



New South Wales

Road Transport (General) Amendment (Licence Suspension) Act 2004 No 59

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New South Wales

Road Transport (General) Amendment (Licence Suspension) Act 2004 No 59

Act No 59, 2004

An Act to amend the *Road Transport (General) Act 1999* with respect to the suspension of driver licences; and for other purposes. [Assented to 6 July 2004]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Road Transport (General) Amendment (Licence Suspension) Act 2004*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Road Transport (General) Act 1999 No 18

The *Road Transport (General) Act 1999* is amended as set out in Schedule 1.

4 Amendment of Road Transport (Driver Licensing) Act 1998 No 99

The *Road Transport (Driver Licensing) Act 1998* is amended as set out in Schedule 2.

5 Repeal of Road Transport (General) Amendment (Operator Onus Offences) Act 2002 No 11

The *Road Transport (General) Amendment (Operator Onus Offences) Act 2002* is repealed.

Schedule 1 Amendment of Road Transport (General) Act 1999

(Section 3)

[1] Section 34 Immediate suspension of licence in certain circumstances

Omit section 34 (1) and (2). Insert instead:

- (1) If a person is charged by a police officer with:
 - (a) an offence involving the death of, or grievous bodily harm to, another person caused by the use of a motor vehicle, being an offence that comprises:
 - (i) the crime of murder or manslaughter, or
 - (ii) an offence under section 33, 35 (1) (b), 52A or 54 of the *Crimes Act 1900*, or
 - (b) an offence under section 9 (3) or (4), 15 (4), 16 or 22 (2) of the *Road Transport (Safety and Traffic Management) Act 1999*,

the same or another police officer may, at any time within 48 hours after the person has been charged, give the person a suspension notice.

- (1A) If it appears to a police officer that a person has committed an offence under the *Road Transport (Safety and Traffic Management) Act 1999* (other than a camera recorded offence within the meaning of section 43 of this Act) of exceeding a speed limit prescribed under that Act by more than 45 kilometres per hour, the same or another police officer may, at any time within 48 hours of:
 - (a) the person being served with a penalty notice for the offence under Division 1, or
 - (b) the person being charged with the offence,give the person a suspension notice.
- (2) For the purposes of this section, a **suspension notice** is a notice, in a form approved by the Authority:
 - (a) if the person is charged with an offence referred to in subsection (1) or (1A)—informing the person that any driver licence held by the person is suspended from a date specified in the notice, or (if the notice so

- specifies) immediately on receipt of the notice, until the charge is heard and determined by a court (or until the charge is withdrawn), and
- (b) if the person is served with a penalty notice for an offence referred to in subsection (1A)—informing the person that any driver licence held by the person is suspended from a date specified in the notice, or (if the notice so specifies) immediately on receipt of the notice, until whichever of the following happens first:
 - (i) a period of 6 months elapses after the date on which the offence is alleged to have been committed,
 - (ii) if the person elects to have the matter determined by a court in accordance with Part 3 of the *Fines Act 1996*—the matter is heard and determined by a court or a decision is made not to take or continue proceedings against the person,
 - (iii) a decision is made not to enforce the penalty notice, and
 - (c) informing the person of the right of review in accordance with section 48 (Notice of decision and review rights to be given by administrators) of the *Administrative Decisions Tribunal Act 1997* or alternative appeal right, and
 - (d) requiring the person:
 - (i) to surrender any such licence, by a date specified in the notice, to a police officer, or
 - (ii) if the notice so specifies—to surrender any such licence in the person’s possession immediately to the police officer who gave the person the notice.

[2] Section 34 (3)

Omit “, in accordance with the terms of the notice, until the charge is heard and determined by a court or withdrawn”.

Insert instead “in accordance with the terms of the notice”.

[3] Section 34 (7) (d) and (e)

Insert at the end of section 34 (7) (c):

, and

- (d) a decision is made not to take or continue proceedings against a person when the person is notified in writing of that fact by a police officer or when the proceedings are discharged by the court, and
- (e) a decision is made not to enforce a penalty notice in relation to a person when the person is notified in writing of that fact by:
 - (i) a police officer, or
 - (ii) an appropriate officer for the penalty notice within the meaning of Part 3 of the *Fines Act 1996*, or
 - (iii) a member of staff of the State Debt Recovery Office.

[4] Section 34 (8)

Insert after section 34 (7):

(8) In this section:

grievous bodily harm has the same meaning as it has in the *Crimes Act 1900*.

[5] Section 35 Suspension of driving privileges of visiting driver

Insert in alphabetical order in section 35 (1):

grievous bodily harm has the same meaning as it has in the *Crimes Act 1900*.

