



New South Wales

Traffic Amendment (Confiscation of Keys and Driving Prevention) Act 1998 No 1

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Traffic Amendment (Confiscation of Keys and Driving Prevention) Act 1998 No 1

Act No 1, 1998

An Act to amend the *Traffic Act 1909* to empower police officers to prevent persons who are under the influence of alcohol or other drugs from driving motor vehicles; and for related purposes. [Assented to 14 April 1998]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Traffic Amendment (Confiscation of Keys and Driving Prevention) Act 1998*.

2 Commencement

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

3 Amendment of Traffic Act 1909 No 5

The *Traffic Act 1909* is amended as set out in Schedule 1.

Schedule 1 Amendments

(Section 3)

[1] Section 17 Common law or statute liability

Insert “section 26A or” after “and for the purpose of,” in section 17 (2).

[2] Section 26A

Insert after section 26:

26A Power to prevent driving by persons who are under the influence of alcohol or other drugs

- (1) If a police officer is of the opinion that a person who is driving (or about to drive) a motor vehicle is under the influence of alcohol or any other drug, the police officer may:
 - (a) prohibit the person from driving the vehicle while the person is under the influence of alcohol or that other drug, and
 - (b) require the person to immediately hand over all ignition or other keys of the motor vehicle in the person’s actual possession:
 - (i) to the police officer, or
 - (ii) to another person in the company of the person who is driving or about to drive the motor vehicle, being another person whom the police officer is satisfied is responsible and capable of exercising proper control of the motor vehicle, and
 - (c) take such other steps as, in the opinion of the police officer, are necessary in order to:
 - (i) immobilise the motor vehicle, or
 - (ii) remove the motor vehicle to a place of safety and detain it at that place.

- (2) If the police officer is of the opinion that the person concerned is under the influence of alcohol, the person is entitled to request that the person undergo a breath test in order to determine whether or not the person is under the influence of alcohol. If such a request is made, the police officer may not take any action under subsection (1) until the person undergoes the breath test.
- (3) Subsection (1) does not authorise the confiscation of any keys, or the immobilisation, removal or detention of any motor vehicle, for any period that is longer than necessary in the circumstances and in the interest of the person driving (or about to drive) or of any other person or of the public.
- (4) It is lawful for a police officer to retain any keys that are confiscated under subsection (1), or for any motor vehicle to be immobilised or detained under that subsection, until such time as:
- (a) the return of the keys or the motor vehicle is requested by a person, and
 - (b) the police officer to whom the request is made:
 - (i) is satisfied that the person making the request is capable of exercising proper control of the motor vehicle, or
 - (ii) is informed by a registered medical practitioner (not being the person making the request) that the person making the request is not under the influence of alcohol or any other drug.
- However, the person making the request is entitled to possession of the keys or motor vehicle concerned only if the police officer is satisfied that the person is entitled to lawful possession of the motor vehicle.
- (5) If the keys or the motor vehicle are not returned within 24 hours after such a request is made, the person may apply to a Local Court for an order for the keys or motor vehicle to be returned to the person.

- (6) A person who:
- (a) contravenes any prohibition or requirement made by a police officer under subsection (1), or
 - (b) in any manner attempts to obstruct a police officer in the exercise of any power conferred on the police officer under subsection (1),
- is guilty of an offence and liable to a penalty not exceeding 10 penalty units.
- (7) A court may only find a person guilty of an offence under subsection (6) if the court is satisfied that the police officer had reasonable grounds for believing that, in the circumstances, the action taken by the police officer was necessary in the interest of the person or of any other person or of the public.
- (8) The Commissioner of Police has (in the Commissioner's official capacity) a duty to take all reasonable steps to secure a motor vehicle that is detained under subsection (1).
- (9) Any expenses incurred in connection with the immobilisation, removal or detention of a motor vehicle under subsection (1) may be recovered from the person who was driving (or about to drive) the vehicle, or from the owner of the vehicle, as a debt in a court of competent jurisdiction.

[Minister's second reading speech made in—
Legislative Assembly on 7 April 1998
Legislative Council on 8 April 1998]