



New South Wales

Road Transport Legislation Amendment Act 2020 No 33

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Road Transport Legislation Amendment Act 2020 No 33

Act No 33, 2020

An Act to make miscellaneous amendments to the *Road Transport Act 2013* and related legislation following a statutory review of that Act. [Assented to 27 October 2020]

The Legislature of New South Wales enacts—

1 Name of Act

This Act is the *Road Transport Legislation Amendment Act 2020*.

2 Commencement

- (1) This Act commences on the date of assent to this Act, except as provided by subsections (2) and (3).
- (2) Schedule 2.5 commences immediately after the commencement of Schedule 4.86 to the *Statute Law (Miscellaneous Provisions) Act 2020*.
- (3) Schedule 1[2]–[8], [17]–[29], [33], [34] and [37] and Schedule 2.2 commence on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Road Transport Act 2013 No 18

[1] Section 4 Definitions

Insert in alphabetical order in section 4(1)—

foreign driver licence means a licence, however described, to drive a motor vehicle that is—

- (a) held by a person who is ordinarily resident in a foreign country and not a permanent resident of Australia, and
- (b) issued in the country in which the person is ordinarily resident.

[2] Section 9 Determination of “first offence” and “second or subsequent offence”

Omit “, within the applicable re-offending period (if any) for the offence concerned,” from section 9(2)(a).

[3] Section 9(2)(c)

Insert at the end of section 9(2)(b)—

, and

- (c) the person committed the previous offence within the applicable re-offending period for the offence concerned.

[4] Section 9(2A)

Omit “(the *new offence*), that offence”.

Insert instead “or the statutory rules (the *new offence*), the new offence”.

[5] Section 9(2A)(a)

Omit “being convicted of”. Insert instead “committing”.

[6] Section 9(3)

Omit “subsection (2)(a)”. Insert instead “subsection (2)(c)”.

[7] Section 9(3)(a)

Insert “immediately before the person committed the new offence” after “years”.

[8] Section 9(5)(f)

Insert at the end of section 9(5)(e)—

, or

- (f) for a previous offence committed in another jurisdiction—a court finds that the previous offence is an equivalent offence.

[9] Section 22 Database of declarations and orders made under this Division

Omit the section.

[10] Section 40 Suspension or cancellation of licence

Omit section 40(4) and (5).

[11] Section 41 Licence ineligibility

Omit section 41(6) and (7).

[12] Section 41A

Insert after section 41—

41A Deletion of demerit points

- (1) All demerit points recorded in the NSW demerit points register against a person at the date of a notice of licence suspension or notice of licence ineligibility given to the person under this Division, and taken into account for the purposes of the notice, are taken to be deleted—
 - (a) if the person’s driver licence has been suspended under this Division—on the commencement of the period of suspension, or
 - (b) if the person has become ineligible under this Division to be issued with, and to apply for, a driver licence—on the commencement of the period of licence ineligibility, or
 - (c) if the person has lodged an appeal in relation to the licence suspension or licence ineligibility—on the determination of the appeal.
- (2) Demerit points that are taken not to be deleted in the circumstances referred to in subsection (1) are to be taken into account for the purposes of sections 40(1) and 41(1) from the end of the period of licence suspension or period of licence ineligibility, as the case may be.
- (3) Nothing in this section prevents Transport for NSW from retaining records of deleted demerit points incurred by any person.

[13] Section 55 Photographs to which this Part applies

Insert at the end of the section—

- (2) This Part does not apply to a photograph provided to Transport for NSW by a person for the sole purpose of establishing the person’s identity.

[14] Section 57 Release of photographs prohibited

Insert after section 57(1)(h)—

- (ha) with the consent of the person whose likeness is shown in the photograph or on the database, or
- (hb) to the Secretary, within the meaning of the *Tattoo Parlours Act 2012*, for the purpose of enabling the Secretary to exercise functions in relation to licences under that Act, or

[15] Section 59 Cancellation or suspension of driver licence for certain speeding offences or alcohol or other drug related driving offences

Insert after section 59(4A)—

- (4B) In determining the period specified in a notice to be served on a person under subsection (3) or (4), Transport for NSW is required to take into account the period during which the person’s driver licence was suspended under an immediate licence suspension notice given to the person under section 224 for the same offence.

