

**49. Driving while unlicensed or disqualified**

- (1) A person who —
- (a) drives a motor vehicle on a road while not authorised under the *Road Traffic (Authorisation to Drive) Act 2008* Part 2 to do so; or
  - (b) employs or permits another person to drive a motor vehicle as described in paragraph (a),

commits an offence.

Penalty for this subsection:

- (a) unless subsection (3) applies —
    - (i) for a first offence, 6 PU;
    - (ii) for a subsequent offence, 12 PU;
  - (b) if subsection (3)(d), but no other paragraph of subsection (3), applies —
    - (i) a fine of not less than 4 PU or more than 30 PU; and
    - (ii) imprisonment for not more than 12 months,  
and the court may order that the offender be disqualified from holding or obtaining a driver's licence for a period of not more than 3 years;
  - (c) if subsection (3)(a), (b), (ca), (c) or (da) applies —
    - (i) for a first offence, a fine of not less than 8 PU or more than 40 PU, and imprisonment for not more than 12 months;
    - (ii) for a subsequent offence, a fine of not less than 20 PU or more than 80 PU, and imprisonment for not more than 18 months,  
and the court shall order that the offender be disqualified from holding or obtaining a driver's licence for a period of not less than 9 months and not more than 3 years.
- (2) It is a defence to a charge of an offence under subsection (1) to prove that the motor vehicle was driven in accordance with —
- (a) regulations referred to in the *Road Traffic (Authorisation to Drive) Act 2008* section 11(1); or
  - (b) a necessity permit under section 49A.
- (3) If an offence under subsection (1)(a) is committed by a person —
- (a) who has applied for, but has been refused, an Australian driver licence of a kind required; or
  - (b) who, at the time of the commission of the offence, is disqualified from holding or obtaining an Australian driver licence of a kind required, other than for the reason described in paragraph (d), whether or not the person has ever held an Australian driver licence of the kind required; or
  - (ca) who has held an Australian driver licence of a kind required but ceased to hold the licence of that kind most recently held other than —
    - (i) because the person had, before the time of the commission of the offence, voluntarily surrendered the licence most recently held; or
    - (ii) because the licence expired; or

(iii) for the reason described in paragraph (d);

or

- (c) whose authority to drive, whether under an Australian driver licence or otherwise, is for the time being suspended other than for the reason described in paragraph (d); or
- (da) who is a member of a class of persons prescribed for the purposes of this paragraph by regulations made for the purposes of the *Road Traffic (Authorisation to Drive) Act 2008* section 5A; or
- (d) who is no longer authorised to drive because of penalty enforcement laws, as described in subsection (9),

a police officer may, without a warrant, arrest the person.

- (4) A person who would only come within a description in subsection (3)(a), (b), (ca) or (c) because of a decision for the review of which an application had been made is excluded from that description if the application had been made, but not determined, when the offence under subsection (1)(a) was committed.
- (5) If a person to whom the CEO has been ordered under the *Road Traffic (Authorisation to Drive) Act 2008* section 30(1) to grant an extraordinary licence commits an offence under subsection (1)(a) —

- (a) before the extraordinary licence is granted; or
- (b) when the extraordinary licence has expired and has not been renewed,

neither the order nor any extraordinary licence granted affects subsection (3).

- (6) An offence under subsection (1) is a subsequent offence if the offender has previously been convicted of any offence under that subsection as in force at any time, except that, if subsection (3)(a), (b), (ca) or (c) applies to an offence under subsection (1)(a), the offence is a subsequent offence only if the person has previously been convicted of a relevant offence.

- (7) In subsection (6) —

**relevant offence** means —

- (a) an offence under subsection (1)(a) as in force after the commencement of section 7 of the *Road Traffic Amendment Act 2006*<sup>1</sup> being an offence to which subsection (3)(a), (b), (ca) or (c) applied; or
- (b) an offence under subsection (1)(a) as in force at a time before the commencement of section 7 of the *Road Traffic Amendment Act 2006*<sup>1</sup> being an offence that would have been taken into account in determining whether another offence committed before that commencement, in circumstances mentioned in section 49(2)(a)(ii) or (iii) or (2)(b) as then in force, would have been a first or subsequent offence.

- (8) A period of disqualification ordered under subsection (1) is cumulative upon —
  - (a) any other period of disqualification to which the person may then be subject; or
  - (b) any period for which the operation of a driver's licence held by the person may currently be suspended.

- (9) When subsection (3)(d) refers to a person who is no longer authorised to drive because of penalty enforcement laws, it means that the person —
- (a) has been disqualified from holding or obtaining a driver's licence under section 19 or 43 of the *Fines, Penalties and Infringement Notices Enforcement Act 1994*; or
  - (b) is the subject of any disqualification or suspension under a law of another jurisdiction that is prescribed to be a corresponding law for the purposes of this subsection.