



New South Wales

Road Transport and Related Legislation Amendment Act 2017 No 61

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New South Wales

Road Transport and Related Legislation Amendment Act 2017 No 61

Act No 61, 2017

An Act to make miscellaneous amendments to certain road transport and related legislation.
[Assented to 23 November 2017]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Road Transport and Related Legislation Amendment Act 2017*.

2 Commencement

- (1) This Act commences on the date of assent to this Act, except as provided by this section.
- (2) Schedules 1.3 and 2 commence on a day or days to be appointed by proclamation.
- (3) Schedule 3 commences on 1 November 2017 or, if the date of assent to this Act is later, on the date of assent.

Schedule 1 Amendment of Road Transport Act 2013 No 18

1.1 Amendment concerning maximum penalty for offences against statutory rule

Section 26 Offences in the statutory rules and certificate evidence

Omit “34” from section 26 (2). Insert instead “50”.

1.2 Amendments concerning detection of dimension offences

[1] Section 121 Definitions

Insert in alphabetical order:

dimension, in relation to a vehicle, means the length, width or height of the vehicle.

maximum dimension requirement, in relation to a vehicle, means a requirement concerning a maximum dimension for the vehicle.

[2] Section 134 Approval of devices by Governor

Insert after section 134 (1) (e):

- (f) measuring the dimensions of a vehicle (whether or not the vehicle concerned is also photographed),
- (g) photographing a vehicle that is driven in contravention of a maximum dimension requirement.

[3] Section 134 (2) (f1)

Insert after section 134 (2) (f):

- (f1) in the case of a device that photographs a vehicle that is driven in contravention of a maximum dimension requirement:
 - (i) the maximum dimension requirement applicable to the vehicle on the length of road on which it is travelling, and
 - (ii) the dimension of the vehicle to which that requirement relates,

[4] Section 135 Definitions

Insert after paragraph (c) of the definition of *detectable traffic offence* in section 135 (1):

- (d) a dimension offence.

[5] Section 135 (1)

Insert in alphabetical order:

dimension offence means an offence against this Act or the statutory rules (or the *Heavy Vehicle National Law (NSW)* or the regulations in force for the purposes of that Law) that involves driving a vehicle in contravention of a maximum dimension requirement applicable to the vehicle on a length of road.

[6] Section 135 (2)

Insert at the end of section 135 (2) (e):

- , and
- (f) an approved traffic enforcement device is *approved for dimension measurement* if it is approved under section 134 for the use referred to in section 134 (1) (f), and

- (g) an approved traffic enforcement device is *approved for dimension imaging* if it is approved under section 134 for the use referred to in section 134 (1) (g).

[7] Section 136A

Insert after section 136:

136A Evidence of vehicle dimension by dimension measurement device

Evidence may be given in proceedings for a dimension offence of a measurement of any vehicle dimensions obtained and recorded by an approved traffic enforcement device that is approved for dimension measurement.

[8] Section 137A

Insert after section 137:

137A Certificates concerning reliability of dimension measurement devices

In proceedings for a dimension offence in which evidence is given of a measurement of any vehicle dimensions obtained from an approved traffic enforcement device that is approved for dimension measurement, a certificate purporting to be signed by an appropriate inspection officer for the device certifying the following matters is admissible and is prima facie evidence of those matters:

- (a) that the device is an approved traffic enforcement device that is approved for dimension measurement,
- (b) that on a day specified in the certificate (being within the period prescribed by the statutory rules before the alleged time of the offence) the device was tested in accordance with the statutory rules and sealed by an appropriate inspection officer for the device,
- (c) that on that day the device was accurate and operating properly.

[9] Section 138 Admissibility of photographs taken by devices—generally

Insert after section 138 (1) (d):

- (e) in the case of proceedings for a dimension offence—a photograph that is tendered as:
 - (i) being taken by means of the operation, on a day specified on the photograph, of an approved traffic enforcement device that is approved for dimension imaging installed at a location specified on the photograph, and
 - (ii) if the photograph is taken by a digital camera device—bearing a security indicator of a kind prescribed by the statutory rules.

[10] Section 141 Rebuttal of evidence concerning operation of approved traffic enforcement devices

Insert “137A,” after “137,” in section 141 (1).

[11] Section 183 Definitions

Insert at the end of paragraph (e) of the definition of *appropriate approved traffic enforcement device* in section 183 (1):

, or

- (f) in the case of a dimension offence—an approved traffic enforcement device that is approved for dimension imaging.

[12] Section 183 (1), definition of “camera recorded offence”

Insert after paragraph (f) of the definition of *camera recorded offence*:

- (g) a dimension offence in respect of which the penalty notice or the court attendance notice indicates that the offence was detected by an appropriate approved traffic enforcement device for the offence.

1.3 Amendments concerning written-off heavy vehicles

[1] Section 4 Definitions

Omit the definition of *NSW written-off vehicles register* from section 4 (1).

Insert in alphabetical order:

Austroads means Austroads Limited (ACN 136 812 390), and includes any successor to or continuation of that company.

licensed repairer means a person who holds a motor vehicle repairer’s licence within the meaning of the *Motor Dealers and Repairers Act 2013*.

motor dealer has the same meaning as it has in the *Motor Dealers and Repairers Act 2013*, and includes any other person declared to be a motor dealer by the statutory rules under this Act.

motor vehicle recycler has the same meaning as it has in the *Motor Dealers and Repairers Act 2013*, and includes any other person declared to be a motor vehicle recycler by the statutory rules under this Act.

