

[Act 1997 No 75]



New South Wales

Traffic and Crimes Amendment (Menacing and Predatory Driving) Bill 1997

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are:

- (a) to increase the existing penalty for the summary offence of intentional menacing driving, and
 - (b) to create a similar summary offence of driving in a manner that the driver ought to know might menace (with a lesser penalty), and
 - (c) to create an indictable offence of predatory driving (with a maximum penalty of 5 years imprisonment).
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Explanatory note

The maximum penalties applying to the relevant offences will be as follows:

Offences Traffic Act	Maximum penalty	
	First offence	Second or subsequent offence
Menacing driving—intentional menace	\$3,000 or 18 months imprisonment, or both	\$5,000 or 2 years imprisonment, or both
Menacing driving—possibility of menace	\$2,000 or 12 months imprisonment, or both	\$3,000 or 18 months imprisonment, or both
Offences Crimes Act	Maximum penalty	
	Jury trial	Summary trial
Predatory driving	5 years imprisonment (or \$100,000 fine)	18 months imprisonment (or \$10,000 fine)

The existing summary offence of menacing driving carries a maximum penalty of \$1,500 or 9 months imprisonment (or both) for a first offence and \$2,000 or 12 months imprisonment (or both) for a second or subsequent offence.

Note. The penalties described in this explanatory note are based on the current value of a penalty unit, namely \$100. The *Statute Law (Miscellaneous Provisions) Bill 1997* contains an amendment to increase the value of a penalty unit to \$110.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Traffic Act 1909* set out in Schedule 1.

Clause 4 is a formal provision giving effect to the amendments to the *Crimes Act 1900* set out in Schedule 2.

Clause 5 is a formal provision giving effect to the amendments to the *Criminal Procedure Act 1986* set out in Schedule 3.

Schedule 1 Amendment of Traffic Act 1909

Schedule 1 [1] replaces the existing summary offence of menacing driving with 2 separate offences (with separate penalties). The first offence is the existing offence that is committed if:

- (a) a person drives a motor vehicle on a public street in a manner that menaces another person, and
- (b) the person intended to menace that other person.

The second offence is a new offence that is committed if:

- (a) a person drives a motor vehicle on a public street in a manner that menaces another person, and
- (b) the person ought to have known that the other person might be menaced.

Schedule 1 [2] applies to the proposed indictable offence of predatory driving (under the *Crimes Act 1900*) the provision relating to the disqualification of the offender from driving that currently applies to the existing summary offence of menacing driving, namely, subject to the order of the court, disqualification for 3 years if the offender has not been convicted of any major traffic offences in the last 5 years or disqualification for 5 years if the offender has been so convicted.

Schedule 2 Amendment of Crimes Act 1900

Schedule 2 creates the proposed indictable offence of predatory driving (with a maximum penalty of 5 years imprisonment). The driver of a vehicle is to be guilty of an offence if the driver, while in pursuit of or travelling near another vehicle:

- (a) engages in a course of conduct that causes or threatens an impact involving the other vehicle, and
- (b) intends by that course of conduct to cause a person in the other vehicle actual bodily harm.

For the purposes of the offence, causing or threatening an impact involving the other vehicle will include an impact with any vehicle or with a person or object, or the vehicle overturning or leaving the road.

Under section 440AA of the *Crimes Act 1900*, the Judge imposing a sentence on any person found guilty by a jury of an indictable offence has the option of imposing a fine not exceeding \$100,000 in addition to, or instead of, a term of imprisonment (see Schedule 3 for amendments relating to the penalty for the offence if dealt with summarily). Provision is inserted to avoid double jeopardy in connection with the offence and other driving offences (including menacing driving under the *Traffic Act 1909* and dangerous driving under the *Crimes Act 1900*).

Schedule 3 Amendment of Criminal Procedure Act 1986

Schedule 3 enables the proposed indictable offence of predatory driving to be prosecuted summarily unless the prosecuting authority or the person charged elects otherwise. The maximum penalty that a Local Court may impose on summary conviction is imprisonment for 18 months or a fine of \$10,000.