



New South Wales

Road Transport (Driver Licensing) Amendment Regulation 1999

under the

Road Transport (Driver Licensing) Act 1998

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Road Transport (Driver Licensing) Act 1998*.

CARL SCULLY, M.P.,
Minister for Transport

Explanatory note

The objects of this Regulation are:

- (a) to remove the right to internal review of decisions by the Roads and Traffic Authority, pending commencement of proposed new complementary review and appeal arrangements (other appeal rights are to remain), and
- (b) to extend transitional provisions relating to appeals to all decisions of the Roads and Traffic Authority to refuse or refuse to renew or vary, or to suspend or cancel, driver licences under the *Road Transport (Driver Licensing) Act 1998* and the *Road Transport (Driver Licensing) Regulation 1999*, and to certain decisions relating to exemptions of visiting drivers from licence requirements, and
- (c) to set out the right of the Roads and Traffic Authority to refuse to issue licences to certain persons who, if licensed, would have been suspended because of incurring demerit points during good behaviour periods resulting from previously incurring demerit points, and
- (d) to extend the period for lodging an appeal from 21 days to 28 days after a person is notified of a relevant decision, and

1999 No 225

Road Transport (Driver Licensing) Amendment Regulation 1999

Explanatory note

- (e) to stay certain decisions of the Authority pending appeals, and
- (f) to provide for procedures enabling the immediate variation, suspension and cancellation of driver licences on medical grounds, and
- (g) to require a visiting licensed New Zealand driver to apply for a driver licence after more than 3 months' residence in this State, and
- (h) to prevent visiting licensed drivers from being exempt from having a driver licence in this State if they are suspended from driving in this State or have had a driver licence cancelled in this State and would not be entitled to have their cancelled driver licence reinstated in this State because of a failure to comply with reinstatement conditions,
- (i) to require a visiting interstate driver or foreign driver exempted from having a driver licence in this State to carry the interstate or foreign driver licence when driving and to produce it at the request of a police officer,
- (j) to make it clear that it is an offence not to comply with the conditions of a provisional licence, and
- (k) to enable cancellation, when 2 or more demerit points are incurred, of probationary licences continued under the *Road Transport (Driver Licensing) Regulation 1999*, and
- (l) to make other transitional provisions and amendments.

This Regulation is made under the *Road Transport (Driver Licensing) Act 1998*, including clause 4 of Schedule 3 and section 19 (the general regulation-making power).

Road Transport (Driver Licensing) Amendment Regulation 1999

1 Name of Regulation

This Regulation is the *Road Transport (Driver Licensing) Amendment Regulation 1999*.

2 Commencement

This Regulation commences on 21 May 1999.

3 Amendment of Road Transport (Driver Licensing) Regulation 1999

The *Road Transport (Driver Licensing) Regulation 1999* is amended as set out in Schedule 1.

4 Notes

The explanatory note does not form part of this Regulation.

Schedule 1 Amendments

(Clause 3)

[1] Clause 6 Eligibility to apply for issue or variation of driver licence

Omit “an Australian driver licence (including a provisional licence) of the class C for a period of, or periods totalling, at least 24 months and” from clause 6 (4) (c).

[2] Clause 18 When application for driver licence can be refused

Insert after clause 18 (2) (c):

, or

- (d) if the applicant is a person who, if already licensed, would be liable to have action taken against the person under section 16(9) of the Act.

[3] Clause 39 Procedures for variation, suspension or Cancellation of driver licence

Insert “or reverse” after “avoid” in clause 39 (1) (b).

[4] Clause 39 (1) (c)

Omit the paragraph. Insert instead:

- (c) the date after service of the notice on which the variation, suspension or cancellation takes effect.

[5] Clause 39 (2) and (3)

Omit “of intention” wherever occurring.

[6] Clause 39 (2A)

Insert after clause 39 (2):

- (2A) Despite subclause (1) (c), if the Authority decides to vary, suspend or cancel a person’s driver licence on the ground that the person has failed or refused to submit to a test or medical examination required under or in accordance with the Act or this Regulation, or has failed such a test or examination, the Authority may determine that the variation, suspension or cancellation is to take effect on the service of the notice.

[7] Clause 50 Authority to ensure notification of appeal rights

Omit clause 50 (2). Insert instead:

- (2) If an affected person is eligible to appeal to a Local Court under clause 52, the Authority must advise the person of the person's right to appeal.

[8] Clause 50 (3)

Omit "periods specified in clauses 51 (3) and 52 (2) are".

Insert instead "period specified in clause 52 (2) is".

[9] Clause 51 Application for internal review

Omit the clause.