NSW written-off heavy vehicles register—see section 104B.

NSW written-off light vehicles register—see section 83.

[2] Part 4.5 (except in section 83 (3) (e) and as otherwise amended by this Act)

Omit each word or expression specified in Column 1 of the following Table wherever occurring (including definitions, headings and notes) and regardless of capitalisation.

Insert instead the word or expression specified in Column 2 opposite the word or expression specified in Column 1 with capitalisation that corresponds to that of the omitted word or expression and rearrange any altered definitions in appropriate order:

Table

Column 1	Column 2
Current word or expression	Replacement word or expression
NSW written-off vehicles register	NSW written-off light vehicles register
written-off vehicle	written-off light vehicle
written-off vehicles (except where occurring in the expression “NSW written-off vehicles register”)	written-off light vehicles
notifiable vehicle	notifiable light vehicle
notifiable vehicles	notifiable light vehicles
vehicle damage assessment	light vehicle damage assessment

Column 1	Column 2
Current word or expression	Replacement word or expression
certificate of compliance	light vehicle certificate of compliance
certificates of compliance	light vehicle certificates of compliance

[3] Section 82 Definitions

Omit the definitions of *Austroads*, *certificate of compliance*, *licensed repairer*, *motor dealer* and *motor vehicle recycler*.

Insert in alphabetical order:

light vehicle certificate of compliance means a light vehicle certificate of compliance issued by a licensed repairer under this Part.

[4] Sections 82 (definition of “vehicle identifier”), 84 (3), (4) and (5), 86 (1), 88 (1) and (2), 89, 90, 96 and 98 (1), (4) and (5)

Omit “a vehicle” wherever occurring. Insert instead “a light vehicle”.

[5] Section 83 NSW written-off light vehicles register

Omit “about vehicles” from section 83 (1). Insert instead “about light vehicles”.

[6] Sections 83 (3), 84 (1), 97 (1) and 103 (3)

Omit “any vehicle” wherever occurring. Insert instead “any light vehicle”.

[7] Section 84 Registration of written-off light vehicles

Omit section 84 (6). Insert instead:

(6) In this section:

interstate written-off light vehicle means a light vehicle recorded on a register of written-off vehicles (however described) of another jurisdiction as:

- (a) a statutory written-off light vehicle or similar (being a light vehicle that is not permitted to be registered in that jurisdiction by the vehicle registration authority of that jurisdiction), or
- (b) a repairable written-off light vehicle or similar (being a light vehicle that may in certain circumstances be registered in that jurisdiction), but only if that vehicle has not been registered in Australia since being so recorded.

[8] Part 4.5, Division 3, heading

Insert “**light**” after “**damaged**”.

[9] Section 88 Notifiable light vehicles

Omit “jurisdiction, and” from section 88 (1) (c) (iii). Insert instead “jurisdiction.”.

[10] Section 88 (1) (d)

Omit the paragraph.

[11] Section 89 Light vehicles that are a total loss

Omit “written off vehicle” from section 89 (1). Insert instead “written-off light vehicle”.

[12] Section 98 Light vehicle certificates of compliance

Insert at the end of section 98 (1):

Note. Section 12 of the *Motor Dealers and Repairers Act 2013* makes it an offence for a person to carry on the business of a motor vehicle repairer unless the person is the holder of a motor vehicle repairer's licence. Section 15 of that Act also makes it an offence for a motor vehicle repairer, in the course of business, to enter into an agreement for any repair work to be done by another person who is not the holder of a motor vehicle repairer's licence.

[13] Section 103 Statutory rules concerning written-off light vehicles

Omit "class of vehicles" from section 103 (3). Insert instead "class of light vehicles".

[14] Part 4.5A

Insert after Part 4.5:

Part 4.5A Written-off heavy vehicles

Division 1 Preliminary

104A Definitions

In this Part:

former written-off heavy vehicle has the meaning given by section 104B (1).

heavy vehicle certificate of compliance means a heavy vehicle certificate of compliance issued by a licensed repairer under this Part.

insurer means a person who carries on the business of insuring vehicles, and includes any other person declared to be an insurer by the statutory rules.

non-repairable damage means damage of a class, or damage caused in circumstances, prescribed by the statutory rules.

notifiable heavy vehicle—see section 104E.

repairable written-off heavy vehicle has the meaning given by section 104B (1).

self-insurer means any person who, in the course of a business, is the registered operator for the number of notifiable heavy vehicles that may be prescribed by the statutory rules in respect of each of which there is no insurance policy with an insurer covering loss or damage.

statutory written-off heavy vehicle has the meaning given by section 104B (1).

total loss—see section 104F.

vehicle identifier, in relation to a heavy vehicle, has the same meaning given by section 525 of the *Heavy Vehicle National Law (NSW)*, and includes any other kind of identifier prescribed by the statutory rules.

