



Road Transport (Vehicle Registration) Amendment (Certification of Vehicles) Regulation 2011

under the

Road Transport (Vehicle Registration) Act 1997

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Road Transport (Vehicle Registration) Act 1997*.

DUNCAN GAY, MLC
Minister for Roads and Ports

Explanatory note

The object of this Regulation is to make provision with respect to the following:

- (a) prohibiting a person from modifying a registrable vehicle in such a way that the vehicle no longer complies with the applicable vehicle standards,
- (b) prohibiting the use of a vehicle that has had a significant modification unless a compliance certificate has been issued in respect of the modification,
- (c) the issuing and cancellation of compliance certificates,
- (d) exemptions from offences relating to the driving of an unregistered, modified or non-complying vehicle if the vehicle is being driven for the purpose of obtaining a compliance certificate,
- (e) the licensing of persons who are able to issue compliance certificates.

This Regulation is made under the *Road Transport (Vehicle Registration) Act 1997*, including Division 2 of Part 2.

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Clause 1 Road Transport (Vehicle Registration) Amendment (Certification of Vehicles) Regulation 2011

**Road Transport (Vehicle Registration) Amendment
(Certification of Vehicles) Regulation 2011**

under the

Road Transport (Vehicle Registration) Act 1997

1 Name of Regulation

This Regulation is the *Road Transport (Vehicle Registration) Amendment (Certification of Vehicles) Regulation 2011*.

2 Commencement

- (1) Except as provided by subclause (2), this Regulation commences on 19 December 2011 and is required to be published on the NSW legislation website.
- (2) Schedule 1 [1] and [4] (but not to the extent that it inserts Divisions 2 and 3 of proposed Part 5A of the *Road Transport (Vehicle Registration) Regulation 2007*) commence on 2 December 2011.

Schedule 1 Amendment of Road Transport (Vehicle Registration) Regulation 2007

[1] Clause 51 Applicable vehicle standards

Omit “The”. Insert instead “For the purposes of this Regulation, the”.

[2] Clause 55 Operations plates and certificates of approved operations

Omit clause 55 (3) (including the penalty provision).

[3] Clause 55A

Insert after clause 55:

55A Modifications to registered vehicles

A person must not carry out modifications on a registered vehicle (whether by the addition or removal of components or otherwise) that results in the vehicle failing to comply with the applicable vehicle standards.

Maximum penalty: 20 penalty units.

[4] Part 5A

Insert after Part 5:

Part 5A Certification of vehicles

Division 1 Preliminary

76AA Definitions

In this Part:

certifier’s licence or *licence* means a certifier’s licence in force under this Part.

compliance certificate means a certificate issued in accordance with this Part.

inspect a vehicle includes test a vehicle.

licensed certifier means a person who holds a certifier’s licence.

modification of a vehicle includes the addition of components to, or the removal of components from, the vehicle.

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Schedule 1 Amendment of Road Transport (Vehicle Registration) Regulation 2007

Division 2 Significantly modified vehicles

76AB Significant modifications to vehicles

- (1) The Authority may declare a modification, or class of modifications, to a vehicle to be modifications to which this Division applies.
- (2) A declaration is to be made by order published in the Gazette and may be made only if the Authority is of the opinion that any such modification may pose a risk of harm to any person or affect the safe operation of a vehicle.

76AC Modified vehicles not to be used unless certified

- (1) A person must not use a vehicle on a road or road related area and the registered operator or owner of the vehicle must not permit the vehicle to be used in such a way if the vehicle has had a modification to which this Division applies.
Maximum penalty: 20 penalty units.
- (2) A person does not commit an offence under subclause (1) if a compliance certificate has been issued in respect of the modification or in respect of the whole vehicle as modified and any such certificate has not been cancelled.

Division 3 Compliance certificates

76AD Compliance certificate may be issued

- (1) A licensed certifier may issue a compliance certificate in a form approved by the Authority to the registered operator of a vehicle (or, if the vehicle is unregistered, to the owner of the vehicle).
- (2) A licensed certifier must not issue a compliance certificate in respect of a vehicle unless the certifier:
 - (a) holds a licence that permits the certifier to issue the particular compliance certificate, and
 - (b) has inspected the vehicle and has decided that:
 - (i) the vehicle complies with the applicable vehicle standards, or
 - (ii) the particular modification to the vehicle to which the certificate relates does not cause the vehicle to fail to comply with the applicable vehicle standards.
- (3) A licensed certifier must not issue a compliance certificate if the certifier knows, or ought reasonably to suspect, that the certificate is false or misleading in a material particular.

