



New South Wales

Road Transport (General) Amendment (Driver Licence Appeals) 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*.

DAVID CAMPBELL, M.P.,
Minister for Roads

Explanatory note

The *Road Transport (Driver Licensing) Act 1998* (the *Licensing Act*) makes special provision for the consequences for drivers of incurring demerit points in respect of offences committed by them. The essential features of the demerit point scheme are as follows:

- (a) Section 16 of the Licensing Act requires the Roads and Traffic Authority (the *Authority*) in certain circumstances to suspend a person's driver licence (other than a provisional driver licence or learner licence) if the person has incurred 12 or more demerit points in respect of offences committed by the person within a 3-year period unless the person elects to be of good behaviour for a 12-month period instead of undergoing the period of suspension. However, if the person makes such an election and incurs a further 2 or more demerit points in the 12-month period, the Authority is required to suspend the person's driver licence for twice the period that would have applied to the person if the person had not made the election.
- (b) Section 17 of the Licensing Act enables the Authority to cancel or suspend a person's provisional driver licence if the person incurs 4 or more demerit points in respect of offences committed by the person.
- (c) Section 16A of the Licensing Act also enables the Authority to issue a person who has incurred 12 or more demerit points within a 3-year period with a notice of licence ineligibility for a specified period. This precludes the person from applying for, or being granted, a driver licence during the specified period. However, any such person may (like a person whose driver licence is subject to suspension) elect to be of good behaviour for a 12-month period instead of undergoing the period of licence ineligibility.

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Explanatory note

Currently, the *Road Transport (General) Regulation 1999* provides that a person may appeal to a Local Court against a decision of the Authority not to grant an application by the person for the issue, variation or renewal of a driver licence. It also confers a right to appeal against a decision of the Authority to vary, suspend or cancel a person's driver licence. However, a Local Court on any such appeal cannot review the guilt or innocence of the person concerned or the level of any penalty imposed on the person for any offence.

There is some doubt about the extent to which the current rights to appeal are available to persons whose driver licences have been suspended, cancelled, not renewed or varied by the Authority because of the incurring of demerit points. The Court of Appeal held in *Roads and Traffic Authority of New South Wales v Wilson* (2003) 58 NSWLR 240 that there is no right to appeal against a suspension of a driver licence by operation of section 16 (9) of the *Road Transport (Driver Licensing) Act 1998* because the Authority makes no decision that can be appealed. However, there is some uncertainty in the courts about the availability of a right to appeal in respect of a refusal by the Authority to issue or renew a driver licence because of the incurring of demerit points.

The objects of this Regulation are:

- (a) to specify the kinds of decisions of the Authority concerning the issue, variation, suspension or cancellation of driver licences that may be appealed to a Local Court, and
- (b) to confirm that a person has no right to appeal against any of the following:
 - (i) a refusal by the Authority to issue, renew or vary a driver licence because of the number of demerit points incurred by the person,
 - (ii) the suspension or cancellation of the person's driver licence because of the number of demerit points incurred by the person.

However, this Regulation preserves the right of holders of provisional driver licences to appeal against the suspension or cancellation of their driver licences in recognition of the more stringent demerit points regime for such licence holders reflected by section 17 of the Licensing Act.

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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under the

Road Transport (General) Act 1999

1 Name of Regulation

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

2 Commencement

This Regulation commences on 17 January 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

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(Clause 3)

[1] Schedule 2 Savings and transitional provisions

Omit clause 6 (1) (b) and (c). Insert instead:

- (b) a decision not to grant an application for the issue, variation or renewal of a driver licence under the *Road Transport (Driver Licensing) Regulation 1999*, not being a decision made under clause 18 (2) (d) of that Regulation,
- (c) a decision to suspend or cancel the person's driver licence under section 17 or 33 of the *Road Transport (Driver Licensing) Act 1998*,
- (d) a decision to vary the person's driver licence under clause 19 or 38 of the *Road Transport (Driver Licensing) Regulation 1999*,
- (e) a decision to suspend or cancel the person's driver licence under clause 15, 15A or 38 of the *Road Transport (Driver Licensing) Regulation 1999*.

[2] Schedule 2, clause 6 (1A)

Omit "subclause (1) (c)". Insert instead "subclause (1) (c)–(e)".

[3] Schedule 2, clause 6 (3)

Omit the note to the subclause. Insert instead:

Note. The effect of this provision is that, for example, in an appeal against a suspension or cancellation action taken under section 17 of the *Road Transport (Driver Licensing) Act 1998* against the holder of a provisional driver licence because of demerit points, the Local Court cannot revisit the issue of an offence in relation to which the demerit points were incurred or the imposition of a penalty in relation to such an offence. In any such case, the Local Court may exercise only the powers that the Authority could exercise under section 17 of that Act (see subclause (8)).

BY AUTHORITY