

**CRIMES (DANGEROUS DRIVING OFFENCES) AMENDMENT
ACT 1994 No. 78**

NEW SOUTH WALES



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**CRIMES (DANGEROUS DRIVING OFFENCES) AMENDMENT
ACT 1994 No. 78**

NEW SOUTH WALES



Act No. 78, 1994

An Act to amend the Crimes Act 1900 in relation to dangerous driving offences; to make a consequential amendment to the Criminal Records Act 1991; and for other purposes. [Assented to 12 December 1994]

See also Traffic (Negligent Driving Offences) Amendment Act 1994.

Crimes (Dangerous Driving Offences) Amendment Act 1994 No. 78

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Crimes (Dangerous Driving Offences) Amendment Act 1994.

Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Amendment of Crimes Act 1900 No. 40

3. The Crimes Act 1900 is amended as set out in Schedule 1.

Amendment of Criminal Records Act 1991 No. 8

4. The Criminal Records Act 1991 is amended as set out in Schedule 2.

SCHEDULE 1—AMENDMENT OF CRIMES ACT 1900

(Sec. 3)

Sections 52A, 52AA:

Omit section 52A, insert instead:

Dangerous driving: substantive matters

52A. (1) **Dangerous driving occasioning death.** A person is guilty of the offence of dangerous driving occasioning death if the vehicle driven by the person is involved in an impact occasioning the death of another person and the driver was, at the time of the impact, driving the vehicle:

- (a) under the influence of intoxicating liquor or of a drug; or
- (b) at a speed dangerous to another person or persons; or
- (c) in a manner dangerous to another person or persons.

SCHEDULE 1—AMENDMENT OF CRIMES ACT 1900—*continued*

A person convicted of an offence under this subsection is liable to imprisonment for 10 years.

(2) Aggravated dangerous driving occasioning death.

A person is guilty of the offence of aggravated dangerous driving occasioning death if the person commits the offence of dangerous driving occasioning death in circumstances of aggravation. A person convicted of an offence under this subsection is liable to imprisonment for 14 years.

(3) Dangerous driving occasioning grievous bodily harm. A person is guilty of the offence of dangerous driving occasioning grievous bodily harm if the vehicle driven by the person is involved in an impact occasioning grievous bodily harm to another person and the driver was, at the time of the impact, driving the vehicle:

- (a) under the influence of intoxicating liquor or of a drug; or
- (b) at a speed dangerous to another person or persons; or
- (c) in a manner dangerous to another person or persons.

A person convicted of an offence under this subsection is liable to imprisonment for 7 years.

(4) Aggravated dangerous driving occasioning grievous bodily harm. A person is guilty of the offence of aggravated dangerous driving occasioning grievous bodily harm if the person commits the offence of dangerous driving occasioning grievous bodily harm in circumstances of aggravation. A person convicted of an offence under this subsection is liable to imprisonment for 11 years.

(5) When vehicle is involved in impact—generally. For the purposes of this section, the circumstances in which a vehicle is involved in an impact occasioning the death of, or grievous bodily harm to, a person include if the death or harm is occasioned through any of the following:

- (a) the vehicle overturning or leaving a road while the person is being conveyed in or on that vehicle (whether as a passenger or otherwise);

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SCHEDULE 1—AMENDMENT OF CRIMES ACT 1900—*continued*

- (b) an impact between any object and the vehicle while the person is being conveyed in or on that vehicle (whether as a passenger or otherwise);
 - (c) an impact between the person and the vehicle;
 - (d) the impact of the vehicle with another vehicle or an object in, on or near which the person is at the time of the impact;
 - (e) an impact with anything on, or attached to, the vehicle;
 - (f) an impact with anything that is in motion through falling from the vehicle.
- (6) **When vehicle is involved in causing other impacts.** For the purposes of this section, a vehicle is also involved in an impact occasioning the death of, or grievous bodily harm to, a person if:
- (a) the death or harm is occasioned through the vehicle causing an impact between other vehicles or between another vehicle and any object or person or causing another vehicle to overturn or leave a road; and
 - (b) the prosecution proves that the vehicle caused the impact.
- (7) **Circumstances of aggravation.** In this section, “**circumstances of aggravation**” means any circumstances at the time of the impact occasioning death or grievous bodily harm in which:
- (a) the prescribed concentration of alcohol was present in the accused’s blood; or
 - (b) the accused was driving the vehicle concerned on a road at a speed that exceeded, by more than 45 kilometres per hour, the speed limit (if any) applicable to that length of road; or
 - (c) the accused was driving the vehicle to escape pursuit by a police officer.
- (8) **Defences.** It is a defence to any charge under this section if the death or grievous bodily harm occasioned by the impact was not in any way attributable (as relevant):

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SCHEDULE 1—AMENDMENT OF CRIMES ACT 1900—*continued*

- (a) to the fact that the person charged was under the influence of intoxicating liquor or of a drug; or
- (b) to the speed at which the vehicle was driven; or
- (c) to the manner in which the vehicle was driven.

