



New South Wales

# Road Transport (General) Amendment (Licence Suspension) Bill 2004

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The objects of this Bill are as follows:

- (a) to expand the range of driving related offences in relation to which a police officer is able to suspend a person's driver licence to certain major offences involving death or grievous bodily harm,
- (b) to enable a police officer to suspend a person's driver licence if the person is caught exceeding the applicable speed limit by more than 45 kilometres per hour,
- (c) to make provision with respect to statutory declarations for ascertaining the driver of a vehicle involved in a parking offence or camera recorded offences.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

**Clause 3** is a formal provision that gives effect to the amendments to the *Road Transport (General) Act 1999* set out in Schedule 1.

**Clause 4** is a formal provision that gives effect to the amendments to the *Road Transport (Driver Licensing) Act 1998* set out in Schedule 2.

**Clause 5** repeals the *Road Transport (General) Amendment (Operator Onus Offences) Act 2002* as a consequence of the amendment made by **Schedule 1 [10]** (referred to below).

## **Schedule 1 Amendment of the Road Transport (General) Act 1999**

**Schedule 1 [1]** inserts proposed section 34 (1), (1A) and (2) into the *Road Transport (General) Act 1999* (the *Principal Act*). Proposed section 34 (1) expands the range of offences currently appearing in section 34 (1) of the Principal Act in relation to which a police officer may suspend a person's driver licence on the person being charged for any such offence. The new group of offences concerned involves the death of, or grievous bodily harm to, another person caused by the use of a motor vehicle, where the offence comprises one of the following:

- (a) the crime of murder or manslaughter,
- (b) an offence against section 33 of the *Crimes Act 1900* (maliciously causing grievous bodily harm with intent to do so),
- (c) an offence against section 35 (1) (b) of that Act (maliciously inflicting grievous bodily harm),
- (d) an offence against section 52A (1), (2), (3) or (4) of that Act (aggravated or dangerous driving occasioning death or grievous bodily harm),
- (e) an offence against section 54 of that Act (causing grievous bodily harm by any unlawful or negligent act or omission).

Proposed section 34 (1A) enables a police officer to suspend a person's driver licence if the person is charged with, or served with a penalty notice for, the offence under the *Road Transport (Safety and Traffic Management) Act 1999* of exceeding a speed limit by more than 45 kilometres per hour.

Proposed section 34 (2) recreates the existing section 34 (2) (which specifies the particulars to be contained in a suspension notice given under the section). It further provides that, if a person is served with a penalty notice for exceeding a speed limit by more than 45 kilometres per hour, the suspension notice must

inform the person that the driver licence is suspended for 6 months or until the matter is determined by a court (or withdrawn).

**Schedule 1 [2]–[4]** provide for amendments consequential on the amendments made by **Schedule 1 [1]**.

**Schedule 1 [6] and [7]** make equivalent amendments to **Schedule 1 [1]** in relation to interstate and overseas drivers.

**Schedule 1 [5], [8] and [9]** provide for amendments that are consequential on the amendments made by **Schedule 1 [6] and [7]**.

**Schedule 1 [10]** inserts proposed section 43 (7A) and (7B).

Proposed section 43 (7A) makes it clear that if a person is served with a penalty notice or summons in relation to a parking offence or camera recorded offence, a statutory declaration may be considered in determining whether the person did not know (and could not with reasonable diligence have ascertained) the name and address of the driver at the time of the offence.

Proposed section 43 (7B) enables the regulations to prescribe matters that must be included in any such statutory declaration.

**Schedule 1 [11]** provides for an amendment that is consequential on the amendment made by **Schedule 1 [10]**.

**Schedule 1 [12]** enables the making of regulations of a savings and transitional nature as a consequence of the enactment of the proposed Act.

## **Schedule 2 Amendment of Road Transport (Driver Licensing) Act 1998**

This Schedule provides for an amendment to section 33A of the *Road Transport (Driver Licensing) Act 1998*. Section 33A currently provides that if a person's driver licence expires after being suspended under that Act:

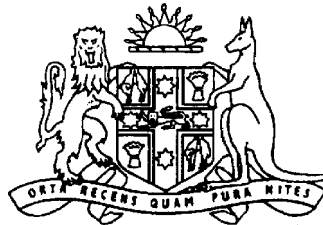
- (a) the person cannot apply for another driver licence during any unexpired portion of the suspension period, and
- (b) the person remains potentially liable, during that period, for any offence in relation to driving a vehicle while a driver licence is suspended.

The proposed amendment to section 33A extends the application of that section to the suspension of a licence by a police officer under the *Road Transport (General) Act 1999*.

