



New South Wales

Road Transport (Driver Licensing) Amendment (Demerit Points System) Act 2008 No 82

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New South Wales

Road Transport (Driver Licensing) Amendment (Demerit Points System) Act 2008 No 82

Act No 82, 2008

An Act to amend the *Road Transport (Driver Licensing) Act 1998* and various regulations with respect to the demerit points system applying to New South Wales drivers. [Assented to 5 November 2008]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Road Transport (Driver Licensing) Amendment (Demerit Points System) Act 2008*.

2 Commencement

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

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

The *Road Transport (Driver Licensing) Act 1998* is amended as set out in Schedule 1.

4 Amendment of Road Transport (Driver Licensing) Regulation 2008

The *Road Transport (Driver Licensing) Regulation 2008* is amended as set out in Schedule 2.

5 Amendment of Road Transport (General) Regulation 2005

The *Road Transport (General) Regulation 2005* is amended as set out in Schedule 3.

6 Repeal of Act

- (1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.
- (2) The repeal of this Act does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by this Act.

Schedule 1 Amendment of Road Transport (Driver Licensing) Act 1998

(Section 3)

[1] Part 2, Division 2, Subdivision 1, heading

Insert before section 14:

Subdivision 1 Demerit points register and offences

[2] Section 14 Demerit points register

Omit section 14 (3) and (4). Insert instead:

- (3) Demerit points incurred by a person for an offence for which demerit points may be incurred under this Act or the regulations are to be recorded in the demerit points register in respect of the day on which the offence was committed.

[3] Part 2, Division 2, Subdivision 2, heading

Insert before section 16:

Subdivision 2 Consequences for unrestricted licence holders who incur demerit points

[4] Section 16, heading

Omit the heading. Insert instead “**Suspension of licence**”.

[5] Section 16 (1)

Omit the subsection.

[6] Section 16 (2)

Omit “holder of a driver licence (not being a provisional or learner licence)”.

Insert instead “holder of an unrestricted driver licence”.

[7] Sections 16 (2) and 16A (1), notes

Omit the notes.

[8] Section 16 (3) (b)

Omit “section 14 (4)”. Insert instead “sections 16AA (2)”.

[9] Section 16 (6)

Omit “the person’s driver licence is suspended for the period applicable under this section from”.

Insert instead “all driver licences held by the person are suspended for the period applicable under this section on and from”.

[10] Sections 16 (8) and 16A (5) (a) and (7)

Omit “from” wherever occurring. Insert instead “on and from”.

[11] Section 16 (9)

Omit “the person’s driver licence”.

Insert instead “all driver licences held by the person”.

[12] Section 16 (11)

Insert “or section 16A (1)” after “subsection (2)”.

[13] Section 16AA

Insert before section 16A:

16AA Consequences in relation to licence applications

- (1) Demerit points recorded against a person must be taken into account if the person subsequently obtains or applies for a driver licence within 3 years of the date of the offence for which the demerit points are incurred.
- (2) For the purposes of subsection (1), if a person applies for a driver licence (including for the renewal of a licence) having incurred 12 or more demerit points within a 3 year period ending on the day on which the applicant last committed an offence for which demerit points have been recorded against the applicant:
 - (a) the Authority may refuse the person’s application and take action under section 16A, or
 - (b) the Authority may grant the licence and take action under section 16.

[14] Section 16A, heading

Omit the heading. Insert instead “**Licence ineligibility**”.

[15] Section 16A (8) (a)

Omit “the person’s driver licence”.

Insert instead “all driver licences held by the person”.

[16] Section 16A (8) (b)

Omit the paragraph. Insert instead:

- (b) all driver licences held by the person are suspended for that period on and from the date specified in the notice.

[17] Section 16A (10)

Omit the subsection. Insert instead:

- (10) Despite subsections (6) and (9), demerit points incurred by a person:

- (a) after the person is served with a notice of licence ineligibility but before the licence ineligibility takes effect, or
- (b) if the person makes an election in accordance with subsection (7), after the person is served with the notice of licence ineligibility and before the 12 months' period of good behaviour begins,

are not taken to be deleted under this section when the licence ineligibility takes effect or period of good behaviour begins and are to be taken into account for the purposes of subsection (1) or section 16 (2) from the end of the licence ineligibility or period of good behaviour.

