

ROAD TRAFFIC (No. 2).

No. 48 of 1976.

AN ACT to amend the Road Traffic Act, 1974-1975.

[Assented to 10th September, 1976.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the *Road Traffic Act Amendment Act (No. 2), 1976.*

Short title
and
citation.

(2) In this Act the Road Traffic Act, 1974-1975 is referred to as the principal Act.

Act No. 59 of
1974 as
amended by
Act No. 93
of 1975.

(3) The principal Act as amended by this Act may be cited as the Road Traffic Act, 1974-1976.

Commence-
ment.

2. (1) Subject to subsection (2) of this section the provisions of this Act shall come into operation on the date on which this Act receives the Royal Assent.

(2) The provisions of section 3 and paragraphs (a), (b), (c), (d), (e), (f) and (h) of section 4 of this Act shall come into operation on such date or dates as is or are, respectively, fixed by proclamation.

Section 49
amended.

3. Section 49 of the principal Act is amended—

(a) by deleting the penalty at the foot of subsection (2) and substituting a penalty as follows—

Penalty:

(i) if the offence is committed in the circumstances mentioned in paragraph (a) of this subsection: a fine of not less than one hundred dollars or more than five hundred dollars, or imprisonment for a period not exceeding twelve months;

(ii) if the offence is committed in circumstances mentioned in paragraph (b) or (c) of this subsection: for a first offence, a fine of not less than one hundred and fifty dollars or more than seven hundred and fifty dollars, or imprisonment for a period not exceeding twelve months, or both the fine and the imprisonment; and for any subsequent offence committed in either of those circumstances, imprisonment for a period not less than one month or exceeding eighteen months, with or without a fine of not less than one hundred and fifty dollars or more than seven hundred and fifty dollars. ;
and

- (b) by substituting for the words “six” and “two” in line seven of subsection (3), the words “nine” and “three” respectively.

4. Section 76 of the principal Act is amended—

Section 76
amended.

- (a) by adding after subsection (1) a subsection as follows—

(1a) No application under subsection (1) of this section shall be made to, or heard by, any court—

(a) within two months after the applicant has been disqualified pursuant to paragraph (b) of subsection (2) of section 64 on conviction of an offence that is a second offence for the purposes of that subsection;

(b) within three months after the applicant has been disqualified pursuant to paragraph (b) of subsection (2) of section 64 on conviction of an offence that is a third or subsequent offence for the purposes of that subsection;
or

(c) within four months after the applicant has been disqualified under paragraph (b) or (c) of subsection (2) of section 63. ;

- (b) by repealing paragraph (b) of subsection (2) and substituting a paragraph as follows—

(b) In the case of a disqualification imposed by a court of petty sessions or which takes effect by operation of the provisions of this Act, any application under subsection (1) of this section shall be made to the court by which the disqualification was imposed or to any court of petty sessions composed of a stipendiary magistrate except where the

application is a special application in which case the application may be made to the court by which the disqualification was imposed, any court of petty sessions composed of a stipendiary magistrate or The District Court of Western Australia. ;

- (c) by substituting for the word "The" in line one of subsection (3), the passage "Subject to subsection (3a) of this section, the";
- (d) by adding after subsection (3) subsections as follows—

(3a) Where a court of petty sessions hears a special application the court shall not make an order directing the issue of an extraordinary driver's licence unless it is satisfied that the application is attended by circumstances of extreme hardship, but nothing in this subsection authorises or requires the court to make such an order if, having regard to any of the matters referred to in paragraph (a), (b), (c), (d), or (e) of subsection (3) of this section, it considers that the application should be refused.

(3b) For the purposes of subsection (3a) of this section an application is attended by circumstances of extreme hardship if the refusal of the application would—

- (a) deprive the applicant of the means of obtaining urgent medical treatment for an illness, disease or disability known to be suffered by the applicant or a person who is a member of his family;
- (b) place an undue financial burden on the applicant or his family, by depriving him of his principal means of obtaining income; or

- (c) deprive the applicant or a person who is a member of his family of the only practicable means of travelling to and from the place at which he or that person, as the case may be, is employed. ;

- (e) by adding after the word "section" in line two of subsection (4) the passage ", not being a special application,";

- (f) by adding after subsection (4) a subsection as follows—
 - (4a) Where a special application is refused no further special application shall be heard unless the first-mentioned application was refused by a court of petty sessions and the further application is made to The District Court of Western Australia. ;

- (g) by repealing subsection (10) and substituting subsections as follows—
 - (10) An application under this section—
 - (a) made to the Supreme Court or to The District Court of Western Australia shall be made in accordance with the rules of the court to which it is made;
 - (b) made to a court of petty sessions shall be made in accordance with regulations made under the Justices Act, 1902.

 - (10a) For the purposes of this section a Children's Court established under the Child Welfare Act, 1947 is a court of petty sessions. ; and

(h) by adding after subsection (11) subsections as follows—

(12) A reference in this section to a “special application” is a reference to an application made under subsection (1) of this section—

(a) within two months after the applicant has been disqualified pursuant to paragraph (a) of subsection (2) of section 63; or

(b) within one month after the applicant has been disqualified pursuant to paragraph (a) of subsection (2) of section 64.

(13) For the purposes of subsections (1a) and (12) of this section—

(a) any period during which the applicant was imprisoned shall not be taken into account in determining whether a period of time has elapsed; and

(b) “disqualified” means disqualified from holding or obtaining a driver’s licence. .

Section 78A
added.

5. The principal Act is amended by adding after section 78 a section as follows—

Impounding
of vehicles.

78A. (1) Subject to the provisions of this section, where a person is convicted of an offence to which this section applies the court convicting the person may, on the application of the Authority, order that the motor vehicle in which the offence was committed shall be impounded by the Authority for such period not exceeding fourteen days, as is specified in the order.

(2) Nothing in subsection (1) of this section affects or in any way limits the power of a court to impose any other penalty or disqualification on a person convicted of an offence to which this section applies.

(3) Where a person is convicted of an offence to which this section applies and—

- (a) from information contained in the records kept by the Authority;
- (b) from information given by the person so convicted; or
- (c) through any other cause,

the Authority has reason to believe that another person has or may have any legal or equitable interest, right or title in or to the ownership or possession of the motor vehicle in which the offence was committed, the Authority shall, before making an application under subsection (1) of this section, give notice to that other person of its intention to do so and shall, on making such an application, inform the court that such notice has been given.

(4) A court shall not make an order under subsection (1) of this section unless it has afforded any person to whom notice has been given under subsection (3) of this section, and who wishes to be heard on the application, a reasonable opportunity to show cause why the order should not be made.

(5) The Authority may do all such things as are necessary for carrying into effect an order made under subsection (1) of this section.

(6) Where a court makes an order under subsection (1) of this section it shall assess the costs that may reasonably be incurred by the Authority in carrying the order into effect and the amount so assessed may be recovered from the person referred to in that subsection as if it were a fine imposed under this Act.

(7) This section applies to—

- (a) any offence against section 63 that is a second or subsequent offence for the purposes of that section;
 - (b) any offence against section 64 that is a second or subsequent offence for the purposes of that section;
 - (c) any offence against paragraph (a) of subsection (1) of section 49 where that offence is committed in circumstances mentioned in paragraph (b) or (c) of subsection (2) of that section and the person convicted of the offence has previously been convicted of an offence against that paragraph committed in either of those circumstances. .
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