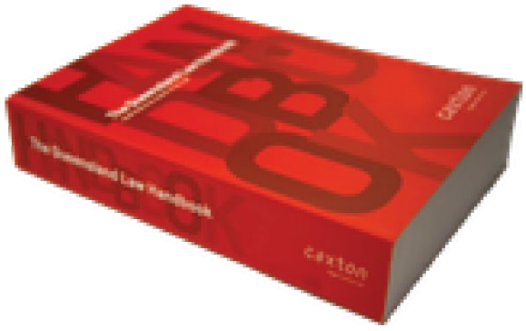

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COMMUNITY LEGAL CENTRE

Traffic Offences

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INTRODUCTION

The vast majority of traffic offences are governed by the *Transport Operations (Road Use Management) Act 1995* (Qld) (TORUM Act) and the Regulations associated with this Act, particularly the *Transport Operations (Road Use Management—Road Rules) Regulation 2009* (Qld) (Road Rules Regulation) and the *Transport Operations (Road Use Management—Driver Licensing) Regulation 2010* (Qld) (Licensing Regulation).

These laws create simple traffic offences, which are prosecuted in the Magistrates Court. More serious offences (i.e. indictable offences involving motor vehicles) are located in the *Criminal Code Act 1899* (Qld) (Criminal Code). In addition, the *Police Powers and Responsibilities Act 2000* (Qld) (PPR Act) deals with impoundment and forfeiture of vehicles involved in the commission of certain offences.

Many traffic offences have a maximum penalty of a certain amount of penalty units. Where a maximum fine is indicated as being a certain number of penalty units, you take the number of penalty units and multiply that number by the amount of one individual penalty unit. As at May 2026, the current penalty unit is $166.90.

When a police officer finds a person committing or reasonably suspects that a person has committed a traffic offence, they may require that person to state their name and address (this is referred to as identifying particulars), and produce any documents that are required to be kept by law (e.g. licence or registration papers). It is an offence to fail to provide the information or give false information. It is also an offence to refuse to provide identifying particulars.

INFRINGEMENT NOTICES FOR TRAFFIC OFFENCES

The Road Rules Regulation set out many minor traffic offences including speeding, making unlawful U-turns, red light offences and failure to observe road signs. These simple traffic offences are generally prosecuted by the issuing of infringement notices on the spot or in the mail (often called a ticket). If guilt for the offence is accepted, the fine is paid. Demerit points are automatically deducted by the Department of Transport and Main Roads (Transport Department) from the person's licence record, and the offence is recorded on the person's traffic history, a document maintained by the Transport Department.

If the penalty is not paid in the manner and time frame advised on the notice, the infringement amount may be automatically referred to the State Penalties

Enforcement Registry, or a summons to attend a Magistrates Court will be issued against the driver or the registered owner of the vehicle (s *22 State Penalties Enforcement Act 1999* (Qld)). The summons should be complied with. If not, the court can impose punishment (short of imprisonment) in the person's absence (ss 142–142A *Justices Act 1886* (Qld) (Justices Act)). Also, for non–indictable traffic offences, a written plea and submissions as to penalty can be sent to the clerk of the court, and the matter can be dealt with in the person's absence (s 146A Justices Act).

Penalties able to be imposed by a court are heavier than those specified in infringement notices, and the cost of issuing the summons will also be ordered to be paid by a person convicted in court of the offence. After conviction by the court, a certificate of conviction will be sent to the person, stating the amount of the fine to be paid and the cost of issuing the summons. The conviction will be recorded on the person's traffic history and demerit points allocated. More serious traffic offences would also appear on a person's criminal history, which is maintained by the Queensland Police.

If a person receives a conviction by the court, they will also be required to pay the offender levy. An offender levy is a mandatory administrative fee applied to adults convicted of an offence to help cover law enforcement costs. It is separate from a fine and cannot be appealed. It is applied per sentencing event regardless of whether a conviction is recorded. As of May 2026, the current levy amount in the Magistrates Court is $142.80.

NOMINATING ANOTHER DRIVER

With camera-detected offences, a ticket will be issued to the registered owner of the vehicle involved. If the owner was not the driver, they have 28 days from receiving the ticket to provide a statutory declaration that advises who the actual driver was, or that despite reasonable control being exercised over the vehicle and reasonable enquiries being made, the owner is unable to say who the driver was. If no such step is taken within 28 days, then the owner is deemed to have been the driver (s 114 TORUM Act). If a summons then issues, the owner is not permitted to come to court and argue that they were not the driver unless they have already provided the statutory declaration within the 28-day time limit.

Making a false statutory declaration in this context can expose a person to charges for fraud or making a false declaration, which carries serious criminal penalties including imprisonment. Lying or making a false declaration on a

statutory declaration in Queensland is covered under section 11 of the *Statutory Declarations Act 1959* and carries a maximum penalty of four years imprisonment.

CONTESTING A TICKET ISSUED FOR A TRAFFIC OFFENCE

If a person seeks to challenge an infringement notice, they should not pay the ticket and elect, on the notice, a court hearing. This will result in a summons being issued to them to attend court. Once a summons is issued, they will then need to attend court on the return date of the summons and plead not guilty, and the court will set a hearing date at which the prosecution will present their case.

It is important to seek legal advice before electing to go to court. The election cannot be reversed, and if a person is convicted (either by their own plea, or after a trial) they must pay the offender levy in addition to any fine received.

Challenging a speed detection device

If the offence is speeding and the person intends to challenge either the accuracy of the speed detection device or speedometer, or the way in which the device was used, the person must await the summons, then attend court and plead not guilty and then serve the prosecution at least 14 days before the hearing date with a signed notice stating the grounds of the challenge. The notice must be in the approved form, and a copy of such a Notice to Challenge or Dispute can be obtained from the Transport Department (ss 124(4)–124(5) TORUM Act).

At the hearing, the prosecution may then call a highly qualified expert to give evidence to answer the challenge to the device. If they do, and if the person is then found guilty of the offence, the court is likely to order the person to pay the expert witness expenses, which can amount to several thousand dollars. The court can also make an order that the person pay costs for the prosecution's legal fees.

If no Notice to Challenge or Dispute has been served on the prosecution, they can give evidence that the device was accurate by simply producing a certificate to show that the device was tested and found to be accurate within a period of one year before the offence date. That certificate is then evidence that the device remains accurate for one year after the date of testing, even though this may not in fact be correct (s 124(1)(pa) TORUM Act).

DANGEROUS OPERATION OF A VEHICLE

More serious traffic offences are brought before the court as a matter of course, usually through service by police of a summons or notice to appear and are governed by the Criminal Code.

A person who operates a vehicle dangerously commits a criminal offence (s 328A Criminal Code). What amounts to dangerous driving is, however, not clearly defined or easily assessed. The Criminal Code provides that dangerous operation of a vehicle includes operating a vehicle at a speed or in a way that is dangerous to the public. Case authorities show that the driving must be assessed objectively in light of what might be expected of a competent and careful driver (*R v Webb* [1986] 2 Qd R 446). Usually, observations by other road users as to the speed and movement of a vehicle are highly relevant.

The Criminal Code gives some examples of relevant considerations (e.g. the condition and use of the road, the condition of the vehicle, any drugs or alcohol affecting the driver and the amount of traffic on the road). Actual danger to others (e.g. to passengers or other road users) need not be shown. The potential for danger to the public is sufficient to bring driving within the definition of dangerous.

Speed alone may not necessarily amount to dangerous driving, but it is a relevant factor in conjunction with others for example the direction of the road and the amount of traffic on it. Falling asleep at the wheel does not necessarily amount to dangerous driving; the question is whether the condition of tiredness immediately preceding falling asleep was objectively dangerous, for example whether the driver was aware of their tiredness or there had been an extended period of time without sleep (*Jiminez v R* (1992) 173 CLR 572).