Road Transport (General) Amendment (Licence Suspension) Bill 2004

Explanatory note

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New South Wales

# Road Transport (General) Amendment (Licence Suspension) Bill 2004

## Contents

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	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Road Transport (General) Act 1999 No 18	2
4 Amendment of Road Transport (Driver Licensing) Act 1998 No 99	2
5 Repeal of Road Transport (General) Amendment (Operator Onus Offences) Act 2002 No 11	2
Schedule 1 Amendment of Road Transport (General) Act 1999	3
Schedule 2 Amendment of Road Transport (Driver Licensing) Act 1998	9

Road Transport (General) Amendment (Licence Suspension) Bill 2004

Contents

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Page

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Contents page 2



New South Wales

# Road Transport (General) Amendment (Licence Suspension) Bill 2004

No. , 2004

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## A Bill for

An Act to amend the *Road Transport (General) Act 1999* with respect to the suspension of driver licences; and for other purposes.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Road Transport (General) Amendment (Licence Suspension) Act 2004</i> .	3 4
<b>2 Commencement</b>	5
This Act commences on a day or days to be appointed by proclamation.	6 7
<b>3 Amendment of Road Transport (General) Act 1999 No 18</b>	8
The <i>Road Transport (General) Act 1999</i> is amended as set out in Schedule 1.	9 10
<b>4 Amendment of Road Transport (Driver Licensing) Act 1998 No 99</b>	11
The <i>Road Transport (Driver Licensing) Act 1998</i> is amended as set out in Schedule 2.	12 13
<b>5 Repeal of Road Transport (General) Amendment (Operator Onus Offences) Act 2002 No 11</b>	14 15
The <i>Road Transport (General) Amendment (Operator Onus Offences) Act 2002</i> is repealed.	16 17



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## Schedule 1 Amendment of Road Transport (General) Act 1999

(Section 3)

### [1] Section 34 Immediate suspension of licence in certain circumstances

Omit section 34 (1) and (2). Insert instead:

- (1) If a person is charged by a police officer with:
  - (a) an offence involving the death of, or grievous bodily harm to, another person caused by the use of a motor vehicle, being an offence that comprises:
    - (i) the crime of murder or manslaughter, or
    - (ii) an offence under section 33, 35 (1) (b), 52A or 54 of the *Crimes Act 1900*, or
  - (b) an offence under section 9 (3) or (4), 15 (4), 16 or 22 (2) of the *Road Transport (Safety and Traffic Management) Act 1999*,

the same or another police officer may, at any time within 48 hours after the person has been charged, give the person a suspension notice.

- (1A) If it appears to a police officer that a person has committed an offence under the *Road Transport (Safety and Traffic Management) Act 1999* (other than a camera recorded offence within the meaning of section 43 of this Act) of exceeding a speed limit prescribed under that Act by more than 45 kilometres per hour, the same or another police officer may, at any time within 48 hours of:

- (a) the person being served with a penalty notice for the offence under Division 1, or
  - (b) the person being charged with the offence,
- give the person a suspension notice.

- (2) For the purposes of this section, a ***suspension notice*** is a notice, in a form approved by the Authority:

- (a) if the person is charged with an offence referred to in subsection (1) or (1A)—informing the person that any driver licence held by the person is suspended from a date specified in the notice, or (if the notice so

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specifies) immediately on receipt of the notice, until the charge is heard and determined by a court (or until the charge is withdrawn), and	1 2 3
(b) if the person is served with a penalty notice for an offence referred to in subsection (1A)—informing the person that any driver licence held by the person is suspended from a date specified in the notice, or (if the notice so specifies) immediately on receipt of the notice, until whichever of the following happens first:	4 5 6 7 8 9
(i) a period of 6 months elapses after the date on which the offence is alleged to have been committed,	10 11 12
(ii) if the person elects to have the matter determined by a court in accordance with Part 3 of the <i>Fines Act 1996</i> —the matter is heard and determined by a court or a decision is made not to take or continue proceedings against the person,	13 14 15 16 17
(iii) a decision is made not to enforce the penalty notice, and	18 19
(c) informing the person of the right of review in accordance with section 48 (Notice of decision and review rights to be given by administrators) of the <i>Administrative Decisions Tribunal Act 1997</i> or alternative appeal right, and	20 21 22 23 24
(d) requiring the person:	25
(i) to surrender any such licence, by a date specified in the notice, to a police officer, or	26 27
(ii) if the notice so specifies—to surrender any such licence in the person’s possession immediately to the police officer who gave the person the notice.	28 29 30
<b>[2] Section 34 (3)</b>	31
Omit “, in accordance with the terms of the notice, until the charge is heard and determined by a court or withdrawn”.	32 33
Insert instead “in accordance with the terms of the notice”.	34

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<b>[3] Section 34 (7) (d) and (e)</b>	1
Insert at the end of section 34 (7) (c):	2
, and	3
(d) a decision is made not to take or continue proceedings against a person when the person is notified in writing of that fact by a police officer or when the proceedings are discharged by the court, and	4 5 6 7
(e) a decision is made not to enforce a penalty notice in relation to a person when the person is notified in writing of that fact by:	8 9 10
(i) a police officer, or	11
(ii) an appropriate officer for the penalty notice within the meaning of Part 3 of the <i>Fines Act 1996</i> , or	12 13 14
(iii) a member of staff of the State Debt Recovery Office.	15 16
<b>[4] Section 34 (8)</b>	17
Insert after section 34 (7):	18
(8) In this section:	19
<b><i>grievous bodily harm</i></b> has the same meaning as it has in the <i>Crimes Act 1900</i> .	20 21
<b>[5] Section 35 Suspension of driving privileges of visiting driver</b>	22
Insert in alphabetical order in section 35 (1):	23
<b><i>grievous bodily harm</i></b> has the same meaning as it has in the <i>Crimes Act 1900</i> .	24 25
<b>[6] Section 35 (1), definition of “suspension notice”</b>	26
Omit the definition. Insert instead:	27
<b><i>suspension notice</i></b> , in relation to an authorised visiting driver who is charged with an offence referred in subsection (2) or (2A), or served with a penalty notice for an offence referred to in subsection (2A), means a notice, in a form approved by the Authority:	28 29 30 31 32
(a) if the driver is charged with an offence referred to in subsection (2) or (2A)—informing the driver that the	33 34