Division 2 Restrictions on registration of certain written-off heavy vehicles

104B NSW written-off heavy vehicles register

- (1) The Authority is to maintain a register of written-off heavy vehicles (the *NSW written-off heavy vehicles register*) that records information about heavy vehicles that the Authority has reason to believe:

- (a) are written-off heavy vehicles of a kind that the statutory rules provide are excluded from being registered regardless of whether they can be repaired (*statutory written-off heavy vehicles*), or
 - (b) are written-off heavy vehicles of a kind that the statutory rules provide can be registered if they are repaired in the circumstances prescribed by the statutory rules (*repairable written-off heavy vehicles*), or
 - (c) were previously written-off heavy vehicles but which have since been repaired and then registered (*former written-off heavy vehicles*).
- (2) The register is to contain such information as the Authority thinks appropriate.
- (3) In this section *written-off heavy vehicle* includes any heavy vehicle:
- (a) that has been assessed to be a total loss by a person in accordance with Division 3, or
 - (b) that has been disposed of to a motor vehicle recycler by a self-insurer, or
 - (c) that has been demolished or dismantled by a motor vehicle recycler, or
 - (d) that is in the control of a motor vehicle recycler and is intended to be demolished or dismantled, or
 - (e) that is prescribed by the statutory rules.

104C Registration of written-off heavy vehicles

- (1) The Authority must not register, renew or transfer the registration of any heavy vehicle (or if the vehicle is registered, the Authority must cancel the registration of the vehicle) if its vehicle identifier is the same as the vehicle identifier of:
- (a) a statutory written-off heavy vehicle or an interstate written-off heavy vehicle, or
 - (b) a written-off heavy vehicle that the Authority reasonably believes has suffered non-repairable damage.
- (2) If the Authority cancels the registration of a heavy vehicle under this section, the Authority must immediately notify the registered operator of the vehicle of the cancellation.
- (3) Despite section 2.8 of the *Motor Accident Injuries Act 2017* and section 14 (3) of the *Motor Accidents Compensation Act 1999*, a third-party policy (within the meaning of those Acts) is not cancelled immediately upon cancellation of registration of a heavy vehicle under this section and continues to have effect until the day on which the registered operator of the vehicle is given notice of the cancellation of registration.
- (4) In this section:
- interstate written-off heavy vehicle* means a heavy vehicle recorded on a register of written-off vehicles (however described) of another jurisdiction as:
- (a) a statutory written-off heavy vehicle or similar (being a heavy vehicle that is not permitted to be registered in that jurisdiction by the vehicle registration authority of that jurisdiction), or
 - (b) a repairable written-off heavy vehicle or similar (being a heavy vehicle that may in certain circumstances be registered in that jurisdiction), but only if that vehicle has not been registered in Australia since being so recorded.

Division 3 Assessment of damaged heavy vehicles

104D Definitions

In this Division:

assessor means an insurer, self-insurer, motor vehicle recycler, motor dealer or other person prescribed by the statutory rules.

heavy vehicle damage assessment means an assessment made by or on behalf of, and in the course of business of, an assessor as to whether or not a notifiable heavy vehicle (anywhere in Australia) is a total loss.

104E Notifiable heavy vehicles

- (1) For the purposes of this Part, a heavy vehicle is a **notifiable heavy vehicle** if the vehicle:
 - (a) complies (or complied at the time of manufacture) with the requirements of all Australian Design Rules adopted by the statutory rules applying to it, and
 - (b) is located anywhere in Australia but is linked to this jurisdiction because:
 - (i) it is registered in this jurisdiction, or
 - (ii) it was last registered in this jurisdiction, or
 - (iii) it has never been registered in Australia, but one or more of the incidents that caused the vehicle to be assessed as a total loss occurred in this jurisdiction.
- (2) For the purposes of this Part, a heavy vehicle is also a **notifiable heavy vehicle** if it is a heavy vehicle prescribed by the statutory rules.

104F Heavy vehicles that are a total loss

- (1) For the purposes of this Part, a heavy vehicle is a **total loss** if it has been damaged, dismantled or demolished to the extent that its salvage value as a written-off heavy vehicle plus the cost of repairing the vehicle for use on a road would be more than:
 - (a) the market value of the vehicle immediately before the damage, dismantling or demolition, or
 - (b) if the vehicle is insured for a specified amount (known as the sum insured), that specified amount.
- (2) The statutory rules may:
 - (a) prescribe other cases as cases in which a heavy vehicle is a total loss for the purposes of this Part, and
 - (b) prescribe exceptions to this section.
- (3) In this section:

market value of a heavy vehicle means the price that the vehicle would bring at open market, as determined (having regard to local market prices and the age and condition of the vehicle) by the person who assesses whether or not the vehicle is a total loss.

salvage value of a heavy vehicle means the value of the vehicle if sold for scrap or parts, or in a damaged state, as determined by the person who assesses whether or not the vehicle is a total loss.

104G Assessments as to whether a heavy vehicle is a total loss

- (1) An assessor must ensure that any heavy vehicle damage assessment made by or on behalf of the assessor is made by a person who:
 - (a) has the training, qualification or experience prescribed by the statutory rules for the purposes of this section, or
 - (b) acts on the advice of a person who has such training, qualifications or experience.Maximum penalty: 20 penalty units.
- (2) The Authority may, by notice in writing, exempt a person from subsection (1), before the relevant assessment is carried out. Such an exemption has effect only for the time specified in the exemption and if any conditions to which it is subject are complied with.

104H Factors relevant to assessments

An assessor must ensure that any heavy vehicle damage assessment made by or on behalf of the assessor:

- (a) includes an assessment of whether the vehicle has suffered non-repairable damage, and
- (b) bases any calculation of the cost of repair of the vehicle (for the purposes of assessing whether the vehicle is a total loss) on the standard of repairs, and the repair methods, prescribed by the statutory rules in relation to vehicles of that type.