Driving without due care and attention

A person who drives a motor vehicle without due care and attention commits an offence and can be fined up to 40 penalty units or imprisoned for up to six months (s 83 TORUM Act). Whilst not mandatory, the court may also disqualify a persons driver licence for a period of time, depending on the circumstances of the offending, and a person's traffic history.

Due care and attention means the degree of care and attention that a reasonable and prudent driver would exercise in the circumstances. This is a lesser offence than dangerous driving, but has similar considerations. Drivers are often charged with this offence as an alternative or in addition to a more specific charge, such as driving through a red light or crossing a double centre line. This is particularly so

when the act complained of poses some risk to other road users rather than being merely a technical breach of the law.

What court deals with dangerous driving offences

Dangerous driving is an indictable offence that must be dealt with summarily in the Magistrates Court (s 552BA Criminal Code) and the maximum penalty is 200 penalty units or three years imprisonment. Where a person commits the offence under the influence of alcohol while racing or excessively speeding, or where they have previously been convicted of the same offence, the charge is dealt with summarily in the Magistrates Court unless the person elects for a trial by jury to be dealt with in the District Court (s 552B Criminal Code). In the District Court, they are liable to a penalty of 400 penalty units or five years imprisonment.

If the driving has caused death or grievous bodily harm to another person, a magistrate cannot try the case and the matter must be dealt with by the District Court (either for trial or sentence). Upon conviction, the offender is liable to a maximum penalty of 10 years imprisonment, and if they were affected by drugs or alcohol at the time, excessively speeding or taking part in an unlawful race or speed trial, they are liable to a maximum of 14 years imprisonment. A person is also liable to 14 years imprisonment by leaving the scene before police arrive if they reasonably ought to know that someone has been killed or injured.

In certain circumstances, the court must impose a term of imprisonment (e.g. where a person has been twice previously convicted of the offence). The prison term may be wholly or partially suspended under s 147 of the *Penalties and Sentences Act 1992* (Qld) (Penalties and Sentencing Act). If the court suspends the term, the person remains in the community for the suspended part of the term. However, if another offence is committed, the court may impose the term to be served (see the Sentencing chapter).

The legislature and the courts view dangerous driving as a very serious offence because of the obvious potential harm to others. The maximum penalties have increased, and the Court of Appeal has subsequently reflected a higher range of sentences to be imposed within those statutory maximums, particularly where harm has resulted, stating that 'the community expects, and rightly expects, appropriately deterrent penalties' (*R v Wilde; ex parte Attorney General* (2002) 135 A Crim R 538).

An automatic minimum six-month period of disqualification from driving applies when a person is convicted of operating a vehicle dangerously (ss 86(3), 86(5) TORUM Act). For less serious examples of the offence and if the person charged has an otherwise good traffic history, it is worth considering a written submission

to the prosecution that a charge of driving with undue care and attention be substituted.

OPERATION OF A VEHICLE LEADING TO MURDER OR MANSLAUGHTER

A person who intentionally kills a person by using a motor vehicle can be charged with murder. The mandatory penalty for murder is life imprisonment. A person who drives a motor vehicle in a criminally negligent way and causes the death of another person can face a manslaughter charge (ss 300, 302–303 Criminal Code). Criminal negligence means more than a mere failure to take reasonable care. It means a high degree of carelessness or recklessness showing a disregard for the life and safety of others. The maximum penalty is life imprisonment.

Charges of manslaughter arising from the driving of a motor vehicle are usually reserved for the worst categories of driving. Dangerous driving causing death is the more common charge. In these circumstances it is open to the jury hearing a manslaughter charge to convict of the lesser offence of dangerous operation of a vehicle causing death (s 328B Criminal Code).

UNLICENSED DRIVING OF A VEHICLE

It is an offence to drive a motor vehicle on a road without a valid licence, or to allow another person known to be unlicensed to drive a motor vehicle on a road (s 78 TORUM Act). The licence can be issued in another state of Australia or in another country, however, if the person takes up residency in Queensland, the non-Queensland licence cannot be used once the person has been in Queensland for three months (reg 128(6) Licensing Regulation). Also, if the person is disqualified from driving by any court in Australia, the non-Queensland licence cannot be used in Queensland even though it may be still valid in the state or country where it was issued (for a definition of 'valid' see reg 128(1) and sch 9 of the Licensing Regulation).

The penalties for unlicensed driving vary significantly depending on the circumstances of the offence under the TORUM Act.

Unlicensed driving can occur in a number of ways. The most straightforward is where a person has never obtained a licence or has allowed their licence to lapse without renewal. Other common situations include driving on a suspended licence - where the suspension may have been imposed due to unpaid fines, demerit point accumulation, a medical condition or driving on a licence that is not valid for the type of vehicle being operated (e.g. driving a heavy vehicle on a standard car licence).

The most serious categories are driving while disqualified by a court order and driving while suspended under s 79B of the TORUM Act. A s 79B suspension is imposed when a person is charged with driving over the middle alcohol limit, drink driving, or driving under the influence of drugs. In these cases, the suspension takes effect immediately upon the person being charged and remains in place until the matter is finalised in court. The notice of suspension is typically served by police at the time of charging. Both a court ordered disqualification and a s 79B suspension carry a maximum penalty of 60 penalty units or 18 months imprisonment, along with a mandatory disqualification from driving for a further two to five years (s 78(3)(a) TORUM Act). Courts treat these offences seriously because they amount to a direct breach of a court order or statutory suspension, and imprisonment is commonly imposed for second or repeat offenders.

For those driving while suspended due to demerit point accumulation, a mandatory disqualification of six months applies. For those suspended due to other reasons such as unpaid fines or a State Penalties Enforcement Registry (SPER) debt, a discretionary disqualification of one to six months may be imposed. Where a person is found driving with simply no licence at all, disqualification is not mandatory but remains at the court's discretion.

For all unlicensed driving offences outside of disqualification and s 79B, the maximum penalty is 40 penalty units or 12 months imprisonment. In some cases, police may issue an infringement notice instead of proceeding to court, which carries a lesser fine. This option is only available where the person has not been convicted of an unlicensed driving offence in the past five years (s 78(1A) TORUM Act).

The specific mandatory disqualification periods for each type of unlicensed driving are set out in ss 78(3)(a) to (i) of the TORUM Act. When a person is charged, they will be informed of the exact circumstances of the offence, which will determine which mandatory disqualification period, if any, applies to them.

LEAVING THE SCENE OF A MOTOR VEHICLE ACCIDENT

The driver of any vehicle involved in an incident resulting in injury to any person or damage to any property is required to stop at the scene and may also be required to provide their name and address to certain people (including police and the driver of the other vehicle) (s 92 TORUM Act). If any person is injured, the driver is required to remain at the scene and give assistance. The driver must report the accident to police if a person is killed or injured, or if property damage is likely to exceed $2500.

Failure to comply with any of these requirements is an offence punishable by a fine of up to 20 penalty units or imprisonment for one year. If a driver has shown callous disregard for the needs of an injured person, imprisonment shall form at least part of the penalty (s 147 Penalties and Sentences Act). Giving false information to police yields greater punishment.

If this offence is committed in conjunction with a more serious offence, for example dangerous driving, it has an aggravating effect on the sentence to be imposed.

MAKING UNNECESSARY NOISE OR SMOKE WHILE OPERATING A VEHICLE

A person must not wilfully or otherwise start or drive a vehicle in a way that makes unnecessary noise or smoke (reg 291 Road Rules Regulation). The offence is punishable by a fine of up to 20 penalty units. This needs to be distinguished from a driver doing a burnout, which involves making smoke when the drive wheels lose traction. Unnecessary smoke could, for example, be smoke from an exhaust rather than from the wheels. Unnecessary noise could be caused by an inadequate muffler on the exhaust.