[16] Section 107 Definitions

Omit the definition of *foreign driver licence* from section 107(1).

[17] Section 183 Definitions

Insert in alphabetical order in section 183(1)—

nomination details of a person means—

- (a) the person’s name, address and date of birth, and
- (b) the number of the person’s Australian driver licence or foreign driver licence, and
- (c) if a person holds a foreign driver licence—the jurisdiction that issued the foreign driver licence.

[18] Sections 183(1) (definition of “relevant nomination document”), 185(3), 186(1)(a), 187 and 224(2)(a) and (4)(b1), (b2), (c) and (d)

Omit “served with” wherever occurring. Insert instead “issued with”.

[19] Sections 185(1), 186(1) and (1A), 187(b), 190(3) and 191(c)

Omit “name and address” and “names and addresses” wherever occurring.

Insert instead “nomination details”.

[20] Section 185 When responsible person not liable for parking offence

Omit “service on” wherever occurring in section 185(1)(a) and (b).

Insert instead “the issue to”.

[21] Sections 185(2) and (3) and 186(2)

Omit “served on” wherever occurring. Insert instead “issued to”.

[22] Section 186 Duty to inform if person not driver of vehicle committing camera recorded offence

Omit “service” from section 186(1). Insert instead “the issue”.

[23] Section 186(3)

Omit “served”. Insert instead “issued”.

[24] Section 188 Offences relating to nominations

Omit “that name and address” from section 188(1). Insert instead “the nomination details”.

[25] Sections 188(1) and 189(4)

Omit “100 penalty units” wherever occurring in the penalty provisions.

Insert instead “200 penalty units”.

[26] Section 188(1A)

Insert after section 188(1)—

- (1A) For the purposes of subsection (1), if a person is a corporation, the person must—
 - (a) nominate an officer of the corporation to undertake to ascertain the nomination details of the person who was in charge of the vehicle at the time the offence occurred, and
 - (b) require the nominated officer to complete a statutory declaration as to the efforts undertaken to ascertain the nomination details, and
 - (c) provide the authorised officer or court, as the case may be, with the statutory declaration of the nominated officer.

[27] Section 188(3)

Omit “either a false name or address (or both a false name and address) for the person is”.
Insert instead “false nomination details for the person are”.

[28] Section 190 Use of statutory declarations as evidence

Insert “or (1A)” after “188(1)” in section 190(3).

[29] Section 195

Omit sections 195–199. Insert instead—

195 Penalty notices

- (1) An authorised officer may issue a penalty notice to a person if it appears to the officer that the person has committed a penalty notice offence.
- (2) A penalty notice offence is an offence against the following that is prescribed by the statutory rules as a penalty notice offence—
 - (a) the road transport legislation,
 - (b) the *Driving Instructors Act 1992* or the regulations under that Act,
 - (c) the *Heavy Vehicle (Adoption of National Law) Act 2013* or the local regulations under that Act,
 - (d) section 650(1) or (4) or 650A(1) or (4) of the *Local Government Act 1993*, including by operation of section 651 of that Act,
 - (e) the *Motor Accident Injuries Act 2017*, the *Motor Accidents Compensation Act 1999* or the regulations under those Acts,
 - (f) the *Recreation Vehicles Act 1983* or the regulations under that Act,
 - (g) the *Roads Act 1993* or the regulations under that Act, including by operation of section 244 of that Act.
- (3) The *Fines Act 1996* applies to a penalty notice issued under this section.
Note. The *Fines Act 1996* provides that, if a person issued with a penalty notice does not wish to have the matter determined by a court, the person may pay the amount specified in the notice and is not liable to any further proceedings for the alleged offence.
- (4) The amount payable under a penalty notice issued under this section is the amount prescribed for the alleged offence by the statutory rules, not exceeding the maximum amount of penalty that could be imposed for the offence by a court.
- (5) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in relation to offences.
- (6) An offence for which a penalty of imprisonment may be imposed under the road transport legislation, except an offence against section 53(3) of this Act, cannot be prescribed by the statutory rules as a penalty notice offence.
- (7) In addition to a manner of issuing a penalty notice provided for by the *Fines Act 1996*, a penalty notice for the following offences may be issued by leaving the notice on the vehicle in relation to which the offence was committed—
 - (a) an offence for which the responsible person for the vehicle is guilty because of Division 2,
 - (b) an offence for which the owner is guilty because of section 651 of the *Local Government Act 1993*.

