

TRAFFIC ACT AMENDMENT ACT

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Queensland



ANNO TRICESIMO NONO

ELIZABETHAE SECUNDAE REGINAE

No. 19 of 1990

An Act to amend the Traffic Act 1949-1989 in certain particulars

[ASSENTED TO 25TH MAY, 1990]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

1. Short title and citation. (1) This Act may be cited as the *Traffic Act Amendment Act 1990*.

(2) In this Act the *Traffic Act 1949-1989* is referred to as the Principal Act.

(3) The Principal Act as amended by this Act may be cited as the *Traffic Act 1949-1990*.

2. Amendment of s. 3. Parts of Act. Section 3 of the Principal Act is amended by inserting after the words "PART VIA—REGULATED PARKING;" the words "PART VIB—PHOTOGRAPHIC DETECTION DEVICES;"

3. Amendment of s. 20A. Issue of provisional licence to disqualified person. Section 20A of the Principal Act is amended—

(a) in subsection (2), by omitting the last paragraph and substituting the following paragraph:—

"An application shall be made in the prescribed form and in respect of every application—

(a) the applicant shall, if required by the court so to do, submit himself as a witness;

and

(b) other persons may be called as witnesses,

to give evidence in respect of all matters relevant to the application and shall be liable to cross-examination with respect thereto.";

(b) by inserting after subsection (4) the following subsection:—

"(4A) An order under this section may relate only to a driver's licence that is of the same class as one which is held by the applicant for the order immediately prior to the disqualification in respect of which his application is made.";

(c) in subsection (5)—

(i) by, in paragraph (b), omitting the words "in a case where the applicant is not the holder of a driver's licence" and substituting the words "unless the applicant is the holder of a driver's licence under Part III (other than a learner's permit)";

(ii) by omitting paragraph (c) and substituting the following paragraph:—

"(c) in a case where the applicant has been previously convicted—

(i) under section 16 of this Act or section 328A of *The Criminal Code*,

or

- (ii) elsewhere than in Queensland of any offence which if committed in Queensland would be an offence under section 16 of this Act,

within a period of five years prior to the conviction that results in the disqualification in respect of which the application is made;";

(iii) by omitting subparagraph (ii) of paragraph (d) and substituting the following subparagraph:—

- "(ii) for an offence committed at a time when he was not the holder of a driver's licence under Part III;";

(d) in paragraph (b) of subsection (8), by omitting all words from and including the word "disqualification" to and including the word "section" and substituting the words "disqualification it shall, subject to section 20B (7), be renewed subject to the restrictions specified in the order last made whether under this section or section 20B";

(e) by omitting subsection (9);

(f) by, in the first paragraph of subsection (10)—

(i) omitting the words "in accordance with that order" and substituting the words "as a consequence of that order or an order under section 20B";

(ii) omitting the expression "\$200" and substituting the words "20 penalty units".

4. **New s. 20B.** The Principal Act is amended by inserting after section 20A the following section:—

"20B. Variation of conditions. (1) Where subsequent to a court making an order under section 20A or this section in respect of a person and the issuing to the person of a provisional licence the circumstances connected with the person's means of earning his livelihood have altered, the person may apply to a Magistrates Court exercising jurisdiction at the place where the person resides for an order varying the restrictions to which the provisional licence is subject as a consequence of the order made under section 20A or this section.

(2) An application shall be made in the prescribed form and in respect of every application—

- (a) the applicant shall, if required by the court so to do, submit himself as a witness;

and

- (b) other persons may be called as witnesses,

to give evidence in respect to all matters relevant to the application and shall be liable to cross-examination with respect thereto.

(3) Written notice of the application setting forth the time and place at which the application is to be heard shall be given

by the applicant, at least 14 days prior to the date of hearing, to the Commissioner or to a member of the Police Force authorized by the Commissioner to receive such notices.

(4) The Commissioner is entitled to be represented at the hearing of the application.

A member of the Police Force may appear and act at the hearing of the application on behalf of the Commissioner.