RACING MOTOR VEHICLES ON THE ROAD

A person must not organise, promote or take part in a race, speed trial, attempt to break a speed record or a skill test of a driver on a road (s 85 TORUM Act). The offence is punishable by a fine of up to 40 penalty units or six months imprisonment.

DRINKING AND TAKING DRUGS WHILE IN CHARGE OF A VEHICLE

Section 79 of the TORUM Act outlines the main offences that may be committed by a person who drives, attempts to drive or is in charge of a motor vehicle after consuming liquor or drugs:

- driving while over the no-alcohol limit—it is an offence to drive with any alcohol content while:
    - under 25 and not holding an open licence
    - driving various special vehicles including a truck, bus, taxi, limousine, tow truck, pilot vehicle or driver training vehicle
    - subject to a probationary licence, which is in place for 12 months after a person is convicted of a drink or drug driving offence

- driving pursuant to a restricted licence or a replacement licence. For a first conviction, the maximum penalty is a fine of 14 penalty units ($1828) or three months imprisonment. In addition, the offender is disqualified from driving for at least one month (s 86(2)(f))
- driving while over the general alcohol limit—it is an offence to drive with a blood alcohol concentration of 0.05 but less than 0.10 (i.e. over the general alcohol limit but under the middle alcohol limit). For a first conviction, the maximum penalty is a fine of 14 penalty units or three months imprisonment. In addition, the offender is disqualified from driving for at least one month
- driving while over the middle alcohol limit—it is an offence to drive with a blood alcohol concentration of 0.10 but less than 0.15 (i.e. over the middle alcohol limit but under the high alcohol limit). For a first conviction, the maximum penalty is a fine of 20 penalty units ($2611) or six months imprisonment. In addition, the offender is disqualified from driving for at least three months
- driving while under the influence—it is an offence to drive while under the influence of alcohol or any drug. With alcohol, a person is conclusively presumed to be under the influence if their blood alcohol concentration is 0.15 or more (i.e. more than 150 mg of alcohol in 100 mL of blood or 0.150 g of alcohol in 210 L of breath). For a first conviction, the fine is 28 penalty units ($3655) or nine months imprisonment. In addition, the offender is disqualified from driving for at least six months (s 86(1))
- driving while a relevant drug is present in the blood or saliva—it is an offence to drive while a relevant drug is present in the blood or saliva. Relevant drugs are delta-9-tetra-hydrocannabinol (cannabis), methylamphetamine (speed and ice) and 3,4-methylenedioxymethamphetamine (ecstasy) (reg *172 Traffic Regulation 1962* (Qld)). Any amount of drug detected is sufficient to constitute the offence. The penalties, including disqualification, are the same as for driving over the general alcohol limit (s 86(2)(f))
- failure to provide a breath specimen—it is an offence to fail to provide, upon request from police, a specimen of breath or saliva (s 80(5A)). The maximum penalty is a fine of 40 penalty units ($5222) or six months imprisonment. In addition, the offender is disqualified from driving for at least six months (s 80(11)(d)). It is a defence to this charge if a person has a medical certificate from a doctor stating that they are unable, because of an illness, to provide a specimen (s 80(5B)).

Whether or not a person is under the influence of drugs in their system is a triable issue. For example, if someone is found to have cannabis in their blood by virtue of a blood test, the level of cannabis and the length of time since cannabis use may determine whether the person would have been affected by the drug at the time of driving. Expert evidence of the scientific explanation for effects of any drug may become relevant.

For under-the-influence charges, drugs found in the person's system need not be unlawful; prescription drugs may also affect driving. A combination of various drugs, with or without alcohol, may also render a person under the influence.

While the level of drug is relevant to whether a person is under the influence of the drug, the level is not relevant to a charge of driving while a relevant drug is present. It is for this reason that the 'relevant drug is present' offence only applies to blood and saliva, and does not apply to urine. Urine can show presence of some drugs long after any effects have worn off, whereas presence in blood or saliva indicates the drug is still active in the person's system. Presently, only saliva tests are routinely carried out by police, who use a swab method to collect and test the saliva.

Being in charge of a vehicle

A conviction can result if someone is over the legal alcohol limit, under the influence of alcohol or a drug, or has a relevant drug present in their saliva or blood, even though they are not driving if they can be said to be in charge of the vehicle. For instance, any such person found asleep inside a vehicle may be convicted. According to s 79(6) of the TORUM Act, it is a defence to being in charge if it is proved beyond reasonable doubt that the person:

- had manifested an intention not to drive by either not being in the driving compartment at the time or by some action while outside the vehicle (e.g. having told others of their intention or giving the keys to another person)
- was not so affected by alcohol or drugs as to be incapable of understanding what they were doing or of forming an intention not to drive
- had parked the vehicle in a way that was not dangerous to other people or traffic
- had not been convicted in the last year of any alcohol-related or drug-related driving offence.

Bicycles and horses

It is also an offence to drive/ride any horse or other animal, or any other vehicle besides a motor-driven one while under the influence of liquor or a drug (s 79(7) TORUM Act). This includes bicycles. The offence is punishable by a maximum fine of 40 penalty units or nine months imprisonment.

DETECTION OF SUSPECTED DRUG AND ALCOHOL LEVELS

Section 80 of the TORUM Act provides detailed procedures for the investigation of suspected alcohol or drug driving offences and the evidentiary value of results of various breath, saliva and blood analysis tests.

Roadside breath and saliva tests

Under s 80 of the TORUM Act, a police officer may only request a roadside breath or saliva test if the officer suspects on reasonable grounds that a person:

- has driven or been in charge of a vehicle within the last three hours
- was driving a vehicle not more than three hours ago which was involved in an accident resulting in injury, death or damage to property.

The police officer may do the test on the roadside or may require the person to come to a police station or other place where a device for the test is located.

It is an offence to refuse to provide a specimen of breath for a breath test or a specimen of saliva for a saliva test in the manner directed. The only defences to such a charge are if the person:

- immediately produces a medical certificate to the police officer which certifies that they are incapable of providing the breath specimen or that to do so would be detrimental to their health
- can satisfy the court that:
    - they were incapable of providing the specimen
    - the request by the police officer was not lawfully made
    - there was some other substantial reason preventing them from doing so.

While these defences provide bases for refusing to provide a breath specimen, there is little utility in doing so. Failing to comply with a request for a breath or saliva test provides the police officer with the power to require a compulsory breath, saliva or blood analysis test, and use such force as is necessary to detain or transport the person elsewhere for that purpose. Also, a conviction for failing

to provide a roadside breath or saliva test has a maximum penalty of 40 penalty units or six months imprisonment (s 80(5A) TORUM Act). This penalty is higher than that provided for the minor drink driving offences.

A roadside breath or saliva test is intended to be only an approximate test, and a positive reading provides the basis for a reasonable suspicion to be formed by police that the person has committed an offence, which permits police to detain or transport the person for the purpose of a further breath and saliva analysis test or blood test, either at the scene or at another location. A police officer may also detain or transport a person and require further testing by breath analysis, saliva analysis or blood tests if the person has produced a certificate of medical incapacity to produce a roadside breath test when the officer reasonably suspects the person is, because of external appearances, affected by liquor or a drug (s 80(6)(ba) TORUM Act).

Breath, saliva and blood analysis tests

Pursuant to s 80 of the TORUM Act, any person detained for suspected offences as described above, arrested for careless driving or any indictable offence arising out of driving a motor vehicle or in hospital for treatment after an accident can be required by a police officer to provide a specimen of breath for analysis on a breathalyser, a specimen of saliva for saliva analysis or a blood sample. If the person is in hospital for treatment, the police officer must have a suspicion that the person has driven or been involved in an accident while driving within the last three hours for a breath, saliva or blood specimen.

