7) and (8) and substituting the following subsections:
 - (7) The Court may, if satisfied on an application under subsection (6) that the forfeiture of the vehicle is likely to cause severe hardship to a person, order that the forfeiture order be quashed and the vehicle returned to its owner or registered operator.
 - (8) If the Court makes an order under subsection (7), the Court is to impose a monetary penalty not exceeding 100 penalty units on the offending driver.
- (j) by omitting subsection (9).

Police Offences Amendment Act 2024
Act No. of 2024

s. 22

22. Section 37Z amended (Defence to show no knowledge and consent)

Section 37Z(1) of the Principal Act is amended as follows:

- (a) by omitting “for forfeiture of a clamped or confiscated vehicle” and substituting “in relation to which a forfeiture order must be made under section 37Y(3)”;
- (b) by inserting “against the making of the forfeiture order” after “defence”.

23. Section 37ZB amended (Third party protection from forfeiture order)

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

- (a) by omitting from subsection (1) “the hearing of an application for forfeiture” and substituting “proceedings in relation to which a forfeiture order was made under section 37Y(3)”;
- (b) by omitting from subsection (2) “6 months” and substituting “14 days”;
- (c) by omitting from subsection (3) “application for forfeiture” and substituting “proceedings in relation to which a forfeiture order was made”.

24. Section 37ZH amended (Disposal of confiscated vehicle)

Section 37ZH(1) of the Principal Act is amended by omitting “2 months” and substituting “one month”.

25. Section 43AA inserted

Before section 43A of the Principal Act, the following section is inserted in Part VA:

43AA. Interpretation

In this Part –

computer includes a mobile telephone.

26. Section 48 amended (No motor-vehicle race to be held without a permit)

Section 48(2) of the Principal Act is amended by omitting “5 penalty units” and substituting “10 penalty units”.

27. Section 55 amended (Arrest)

Section 55 of the Principal Act is amended as follows:

- (a) by omitting paragraph (ca) from subsection (1);
- (b) by inserting in subsection (2D) “section 37FA,” after “section 37B,”.

Police Offences Amendment Act 2024
Act No. of 2024

s. 28

28. Section 67A substituted

Section 67A of the Principal Act is repealed and the following section is substituted:

67A. Evidentiary provisions

- (1) In proceedings for an offence against section 13(2A), (2B) or (2C), section 25 or section 26, an allegation in the complaint –
 - (a) that a substance referred to in the complaint was liquor; or
 - (b) that a place specified in the complaint was, or was not, on a specified date a place specified in a licence or permit in force under the *Liquor Licensing Act 1990* –
is evidence of that matter.
- (2) In proceedings for an offence under section 20C, an allegation in the complaint is evidence that –
 - (a) an official warning was authorised and given to the defendant; and
 - (b) the official warning was in force at the time of the alleged contravention.
- (3) In the absence of evidence to the contrary, in proceedings for an offence against section 37, an allegation, in the

Police Offences Amendment Act 2024
Act No. of 2024

s. 28

complaint that gives rise to the proceedings, that –

- (a) a specified person was the owner of the property in relation to which the offence was allegedly committed; and
- (b) the specified person did not give consent to the destruction or injury of that property –

is evidence of these matters.

- (4) In the absence of evidence to the contrary, in proceedings for an offence against section 37B, an allegation, in the complaint that gives rise to the proceedings, that –

- (a) a specified person was –
 - (i) the owner, or registered operator, of the motor vehicle in relation to which the offence was allegedly committed; or
 - (ii) the person lawfully in charge of the motor vehicle in relation to which the offence was allegedly committed, at the time of the alleged offence, and had authority to give consent to the

Police Offences Amendment Act 2024
Act No. of 2024

s. 29

driving or use of the
motor vehicle; and

- (b) the person so specified did not
give consent to the driving or use
of the motor vehicle by the
defendant in respect of the
proceedings –

is evidence of these matters.

29. Repeal of Act

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