[18] Section 16A (11)

Omit "subsection (7) or (10)". Insert instead "subsection (6) or (9)".

[19] Part 2, Division 2, Subdivision 3

Omit section 17. Insert instead:

Subdivision 3 Consequences for learner or provisional licence holders who incur demerit points

17 Threshold number of demerit points for learner or provisional licence holders

In this Subdivision, the *threshold number of demerit points* is:

- (a) for the holder of a learner licence or a provisional P1 licence, 4 or more demerit points, and
- (b) for the holder of a provisional P2 licence, 7 or more demerit points.

17A Consequences generally

If the holder of a learner licence or a provisional licence incurs the threshold number of demerit points within the 3 year period ending on the day on which the person last committed an offence for which demerit points have been recorded against the person, the Authority may:

- (a) issue a notice of suspension or cancellation of licence under section 17B, or
- (b) if the person subsequently applies for a driver licence:
 - (i) refuse the application and issue a notice of licence ineligibility under section 17C, or
 - (ii) (if the driver licence applied for is a learner or provisional licence) grant the licence and issue a notice of suspension or cancellation of licence under section 17B.

17B Suspension or cancellation of licence

- (1) The Authority may give a notice of licence suspension or cancellation to the holder of a learner licence or a provisional licence who incurs the threshold number of demerit points within the 3 year period ending on the day on which the person last committed an offence for which demerit points have been recorded against the person.
- (2) A notice of licence suspension must specify the date on which the suspension is to take effect and any driver licence to which the notice applies, and must contain any other matters specified by the regulations. The date specified must not be earlier than 28 days after the notice is given.
- (3) If a person is served with a notice of licence suspension under this section, all driver licences held by the person in relation to which the threshold number of demerit points is the same or lower than the number of demerit points taken into account for the purposes of the notice, are suspended on and from the date, and for the period, specified in the notice.
- (4) On the commencement of a period of suspension, all demerit points recorded in the demerit points register against the person at the date of the notice, and taken into account for the purpose of the notice, are taken to be deleted.
- (5) Nothing in subsection (4) prevents the Authority from retaining records of deleted demerit points incurred by any person.

- (6) The regulations may make provision for or with respect to the following matters:
- (a) notices of cancellation to holders of learner licences or provisional licences who incur the threshold number of demerit points,
 - (b) the circumstances in which the Authority may issue a notice of cancellation to holders of learner licences or provisional licences who incur the threshold number of demerit points,
 - (c) prescribing the driver licences held by a person that may be cancelled as a consequence of incurring demerit points the subject of a notice of cancellation served on the person,
 - (d) the deletion of demerit points recorded in the demerit points register against a person on cancellation of the person's licence.

17C Licence ineligibility

- (1) The Authority may give a notice of licence ineligibility to the applicant for a licence (including a provisional licence or learner licence) who incurs the threshold number of demerit points within the 3 year period ending on the day on which the person last committed an offence for which demerit points have been recorded against the person.
- (2) However, the Authority may not give a person both a notice of licence ineligibility and a notice of licence suspension or cancellation under section 17B in respect of the same 3 year period.
- (3) The notice of licence ineligibility must specify the date on which the ineligibility is to take effect (not being a date that is earlier than the date on which the notice is given), the period of ineligibility and any licence to which the notice applies, and must contain any other matters specified by the regulations. If the notice is delivered to the applicant personally, the specified date is taken to be the date on which it is so delivered unless the notice provides for a later date.
- (4) Except as provided by subsection (5), a person who has been served with a notice of licence ineligibility under this section is not entitled to apply for or be issued with any driver licence on and from the date, and for the period, specified in the notice.

- (5) Subsection (4) does not prevent a person served with a notice of licence ineligibility under this section who holds a driver licence of a licence class different from that the subject of the application in relation to which the notice is given, from applying for or being issued with:
 - (a) a renewal of that licence, or
 - (b) a higher grade of that class of licence.
- (6) On the commencement of an ineligibility period, all demerit points recorded in the demerit points register against the person at the date of the notice, and taken into account for the purpose of the notice, are taken to be deleted.
- (7) Nothing in subsection (6) prevents the Authority from retaining records of deleted demerit points incurred by any person.
- (8) In this section, a reference to a grade of driver licence is a reference to a learner licence, a provisional P1 licence, a provisional P2 licence or an unrestricted licence (ordered from lowest to highest).