The choice of whether the test should be a breath, saliva or blood analysis rests with the police officer. A person cannot insist on a blood test unless a breath sample cannot be given on medical grounds. In practice, police officers will require a breath analysis where a breathalyser is available, and the person can then certify that they are unable to give a breath sample. A blood sample may also be obtained if a breathalyser reading is not believed to be accurate. A blood sample can be taken without consent if the person is unconscious or unable to communicate.

A request to provide a specimen of breath, saliva or blood for analysis may be made by any police officer, but the operator of the breathalyser or saliva analysing instrument must be a separate person who is an authorised member of the police force. Blood tests are taken by health care professionals.

Once the request has been made, the person is obliged to perform the breath test (by blowing through the mouthpiece into the breathalyser until told to stop by the operator), saliva test (by wiping a swab inside the mouth) or allow a health care professional to take the blood specimen as necessary.

Before requiring a formal breath, saliva or blood analysis, police may first administer a roadside breath test. This involves the person blowing into a handheld device that provides an indicative reading of their blood alcohol level. If the roadside test returns a positive result, the person will be required to accompany police to a breathalyser, which is typically located at a police station. Where a random breath testing operation is being conducted, a breathalyser may be available on site. It is important to note that the roadside reading itself is not admissible as evidence in court and cannot be used to prove the offence. It is only the result of the subsequent breathalyser analysis that can be tendered as evidence. Where a person provides a roadside breath test but then refuses or fails to provide the subsequent breath analysis, they may be charged with failing to provide a specimen in the prescribed manner.

Failure to provide a specimen in the prescribed manner is an offence, which results in the person being deemed to have committed the offence of driving under the influence attracting the higher penalties under that offence (s 80(11) TORUM Act). This is especially harsh with saliva tests, since a positive result means the person is only liable to the same penalties as an offence of driving over the general alcohol limit, whereas a failure to provide the specimen deems the person guilty of the more serious offence of driving under the influence.

Defences to failing to provide a blood, saliva or breath specimen for analysis are that the court is satisfied that (s 80(11A) TORUM Act):

- the request was unlawful
- the person was incapable of providing the specimen
- there was some other reason of a substantial character for not providing the specimen (other than desiring to avoid providing information that might be used as evidence).

Once the analysis is completed, the operator is required to fill out in duplicate a certificate stating the result of the analysis and various other particulars. One copy is given to the officer who made the request and the other to the driver. If the driver fails to provide a specimen of breath or saliva, a certificate stating this will be completed by the operator (ss 80(15), 80(15AB), 80(15B) TORUM Act). With saliva, another part of the specimen that was analysed must also be sent to a laboratory for confirmation of the presence of a relevant drug. A certificate will also be issued by an analyst from the laboratory that tested a saliva, blood or urine specimen.

For the result of a breath, saliva or blood analysis to be admissible as evidence in court, the specimen must be collected within three hours of the person driving or being in charge of the vehicle. This time limit is significant in practice, as delays in transporting a person to a police station or in obtaining medical assistance to collect a blood sample may affect the admissibility of the result. Where a specimen is collected outside of this three-hour window, the result cannot be relied upon as evidence of the offence.

EVIDENCE OF DRUG OR ALCOHOL CONSUMPTION AND DEFENCES

Evidentiary certificates

Certificates issued are conclusive evidence either that the person failed to provide a specimen of breath, saliva or blood, or that the blood alcohol concentration or presence of a relevant drug was as recorded at the time of analysis and during the preceding two hours or three hours respectively (ss 80(15A)–80(15B), 80(15G), 80(16B)–80(16C), 80(16E)–80(16F), 80(16FA) TORUM Act). The certificates may also have this conclusive character in proceedings other than prosecution of drink driving offences (e.g. see ss 80(16C) and 80(16F)–80(16G) of the TORUM Act in civil liability actions).

Defences

The conclusiveness of a certificate stating the result of an analysis may be negated by proof that the breathalyser was defective or not properly operated (s 80(15H) TORUM Act). Similarly, the conclusiveness of certificates of saliva or blood analysis may be negated by proof that the laboratory test did not provide a correct result (s 80(16G) TORUM Act). In the case of a certificate stating that a person failed to supply a specimen of breath or blood, the certificate can be disproved by any means (ss 80(15B), 80(15F), 80(16E) TORUM Act).

When a person intends to defend a charge on the basis that a breathalyser was defective or not properly operated, or a saliva or blood test result was incorrect, written notice must be given to the arresting officer not less than 14 days before the court hearing.

According to the courts, if a roadside breath or saliva test has been unlawfully administered, the result of this breath, saliva or blood analysis may still be used as evidence. However, a court does have discretion to reject such evidence because it was unlawfully obtained (*Bunning v Cross* (1978) 141 CLR 54).

Sometimes, a person is not stopped by police while driving and, on returning home, consumes alcohol or drugs. Later, if police officers arrive and suspect on reasonable grounds that the person was the observed driver, they may ask them to take a breath or saliva test. If this is positive, the person may be taken to a police station for a breath, saliva or blood analysis test. The blood alcohol or drug concentration recorded will obviously not be the same as it would have been at the time of the accident. Despite this, under ss 80(15G) and 80(16FA) of the TORUM Act, the reading or result obtained at the later time is conclusive evidence of the presence of a relevant drug or the blood alcohol concentration of the person (from the time of the driving to the time of analysis) if it was made not more than three hours after the driving. That evidence can only be negated if it is proven that the breath or saliva analysing instrument was defective or not properly operated.

Save for the defence of mistake of fact (s 24 Criminal Code), the defences stipulated in the Criminal Code (s 23 for accident, s 25 for extraordinary emergency, s 27 for insanity, s 28 for involuntary intoxication and s 31 for compulsion) also apply to drink or drug driving offences (s 79(12) TORUM Act).

If the driver has been previously convicted of the same or similar offences within the previous five years, the penalties are increased. On a third conviction for an offence of driving under the influence or a combination of other serious traffic offences within five years, a compulsory sentence of imprisonment will be imposed (s 79(1C) TORUM Act). The five-year period is calculated backwards from the date of conviction (the court date) not the date the offence was committed. Again, suspension of the period of imprisonment under s 147 of the Penalties and Sentences Act may be ordered.

Insurance cover

Certificates issued under the TORUM Act are also relevant to the question of a driver's insurance cover if the insured is involved in an accident while driving under the influence of alcohol or a drug.

If a driver causes the death of, or injury to, another person when driving with more than the allowed blood alcohol concentration or while a relevant drug is present, the compulsory third party insurance policy (for which the premium is paid as part of the annual registration fee) will still cover them for any civil liability incurred. However, the insurance company may seek to recover all or part of the payout from the insured drink driver.

Comprehensive insurance policies or cheaper third party property damage policies will generally not cover damage caused while the driver's blood alcohol concentration was above a certain level. This level may be higher or lower than

the minimum level prescribed by the TORUM Act (i.e. 0.05), and drivers would be well advised to check their insurance policies on this point. Also, some policies now provide that failure to supply a specimen when requested to do so by a police officer prevents a person from claiming on their insurance.

Drivers will also be required to disclose the fact that they had been charged with such an offence in any future insurance applications, and any person convicted of drink-driving offences will pay increased insurance premiums for some years thereafter. The statutory requirements of disclosure mean that in some cases, when charges are possibly pending, an admission in an insurance application may also be used as evidence in any prosecution. Legal advice in these circumstances may be necessary.

LICENCE RESTRICTIONS APPLIED TO ALCOHOL AND DRUG DRIVING OFFENCES

24-hour suspension

An immediate 24-hour suspension from driving applies to any person charged with driving while under the influence of alcohol, drugs, over the legal alcohol limit, or who has failed to provide a specimen of breath or blood for analysis (s 80(22AA) TORUM Act). It is an offence to drive during the period of the suspension (s 80(22D) TORUM Act). A notice to that effect will be served upon the person, together with a notice to appear or summons to appear in court. A person will very rarely be arrested for drink-driving offences unless a more serious offence is also being charged. However, a person cannot resist being detained or transported to a police station or hospital for the purpose of a breath or blood test.