- (8) The regulations may specify the classes of authorised officer who are authorised to issue a penalty notice for a specified penalty notice offence.

[30] Section 200 Proceedings for offences

Insert after section 200(2)—

- (3) Despite subsection (2), the maximum monetary penalty that may be imposed by the Local Court for an offence against section 188(1) or (2) or 189(4) is 200 penalty units or the maximum monetary penalty provided for the offence, whichever is less.
- (4) Without limiting section 14 of the *Criminal Procedure Act 1986*, proceedings for an offence against the road transport legislation may be commenced by Transport for NSW or a person authorised in writing by Transport for NSW.

[31] Section 202

Insert after section 201—

202 Period within which certain other proceedings may be commenced

- (1) Despite the *Criminal Procedure Act 1986* or another Act, proceedings for an offence against the following provisions may be commenced not later than 2 years after the date alleged to be the date on which the offence was committed—
- (a) section 49(1),
 - (b) section 54(1)(b), (3)(b), (4)(b), (5)(a)(ii) and (5)(b)(ii),
 - (c) section 69(1)(a) and (2)(a),
 - (d) section 110, 111 or 112, to the extent that the offence arises out of an incident in relation to which the person was charged with an offence against section 117(1) and the driving occasioned death or grievous bodily harm,
 - (e) section 117(1) if the driving occasioned death or grievous bodily harm,
 - (f) section 145,
 - (g) section 146.
- (2) Despite the *Criminal Procedure Act 1986* or another Act, the regulations may provide that proceedings for an offence against the regulations made under this Act may be commenced not later than a period, not exceeding 2 years, after the date alleged to be the date on which the offence was committed.

[32] Section 223A

Insert after section 223—

223A Suspension of foreign driver

- (1) The Commissioner of Police may suspend the authority of the holder of a foreign driver licence to drive in this jurisdiction if the total number of demerit points specified under section 32 for all relevant offences during the relevant 3-year period is 13 or more.
- (2) The suspension must not exceed 14 days.
- (3) The Commissioner of Police must immediately—
- (a) notify Transport for NSW that the Commissioner has suspended the authority and the grounds for the suspension, and

- (b) report to Transport for NSW whether in the Commissioner's opinion a further suspension or the cancellation of the authority is warranted or is desirable in the interest of public safety.
- (4) In this section—
 - relevant 3-year period* means the 3-year period immediately before the suspension under this section would commence.
 - relevant offence* means an offence against an Act or statutory rule—
 - (a) for which a penalty notice has been issued to the holder of a foreign driver licence, and
 - (b) for which demerit points may, but have not yet been, incurred.

[33] Section 224 When immediate licence suspension notice may be issued by police officer

Insert “or as the holder of a foreign driver licence” after “driven” in section 224(1)(c)(ii).