Maximum penalty:

- (a) in the case of a corporation, 250 penalty units for a first offence or 500 penalty units for a second or subsequent offence, or
- (b) in any other case, 50 penalty units for a first offence or 100 penalty units for a second or subsequent offence.

104I Provision of results of assessments

- (1) An assessor must, if requested to do so by the registered operator or owner of a notifiable heavy vehicle or a person authorised by the Authority, provide the operator, owner or person with a written record of any heavy vehicle damage assessment made by or on behalf of the assessor of that vehicle setting out:
 - (a) a statement as to whether or not the vehicle has suffered non-repairable damage, and
 - (b) any other information prescribed by the statutory rules.Maximum penalty: 20 penalty units.
- (2) An assessor must, if directed in writing to do so by an authorised officer, provide the Authority with a written record of any heavy vehicle damage assessment made by or on behalf of the assessor setting out:
 - (a) a statement as to whether or not the vehicle has suffered non-repairable damage, and
 - (b) any other information specified in the direction.Maximum penalty: 20 penalty units.
- (3) More than one direction may be issued under subsection (2).

Note. Section 307C of the *Crimes Act 1900* makes it an offence for a person to produce a record under this section if the person does so knowing that the record is false or misleading.

104J Information about written-off and demolished heavy vehicles

- (1) An assessor must ensure that the Authority is provided with the information required by the statutory rules concerning each notifiable heavy vehicle that is assessed as being a total loss in the course of a heavy vehicle damage assessment conducted by or on behalf of the assessor:
 - (a) within 7 days after the assessment and before the vehicle is sold or otherwise disposed of, or
 - (b) within any other time prescribed by the statutory rules.
- (2) A self-insurer must ensure that the Authority is provided with the information required by the statutory rules concerning each notifiable heavy vehicle that is taken to be a total loss by virtue of being disposed of by the self-insurer (anywhere in Australia) to a motor vehicle recycler:
 - (a) within 7 days after the vehicle is disposed of, or
 - (b) within any other time prescribed by the statutory rules.
- (3) A motor vehicle recycler must ensure that the Authority is provided with the information required by the statutory rules concerning each notifiable heavy vehicle that the motor vehicle recycler intends to demolish or dismantle (anywhere in Australia) in the course of the business carried on by the motor vehicle recycler:
 - (a) within 7 days after the motor vehicle recycler forms the intention to demolish or dismantle the vehicle, or
 - (b) within any other time prescribed by the statutory rules.
- (4) Despite subsection (3), the information must be provided before the part of the vehicle to which the vehicle identifier is attached is sold or otherwise disposed of.
- (5) A person (other than an insurer) is not guilty of an offence against this section in respect of a failure to provide information concerning a notifiable heavy vehicle if the person proves to the court's satisfaction that the person believed, on reasonable grounds, that the required information concerning the vehicle had already been provided to the Authority by another person under this section.
Maximum penalty: 20 penalty units.

104K Maintenance of records

- (1) An assessor must maintain, and keep for at least 7 years, the following records in relation to each heavy vehicle damage assessment made by or on behalf of the assessor:
 - (a) the records required by the statutory rules,
 - (b) any other records that the Authority, by notice in writing, requires the assessor to maintain.
- (2) An authorised officer may, for the purposes of determining whether this Part has been complied with, direct in writing any person to produce any records required to be maintained under this Division.
- (3) A person must comply with such a direction within the time specified in the direction.
Maximum penalty: 20 penalty units.

104L False assessments

A person must not induce, attempt to influence, or coerce the making of a false heavy vehicle damage assessment or a heavy vehicle damage assessment that does not comply with this Part.

Maximum penalty:

- (a) in the case of a corporation, 250 penalty units for a first offence or 500 penalty units for a second or subsequent offence, or
- (b) in any other case, 50 penalty units for a first offence or 100 penalty units for a second or subsequent offence.

104M Removal of vehicle identifiers of heavy vehicles

An assessor must ensure that reasonable steps are taken to remove, deface, obliterate or destroy the vehicle identifier on any part of a heavy vehicle that has been assessed as being a total loss by or on behalf of the assessor, if required to do so:

- (a) by the statutory rules, or
- (b) by notice in writing served on the assessor by the Authority.

Maximum penalty: 20 penalty units.

104N Duty to attach written-off warning label to written-off heavy vehicles

- (1) An assessor must ensure that a written-off warning label is attached, in accordance with the statutory rules, at all times to any heavy vehicle in the person's possession or control that has been assessed as being a total loss:
 - (a) to the part of the vehicle to which the vehicle identifier is attached (in the case of a dismantled vehicle), or
 - (b) to the vehicle (in any other case).
- (2) The label must be attached within the period in which the information must be provided to the Authority about the vehicle under section 104J.

Maximum penalty: 20 penalty units.

Division 4 General

104O Heavy vehicle certificates of compliance

- (1) A licensed repairer may issue, in a form approved by the Authority, a heavy vehicle certificate of compliance in relation to a heavy vehicle if:
 - (a) the licensed repairer's licence is of a class that authorises the repairer to repair the type of vehicle, and the type of vehicle damage, the subject of certification, and
 - (b) the vehicle has been repaired by the licensed repairer or the repairer is satisfied that it has been repaired by another licensed repairer, and
 - (c) the licensed repairer is satisfied that the standard of repairs, and the repair methods used, are in accordance with the requirements adopted by or set out in the statutory rules.