(5) A court to which an application is made under subsection (1) may, if it considers that the justice of the case requires that it do so and having regard to the restrictions referred to in section 20A (4), make an order varying the restrictions to which the provisional licence is subject as a consequence of an order made under section 20A or this section.

(6) A Superintendent to whom—

(a) a copy of an order made under this section (hereinafter in this subsection called “the order”) certified by the clerk of the court which made the order to be a true copy;

and

(b) the provisional licence to which the order relates, are produced shall vary the restrictions to which the provisional licence is subject by reason of an order made under section 20A or a prior order made under this section so that they accord with those imposed by the court by the order.

(7) Until a Superintendent, pursuant to subsection (6), varies the restrictions to which the provisional licence is subject, those restrictions shall continue to apply to the holder of the licence notwithstanding the making of an order or, as the case may be, a further order under this section.”

5. **New Part VIB.** The Principal Act is amended by inserting after section 44N the following heading and sections:—

“PART VIB—PHOTOGRAPHIC DETECTION DEVICES

44O. Approval of apparatus. The Governor in Council may, by Order in Council, approve apparatus of a specified kind as photographic detection devices.

44P. Interpretation. In this Part—

“camera-detected prescribed offence” means a prescribed offence in respect of which—

(a) the notice under section 44R;

or

(b) the summons,

indicates that the offence was detected by a photographic detection device;

“owner” in relation to a vehicle includes any person in whose name a vehicle is registered under the *Main*

Roads Act 1920-1985 or under any corresponding law of another State or a Territory of the Commonwealth;

“photographic detection device” means an apparatus of a kind approved by Order in Council as a photographic detection device;

“prescribed offence” means an offence against this Act prescribed by the regulations for the purposes of this Part.

44Q. Offences detected by photographic detection device. (1)

If—

- (a) a prescribed offence occurs;
and
- (b) the offence is detected by a photographic detection device,

the person who at the time of the occurrence of the offence is the owner of the vehicle involved in the offence shall be taken to have committed the offence and may be charged with the offence and punished accordingly.

(2) A person who—

- (a) is served with a notice under section 44R or a summons in respect of a camera-detected prescribed offence;
- (b) was not the driver of the vehicle to which the offence relates at the time the prescribed offence occurred;
and
- (c) does not, within 21 days after service of the notice or summons (whichever is the first served), supply by statutory declaration made under the *Oaths Act 1867-1988* to the Commissioner for Transport the name and address of the person who was in charge of the vehicle at the time the prescribed offence occurred,

commits an offence.

(3) It is a defence for a person charged with an offence against subsection (2) to prove that he did not know and could not with reasonable diligence have ascertained that name and address.

(4) A person who, in a statutory declaration supplied under subsection (2), falsely nominates another person as the person who was in charge of the vehicle at the time the prescribed offence occurred commits an offence.

(5) A person charged with an offence against subsection (2) or (4) is liable upon conviction therefor—

- (a) where the person is a body corporate—to a penalty of 20 penalty units;
- (b) where the person is a natural person—to a penalty of 10 penalty units.

(6) It is a defence for a person charged with a camera-detected prescribed offence to prove—

(a) that he has complied with subsection (2) in relation to the offence;

or

(b) that he did not know and could not with reasonable diligence have ascertained the name and address of the person who was in charge of the vehicle at the time the offence occurred.

(7) For the purposes of subsections (2) and (4), a statutory declaration which purports to have been made on behalf of a body corporate by a director, manager or secretary thereof shall be taken to have been made by the body corporate.”.

6. New ss. 44R, 44S and 44T. The Principal Act is amended by inserting after section 44Q the following sections:—

“44R. Procedure in relation to camera-detected prescribed offences. (1) Where it appears to the Commissioner for Transport that a prescribed offence that has been detected by a photographic detection device has occurred, he may serve on any person who appears to him to be—

(a) the owner of the vehicle involved in the offence at the time of its occurrence;

or

(b) the person in charge of that vehicle at that time,

a notice in the prescribed form—

(c) alleging that the person on whom the notice is served committed the offence;

(d) containing the other prescribed particulars;

and

(e) advising that a prescribed penalty may be paid for the offence to the Commissioner for Transport within the period specified in the notice without involving proceedings in a court.