[34] Section 239A

Insert after section 239—

239A Extension of additional sanction to corporation owned motor vehicles

- (1) A police officer may exercise an authorised power in relation to a motor vehicle if the police officer reasonably believes—
 - (a) the registered operator of the motor vehicle is a corporation, and
 - (b) a circumstance set out in subsection (2), (3) or (4) is made out.
- (2) The motor vehicle was operated on a road to commit a sanctionable offence—
 - (a) on that day, or
 - (b) during the past 10 days.
- (3) The motor vehicle is being operated on a road—
 - (a) by a person who is disqualified from holding or obtaining a driver licence, and
 - (b) to commit an offence, not being a camera recorded offence, of driving a vehicle at a speed more than 30 kilometres per hour over the designated speed limit applying to the driver for the length of road at the time the offence is committed.
- (4) The motor vehicle is being operated on a road by a person—
 - (a) who is disqualified from holding or obtaining a driver licence or who has never been licensed, and
 - (b) who has been convicted of an offence against section 53(3) or 54(1) on 2 or more previous occasions within the past 5-year period.
- (5) The police officer is to notify Transport for NSW of the exercise of the authorised power.
- (6) Transport for NSW is, as soon as is practicable, to notify the registered operator of the motor vehicle of the exercise of the authorised power.
- (7) For the purposes of this Part—
 - (a) the exercise of the authorised power of seizure and impoundment is taken to be the exercise of the power under section 239(1)(a), and

- (b) the exercise of the authorised power of confiscation of number-plates is taken to be the exercise of the power under section 239(1)(c), and
 - (c) sections 240, 243 and 245–247 do not apply in relation to the exercise of an authorised power under this section, and
 - (d) to avoid doubt, section 248(1)(b) and (2)(b) do not apply to a motor vehicle impounded or number-plates confiscated under this section, and
 - (e) section 249(3) is taken to include the following paragraph after paragraph (b)—
 - (c) for the exercise of an authorised power under section 239A—alleged extreme hardship to a person other than the driver of the motor vehicle who committed, or is alleged to have committed, the offence that led to the exercise of the power.
- (8) In this section—
authorised power means—
- (a) to seize and take charge of a motor vehicle and cause it to be moved to a place determined by the Commissioner of Police, or
 - (b) to remove and confiscate the number-plates affixed to a motor vehicle and attach a number-plate confiscation notice to the motor vehicle.

[35] Section 271 Fixing fees for services concerning driver licensing and vehicle registration

Omit “, or amend, waive or revoke fees,” from section 271(1).

[36] Section 271(2A)

Insert after section 271(2)—

- (2A) Transport for NSW may waive or remit all or part of a fee fixed under this section.

[37] Section 276 Service of documents on persons generally

Omit section 276(4).

[38] Section 277A

Insert after section 277—

277A Use of information in registers

- (1) Transport for NSW may use information recorded in a register required to be kept under this Act for the purpose of exercising its functions, including delegated functions.
- (2) Nothing in this section overrides Part 3.5.

[39] Section 279A

Insert after section 279—

279A Reports on liability of corporations for camera recorded offences

- (1) Revenue NSW is to prepare a monthly report that contains the following information for the month—
 - (a) the number of penalty notices issued to corporations for camera recorded offences, categorised by each particular offence,

- (b) the number of offences against section 188(1) alleged to have been committed by a corporation, whether dealt with by penalty notice or court attendance notice,
 - (c) the number of times the registration of a registrable vehicle was suspended because the registered operator of the vehicle was a corporation that committed an offence under section 188(1).
- (2) As soon as reasonably practicable after preparing a report, Revenue NSW is to make the report available to the public on a NSW Government website.
- (3) In this section—
camera recorded offence has the same meaning as in Part 7.3, Division 2.

[40] Schedule 1 Examples of statutory rule-making powers

Insert after clause 3—

3A Offensive or discriminatory material displayed on vehicles

The suspension and cancellation of the registration of a registrable vehicle on the grounds of offensive or discriminatory material displayed on the vehicle, including the circumstances in which material is considered to be offensive or discriminatory.

[41] Schedule 4 Savings, transitional and other provisions

Insert at the end of the Schedule, with appropriate Part and clause numbering—

**Provision consequent on enactment of Road
Transport Legislation Amendment Act 2020**

Application of amendments

- (1) A *previous offence*, within the meaning of section 9, extends to an offence committed before the commencement of the amendments to section 9 made by the amending Act.
- (2) Section 41A applies in relation to notices given before the commencement of the section if, immediately before the commencement—
 - (a) the period of suspension has not commenced, or
 - (b) the licence ineligibility has not taken effect.
- (3) A period during which a driver licence is suspended under an immediate licence suspension notice is to be taken into account under section 59(4B) even if it occurred before the commencement of that subsection.
- (4) Section 200(4) extends to an offence against the road transport legislation committed before the commencement of the subsection.
- (5) Section 202 applies only in relation to an offence committed after the commencement of the section.
- (6) The authority of the holder of a foreign driver licence to drive in this jurisdiction may be suspended under section 223A even if some or all of the demerit points were for an offence for which the penalty notice was issued before the commencement of the section.
- (7) In this clause, *amending Act* means the *Road Transport Legislation Amendment Act 2020*.

