



New South Wales

# Road Transport (General) Amendment (Licence Suspension) Regulation 2005

under the

Road Transport (General) Act 1999

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Road Transport (General) Act 1999*.

MICHAEL COSTA, M.L.C.,  
Minister for Roads

## Explanatory note

The object of this Regulation is to enable a person to appeal to a Local Court against a suspension of the person's driver licence or authority to drive under section 34 or 35 of the *Road Transport (General) Act 1999*. This Regulation also makes amendments by way of statute law revision.

This Regulation is made under the *Road Transport (General) Act 1999*, including section 71 (the general regulation-making power) and clause 24 of Schedule 2 to that Act.

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Clause 1      Road Transport (General) Amendment (Licence Suspension) Regulation  
2005

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**Road Transport (General) Amendment (Licence  
Suspension) Regulation 2005**

under the

Road Transport (General) Act 1999

**1 Name of Regulation**

This Regulation is the *Road Transport (General) Amendment (Licence  
Suspension) Regulation 2005*.

**2 Commencement**

This Regulation commences on 24 June 2005.

**3 Amendment of Road Transport (General) Regulation 1999**

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

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## Schedule 1 Amendments

(Clause 3)

**[1] Schedule 2 Savings and transitional provisions**

Omit “clerk” wherever occurring in clauses 3 (1) and (3), 4A (2) and (3), 6 (4) and (5), 9 (1) and (3) and 10A (2) and (3).

Insert instead “registrar”.

**[2] Schedule 2, clauses 3 (1), 6 (1) and (2), 9 (1) and (1A) and 10A (1)**

Omit “constituted by a Magistrate sitting alone” wherever occurring.

**[3] Schedule 2, clause 4A (1)**

Omit “constituted by a Magistrate”.

**[4] Schedule 2, Part 1, Division 3**

Insert “**against decision of Authority**” after “**Appeals**” in the heading to the Division.

**[5] Schedule 2, Part 1, Division 3A**

Insert after Division 3:

**Division 3A Appeals against decision of police officer  
concerning licence suspension**

**8A Appeals to Local Court**

- (1) A person may appeal to a Local Court against a decision of a police officer to give the person a suspension notice under section 34 or 35 of the Act.
- (2) 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.
- (3) Notice of any such appeal specifying the grounds of the appeal must be lodged with the registrar of the Local Court to which the appeal is being made not later than 28 days after the date on which the appellant is given the suspension notice.

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Schedule 1 Amendments

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- (4) The registrar of the Local Court must give notice of the time and place of the hearing of any such appeal to the Commissioner of Police and to the appellant, and in the notice to the Commissioner must notify the Commissioner as to the grounds of appeal.
- (5) The hearing of the appeal may proceed despite any omission or error in a notice under subclause (4) or the failure to give any such notice if the Court is satisfied that the appellant and the Commissioner had knowledge of the time and place of the hearing and were not prejudiced by any such omission or error or by the failure to give any such notice.
- (6) A Local Court must hear and determine an appeal made to it under this clause and may confirm (with or without variation) or disallow the decision appealed against, or make such other order in the circumstances as to the Court seems just.
- (7) In determining an appeal made under this clause, a Local Court is not to vary or set aside a decision to issue a suspension notice unless it is satisfied that there are exceptional circumstances justifying a lifting or variation of the suspension.
- (8) For the purposes of varying a decision under subclause (6), the Court may exercise only such powers as the police officer could have exercised under section 34 or 35 of the Act when making that decision.
- (9) If in any proceedings concerning a decision of a police officer to issue a suspension notice it appears to the Court that:
  - (a) the licence of the appellant is affected by a decision of the Authority as well, and
  - (b) the appellant has commenced or intends to commence appeal proceedings under clause 6 in respect of that other decision,the Court may adjourn the proceedings pending hearing of that other appeal or so that both appeals may be heard together.
- (10) The decision of a Local Court in respect of an appeal made under this clause is final and binding.

### 8B Stay of decision

- (1) If a person makes an appeal to a Local Court under clause 8A (1) against a decision of a police officer to give the person a suspension notice, the Local Court may make an order staying the decision, but only in exceptional circumstances.

- (2) In determining exceptional circumstances for the purposes of subclause (1), a Local Court is to take into account each of the following:
- (a) the strength of the prosecution evidence,
  - (b) the affected person's need for a licence,
  - (c) the potential danger to the community if an order is made,
  - (d) any other matter that the Local Court considers to be relevant.