A licence may also be suspended in some instances where a person accumulates a certain number of demerit points (e.g. for an offence of speeding more than 40 km per hour over the limit (pt 11–12 Licensing Regulation) or under the *State Penalties Enforcement Act 1999* (Qld) for non-payment of fines).

Suspension until charge is finalised

In some circumstances, a person's licence is suspended immediately upon being charged with an offence, and the suspension continues until the charge has been finalised by the court or the court issues a replacement licence (s 79B TORUM Act). This applies where the person is charged with:

- driving a motor vehicle while under the influence of alcohol and an analysis certificate has been given to the person (does not apply to under the influence of a drug)

- failing to provide a specimen of breath, blood or saliva
- driving while over the no-alcohol limit, over the general alcohol limit or while a relevant drug is present, and that charge has arisen either after the person has earlier been charged with any one of those offences and the earlier charge has not been finalised, or while the person is the holder of a replacement licence issued under s 79E of the TORUM Act
- dangerous operation of a vehicle while adversely affected by alcohol.

A notice of the suspension must be given to the person (s 79D TORUM Act). It is an offence of unlicensed driving to drive while the licence is suspended, and a conviction for this offence results in disqualification from holding a licence for a minimum of two years (s 78(3)(i) TORUM Act).

Disqualification

When a driver is convicted of a drink driving offence, they are automatically disqualified from holding or obtaining a driver licence.

The period of disqualification in any given case will be decided by the court within the statutory minimums and maximums. The factors that the court will look at include the blood alcohol concentration, the manner of driving, any mitigating factors as to the context for the driving, the person's character and previous driving record, the person's need for a licence and the danger to other road users.

Section 187 of the Penalties and Sentences Act provides power for the court to order disqualification of a licence where an offender is convicted of any offence in connection with or arising out of the driving of a motor vehicle. This will occur if the court is satisfied that the person should be prohibited from driving in the interests of the public, having regard to the nature of the offence or the circumstances in which it was committed. Even if a person has been acquitted of such an offence, either on indictment or summarily, the trial judge or magistrate may still order disqualification if they consider it is in the public interest (ss 89–90 TORUM Act).

Cancellation

When a court disqualifies a person from driving, every driver licence held by that person is deemed to be cancelled from the date of disqualification (s 127 TORUM Act). Once the disqualification period has ended, that person must apply for a new licence or licences to drive at the Transport Department. It is an offence to apply for a licence when still disqualified. It is an offence, pursuant to s 126 TORUM Act, to possess without a lawful excuse a cancelled or suspended license (maximum penalty is a fine of 40 penalty units or six months imprisonment).

A licence may also be cancelled administratively by an accumulation of demerit points. Cancellation means that the licence is completely invalid and the person must apply again for a new licence when the cancellation period expires.

Absolute disqualification and applying for removal of disqualification

In some circumstances, a person may be disqualified absolutely from driving or for a specified period of time longer than two years. This does not mean that the person may never again obtain a driver licence or even that the person must wait the entire period where it exceeds two years. At any time after two years from the date of disqualification (whether it be an absolute disqualification of some other period of disqualification in excess of two years), they may apply for the removal of the disqualification to any court of similar jurisdiction to the court which ordered the disqualification (s 131(2) TORUM Act).

The court has a wide discretion in the matter, but it is required to have regard to the character of the applicant, their conduct since the disqualification, the nature of the offence and any other circumstances of the case including the person's traffic history. These issues must be addressed by affidavit material, filed and served by the applicant in support of the application, and the witnesses must be available for cross-examination by police if required. Police must be given notice of an application in order to also make relevant enquiries. If the court refuses the application, the person cannot re-apply for at least one year. A Removal of Disqualification kit can be obtained at the courts or from the Legal Aid Queensland offices or website.

Cumulative disqualifications

The disqualification is cumulative with any other disqualifications for other offences of this type that were committed at a different time (s 90B TORUM Act), and where the person is disqualified from driving for any of the following offences:

- drink or drug driving
- failure to provide a specimen for analysis
- driving in breach of the conditions of a restricted licence or a replacement licence
- dangerous operation while adversely affected by an intoxicating substance.

Further, if any other offence (e.g. drink or drug driving offence, fail-to-provide offence or a dangerous operation while adversely affected offence) occurs when a person is unlicensed or disqualified, then any disqualification imposed for the

unlicensed or disqualified driving offence must also be made cumulative with the disqualification for this other offence (s 90C TORUM Act).

OPTION OF A RESTRICTED LICENCE AFTER LICENCE SUSPENSION

People convicted of a drink driving offence or an offence of driving while a relevant drug was present may apply to the court for a restricted licence to drive only at certain times or between certain places for employment purposes (s 87 TORUM Act). Such a licence is only available for drink or drug driving convictions (i.e. up to a reading of 0.10) and is not available for driving under the influence (i.e. a reading less than 0.15). Before granting a restricted licence, the court must be satisfied that certain criteria are met (s 87(5) TORUM Act):

- The applicant is a fit and proper person to hold a restricted licence.
- Refusal of a licence would cause extreme hardship to the applicant or the applicant's family by depriving the applicant of their livelihood.
- The applicant's provisional or open licence has not been suspended, cancelled or disqualified in the previous five years, which does not include:
    - suspension, cancellation or disqualification set aside on appeal
    - suspension, cancellation or disqualification due to mental or physical disability
    - State Penalties Enforcement Registry suspension
    - suspension for not appearing in court
    - 24-hour suspension
    - suspension resulting in a special hardship order.
- The offence is related to a blood alcohol concentration of less than 0.15.
- The applicant was the holder of an open or provisional licence.
- The offence was not committed while the applicant was engaged in a work-related activity.
- The applicant was not previously convicted of a drink driving or dangerous operation offence in the previous five years (including a similar offence outside Queensland).
- The applicant was not subject to a no-alcohol limit for any reason (ss 79(2A), 79(2B), 79(2D), 79(2J) TORUM Act).

Application for a restricted licence can only be made at the hearing of the drink-driving charge once culpability is accepted but before a disqualification period is imposed.

In practice, if a person appears before the court on the first return date of the summons/notice to appear, is eligible for a restricted licence (by reference to the drink-driving charge faced and the person's traffic history), indicates to the court that culpability is accepted and a restricted licence is sought, a further date, approximately six weeks later, will be given. In the meantime, the person must file with the court an application and supporting affidavit material, including an affidavit by the person's employer (if not self-employed) regarding issues such as extreme hardship and 'fit and proper person' to hold a licence, and serve it on police. At the hearing of the application, police will either contest or accept the affidavit material and oppose or consent to the application. If the application or the affidavit material is contested, each person who has submitted an affidavit must be available for cross-examination by police (s 87(2A) TORUM Act). Self-help kits on applying for restricted licences can be obtained from Legal Aid Queensland.

When a magistrate issues an order for a restricted licence, conditions will be imposed on the use of the licence. Conditions must restrict the use of the licence to circumstances directly connected with the person's means of earning their livelihood, and they may also restrict the type of vehicle driven, the purpose for which it may be used, the times it may be used and even allow only nominated vehicles of a particular employer to be driven (s 87(4) TORUM Act). Keeping a logbook might also be required. If a restricted licence is granted, it lasts for the duration of the disqualification period to be imposed. The disqualification period will be longer than that which would be imposed if no restricted licence was granted. In practice, the court will add a third or more. Where a maximum period applies, the court may impose up to double the period of maximum disqualification (ss 87(6)–87(6A) TORUM Act).

If conditions of the restricted licence become unworkable, a further application to vary the conditions can be made to the Magistrates Court (s 88 TORUM Act). Again, the application and supporting affidavit material must be drawn, filed with the court and served on police at least 14 days prior to the hearing, and the deponents should be available for cross-examination if required by police.