Schedule 2 Amendment of other legislation

2.1 Driving Instructors Act 1992 No 3

[1] **Section 10 Prerequisites for licence**

Omit “after considering a report on the person made under section 13 or any other relevant matter,” from section 10(4)(b).

[2] **Sections 12 and 13**

Omit the sections.

[3] **Section 14 Consideration of information**

Omit “report of” from section 14(1). Insert instead “information received from”.

[4] **Section 14(2)**

Omit the subsection.

2.2 Fines Act 1996 No 99

[1] **Section 38 Circumstances in which person issued with penalty reminder notice for vehicle or vessel offence is not liable to pay penalty**

Omit “name and address” from section 38(1)(a).

Insert instead “nomination details”.

[2] **Section 38(1)(b)**

Omit “that name and address”. Insert instead “the nomination details”.

[3] **Section 38(3F)**

Omit “either a false name or address (or both a false name and address) for the person is”.

Insert instead “false nomination details for the person are”.

[4] **Section 38(4)**

Insert in alphabetical order—

Australian driver licence has the same meaning as in the *Road Transport Act 2013*.

foreign driver licence has the same meaning as in the *Road Transport Act 2013*.

nomination details of a person means—

- (a) the person’s name, address and date of birth, and
- (b) if the offence relates to a vehicle—
 - (i) the number of the person’s Australian driver licence or foreign driver licence, and
 - (ii) if the person holds a foreign driver licence—the jurisdiction that issued the licence.

2.3 Photo Card Act 2005 No 20

[1] **Section 13D, heading**

Insert “or use” after “Release”.

[2] Section 13D

Omit “may use and release information (including photographs) in the Register to the Secretary or the Chief Executive Officer of Service NSW if the release of the information is for the purpose of the issue of a digital Photo Card”.

Insert instead—

may—

- (a) use information, including photographs, in the Register for the purpose of exercising its functions, including delegated functions, or
- (b) release information, including photographs, in the Register if the release of the information is for the purposes of—
 - (i) the issue of a digital Photo Card, or
 - (ii) the use of a digital Photo Card, or
 - (iii) verifying the authenticity of a digital Photo Card.

[3] Section 15 Security of information on Register

Insert “or used” after “released”.

2.4 Road Transport (General) Regulation 2013

[1] Part 2, Division 1 Database of declarations and orders

Omit the Division.

[2] Clause 149

Insert after clause 148—

149 Limitation period for certain offences

For the purposes of section 202(2) of the Act, the following provisions of the *Road Transport (Vehicle Registration) Regulation 2017* are prescribed as provisions for which proceedings may be commenced not later than 2 years after the date alleged to be the date for an offence on which the offence was committed—

- (a) clause 68(8)–(10),
- (b) clause 69(4) and (6),
- (c) clause 85(5),
- (d) clause 93.

[3] Schedule 1 Fees

Omit the matter relating to item 1.

2.5 Road Transport (Driver Licensing) Regulation 2017

Clause 104 Use of information by TfNSW

Omit the clause.

2.6 Road Transport (Vehicle Registration) Regulation 2017

Clause 45 Suspension or cancellation of registration by Authority

Omit “a second or subsequent offence under section 188(1) of the Act or a former corresponding provision in relation to any vehicle of the registered operator in any 3 year period” from clause 45(3).

Insert instead “an offence under section 188(1) of the Act”.

[Second reading speech made in—
Legislative Assembly on 15 October 2020
Legislative Council on 22 October 2020]