- (4) A licensed certifier must pay to the Authority, within the time specified by the Authority, the applicable fee for each compliance certificate issued under this clause.

Maximum penalty: 20 penalty units.

76AE Authority may cancel compliance certificate

- (1) The Authority may, by notice in writing given to a registered operator of a vehicle (or, if the vehicle is unregistered, to the owner of the vehicle), cancel a compliance certificate that relates to the vehicle if, in the opinion of the Authority:
- (a) the certificate was issued fraudulently, incorrectly or negligently, or
 - (b) the certificate is no longer relevant owing to subsequent modifications to the vehicle, or
 - (c) the vehicle no longer complies with the applicable vehicle standards.
- (2) The compliance certificate is cancelled at the time the notice is given or, if a later time is specified in the notice, at that later time.

76AF Person may drive vehicle for purpose of compliance certificate

A person does not commit an offence under clause 52 (Registrable vehicles to comply with vehicle standards specified in Schedule 2), 76AC (Modified vehicles not to be used unless certified) or the registration provisions (within the meaning of Schedule 1) in respect of a vehicle that is being driven:

- (a) to a licensed certifier for the purpose of obtaining a compliance certificate by the most direct and convenient route, or
- (b) in the course of the inspection of the vehicle by a licensed certifier, or
- (c) from any such inspection by the most direct and convenient route to the nearest place where work can be carried out on the vehicle to enable it to meet the applicable vehicle standards, but only if the driver of the vehicle has written notice from the licensed certifier who inspected the vehicle that the vehicle does not pose an imminent risk to road safety.

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Division 4 Licensing of certifiers

76AG Definition

In this Division:

vary a licence includes imposing or revoking conditions to which the licence is subject or varying such conditions.

76AH Applications with respect to licences

- (1) An individual may apply to the Authority for a certifier's licence or for the renewal or variation of such a licence.
- (2) An application must:
 - (a) be made in the manner and form approved by the Authority, and
 - (b) be supported by any information required by the Authority, and
 - (c) be accompanied by the applicable fee for the particular application, and
 - (d) in the case of an application for a renewal or variation of a licence, be made during the term of the existing licence.
- (3) The Authority is to decide an application by approving or refusing the application.
- (4) The Authority may, at its discretion, refuse an application on any ground.
- (5) The Authority must refuse an application for a licence or an application for a renewal of a licence if it is of the opinion that a person is not competent, or is not a fit and proper person, to hold a licence.
- (6) The Authority must give notice in writing to the applicant of its decision including, if the Authority decides to issue or renew a licence, the term of the licence.
- (7) If the Authority refuses an application the notice must specify the reasons for the refusal.

76AI Licences

- (1) A certifier's licence is to be issued in the manner and form approved by the Authority and may be issued unconditionally or subject to conditions.

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- (2) The term of a licence (unless cancelled or surrendered sooner) is the term of 1 year or such other period as may be specified by the Authority.
 - (3) The Authority may, by notice in writing to the holder of a licence, cancel or suspend the licence or vary the licence or the term of the licence:
 - (a) if the holder has failed to comply with this Part, including any condition to which the licence may be subject under this Part, or
 - (b) if the holder is not, in the opinion of the Authority, competent to hold the licence, or
 - (c) if the holder is not, in the opinion of the Authority, a fit and proper person to hold the licence, or
 - (d) at its discretion on any other ground.
 - (4) A variation, suspension or cancellation takes effect at the time the notice is given or, if a later time is specified in the notice, at that later time.
 - (5) The holder of a licence must not breach a condition of the licence. Maximum penalty: 20 penalty units.
 - (6) The holder of a licence may surrender the licence at any time by notice in writing to the Authority.

76AJ Consultation before making certain decisions

- (1) This clause applies to the following decisions of the Authority under this Part:
 - (a) a decision to suspend or cancel a licence,
 - (b) a decision to refuse an application to renew a licence,
 - (c) a decision to impose or vary a condition on a particular licence (rather than on all licences).
- (2) Before the Authority makes a decision to which this clause applies, the Authority must:
 - (a) give the person concerned notice in writing of the grounds for the proposed decision, and
 - (b) request in that notice that the person make a written submission, within 21 days, with respect to the proposed decision, and
 - (c) take into account any submission received from the person within that 21-day period.