driver's authority to drive in New South Wales is suspended from a date specified in the notice, or (if the notice so specifies) immediately on receipt of the notice, until the charge is heard and determined by a court (or until the charge is withdrawn), and

- (b) if the driver is served with a penalty notice for an offence referred to in subsection (2A)—informing the driver that the driver's authority to drive in New South Wales is suspended from a date specified in the notice, or (if the notice so specifies) immediately on receipt of the notice, until whichever of the following happens first:
  - (i) 6 months elapses after the date on which the offence is alleged to have been committed,
  - (ii) if the driver elects to have the matter determined by a court in accordance with Part 3 of the *Fines Act 1996*—the matter is heard and determined by a court or a decision is made not to take or continue proceedings against the driver,
  - (iii) a decision is made not to enforce the penalty notice, and
- (c) informing the driver of the right of review in accordance with section 48 (Notice of decision and review rights to be given by administrators) of the *Administrative Decisions Tribunal Act 1997* or alternative appeal right.

**[7] Section 35 (2) and (2A)**

Omit section 35 (2). Insert instead:

- (2) If an authorised visiting driver is charged by a police officer with:
  - (a) an offence involving the death of, or grievous bodily harm to, another person caused by the use of a motor vehicle, being an offence that comprises:
    - (i) the crime of murder or manslaughter, or
    - (ii) an offence under section 33, 35 (1) (b), 52A or 54 of the *Crimes Act 1900*, or

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(b)	an offence under section 9 (3) or (4), 15 (4), 16 or 22 (2) of the <i>Road Transport (Safety and Traffic Management) Act 1999</i> ,	1
	the same or another police officer may, at any time within 48 hours after the authorised visiting driver has been charged, give the authorised visiting driver a suspension notice.	2
(2A)	If it appears to a police officer that an authorised visiting driver has committed an offence under the <i>Road Transport (Safety and Traffic Management) Act 1999</i> (other than a camera recorded offence within the meaning of section 43 of this Act) by exceeding a speed limit prescribed under that Act by more than 45 kilometres per hour, the same or another police officer may, at any time within 48 hours of:	3
(a)	the authorised visiting driver being served with a penalty notice for the offence under Division 1, or	4
(b)	the authorised visiting driver being charged with the offence,	5
	give the authorised visiting driver a suspension notice.	6
<b>[8] Section 35 (3)</b>		7
	Omit “, in accordance with the terms of the notice, until the charge is heard and determined by a court or withdrawn”.	8
	Insert instead “in accordance with the terms of the notice”.	9
<b>[9] Section 35 (5) (d) and (e)</b>		10
	Insert at the end of section 35 (5) (c):	11
	, and	12
(d)	a decision is made not to take or continue proceedings against a person when the person is notified in writing of that fact by a police officer or the proceedings are discharged by the court, and	13
(e)	a decision is made not to enforce a penalty notice in relation to a person when the person is notified in writing of that fact by:	14
(i)	a police officer, or	15

	(ii) an appropriate officer for the penalty notice within the meaning of Part 3 of the <i>Fines Act 1996</i> , or	1 2 3
	(iii) a member of staff of the State Debt Recovery Office.	4 5
<b>[10]</b>	<b>Section 43 Liability of responsible person for vehicle for designated offences</b>	6 7
	Insert after section 43 (7):	8
	(7A) A court or authorised officer may have regard to a statutory declaration that is provided by a person in deciding, for the purposes of subsection (3), (5) or (7), whether the person did not know and could not with reasonable diligence have ascertained the name and address of the person in charge of a vehicle.	9 10 11 12 13 14
	(7B) If a statutory declaration is provided by a person under subsection (7A), it must include the matters (if any) prescribed by the regulations.	15 16 17
<b>[11]</b>	<b>Section 43 (9)</b>	18
	Omit “or (4)”. Insert instead “, (4) or (7A)”.	19
<b>[12]</b>	<b>Schedule 2 Savings, transitional and other provisions</b>	20
	Insert at the end of clause 1 (1):	21
	<i>Road Transport (General) Amendment (Licence Suspension) Act 2004</i>	22 23

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**Schedule 2 Amendment of Road Transport (Driver  
Licensing) Act 1998**

(Section 4)

**Section 33A Effect of expiry of driver licence during a suspension  
period**

Insert “of this Act or section 33, 34 or 35 of the *Road Transport (General)  
Act 1999*” after “or 33” in section 33A.

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