Note. Section 12 of the *Motor Dealers and Repairers Act 2013* makes it an offence for a person to carry on the business of a motor vehicle repairer unless the person is the holder of a motor vehicle repairer's licence. Section 15 of that Act also makes it an offence for a motor vehicle repairer, in the course of business, to enter into an agreement for any repair work to be done by another person who is not the holder of a motor vehicle repairer's licence.

- (2) A licensed repairer must not issue a heavy vehicle certificate of compliance that the repairer knows, or ought reasonably to know, is false or misleading in a material particular.
Maximum penalty: 20 penalty units.
- (3) A person must not attempt to obtain a heavy vehicle certificate of compliance by a false or misleading statement or any misrepresentation or other dishonest means.
Maximum penalty: 20 penalty units.
- (4) The Authority may do any of the following in respect of a heavy vehicle that is the subject of a heavy vehicle certificate of compliance referred to in subsection (2) or (3):
 - (a) amend the NSW written-off heavy vehicles register accordingly,
 - (b) suspend the registration of the vehicle,
 - (c) refuse to transfer the registration of the vehicle,
 - (d) cancel the registration of the vehicle.
- (5) The Authority must not cancel the registration of a heavy vehicle unless it has first given the registered operator of the vehicle at least 14 days' notice of the proposed cancellation.
- (6) A person who is not a licensed repairer must not purport to issue a heavy vehicle certificate of compliance or advertise that the person is willing to issue a heavy vehicle certificate of compliance.
Maximum penalty: 1,000 penalty units.

104P Access to NSW written-off heavy vehicles register

- (1) The Authority is not to provide access to the NSW written-off heavy vehicles register except as provided by this section.
- (2) The Authority may allow the following to have access to the register:
 - (a) a government department, a public authority, a local authority or the NSW Police Force,
 - (b) a government department, a public authority, a local authority or the police force of another jurisdiction,
 - (c) Austroads, but only for the purpose of its national database of written-off heavy vehicles and information about them,
 - (d) an insurer, self-insurer, motor vehicle recycler or motor dealer,
 - (e) any other person or body, or class of persons or bodies, prescribed by the statutory rules.
- (3) The Authority may provide a person or body with information contained in the register.
- (4) The Authority may:
 - (a) impose any conditions that the Authority considers appropriate on the provision of access, or the provision of information, under this section, or
 - (b) limit the level of detail to which access is provided under this section as the Authority considers appropriate.

104Q Interference with NSW written-off heavy vehicles register

A person must not, except as authorised by the Authority:

- (a) obtain access to the NSW written-off heavy vehicles register or information contained in the register, or
- (b) make, alter or delete an entry in the register, or
- (c) interfere with the register in any other way.

Maximum penalty: 250 penalty units.

104R Unauthorised disclosure of information

A person must not disclose any information obtained in connection with the administration or execution of this Part, except:

- (a) in connection with the administration or execution of this Part or the statutory rules made for the purposes of this Part, or
- (b) for the purposes of Austroads administering a national database of written-off heavy vehicles and information about them and allowing driver licensing and vehicle registration authorities in the other States and Territories to have access to the information in the national database, or
- (c) for the purposes of any legal proceedings arising out of this Act or the statutory rules or of any report of such proceedings, or
- (d) to the Secretary within the meaning of the *Motor Dealers and Repairers Act 2013* for the purposes of any disciplinary or legal proceedings arising out of that Act or the regulations under that Act, or
- (e) to Transport for NSW for the purpose of assisting Transport for NSW to exercise its functions, or
- (f) in the circumstances prescribed by the statutory rules.

Maximum penalty: 20 penalty units.

104S Certificate evidence

A statement in a certificate purporting to have been issued by an Australian Authority or Australian authorised officer that, at a specified time or during a specified period, a specified vehicle was or was not on the NSW written-off heavy vehicles register or a register of written-off heavy vehicles (however described) kept under a law of another jurisdiction is admissible as evidence in any legal proceedings and is, until admissible evidence is given to the contrary, evidence of the matter certified.

104T Statutory rules concerning written-off heavy vehicles

- (1) Without limiting Chapter 2, the statutory rules may make provision for or with respect to the following matters:
 - (a) any matter relating to the registration of written-off heavy vehicles,
 - (b) any matter relating to the making of heavy vehicle damage assessments under this Part, including the conduct or duties of persons making those assessments,
 - (c) any matter relating to the making and keeping of records under this Part and the furnishing of information and records,
 - (d) any matter relating to the repair of written-off heavy vehicles,

- (e) any matter relating to the issue of heavy vehicle certificates of compliance, including the conduct or duties of persons issuing certificates of compliance,
 - (f) any matter relating to written-off warning labels,
 - (g) the disclosure of information obtained in connection with the administration or execution of this Part.
- (2) The statutory rules may require any person to provide the Authority with the information prescribed by the statutory rules concerning any notifiable heavy vehicle that is assessed as being a total loss while in the care, custody or control of the person (anywhere in Australia).
- (3) The statutory rules may exempt, with or without conditions, any heavy vehicle, any class of heavy vehicles or any class of persons from the operation of all or any of the provisions of this Part.
- (4) The statutory rules may adopt a provision set out in any specified publication.