[10] Clause 52 Appeal to Local Court

Omit clause 52 (1) (b) and (c). Insert instead:

- (b) not to grant an application for the issue, variation or renewal of a driver licence,
- (c) to vary, suspend or cancel the person's driver licence under the Act or this Regulation.

[11] Clause 52 (1A) and (1B)

Insert after clause 52 (1):

- (1A) An affected person may appeal to a Local Court constituted by a Magistrate sitting alone against a decision of the Authority, based on an opinion formed by the Authority under clause 55 (2) (e) or (f), that the person has ceased to be exempt from the requirements of the Act and this Regulation.
- (1B) Despite any other provision of this clause, an appeal under this clause does not permit review of:
 - (a) the guilt or innocence of the person concerned, or
 - (b) the imposition of a penalty or the level of a penalty imposed on the person concerned.

Note. The effect of this provision is that, for example, in an appeal against a suspension action taken because of demerit points the Local Court cannot revisit the issue of an offence in relation to which the demerit points were incurred or the imposition of a penalty in relation to such an offence. In any such case, the Local Court may exercise only the powers that the Authority could exercise under the provisions of the Act authorising the suspension (see subsection (6)).

[12] Clause 52 (2)

Omit “21”. Insert instead “28”.

[13] Clause 52 (9) and (10)

Insert after clause 52 (8):

- (9) This clause, as amended by the *Road Transport (Driver Licensing) Amendment Regulation 1999*, applies to a decision made before or after the commencement of that amendment.
- (10) Despite subclause (2), an appeal may be made in respect of a decision made before the commencement of the *Road Transport (Driver Licensing) Amendment Regulation 1999* not later than 28 days after that commencement.

[14] Clause 52A

Insert after clause 52:

52A Stay of decision pending appeal

- (1) This clause applies to the following decisions:
 - (a) a decision by the Authority to suspend, vary or cancel a driver licence on any ground other than medical unfitness or incompetence to drive a motor vehicle,
 - (b) a decision by the Authority that an exemption from a requirement to hold a driver licence no longer applies to a person.

- (2) If an affected person appeals against a decision, the decision has effect:
- (a) only if the Court hearing the appeal confirms the decision or the appeal is withdrawn, and
 - (b) subject to any variation of the decision by the Court, and
 - (c) on and from the date on which the Court confirms the decision or on such later date as the Court may order or, if the appeal is withdrawn, on the date on which it is withdrawn.

[15] Clause 53 Affected person entitled to be given reasons

Omit “51 (1) or 52 (1) to seek internal review of a decision of the Authority or” from clause 53 (1).
Insert instead “52”.

[16] Clause 53 (3)

Omit “seeks internal review of a decision under clause 51 or”.

[17] Clause 55 Interstate and international visitors

Insert “driver licence or” after “New Zealand” in clause 55 (1) (a).

[18] Clause 55 (1)

Insert “(other than this clause)” after “Regulation”.

[19] Clause 55 (2) (a)

Insert “or New Zealand driver licence or learner licence” after “learner licence”.

[20] Clause 55 (2) (c)

Insert “suspended or” before “disqualified”.

1999 No 225

Road Transport (Driver Licensing) Amendment Regulation 1999

Schedule 1 Amendments

[21] Clause 55 (2) (c1)

Insert after clause 55 (2) (c):

- (c1) if the person would in the opinion of the Authority, if the person applied for a driver licence, be refused because of a failure to meet the conditions of reinstatement of a driver licence after cancellation,

[22] Clause 55 (5)

Insert after clause 55 (4):

- (5) A visiting driver exempted under this clause must, when driving a motor vehicle or a trailer on a road or road related area:
 - (a) carry the licence held by the visiting driver and referred to in subclause (1), and
 - (b) if requested to do so by a police officer, produce the licence to the police officer.

Maximum penalty: 20 penalty units

[23] Clause 56 Licence conditions

Insert “or provisional licence” after “driver licence”.

[24] Schedule 1 Demerit points offences and penalties

Insert “or regulation 124, *Motor Traffic Regulations 1935*” after “Section 4A (1A), *Traffic Act 1909*” wherever occurring in Column 3 of Part 1.

[25] Schedule 4 Savings and transitional provisions

Insert after clause 3:

4 Cancellation of probationary licences

This clause applies to a probationary licence continued in force under clause 1.

Road Transport (Driver Licensing) Amendment Regulation 1999

Amendments

Schedule 1

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- (2) A probationary licence may be cancelled by the Authority if the licence holder incurs 2 or more demerit points.
 - (3) Despite clause 1, a probationary licence is not to be treated as a driver licence for the purposes of section 16 of the Act.
 - (4) Clause 39 applies to a decision by the Authority to cancel a licence under this clause.