Driving otherwise than in accordance with the conditions of a restricted licence is an offence punishable by a fine, and conviction results in automatic disqualification from any driving for any remaining period for which the restricted licence would have been in force, together with an additional three-month period (ss 87(10)–87(10A) TORUM Act).

Replacement licence

Persons who have their licence suspended until the charge is finalised (s 79B TORUM Act) may apply to the court for a replacement licence to continue to drive in stated circumstances (s 79E TORUM Act). The criteria for an application are similar to, but not identical with, the criteria for a restricted licence (regs 91–92 Licensing Regulation) listed below:

- The applicant is a fit and proper person to continue to drive.
- There would not be an unacceptable risk the applicant would commit a further drink or drug driving offence.
- Refusal of a licence would either cause extreme hardship to the applicant or the applicant's family by depriving the applicant of their means of earning a living, or cause severe and unusual hardship to the applicant or the applicant's family other than by depriving the applicant of their means of earning a living.
- The applicant's licence has not been suspended, cancelled or disqualified in the previous five years, which does not include:
    - suspension for not appearing in court
    - suspension until charge is finalised
    - 24-hour suspension
    - suspension or cancellation set aside by Queensland Department of Transport and Main Roads (Transport Department)
    - suspension, cancellation or disqualification set aside on appeal
    - suspension, cancellation or disqualification due to mental or physical incapacity
    - State Penalties Enforcement Registry suspension.
- The applicant was the holder of an open licence.
- The offence was not committed while engaged in a work-related activity.
- The applicant has not previously been convicted of a drink or drug driving, or dangerous operation offence in the previous five years (including a similar offence outside Queensland).
- The applicant was not subject to a no-alcohol limit for any reason.
- The applicant had not previously been charged with a drink or drug driving offence which has not yet been finalised.
- The applicant did not hold a restricted licence.

- The applicant was not driving during a good behaviour period.

Application for a replacement licence must be made in the approved form within 21 days of the person's licence being suspended, and it must be accompanied by details of the information intended to be relied upon. The application form can be obtained from any Magistrates Court registry. After filing the application in court, the applicant must give a copy of the application and the accompanying details to the Transport Department at least three days before the date set for the hearing (reg 92 Licensing Regulation). Failure to strictly comply with these provisions cannot be overlooked by the court (s 150AC TORUM Act).

The applicant must file their own affidavit setting out how they will suffer either extreme hardship in connection with earning a living or severe and unusual hardship in some other way. If not self-employed and claiming extreme hardship, they must also file an affidavit by their employer confirming that loss of licence will cause loss of employment. If claiming severe and unusual hardship, the applicant's affidavit must have documents attached to it to support matters stated in the affidavit (reg 94 Licensing Regulation).

At the hearing, the Transport Department may appear and contest the application. The applicant may give further evidence and call further witnesses, and the applicant and any witnesses must be available for cross-examination by the Transport Department (reg 93 Licensing Regulation).

When a magistrate issues an order for a replacement licence, conditions will be imposed on the use of the licence. Conditions must restrict the purpose for which the vehicle may be driven, the class of vehicle to be driven, the times at which it may be driven, and they must require the person to carry a copy of the order while driving. Conditions may also restrict where the vehicle may be driven, whether passengers (and if so, who) may be carried and anything else the court considers appropriate (e.g. a requirement to wear a uniform or keep a logbook) (reg 95(3) Licensing Regulation).

If the conditions of a replacement licence become unworkable, the applicant may make a further application to the court to vary the order. Again, the application must be in approved form, accompanied by details of the information relied upon and served on the Transport Department at least three days before the hearing. Again, the applicant and any witnesses must be available for cross-examination (regs 96–99 Licensing Regulation).

Driving otherwise than in accordance with the conditions of a replacement licence is an offence punishable by a fine of up to 20 penalty units , and conviction results in automatic disqualification from any driving until the original charge is finalised (reg 100 Licensing Regulation).

ALCOHOL IGNITION INTERLOCKS

An 'interlock condition' may be imposed on a person who has been convicted of certain offences related to driving while under the influence of alcohol. An alcohol ignition interlock is a device that when fitted to a motor vehicle prevents the vehicle from being started unless the device is provided with a specimen of a person's breath containing either no alcohol or less than a particular concentration of alcohol (s 91I TORUM Act)).

An interlock condition will apply to people who are convicted of:

- driving under the influence (0.15% or more)
- failing to provide a specimen for analysis
- operating a vehicle dangerously while adversely affected by alcohol
- committing a second drink driving offence of any kind within five years of conviction for an earlier drink driving offence of any kind
- driving unlicensed at a time when the offender would have been subject to an interlock condition if they did hold a licence.

The interlock period starts when the period of disqualification for the offence ends. The interlock period will last for whichever of the following happens first:

- two years has elapsed since the period began
- one year has elapsed while the person has held a valid licence and had a nominated vehicle fitted with an interlock device or held an interlock exemption.

The person to whom the interlock condition applies must nominate a vehicle to be fitted with an interlock device. If the nominated vehicle is driven by more than one person, then either the interlock device must be able to identify which person is using it with a pin or swipe access or each person must keep an interlock driver record of the approved form.

A person convicted of a relevant offence, as above, may apply to the chief executive for an exemption certificate on the grounds set out in s 91Q of the TORUM Act, which include a person:

- residing more than 150 km from the nearest interlock installer
- having a medical condition preventing them from providing a sufficient breath sample to operate an interlock device, which has to be evidenced by a doctor's certificate

- suffering 'severe hardship', and it is not possible to fit a device to the only available vehicle. This would not include the cost of fitting the device. Severe hardship would be suffered other than by preventing the person from driving to or from work or during work. If you are required to drive multiple vehicles for work or other purposes, each vehicle must be fitted with the interlock device.

It is an offence to drive a motor vehicle that is not fitted with an interlock where the driver is subject to an interlock condition. This offence attracts a fine and a further period of disqualification of either three or six months depending on the person's traffic history.

There are a number of other offences in the Licensing Regulation where an interlock has been fitted which attract a maximum penalty of 20 penalty units for example:

- failing to use technical ability to identify a driver where the interlock device is fitted
- failing to produce an interlock driving record within seven days
- destroying an interlock driving record
- failing to promptly notify the chief executive of the destruction, loss or theft of an interlock driving record
- using another person's identification or allowing another person to use your identification to operate a vehicle fitted with an interlock device.

DEMERIT POINTS SYSTEM

Demerit points are allocated for certain offences. After a conviction (including payment of an infringement notice), points are allocated for the offence and recorded on the person's traffic history. The offences, which have been assigned a points value, are set out in sch 3 of the Licensing Regulation. The points allocated for some of the more frequent offences are:

- exceeding speed limit by 40 km/h or more—eight points
- exceeding speed limit by 30 km/h but less than 40 km/h—six points
- failing to give way—three points
- disobeying traffic signs, lights or police directions—between two and four points
- careless driving—three points
- failing to signal intention—two points

- failing to keep left—two points
- following too closely—one or two points
- using a mobile phone – four points
- failing to correctly wear a seatbelt – four points.

Good behaviour licence

When the holder of a licence is convicted of enough offences to constitute a certain number of demerit points within a certain time, the licence may be suspended (reg 79 Licensing Regulation):

- for an open licence—12 points within three years equals three months suspension (longer periods apply if more than 15 points)
- for a provisional or learner licence—four points within one year equals three months suspension.

The points are allocated on the date when the offence was committed and once a person pays the fine or is convicted in court. Points for traffic offences committed interstate can count in the accumulation of demerit points on a person's traffic history.

Before the licence is suspended, the Transport Department must send a Notice to Choose, giving the person 21 days to choose between having their licence suspended for the requisite period or agreeing to be of good behaviour while driving for one year (reg 79(3)). If the person makes no choice, the suspension option applies (reg 79(5)). Any subsequent driving constitutes unlicensed driving.

