



New South Wales

Road Transport (General) Amendment (Consecutive Disqualification Periods) Act 2009 No 69

Contents

	Page
1 Name of Act	2
2 Commencement	2
Schedule 1 Amendment of Road Transport (General) Act 2005 No 11	3
Schedule 2 Consequential amendment of other legislation	7



New South Wales

Road Transport (General) Amendment (Consecutive Disqualification Periods) Act 2009 No 69

Act No 69, 2009

An Act to amend the *Road Transport (General) Act 2005* to make further provision for the commencement of consecutive driver licence disqualifications and to make consequential amendments to certain other legislation. [Assented to 1 October 2009]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the Road Transport (General) Amendment (Consecutive Disqualification Periods) Act 2009.

2 Commencement

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

Schedule 1 **Amendment of Road Transport (General) Act 2005 No 11**

[1] **Section 188A**

Insert after section 188:

188A Bringing forward of consecutive disqualification periods to avoid orphan periods

- (1) This section applies to a licence disqualification (an *orphan licence disqualification*) imposed on a person if:
 - (a) the licence disqualification is to be completed consecutively with another licence disqualification (the *primary licence disqualification*) for the person, and
 - (b) the primary licence disqualification ends prematurely because it is annulled, quashed or set aside, or is varied to shorten its period, before the date for its completion (whether or not the disqualification has already commenced), and
 - (c) the premature ending of the primary licence disqualification results in a period (the *disqualification orphan period*) during which the person would, but for this section, not be disqualified from holding a driver licence before the consecutive licence disqualification commences.
- (2) An orphan licence disqualification is taken by operation of this section (and without the need for a further order of a court):
 - (a) to commence at the beginning of what would otherwise have been the disqualification orphan period, and
 - (b) to be completed after the expiry of a period that is equivalent in length to the period that the licence disqualification would have been in force if it had commenced and ended as intended.

Note. Section 25A (1A) of the *Road Transport (Driver Licensing) Act 1998* provides that the driver of a motor vehicle who drives the vehicle during a period of licence disqualification the commencement and completion dates of which have been altered by operation of this section is not guilty of driving while disqualified unless the Authority has previously given written notice of the altered dates to the driver. However, the operation of this section in other contexts (such as when a person seeks to apply for a driver licence) is not affected.

- (3) If the operation of this section in bringing forward the commencement of an orphan licence disqualification would result in:
- (a) any other licence disqualifications intended to be completed consecutively with any different licence disqualifications (whether or not the orphan licence disqualification) not having effect consecutively, or
 - (b) any other licence disqualifications intended to be wholly or partly completed concurrently with any different licence disqualifications (whether or not the orphan licence disqualification) not having effect concurrently,
- the commencement and completion dates for each of those other licence disqualifications are also brought forward by operation of this section (and without the need for a further order of a court) to the extent necessary to ensure that they continue to have effect consecutively or concurrently, as the case may be.
- (4) If the primary licence disqualification is reinstated by a court (whether on appeal or otherwise) after this section operates to bring forward the commencement of the orphan licence disqualification, the balance of the reinstated primary licence disqualification remaining to be completed is, unless the court orders otherwise, to be completed:
- (a) if only the commencement of the orphan licence disqualification is brought forward by operation of this section—immediately after the completion of that disqualification, or
 - (b) if the commencement of more than one consecutive licence disqualification is brought forward by operation of this section—immediately after the last of the consecutive licence disqualifications is completed.
- (5) For the purposes of this section, a licence disqualification is consecutive with another licence disqualification if it is to commence:
- (a) when the other licence disqualification is completed, or
 - (b) on a date that coincides with the anticipated date for the completion of the other licence disqualification.
- (6) Nothing in this section limits any power that a court has:
- (a) to make an order for licence disqualification (whether or not to be completed concurrently or consecutively with any other licence disqualification), or
 - (b) to annul, quash, set aside or vary a licence disqualification.

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- (7) This section has effect despite anything to the contrary in:
- (a) the road transport legislation or any other Act or statutory rule, and
 - (b) any order of a court that imposes a licence disqualification (or a period for a licence disqualification) to which this section applies.
- (8) In this section:
- licence disqualification* means the disqualification of a person under the road transport legislation from holding a driver licence as a consequence of the person being convicted of an offence by a court (whether or not the disqualification is imposed by an order of a court).

[2] Section 189 Effect of disqualification

Omit “under the road transport legislation” from section 189 (1).

[3] Section 189 (1)

Insert “under the road transport legislation” after “a person is disqualified”.

[4] Section 201 Period of disqualification of habitual traffic offender

Insert at the end of section 201 (6):

Note. Section 188A brings forward a licence disqualification of a person that is to commence on the completion of a previous licence disqualification in circumstances where the previous licence disqualification ends prematurely resulting in the person ceasing to be disqualified for a period before the new licence disqualification commences.

[5] Schedule 1 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

*Road Transport (General) Amendment (Consecutive
Disqualification Periods) Act 2009*

[6] Schedule 1

Insert at the end of the Schedule (with appropriate Part and clause numbers):

**Part Provisions consequent on enactment of
Road Transport (General) Amendment
(Consecutive Disqualification Periods)
Act 2009**

**Application of section 188A to certain existing licence
disqualifications**

- (1) Section 188A (as inserted by the amending Act) extends to a licence disqualification (an *existing licence disqualification*) that:
 - (a) was imposed before the relevant day, and
 - (b) had commenced (or had not yet commenced) immediately before the relevant day.
- (2) If a disqualification orphan period in relation to an existing licence disqualification was already in existence immediately before the relevant day, section 188A (as inserted by the amending Act) applies in relation to that licence disqualification as if the disqualification orphan period for the purposes of that section had come into existence on the relevant day.
- (3) In this clause:

amending Act means the *Road Transport (General) Amendment (Consecutive Disqualification Periods) Act 2009*.

disqualification orphan period and *licence disqualification* have the same meaning as they have in section 188A (as inserted by the amending Act).

relevant day means the day on which the amending Act commences.

Schedule 2 Consequential amendment of other legislation

2.1 Road Transport (Driver Licensing) Act 1998 No 99

Section 25A Offences committed by disqualified drivers or drivers whose licences are suspended or cancelled

Insert after section 25A (1):

- (1A) Subsection (1) does not apply to a driver of a motor vehicle in relation to a period of disqualification the commencement and completion dates of which have been altered by operation of section 188A of the *Road Transport (General) Act 2005* unless the Authority has given written notice of the altered dates to the driver before the driver is alleged to have driven the vehicle.

Note. Section 239 of the *Road Transport (General) Act 2005* (and regulations made for the purposes of that section) provide for the service and giving of documents to persons under the road transport legislation, which includes this Act.

2.2 Road Transport (General) Regulation 2005

Clause 6 Service of notices on persons under Road Transport (Driver Licensing) Act 1998

Insert “or a notice under section 25A (1A) of that Act” after “*Road Transport (Driver Licensing) Act 1998*” in clause 6 (3).

[Agreement in principle speech made in Legislative Assembly on 25 June 2009
Second reading speech made in Legislative Council on 23 September 2009]

BY AUTHORITY