104U Determination of first offences and second and subsequent offences against this Part

For the purposes of section 9 in its application to offences against provisions of this Part, it is declared that there is no applicable re-offending period for such offences.

Note. Section 9 provides for the determination of whether an offence against a provision of this Act or the statutory rules is a first offence or a second or subsequent offence.

1.4 Amendment concerning savings and transitional provisions

Schedule 4 Savings, transitional and other provisions

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

Part Provisions consequent on enactment of Road Transport and Related Legislation Amendment Act 2017

Written-off light vehicles

- (1) Any light vehicle that was a statutory written-off vehicle for the purposes of Part 4.5 of this Act immediately before its amendment by the amending Act is taken to be a statutory written-off light vehicle for the purposes of Part 4.5 of this Act (as amended).
- (2) Any vehicle that was a former written-off vehicle for the purposes of Part 4.5 of this Act immediately before its amendment by the amending Act is taken to be a former written-off light vehicle for the purposes of Part 4.5 of this Act (as amended).
- (3) A vehicle that is recorded on the NSW written-off light vehicles register under Part 4.5 of this Act as a former written-off light vehicle may also be referred to as a repairable written-off light vehicle.
- (4) In this clause:
amending Act means the *Road Transport and Related Legislation Amendment Act 2017*.

Schedule 2 Amendment of Driving Instructors Act 1992 No 3

[1] Section 2A Objects of Act

Insert “and performance” after “competency” in section 2A (a).

[2] Section 4 Meaning of “driving instructor”

Omit section 4 (1). Insert instead:

- (1) For the purposes of this Act, a *driving instructor* is a person:
 - (a) who:
 - (i) instructs another person for the purpose of teaching that other person to drive a motor vehicle, or
 - (ii) tests or assesses another person for the purpose of enabling that other person to obtain a driver licence or have it varied, and
 - (b) receives a monetary or other reward for so teaching, testing or assessing (whether from the person being instructed, tested or assessed or otherwise).
- (1A) Subject to the regulations, any other reference in this Act (including subsections (2) and (3)) to a driving instructor or other person giving driving instructions to another person includes a reference to testing or assessing another person for the purpose of enabling that other person to obtain a driver licence or have it varied.

[3] Section 5

Omit the section. Insert instead:

5 Meaning of “driving school”

For the purposes of this Act, a *driving school* is a business (including any franchise or co-operative) that:

- (a) provides persons with instructions for the purpose of teaching those persons to drive motor vehicles, or
- (b) tests or assesses persons for the purpose of enabling those persons to obtain driver licences or have them varied.

[4] Section 10 Prerequisites for licence

Insert at the end of section 10 (1) (d):

- , and
- (e) either holds a working with children check clearance granted under the *Child Protection (Working with Children) Act 2012* that is applicable to the work to be permitted by the licence or has a current application for such clearance under that Act.

[5] Section 10 (2)

Omit the subsection. Insert instead:

- (2) An applicant for a licence is not eligible to be issued with a licence:
 - (a) while serving a period of good behaviour under section 36 of the *Road Transport Act 2013* (or a corresponding provision under the law of any other State or Territory), or
 - (b) if the applicant is subject to an interim bar under the *Child Protection (Working with Children) Act 2012*.

[6] Section 10 (4) (b)

Omit the paragraph. Insert instead:

- (b) after considering a report on the person made under section 13 or any other relevant matter, the Authority is satisfied that the person is of good repute and good character.

[7] Section 10 (5) and (6)

Insert after section 10 (4):

- (5) Subsection (1) (e) does not apply if the applicant would be exempt from a working with children check clearance under the *Child Protection (Working with Children) Act 2012* for the work permitted by the licence.
- (6) The Authority may exempt any person or class of persons from the requirement under subsection (1) (e) to hold a clearance or to have a current application for such a clearance if the licence to be issued is limited to the instruction of persons who are 18 years old or older.

[8] Section 15 Testing of applicant

Omit section 15 (d). Insert instead:

- (d) the applicant's ability:
 - (i) to teach persons to drive motor vehicles (or motor vehicles of the relevant class), or
 - (ii) to test or assess persons seeking to obtain or vary driver licences for motor vehicles (or motor vehicles of the relevant class),

[9] Section 18 Grounds for refusal of application

Insert "good repute and" after "is a person of" in section 18 (1) (b).

[10] Section 18 (1) (g)

Omit "convictions (within the State or elsewhere) for offences involving motor vehicles".

Insert instead "offences (within the State or elsewhere) involving motor vehicles".

[11] Section 18 (2)

Omit the subsection. Insert instead:

- (2) The Authority may refuse an application if:
 - (a) the applicant has been found guilty of an offence (within the State or elsewhere) or is charged with an offence (within the State or elsewhere), and
 - (b) the Authority is satisfied that granting the application would be inconsistent with any of the primary objects of this Act.

[12] Section 18 (2A)

Omit "been guilty of". Insert instead "engaged in".

[13] Section 19 Conditional licences

Omit "The conditions may include, for example, a condition restricting the licensee to acting as a driving instructor in respect of motor vehicles of a specified class." from section 19 (1).

[14] Section 26 Grounds for suspension or cancellation of licence

Omit section 26 (1) (c). Insert instead:

- (c) the holder of the licence:
 - (i) has been found guilty of an offence against this Act or the regulations, or
 - (ii) has been found guilty of, or has charges pending before a court for, any other offence (within the State or elsewhere) and the Authority is satisfied that suspending or cancelling the licence will promote one or more of the primary objects of this Act,

[15] Section 26 (1) (f)

Omit the paragraph.