It is important to note that once a choice is made, or the time limit for choosing elapses, it cannot be reversed.

Breaching a good behaviour licence

If during the one-year good behaviour period the person has two or more demerit points allocated, then the Transport Department must give a notice to the person suspending the licence for double the previous suspension period and advising of the right to apply for a special hardship order (regs 79(8), 79(6) Licensing Regulation).

Suspension of licence due to driving at high speed

If a person is convicted of speeding more than 40 km per hour over the speed limit (a high speed offence), the Transport Department must give a notice to the person suspending the licence for six months commencing on a date at least 21 days after the notice and advising of the right to apply for a special hardship order (regs 85–86 Licensing Regulation).

Special hardship orders

A person whose licence is suspended due to accumulating two or more demerit points while on a good behaviour licence or due to a high speed offence may apply to a court for a special hardship order allowing them to continue to drive in stated circumstances (reg 112 Licensing Regulation). The criteria for an application are similar to, but not identical with, the criteria for a restricted licence or a replacement licence (regs 106, 111 Licensing Regulation):

- The applicant is a fit and proper person to continue to drive.
- Refusal of a licence would either cause extreme hardship to the applicant or the applicant's family by depriving the applicant of their means of earning a living, or cause severe and unusual hardship to the applicant or the applicant's family other than by depriving the applicant of their means of earning a living.
- The applicant's licence has not been suspended, cancelled or disqualified in the previous five years, which does not include:
    - suspension for not appearing in court
    - suspension until charge is finalised
    - 24-hour suspension
    - suspension, cancellation or disqualification set aside by the Transport Department
    - suspension, cancellation or disqualification set aside on appeal
    - suspension, cancellation or disqualification due to mental or physical incapacity
    - State Penalties Enforcement Registry suspension.
- The applicant, while unlicensed at any time during the previous five years, was not ineligible to hold a licence because either four or more demerit points were allocated in one year, or the person was convicted of a high-speed offence.
- The applicant was the holder of an open or provisional licence.

Application for a special hardship order must be made in the approved form within 21 days of the person's licence being suspended, and must be accompanied by details of the information intended to be relied upon. The application form can be obtained from any Magistrates Court registry. After filing the application in court, the applicant must give a copy of the application and accompanying details

to the Transport Department at least seven days before the date set for the hearing (reg 107 Licensing Regulation). Once an application is filed and served, the person can continue to drive until the application is heard by the court.

As with an application for a replacement licence (discussed above), the applicant must file an affidavit setting out details of extreme hardship or severe and unusual hardship, include if relevant an affidavit from their employer and also attach to their own affidavit documents in support of any claim of severe and unusual hardship (regs 111(2)–(3) Licensing Regulation). Any witnesses must be available for cross-examination (reg 109 Licensing Regulation).

When a magistrate makes a special hardship order, it must last for the period the applicant would otherwise have their licence suspended. It must include a number of conditions restricting the use of the licence, and these are identical to the restrictions required for a replacement licence. Also, the court is given discretion to impose various other restrictions (reg 112 Licensing Regulation). Also, the applicant can apply to vary the order if it later becomes unworkable (regs 115–118 Licensing Regulation).

Driving otherwise than in accordance with the conditions of a special hardship order is an offence punishable by a fine of up to 20 penalty units, and conviction results in automatic disqualification from any driving for any remaining period for which the special hardship order would have been in force, together with an additional three-month period (reg 119 Licensing Regulation).

While subject to a special hardship order, a person has special rules applying to the allocation of demerit points. Effective from 1 July 2019, drivers are unable to accrue any demerit points if they have had their licence suspended and have been granted a special hardship order. The allocation of demerit points while subject to a special hardship order will result in a driver licence suspension for double the initial suspension period (reg 121 Licensing Regulation).

VEHICLE IMPOUNDMENT AND FORFEITURE

The owner of a vehicle involved in the commission of certain traffic offences can have their vehicle impounded for a specified period or in some cases forfeited permanently (ch 4 PPR Act). The offences giving rise to this are in four categories, with each category having a different outcome.

- Type 1 (any of these offences must involve a speed trial, race or a burn out:
    - dangerous operation of a vehicle
    - driving without due care and attention
    - taking part in a race, speed trial or skill test

    - making unnecessary noise or smoke
- Type 2 (any multiple or repeat offences must be of the same kind or from the same paragraph shown in ss 69A(2)(a) to (2)(e) of the PPR Act:
    - driving both an unregistered and uninsured vehicle
    - unlicensed driving
    - driving under the influence of alcohol (but not drugs)
    - failure to provide roadside test or specimen for analysis (not including saliva) or driving under 24-hour suspension
    - failure to comply with a defect notice requiring inspection of vehicle
- motorbike noise—contravention of a noise abatement order (a noise abatement order is obtained by police under s 589, and the offence of contravention of the order is found in s 590(5))
- evasion—failing to stop a vehicle when directed by a police officer (ss 754, 758).

Second and subsequent offences result in increasing penalties, and it does not matter that different vehicles were used in each offence. The forfeiture or impoundment refers to the vehicle used in the most recent offence.

According to s 74 of the PPR Act, as soon as the driver is charged, police can impound the vehicle for 90 days for the first Type 1 vehicle related offence. For a first Type 2 vehicle related offence, the impoundment period is 7 days (s 74C PPR Act). Police have a number of powers related to the impounding and immobilisation of vehicles within these provisions (s 75 PPR Act). Police must give written notice of the impoundment to the driver and to the owner, if the driver is not the owner (s 78 PPR Act). If police also intend to apply to the court for an order, the notice must advise that fact (ss 81, 82–84 PPR Act). Once the court sets a date for the application to be mentioned in court, police must also give written notice of that date to the driver and the owner (ss 89, 94, 762 PPR Act).

The court cannot make a final order until the driver has been found guilty of each of the offences relied upon in the application, and the court must adjourn the hearing of the application until that has occurred (s 88 PPR Act). The court can, however, make an interim order impounding the vehicle for up to three months if the driver has been found guilty of at least one of the offences relied upon. This does not apply to evasion offences.

Where a court may make a final order for impoundment, it can be for any period up to three months (s 100(1) PPR Act), and where it may order forfeiture, it may order forfeiture or impoundment for up to three months (s 101(1) PPR Act).

Application for early release of vehicle

There are circumstances in which an owner of a vehicle may be able to apply for the early release of an impounded vehicle. This application is made to the Commissioner and the application must be made in the approved form and provide sufficient information to enable a decision to be made. The application may be made on the following grounds that:

- the person or their family would suffer severe financial hardship
- the person or a member of their family would suffer severe physical hardship
- the owner of the vehicle did not give consent to the offence been committed
- the grounds for the impoundment based on a Type 2 vehicle-related offence have been rectified (unlicensed or unregistered/uninsured vehicle only)
- there were no reasonable grounds to impound/immobilise the vehicle.

The application can be made by the owner of the vehicle or by a usual driver of the vehicle. It is not sufficient to drive the vehicle only occasionally, the applicant must be a person who usually drives the vehicle. For further information in relation to an application for early release, visit the police website.

Community service

Instead of making a final order for impoundment or forfeiture, the court may order the driver to perform up to 240 hours of unpaid community service. Before doing so, the court must be satisfied impoundment or forfeiture would cause severe financial or physical hardship to the owner or the usual driver of the vehicle (s 102 PPR Act). Such an order is deemed to be a fine option order (s 102(3) PPR Act), and as such the driver would need to give consent before the order can be made (s 55 Penalties and Sentences Act). The owner cannot be ordered to perform community service, and therefore regardless of any hardship, the vehicle may be impounded or forfeited unless the driver agrees to perform the community service. Vehicle owners need to exercise caution about who they allow to drive their vehicle.