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76AK Immediate suspensions

- (1) The Authority may suspend a licence immediately (an *immediate suspension*) without complying with clause 76AJ if the Authority is proposing to cancel the licence because it is of the opinion that the holder of the licence:
 - (a) has wilfully failed to comply with any requirement of this Part, including any condition to which the licence may be subject under this Part, or
 - (b) poses a risk to road safety if he or she continues to hold the licence.
- (2) After it imposes an immediate suspension, the Authority must, in respect of the proposed cancellation of the licence:
 - (a) give notice under clause 76AJ within 14 days, and
 - (b) make its final decision within 35 days after giving that notice (the *specified period*).
- (3) An immediate suspension remains in force with respect to a licence:
 - (a) if the Authority decides, within the specified period, to cancel the licence—until the licence is cancelled or, if the decision to cancel the licence is the subject of an appeal, until the Court overturns the decision or orders that the suspension should no longer remain in force, or
 - (b) if the Authority decides, within the specified period, not to cancel the licence—until that decision is made, or
 - (c) if the Authority makes no decision within the specified period—until the end of that specified period.

76AL Record keeping requirements

- (1) The holder of a licence must keep a record of the following in respect of each inspection undertaken for the purposes of this Part:
 - (a) the following identification details of the vehicle on which the inspection was carried out:
 - (i) the registration number of the vehicle (if issued),
 - (ii) the vehicle identifier of the vehicle,
 - (iii) the make and model of the vehicle,
 - (iv) the build date or compliance date of the vehicle,
 - (b) a record of the methods and calculations used during the inspection,

- (c) the results of the inspection,
 - (d) a record of any compliance certificate issued as a result of the inspection.
- (2) A person who is required to keep a record under this clause must keep the record for at least 7 years after it is made.
- (3) A person who is required to keep a record under this clause must produce the record to the Authority or an authorised person when required to do so by the Authority or an authorised person.
- Maximum penalty: 20 penalty units.

76AM Insurance

- (1) In this clause:
required insurance, in respect of a person, means professional indemnity insurance and public liability insurance that:
- (a) indemnify the person against any liability to pay compensatory damages arising from any act or omission of the person in the exercise of the functions of a licensed certifier under this Part, and
 - (b) satisfy any other requirements of the Authority that are set out in an order of the Authority that is published in the Gazette for the purposes of this clause.
- (2) A licensed certifier must not hold out that the licensed certifier is covered by the required insurance unless the licensed certifier is covered by the required insurance.
- Maximum penalty: 20 penalty units.
- (3) A person must be covered by:
- (a) the required insurance at all times that the person is a licensed certifier, and
 - (b) the required insurance that is professional indemnity insurance for at least 7 years after the person ceases to be a licensed certifier.
- Maximum penalty: 20 penalty units.
- (4) For the purposes of this section, a person is taken to be covered by the required insurance if the person pays amounts specified by the Authority, at such times as the Authority may direct, towards insurance cover obtained by the Authority on behalf of the person.

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- (5) A licensed certifier's licence is suspended:
- (a) at any time that the licensed certifier is not covered by the required insurance, and
 - (b) if the licensed certifier is relying on the insurance obtained by the Authority, at any time that there is an amount owing after the date payment is required under subclause (4).

76AN Offence of holding out

- (1) A person must not issue a document that purports to certify to the registered operator or owner of a vehicle (for which a compliance certificate is required before the vehicle may be driven on a road or road related area) that the vehicle, or a modification to the vehicle, complies with the applicable vehicle standards unless the document is a compliance certificate.

Maximum penalty: 20 penalty units.

- (2) A person must not purport to issue a compliance certificate or hold himself or herself out as a person who may issue such a certificate unless the person is the holder of a licence and the licence permits the person to issue the particular compliance certificate.

Maximum penalty: 20 penalty units.

76AO Service of notices under Part

The date on which a person other than a registered operator is taken to have been given or served with a notice under this Part is:

- (a) if the notice is sent by mail—the fourth working day after the notice was posted, or
- (b) if the notice is delivered to the person personally—the date when it is so delivered.

Note. Clause 7 of the *Road Transport (General) Regulation 2005* makes similar provision in respect of notices given or served on registered operators.

76AP Transitional provision—certificates issued under old scheme

- (1) Clause 76AN (1) does not apply to a document issued before 31 January 2012 in respect of a modification to a vehicle if the Authority is satisfied that:
- (a) the person issuing the document was, immediately before 19 December 2011, authorised to certify such a modification in accordance with a scheme approved by the Authority, and

- (b) the person commenced his or her inspection of the modified vehicle before 19 December 2011.
- (2) A document referred to in subclause (1) is taken to be a compliance certificate for the purposes of clause 76AC if it is provided to the Authority by the registered operator of the motor vehicle to which the document relates, no later than 19 June 2012 (or such later date as may be permitted by the Authority in any particular case).