[16] Section 26 (1) (g)

Omit “is guilty of”. Insert instead “engaged in”.

[17] Section 26 (1) (h)–(m)

Insert after section 26 (1) (g):

- (h) the holder of the licence does not hold a working with children check clearance under the *Child Protection (Working with Children) Act 2012* or does not have a current application for such clearance under that Act,
- (i) the Authority is satisfied that the holder of the licence is not a person of good repute or good character,
- (j) the Authority is satisfied that the holder of the licence is not a fit and proper person to act as a driving instructor,
- (k) the Authority has reason to believe that the holder of the licence has engaged in bribery or fraud relating to the testing of applicants for driver licences under the *Road Transport Act 2013* or former *Road Transport (Driver Licensing) Act 1998* (or corresponding licences under the law in any other State, or in any Territory or country) or the issue of those licences,
- (l) having regard to the objects of the Act, the Authority is of the opinion that the holder of the licence is a person who no longer displays the competencies, or is no longer suitable, to act as a driving instructor,
- (m) the Authority is of the opinion that it would not be in the public interest for the holder of the licence to continue to hold a licence having regard to his or her record of offences (within the State or elsewhere) involving motor vehicles.

[18] Section 26 (1A)

Insert after section 26 (1):

- (1A) The Authority may issue a caution to the holder of a licence instead of suspending or cancelling the licence under subsection (1).

[19] Section 26 (2)

Omit the subsection.

[20] Section 31 Appeal against decision of Authority

Omit “21” from section 31 (4). Insert instead “28”.

[21] Section 36 Grounds on which prohibition order may be made

Insert at the end of the section:

- (2) Without limiting subsection (1) (b), a prohibition order may also be made against a person if:
 - (a) the Local Court is satisfied that the person is conducting a driving school or engaging in the control, management or administration of a driving school, and
 - (b) the person has been found guilty of an offence (within the State or elsewhere), and
 - (c) the Local Court is satisfied that the making of the order will promote one or more of the primary objects of this Act.

[22] Section 39 Appeal against making or variation of prohibition order

Omit “21” from section 39 (2). Insert instead “28”.

[23] Section 43 When order takes effect

Omit “21” wherever occurring in section 43 (1) and (2). Insert instead “28”.

[24] Section 58

Omit the section. Insert instead:

58 Service of documents

- (1) A document that is authorised or required by this Act or the regulations to be served on any person may be served by any of the following methods:
 - (a) in the case of an individual—by personal delivery to the person,
 - (b) by post to the address specified by the person for the service of documents of that kind,
 - (c) in the case of an individual who has not specified such an address—by post to the residential or business address of the person last known to the person serving the document,
 - (d) in the case of a corporation—by post to the registered office or any other office of the corporation or by leaving it at any such office with a person apparently over the age of 16 years,
 - (e) by email to an email address specified by the person for the service of documents of that kind,
 - (f) by any other method authorised by the regulations for the service of documents of that kind.
- (2) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on a person by any other method.
- (3) In this section, *serve* includes give or send.

[25] Section 59 Regulations

Insert after section 59 (2) (i):

- (j) the types or classes of licences relating to driving instructors and the conditions for each type or class.

[26] Schedule 1 Savings and transitional provisions

Insert at the end of clause 2 (1):

any other Act that amends this Act.

[27] Schedule 1, clause 2 (3)

Omit “in the Gazette”. Insert instead “on the NSW legislation website”.

[28] Schedule 1

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

**Part Provisions consequent on Road Transport and
Related Legislation Amendment Act 2017**

Definition

In this Part:

amending Act means the *Road Transport and Related Legislation Amendment Act 2017*.

Licence for testing or assessment not required for 12 months

Despite the amendments made by the amending Act, a person who tests or assesses other persons for the purpose of enabling those persons to obtain driver licences or have them varied is not required to hold a licence under this Act authorising the person to do so for the period of 12 months after the day on which Schedule 2 [2] to the amending Act commences.

Time for appeals against existing decisions

- (1) Section 31 (4), as amended by the amending Act, extends to an appeal against a decision made before the commencement of the amendment, but only if the period within which to make the appeal specified by the subsection before its amendment had not already expired.
- (2) Section 39 (2), as amended by the amending Act, extends to an appeal against a decision to make or vary a prohibition order made before the commencement of the amendment, but only if the period within which to make the appeal specified by the subsection before its amendment had not already expired.
- (3) Section 43, as amended by the amending Act, extends to a prohibition order or variation of a prohibition order made before the commencement of the amendments if subclause (2) operates to extend the time for making an appeal.

Schedule 3 Amendment of Point to Point Transport (Taxis and Hire Vehicles) Act 2016 No 34

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

function includes a power, authority or duty, and *exercise* a function includes perform a duty.

[2] Section 24 Notifiable occurrences

Omit section 24 (2). Insert instead:

- (2) In this section, a *notifiable occurrence* means an accident or incident of a kind that is prescribed by the regulations for the purposes of this section.

[3] Section 46A

Insert after section 46:

46A Surrender of authorisation

- (1) A provider may, at any time, surrender an authorisation to provide a taxi service or booking service by giving the Commissioner a notice of surrender.
- (2) A notice of surrender must be in the form approved by the Commissioner and specify the date for the surrender to take effect.
- (3) The Commissioner must cancel the authorisation:
- (a) if the date specified for the surrender to take effect is on or before the day on which the Commissioner receives the notice—on receiving the notice, or
- (b) if the date specified for the surrender to take effect is after the day on which the Commissioner receives the notice—on the date specified.