[20] Part 2, Division 2, Subdivision 4

Insert before section 18:

Subdivision 4 General matters relating to demerit points

17D Determining demerit thresholds where combined licences

- (1) If a person holds 2 classes of driver licence and a different threshold number of demerit points applies to each of those licences:
 - (a) demerit points incurred on the licence to which the higher threshold applies may be counted only towards the threshold applying to that licence, and
 - (b) demerit points incurred on the licence to which the lower threshold applies may be counted towards either threshold.
- (2) If a person holds 2 classes of driver licence and the same threshold number of demerit points applies to both of those licences, demerit points incurred on either licence may be counted towards the threshold.
- (3) If a person who makes an election in accordance with section 16 (8) or 16A (7) holds 2 classes of driver licence, demerit points incurred on either licence may be counted towards the threshold number of demerit points referred to in section 16 (9) or 16A (8), respectively.

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- (4) For the purposes of subsections (1) and (2), the threshold number of demerit points applying to a licence is:
- (a) for an unrestricted licence, the threshold of 12 or more demerit points applying to the holder of an unrestricted licence under Subdivision 2, and
 - (b) for a learner, provisional P1 or provisional P2 licence, the threshold applying to the holders of those licences under Subdivision 3.

[21] Section 18, heading

Omit the heading. Insert instead “**Demerit point penalties**”.

[22] Section 18 (1)

Omit “section 16”. Insert instead “section 16 or 17B”.

[23] Section 33 Cancellation or suspension of driver licence by Authority

Omit section 33 (1) (a) and (b). Insert instead:

- (a) the holder pays the whole or any part of the penalty specified in a penalty notice issued to the holder in respect of the offence, or
- (b) the holder has not paid the penalty specified in the penalty notice issued to the holder in respect of the offence and has not elected to have the matter dealt with by a court, and the time for the holder to have the matter so dealt with has lapsed.

[24] Section 33A Effect of expiry of driver licence during suspension period

Omit “section 16, 16A”.

Insert instead “the regulations or section 16, 16A, 17B”.

[25] Schedule 3 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Road Transport (Driver Licensing) Amendment (Demerit Points System) Act 2008

[26] Schedule 3, Part 5

Insert at the end of Schedule 3:

**Part 5 Provisions consequent on enactment of
Road Transport (Driver Licensing)
Amendment (Demerit Points System) Act
2008**

13 Interpretation

- (1) In this Part:
amending Act means the *Road Transport (Driver Licensing) Amendment (Demerit Points System) Act 2008*.
- (2) In this Part, a reference to an old provision is a reference to that provision as in force before its amendment or substitution by the amending Act and a reference to a new provision is a reference to that provision as amended, substituted or inserted by the amending Act.

14 Existing suspensions

A notice of suspension given under old section 17 and in force immediately before the commencement of new section 17B is taken to be a notice of suspension given under new section 17B.

15 Demerit points incurred for offences already committed

Demerit points incurred by the holder of a provisional licence for offences committed before the commencement of new Subdivision 3 of Division 2 of Part 2, and not taken into account for the purposes of old section 16, 16A or 17 before that commencement, may be taken into account for the purposes of new section 16, 16A or 17B but not new section 17C.

16 Validation

Anything done or omitted to be done before the commencement of the amendments made by Schedule 1 [9]–[12] and [15]–[17] and [20] to the amending Act that would have been valid had those amendments been in force when it was done or omitted to be done is validated.

[27] Dictionary

Insert in alphabetical order:

provisional P1 licence means:

- (a) a provisional licence issued in accordance with clause 20(1) of the *Road Transport (Driver Licensing) Regulation 2008*, or
- (b) any class of licence prescribed by the regulations under this Act that replaces any such licence.

provisional P2 licence means:

- (a) a provisional licence issued in accordance with clause 27(1) of the *Road Transport (Driver Licensing) Regulation 2008*, or
- (b) any class of licence prescribed by the regulations under this Act that replaces any such licence.

Schedule 2 Road Transport (Driver Licensing) Regulation 2008

(Section 4)

[1] Clause 25 Demerit points and speeding offences—eligibility for provisional P2 or unrestricted licence

Omit clause 25 (a).

[2] Clause 30 Demerit points and speeding offences—eligibility for unrestricted licence

Omit clause 30 (a).