(2) The penalty prescribed for the purposes of this section is—

(a) if the prescribed offence is also a traffic offence pursuant to section 45A—the amount prescribed in respect of that traffic offence;

(b) in any other case—the amount prescribed by the regulations in respect of a prescribed offence of the kind in question.

(3) A notice under this section may be withdrawn at any time within 14 days after the serving of the notice.

(4) If the penalty specified in the notice is paid before the notice is withdrawn, the amount so paid shall be refunded.

44S. Material to accompany notice and summons. (1) Where a person is alleged to have committed a camera-detected prescribed offence—

(a) a notice under section 44R in respect of that offence shall contain or be accompanied by a notice in the prescribed form containing—

(i) a statement that a copy of the photographic evidence on which the allegation is based may be viewed on application to the Commissioner for Transport; and

(ii) a statement setting forth details of section 44Q (2);

(b) there shall be served with a summons in respect of that offence a notice in the prescribed form containing the statements referred to in paragraph (a).

(2) The endorsement of a copy of the notice under subsection

(1) (b) with an oath of service shall be evidence of such service and, in the absence of evidence to the contrary, conclusive evidence thereof.

44T. Payment of penalty. (1) Subject to subsection (2), if before the expiration of the period specified in the notice under section 44R the prescribed penalty is paid to the Commissioner for Transport—

(a) the person on whom the notice is served shall be taken to have expiated the offence by payment of the penalty;

(b) no further proceedings may be taken in respect of the offence;

and

(c) no conviction for the offence shall be regarded as having been recorded.

(2) If a notice under section 44R is served and the prescribed penalty is not paid before the expiration of the period specified in the notice as the time for payment or the notice has been withdrawn, nothing in this section in any way prejudices the institution or prosecution of proceedings for the offence to which the notice relates.”

7. New s. 44U. The Principal Act is amended by inserting after section 44T the following section:—

“44U. Evidentiary provisions. (1) In proceedings for a prescribed offence—

(a) a photograph or series of photographs produced by the prosecution shall be admitted in evidence if—

(i) the photograph or each of the photographs was produced from an exposure taken by a photographic detection device;

- and
- (ii) the regulations as to the operation and testing of photographic detection devices were complied with in connexion with the use of the device, and a denotation as to date, time and location that appears as part of such a photograph shall be accepted as evidence and, in the absence of evidence to the contrary, conclusive evidence of the date, time and location at which the exposure was taken;
 - (b) a document produced by the prosecution and purporting to be signed by the Commissioner for Transport certifying—
 - (i) that a specified device used at a specified location during a specified period was a photographic detection device;and
 - (ii) that the requirements of the regulations as to the operation and testing of photographic detection devices were complied with in connexion with the use of the device during the period,shall be evidence and, in the absence of evidence to the contrary, conclusive evidence of the facts so certified;
 - (c) evidence of the condition of the photographic detection device shall not be required unless evidence that the device was not in proper condition has been adduced.

(2) A statutory declaration referred to in section 44Q (2) if produced in any proceedings against the person named in the declaration and in respect of the prescribed offence concerned is evidence and, in the absence of evidence to the contrary, conclusive evidence, that the person was driving the vehicle at all relevant times relating to the offence.”.

8. Amendment of Schedule. The Schedule to the Principal Act is amended by inserting after clause 16 the following clauses:—

“17. Transportation of buildings. Regulating and controlling the transportation of buildings or any part thereof along any road including requiring (in every case or in a particular case or class of case) that an approval of a specified type or description be obtained from a Local Authority before any licence authorizing the transportation may be issued under this Act.

Regulations made for the purpose of this clause may apply differently, according to different factors of a specified kind.

18. Photographic detection devices. Prescribing matters with respect to the manner and method of operating and testing photographic detection devices within the meaning of Part VIB.”.