(9) **Definitions.** In this section:

“**drug**” has the meaning it has in section 2 (1) of the Traffic Act 1909;

“**object**” includes an animal, building, structure, earthwork, embankment, gutter, stormwater channel, drain, bridge, culvert, median strip, post or tree;

“**prescribed concentration of alcohol**” means a concentration of 0.15 grammes or more of alcohol in 100 millilitres of blood;

“**road**” means:

- (a) a public street within the meaning of the Traffic Act 1909; or
- (b) any other place;

“**vehicle**” means:

- (a) any motor car, motor carriage, motor cycle or other vehicle propelled wholly or partly by volatile spirit, steam, gas, oil, electricity, or by any other means other than human or animal power; or
- (b) a horse-drawn vehicle,

whether or not it is adapted for road use, but does not mean a vehicle used on a railway or tramway.

Dangerous driving: procedural matters

52AA. (1) **Presumption as to intoxication.** For the purposes of section 52A, the accused is conclusively presumed to be under the influence of liquor if the prosecution proves that the prescribed concentration of alcohol was present in the accused’s blood at the time of the impact occasioning death or grievous bodily harm.

SCHEDULE 1—AMENDMENT OF CRIMES ACT 1900—*continued*

(2) **Evidence of intoxication.** For the purposes of section 52A, evidence may be given of the concentration of alcohol present in the accused's blood at the time of the impact occasioning death or grievous bodily harm occurring at a place that is not a public street (within the meaning of the Traffic Act 1909) as determined by a blood analysis carried out in accordance with section 4F and 4G of that Act.

(3) **Time of intoxication.** A concentration of alcohol determined by the means referred to in subsection (2) is taken to be the concentration of alcohol in the accused's blood at the time of the impact occasioning death or grievous bodily harm:

- (a) if the blood sample that was analysed was taken within 2 hours after the impact; and
- (b) unless the accused proves that the concentration of alcohol in the accused's blood at the time of the impact was less than the prescribed concentration of alcohol.

(4) **Alternative verdicts.** If on the trial of a person who is indicted for murder or manslaughter or for an offence under section 53 or 54 the jury is satisfied that the person is guilty of an offence under section 52A, it may find the accused guilty of the offence under section 52A, and the accused is liable to punishment accordingly.

(5) **Question of aggravation.** If on the trial of a person for an offence under section 52A (2) or (4) the jury is not satisfied that the accused is guilty of the offence charged, but is satisfied on the evidence that the accused is guilty of an offence under section 52A (1) or (3), it may find that the accused is guilty of the offence under section 52A (1) or (3), and the accused is liable to punishment accordingly.

(6) **Double jeopardy.** This section does not take away the liability of any person to be prosecuted for or found guilty of murder, manslaughter or any other offence or affect the punishment that may be imposed for any such offence. However, a person who:

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SCHEDULE 1—AMENDMENT OF CRIMES ACT 1900—*continued*

- (a) has been convicted or acquitted of an offence under section 52A cannot be prosecuted for murder or manslaughter or for any other offence under this Act on the same, or substantially the same, facts; or
- (b) has been convicted or acquitted of murder or manslaughter or of any other offence under this Act cannot be prosecuted for an offence under section 52A on the same, or substantially the same, facts.

(7) **Definitions.** In this section:

“prescribed concentration of alcohol” means a concentration of 0.15 grammes or more of alcohol in 100 millilitres of blood.

**SCHEDULE 2—AMENDMENT OF CRIMINAL RECORDS
ACT 1991**

(Sec. 4)

Section 11 (**How are traffic offences to be dealt with?**):

Omit section 11 (4) (a), insert instead the following paragraphs:

- (a) culpable driving (section 52A of the Crimes Act 1900 as in force immediately before the commencement of Schedule 1 to the Crimes (Dangerous Driving Offences) Amendment Act 1994);
- (a1) dangerous driving occasioning death (section 52A (1) of the Crimes Act 1900);
- (a2) aggravated dangerous driving occasioning death (section 52A (2) of the Crimes Act 1900);

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1991—*continued*

- (a3) dangerous driving occasioning grievous bodily harm (section 52A (3) of the Crimes Act 1900);
 - (a4) aggravated dangerous driving occasioning grievous bodily harm (section 52A (4) of the Crimes Act 1900);
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*[Minister's second reading speech made in—
Legislative Council on 27 October 1994
Legislative Assembly on 1 December 1994]*