Return of vehicle to the Owner

It is a ground for an application for the owner to have the vehicle returned to prove that the offence happened in circumstances which were unlawful, for example, where the vehicle was being used unlawfully or had been stolen or was a rental vehicle. In those circumstances, the motor vehicle must be released to the owner as soon as reasonably practicable and an application for impoundment or forfeiture must not be made (s 76 PPR Act).

Costs of impoundment

The driver is liable to pay the costs of removing and keeping an impounded vehicle if they are found guilty of the offence. If someone other than the driver pays the costs (e.g. an owner in order to recover their vehicle), those costs are a debt payable by the driver. If the driver is found not guilty of the offence or the application is withdrawn, the costs are payable by the State of Queensland (ss 111–112 PPR Act).

The offence of disposing of a vehicle

It is an offence punishable by a fine of up to 40 penalty units for an owner in a pending application to modify, sell or otherwise dispose of the vehicle (s 106A PPR Act), or to unlawfully remove an impounded vehicle from a holding yard (s 105 PPR Act). 'Modify' is defined in s 69 of the PPR Act.

BICYCLES AND TRAFFIC OFFENCES

The Road Rules Regulation apply to bicycles. Bicycles are included as vehicles within those Regulations. Accordingly, individuals riding bicycles must obey all of the general road rules. The general road rules that always apply include that cyclists must:

- give way to the right at unsigned cross intersections
- abide by traffic signs, lights and road markings
- obey the speed limit
- stop at a stop sign (i.e. all wheels of the vehicle must come to a complete halt)
- obey the No U-turn sign at traffic lights.

The Queensland Department of Transport and Main Roads has a number of resources about Queensland road rules.

Riding and equipment

Part 15 of the Road Rules Regulation set out a number of rules that are specific to cyclists:

- The rider of a bicycle must sit astride the rider's seat facing forwards (except if the bicycle is not built to be ridden astride), ride with at least one hand on the handlebars and, if the bicycle is equipped with a seat, not ride the bicycle seated in any other position on the bicycle (reg 245).

- A rider of a bicycle may only carry another person if the bicycle is designed to carry more than one person, has a passenger seat and each person is wearing a helmet (reg 246).
- The cyclist riding on a length of road with a bicycle lane designed for bicycles travelling in the same direction must ride in the bicycle lane unless it is impracticable to do so.
- A person must not ride a bike unless it has at least one effective brake and a bell, horn or similar warning device in working order (reg 258).
- A person must not ride a bicycle that is being towed by another vehicle or hold on to another moving vehicle while riding a bicycle (reg 254).

If you do not comply with the rules it will be considered an offence.

When riding at night or in hazardous weather conditions with reduced visibility, a bike rider must display on their bicycle or their person:

- a flashing or steady white light that is clearly visible for at least 200 metres from the front of the bicycle
- a flashing or steady red light that is clearly visible for at least 200 metres from the rear of the bicycle
- a red reflector that is clearly visible for at least 50 metres from the rear of the bicycle when a vehicle's headlights on low beam shine on it (reg 259).

A bike rider must give hand signals when turning right. To give a hand signal for changing direction to the right, a bike rider must extend their right arm and hand horizontally and at right angles from the right side of the bicycle with their hand open and their palm facing the direction of travel (regs 48–50 Road Rules Regulation).

All road users must avoid becoming a hazard and cyclists must do this by not riding into the path of a driver or pedestrian (reg 253).

A cyclist must not ride within two metres of the rear of a moving motor vehicle continuously for more than 200 metres (reg 255).

Helmets

An individual riding a bicycle must wear an approved bicycle helmet securely fitted and fastened (reg 256 Road Rules Regulation). Any passenger on a bicycle that is moving or stationary must also wear an approved bicycle helmet securely fitted and fastened, unless that passenger is a paying passenger on a three or four-wheel bicycle. The term 'approved bicycle helmet' is defined in sch 5 of the Road Rules Regulation to mean a helmet that complies with Australian Standard

AS 2063 or AS/NZS 2063, or another standard the chief executive considers at least equal to that standard.

A person is exempt from wearing a bicycle helmet if the person is carrying a current doctor's certificate stating that, for a stated period, the person cannot wear a bicycle helmet for medical reasons or because of a physical characteristic of the person, and it would be unreasonable to require the person to wear a bicycle helmet (reg 256(4)).

A person is also exempt from wearing a bicycle helmet if the person is practising a religion that requires a headdress to be worn, and it therefore makes it impractical for the person to wear a bicycle helmet (reg 256(5)).

Trailers and loads

Regulation 257 of the Road Rules Regulation provides that a bike rider may tow a child in a bicycle trailer if:

- the rider is 16 years or older
- the child in or on the bicycle trailer is less than 10 years old
- the bicycle trailer can safely carry the child
- the child in or on the bicycle trailer is wearing an approved bicycle helmet that is securely fitted or fastened.

If the person is exempt from wearing a bicycle helmet then the appropriate current doctor's certificate should be carried. The maximum penalty for breaching the requirements of this provision is 20 penalty units ($2611).

The road rules regarding insecure and overhanging loads apply to bicycles. A cyclist must not ride or tow a bicycle if it is carrying a load that is not properly secured to the vehicle, is placed on the vehicle in a way that it causes the vehicle to be unstable or projects from the vehicle in a way that is likely to injure a person, obstruct the path, other drivers or pedestrians, or damage a vehicle or anything else including the road surface. The maximum penalty for non-compliance with this Regulation is 20 penalty units ($2611).

Lanes, paths and crossings

The Road Rules Regulation also deal with the rules regarding bicycle lanes on roads, footpaths and crossings. As a cyclist you:

- should use a bike lane where provided it and should ride to the left (regs 251)
- must not ride alongside another rider on a single-lane road or a marked lane unless overtaking that rider. If the rider is riding alongside another rider, the rider must ride not more than 1.5 metres from the other rider (reg 151)

- are permitted to ride across a pedestrian crossing or children's crossing if the rider stops as near as practicable to the crossing before riding across
- (s 248(3)). The rider may ride across a marked foot crossing only if the crossing has bicycle crossing lights (s 248(4)). In any case, the rider must proceed slowly and safely, give way to pedestrians on the crossing and keep left of an oncoming rider or user of a personal mobility device (s 248(5))
- can only ride on the side of a separated path that is designated for cyclists where a path is separated for pedestrians and cyclists (reg 249)
- must keep left and give way to pedestrians on footpaths and shared-use paths (reg 250)
- must always ride your bicycle to the left of other riders (reg 251)
- cannot ride on a road or footpath where signs or road markings specifically ban bicycles (reg 252)
- can ride on footpaths, at any age, unless prohibited by a 'no bicycles' sign.

All of the above rules are penalty provisions and attract a penalty of 20 penalty units if they are not complied with.

Keeping left and overtaking

Riders must ride as near as is safely possible to the far-left side of the road. On a multi-lane road (i.e. a road with two or more lines of traffic travelling in the same direction), a rider can occupy a lane and travel in the right-hand lane when necessary. Cyclists must stay to the left of any oncoming vehicle and not overtake another vehicle on the left if that vehicle is turning left and giving a left change of direction signal. Cyclists are not permitted to ride more than two abreast unless overtaking and must ride within 1.5 metres of the other rider if riding two abreast (regs 129, 131, 141, 151 Road Rules Regulation).

Bicycle storage areas

At traffic light intersections, the area that allows cyclists to wait in front of vehicles stopped at the intersection is called the bicycle storage area. It is usually painted green with a white bicycle symbol. The following special rules apply to this area:

- Cyclists must enter a bicycle storage area from a bicycle lane (unless it is impractical to ride in the bicycle lane).
- They must give way to any vehicle that is already in the bicycle storage area.

- Cyclists must give way to any vehicle entering the area where there is a green or yellow light in front of the bicycle storage area (reg 247B Road Rules Regulations).

LEGAL NOTICES

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