[3] Clause 42 Suspended or disqualified persons not eligible

Insert after clause 42 (1):

(1A) Despite subclause (1), a person who is issued a notice of licence suspension under Division 2 of Part 2 of the Act is not eligible to apply for a driver licence on and from the date the notice is issued until:

- (a) if the notice is issued under section 16 (2) of the Act and the person elects to be of good behaviour under section 16 (8) of the Act, the time that the person so elects, or
- (b) if the person makes no such election or the notice is issued under section 16 (9), 16A (8) or 17B (1) of the Act, the end of the licence suspension.

[4] Clause 42 (4) and (5)

Omit the subclauses. Insert instead:

(4) A person whose licence is suspended under section 16, 16A or 17B of the Act and who (before the expiration of the period of licence suspension) is subsequently disqualified from driving, remains ineligible to apply for a driver licence, after the period of disqualification ends, for a further period equivalent to the unexpired portion of the period of licence suspension.

[5] Clause 54 Application for surrender of driver licence

Omit “17 or” wherever occurring in clause 54 (3) (b) and (c).

Insert instead “17B or”.

[6] Schedule 1 National schedule of demerit point offences

Insert “learner licence or” before “provisional P1 licence” wherever occurring in Column 2 in the matter relating to Rule 20 of the *Road Rules 2008*, being Rule 20 (except in a school zone or where the applicable speed limit is specified by rule 24–1, 24–2, 24–3 or 24–4) and Rule 20 (in school zone, except where the applicable speed limit is specified by rule 24–1, 24–2, 24–3 or 24–4).

[7] Schedule 2 Additional demerit point offences

Insert “(1),” after “rule 24–1” wherever occurring in Column 1 in the matter relating to Rule 20 of the *Road Rules 2008*, being Rule 20 (where the applicable speed limit is specified by rule 24–1 (2) or (3), except in a school zone) and Rule 20 (in a school zone where the applicable speed limit is specified by rule 24–1 (2) or (3)).

[8] Schedule 2

Omit “speed limit for provisional driver:” wherever occurring in Column 2 in the matter relating to Rule 20 of the *Road Rules 2008*, being Rule 20 (where the applicable speed limit is specified by rule 24–1 (2) or (3), except in a school zone) and Rule 20 (in a school zone where the applicable speed limit is specified by rule 24–1 (2) or (3)).

Insert instead “speed limit for learner or provisional driver:”.

[9] Schedule 2

Omit “otherwise than by the holder of a provisional P1 licence” wherever occurring in Column 2 in the matter relating to Rule 20 of the *Road Rules 2008*, being Rule 20 (where the applicable speed limit is specified by rule 24–1 (2) or (3), except in a school zone) and Rule 20 (in a school zone where the applicable speed limit is specified by rule 24–1 (2) or (3)).

Insert instead “in the case of the holder of a provisional P2 licence”.

[10] Schedule 2

Omit “in the case of the holder of a provisional P1 licence” wherever occurring in Column 2 in the matter relating to Rule 20 of the *Road Rules 2008*, being Rule 20 (where the applicable speed limit is specified by rule 24–1 (2) or (3), except in a school zone) and Rule 20 (in a school zone where the applicable speed limit is specified by rule 24–1 (2) or (3)).

Insert instead “in the case of the holder of a learner licence or provisional P1 licence”.

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Schedule 2 Road Transport (Driver Licensing) Regulation 2008

[11] Schedule 2

Insert “learner licence or” before “provisional P1 licence” wherever occurring in Column 2 in the matter relating to Rule 20 of the *Road Rules 2008*, being Rule 20 (where the applicable speed limit is specified by rule 24–3).

Schedule 3 Road Transport (General) Regulation 2005

(Section 5)

[1] Clause 18 Appeals concerning driver licensing

Omit “17 or” from clause 18 (1) (c).

[2] Clause 18 (1) (c1)

Insert after clause 18 (1) (c):

- (c1) a decision to give the person a notice of licence suspension under section 17B (1), or a notice of licence ineligibility under section 17C (1), of the *Road Transport (Driver Licensing) Act 1998*,

[Agreement in principle speech made in Legislative Assembly on 24 September 2008
Second reading speech made in Legislative Council on 29 October 2008]

BY AUTHORITY