[4] Section 67 Commissioner to be notified of lease, sublease or arrangement

Omit “the Commissioner” from section 67 (1).

Insert instead “the person who facilitates the provision of the taxi service for the taxi licence”.

[5] Section 69A

Insert after section 69:

69A Surrender of taxi licence

- (1) A holder of a taxi licence may, at any time, surrender the taxi licence by giving the Commissioner a notice of surrender.
- (2) A notice of surrender must be in the form approved by the Commissioner and specify the date for the surrender to take effect.
- (3) The Commissioner must cancel the taxi licence:
- (a) if the date specified for the surrender to take effect is on or before the day on which the Commissioner receives the notice—on receiving the notice, or
- (b) if the date specified for the surrender to take effect is after the day on which the Commissioner receives the notice—on the date specified.

[6] Section 115A

Insert after section 115:

115A Persons assisting authorised officers

- (1) A person (the *assistant*), including an interpreter, may accompany an authorised officer entering a premises under this Division to assist the authorised officer if the authorised officer considers the assistance is necessary.
- (2) The assistant:
 - (a) may do the things at the place and in the manner that the authorised officer requires to assist the authorised officer to exercise the officer's functions under this Division, but
 - (b) must not do anything that the authorised officer does not have power to do, except as permitted under a search warrant.
- (3) Anything done lawfully by the assistant is taken for all purposes to have been done by the authorised officer.

[7] Section 130 Return of number-plates

Omit section 130 (1).

[8] Section 130 (2)

Omit "the Point to Point Transport Commissioner or the Commissioner of Police".

Insert instead "RMS".

[9] Section 136 Nature of proceedings for offences

Omit "the date alleged to be the date on which the offence was committed" from section 136 (4).

Insert instead "the offence first comes to the notice of the Commissioner".

[10] Section 139A

Insert after section 139:

139A Powers of Commissioner to obtain information

- (1) If the Commissioner has reasonable grounds to believe that a person is capable of giving information, providing documents or giving evidence in relation to a possible contravention of this Act, or that will assist the Commissioner to monitor or enforce compliance with this Act, the Commissioner may by written notice served on the person, require the person to do one or more of the following:
 - (a) to give the Commissioner, in writing signed by the person (or in the case of a body corporate, by a competent officer of the body corporate) and within the time and in the manner specified in the notice, that information of which the person has knowledge,
 - (b) to produce to the Commissioner, in accordance with the notice, those documents,
 - (c) to appear before a person appointed by the Commissioner on a day, and at a time and place, specified in the notice (being a day, time and place that are reasonable in the circumstances) and give either orally or in writing that evidence and produce those documents.

- (2) The notice must:
 - (a) state that the requirement is made under this section, and
 - (b) contain a statement to the effect that a failure to comply with a requirement is an offence, and
 - (c) if the notice requires the person to provide information or documents or answer questions:
 - (i) contain a statement about the effect of section 124, and
 - (ii) state that the person may attend with a legal practitioner.
- (3) The Commissioner must not make a requirement under subsection (1) (c) unless the Commissioner has taken all reasonable steps to obtain the information, including steps under subsection (1) (a) and (b), and has been unable to do so.
- (4) A person must not, without reasonable excuse, refuse or fail to comply with a requirement made under this section.

Maximum penalty:

 - (a) in the case of an individual—\$10,000, or
 - (b) in the case of a body corporate—\$50,000.
- (5) Subsection (4) places an evidential burden on the defendant to show a reasonable excuse.
- (6) Section 124 applies to a requirement under this section.

[11] Section 145 Reviews by NCAT

Insert “(but not a decision to cancel a surrendered authorisation or taxi licence)” after “licence” in section 145 (2) (b).

Schedule 4 Consequential amendments

4.1 Driving Instructors Regulation 2016

[1] Clause 4 Certain persons not driving instructors for purpose of Act

Insert at the end of the clause:

- (2) For the purposes of section 4 (3) of the Act, an employee or contractor of the Authority or Service NSW who assesses or tests a person for the purposes of enabling that person to obtain or vary a driver licence is not a driving instructor for the purposes of the Act.

[2] Clause 11A

Insert after clause 11:

11A Service of documents on approved electronic addresses

An electronic address (other than an email address) specified by the person being served of a kind approved by the Authority for documents of the kind concerned is prescribed for the purposes of section 58 (1) (f) of the Act.

4.2 Point to Point Transport (Taxis and Hire Vehicles) Regulation 2017

Clause 30 Notifiable occurrences

Omit “section 24 (2) (b)” from clause 30 (2). Insert instead “section 24 (2)”.

4.3 Road Transport (General) Regulation 2013

Clause 35 Testing and security indicators for approved traffic enforcement devices

Insert after clause 35 (1):

- (1A) For the purposes of section 137A (b) of the Act:
 - (a) an approved traffic enforcement device that is approved for dimension measurement must be tested for accuracy and functional requirements in accordance with a calibration method approved by the Authority, and
 - (b) the prescribed period is 12 months.

[Second reading speech made in—

Legislative Council on 18 October 2017

Legislative Assembly on 15 November 2017]