



New South Wales

Road Transport (Driver Licensing) Amendment (Professional Drivers) Regulation 2011

under the

Road Transport (Driver Licensing) Act 1998

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Road Transport (Driver Licensing) Act 1998*.

DAVID BORGER, MP
Minister for Roads

Explanatory note

The object of this Regulation is to amend the *Road Transport (Driver Licensing) Regulation 2008* to prescribe the classes of persons who are professional drivers, and the classes of persons who are not professional drivers, for the purpose of Division 2 of Part 2 of the *Road Transport (Driver Licensing) Act 1998*. That Division (as amended by the *Road Transport (Driver Licensing) Amendment Act 2010*) provides for the suspension or refusal of a driver licence if the holder of, or applicant for, the licence incurs 13 or more demerit points, or 14 or more demerit points in the case of a professional driver, within a 3 year period. This Regulation provides that the threshold of 14 or more demerit points will not apply to a person who was not a professional driver at the time of being given a notice of licence suspension; in the case of a licence refusal, that threshold does not apply to a person who was not a professional driver at the time of the refusal or whose licence has been disqualified or expired for more than 6 months. This Regulation also provides for the variation, suspension or cancellation of a driver licence that has been issued or renewed, or in respect of which a notice of suspension has been withdrawn, on the basis of false or misleading information about a person's status as a professional driver.

This Regulation is made under the *Road Transport (Driver Licensing) Act 1998*, including the definition of **professional driver** in the Dictionary and section 19 (the general regulation-making power) and section 20.

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Clause 1 Road Transport (Driver Licensing) Amendment (Professional Drivers)
Regulation 2011

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(Professional Drivers) Regulation 2011**

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Road Transport (Driver Licensing) Act 1998

1 Name of Regulation

This Regulation is the *Road Transport (Driver Licensing) Amendment (Professional Drivers) Regulation 2011*.

2 Commencement

This Regulation commences on 31 January 2011 and is required to be published on the NSW legislation website.

Schedule 1 Amendment of Road Transport (Driver Licensing) Regulation 2008

[1] Clause 55 Variation, suspension or cancellation of driver licence by Authority

Insert at the end of clause 55 (1) (l):

, or

- (m) the licence has been issued or renewed, or a notice of suspension of the licence has been withdrawn, on the basis of information that has been provided in purported compliance with a request under section 18A of the Act and that is false or misleading in a material particular.

[2] Clause 120A

Insert after clause 120:

120A Professional drivers

- (1) For the purposes of the definition of *professional driver* in the Dictionary to the Act, the following classes of persons are professional drivers:
 - (a) a person whose primary work is personally driving a motor vehicle to transport goods,
 - (b) a person who is the holder of an authority under Division 2 of Part 2, Division 5 of Part 4 or Division 5 of Part 4A of the *Passenger Transport Act 1990*.
- (2) For the purposes of the definition of *professional driver* in the Dictionary to the Act, the following classes of persons are not professional drivers:
 - (a) a person who trades goods or provides services from a vehicle, such as a mobile food vendor or pet groomer,
 - (b) a person whose primary work of personally driving a motor vehicle does not ordinarily exceed 20 hours in any 7 day period,
 - (c) a person in respect of whose primary work of personally driving a motor vehicle no remuneration is payable,
 - (d) a person whose primary work is driving an implement.

Note. The definition of *professional driver* in the Dictionary to the Act provides that a professional driver is a person whose primary work is personally driving a motor vehicle on roads in or outside of the State; it includes the classes prescribed by clause 120A (1) but excludes the classes prescribed by clause 120A (2). Accordingly, a person is not a professional driver if the person's primary work does not meet this

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description. For example, an electrician who drives a motor vehicle for transport to premises on which he or she carries out electrical work, which is his or her primary work, is not a professional driver.

120B Exemptions for professional drivers

- (1) Section 16 (2) of the Act, to the extent that it provides for a threshold of 14 or more demerit points for the suspension of a licence of a professional driver, does not apply in respect of a person if the person is not a professional driver at the time the person is given the notice of licence suspension under that section.
- (2) Section 16AA (2) (a) of the Act, to the extent that it provides for a threshold of 14 or more demerit points for the refusal of an application of a professional driver, does not apply in respect of a person if, at the time the person's application is refused under that section:
 - (a) the person is not a professional driver, or
 - (b) the person has previously been disqualified for a period of more than 6 months from holding a driver licence and has not held a driver licence since that disqualification, or
 - (c) the person's driver licence has been expired for a period of more than 6 months and the person has not held a driver licence since that expiry.