[6] Section 35 (1), definition of “suspension notice”

Omit the definition. Insert instead:

suspension notice, in relation to an authorised visiting driver who is charged with an offence referred in subsection (2) or (2A), or served with a penalty notice for an offence referred to in subsection (2A), means a notice, in a form approved by the Authority:

- (a) if the driver is charged with an offence referred to in subsection (2) or (2A)—informing the driver that the

driver's authority to drive in New South Wales is suspended from a date specified in the notice, or (if the notice so specifies) immediately on receipt of the notice, until the charge is heard and determined by a court (or until the charge is withdrawn), and

- (b) if the driver is served with a penalty notice for an offence referred to in subsection (2A)—informing the driver that the driver's authority to drive in New South Wales is suspended from a date specified in the notice, or (if the notice so specifies) immediately on receipt of the notice, until whichever of the following happens first:
 - (i) 6 months elapses after the date on which the offence is alleged to have been committed,
 - (ii) if the driver elects to have the matter determined by a court in accordance with Part 3 of the *Fines Act 1996*—the matter is heard and determined by a court or a decision is made not to take or continue proceedings against the driver,
 - (iii) a decision is made not to enforce the penalty notice, and
- (c) informing the driver of the right of review in accordance with section 48 (Notice of decision and review rights to be given by administrators) of the *Administrative Decisions Tribunal Act 1997* or alternative appeal right.

[7] Section 35 (2) and (2A)

Omit section 35 (2). Insert instead:

- (2) If an authorised visiting driver is charged by a police officer with:
 - (a) an offence involving the death of, or grievous bodily harm to, another person caused by the use of a motor vehicle, being an offence that comprises:
 - (i) the crime of murder or manslaughter, or
 - (ii) an offence under section 33, 35 (1) (b), 52A or 54 of the *Crimes Act 1900*, or

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- (b) an offence under section 9 (3) or (4), 15 (4), 16 or 22 (2) of the *Road Transport (Safety and Traffic Management) Act 1999*,

the same or another police officer may, at any time within 48 hours after the authorised visiting driver has been charged, give the authorised visiting driver a suspension notice.

- (2A) If it appears to a police officer that an authorised visiting driver has committed an offence under the *Road Transport (Safety and Traffic Management) Act 1999* (other than a camera recorded offence within the meaning of section 43 of this Act) by exceeding a speed limit prescribed under that Act by more than 45 kilometres per hour, the same or another police officer may, at any time within 48 hours of:

- (a) the authorised visiting driver being served with a penalty notice for the offence under Division 1, or
(b) the authorised visiting driver being charged with the offence,

give the authorised visiting driver a suspension notice.

[8] Section 35 (3)

Omit “, in accordance with the terms of the notice, until the charge is heard and determined by a court or withdrawn”.

Insert instead “in accordance with the terms of the notice”.

[9] Section 35 (5) (d) and (e)

Insert at the end of section 35 (5) (c):

, and

- (d) a decision is made not to take or continue proceedings against a person when the person is notified in writing of that fact by a police officer or the proceedings are discharged by the court, and
(e) a decision is made not to enforce a penalty notice in relation to a person when the person is notified in writing of that fact by:
(i) a police officer, or

- (ii) an appropriate officer for the penalty notice within the meaning of Part 3 of the *Fines Act 1996*, or
- (iii) a member of staff of the State Debt Recovery Office.

[10] Section 43 Liability of responsible person for vehicle for designated offences

Insert after section 43 (7):

- (7A) A court or authorised officer may have regard to a statutory declaration that is provided by a person in deciding, for the purposes of subsection (3), (5) or (7), whether the person did not know and could not with reasonable diligence have ascertained the name and address of the person in charge of a vehicle.
- (7B) If a statutory declaration is provided by a person under subsection (7A), it must include the matters (if any) prescribed by the regulations.

[11] Section 43 (9)

Omit “or (4)”. Insert instead “, (4) or (7A)”.

[12] Schedule 2 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

*Road Transport (General) Amendment (Licence Suspension)
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Amendment of Road Transport (Driver Licensing) Act 1998

Schedule 2

Schedule 2 Amendment of Road Transport (Driver Licensing) Act 1998

(Section 4)

Section 33A Effect of expiry of driver licence during a suspension period

Insert “of this Act or section 33, 34 or 35 of the *Road Transport (General) Act 1999*” after “or 33” in section 33A.

[Second reading speech made in—
Legislative Assembly on 2 June 2004
Legislative Council on 28 June 2004]

BY AUTHORITY