



New South Wales

Road Transport Amendment (Driver Licence Disqualification) Bill 2017

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the *Road Transport Act 2013* with respect to driver licence disqualification and other sanctions that may be imposed under that Act for offences, in particular offences relating to unauthorised driving. The Bill:

- (a) confers on the Local Court power to remove outstanding driver licence disqualification periods, and
- (b) abolishes the habitual traffic offender scheme, and
- (c) provides for clearer delineation and flexibility of periods of driver licence disqualification for unauthorised driving offences, and
- (d) reduces the maximum periods of imprisonment that may be imposed for unauthorised driving offences, and
- (e) enables additional sanctions concerning vehicles to be imposed for unauthorised driving offences and in relation to recidivist unauthorised drivers.

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.

Schedule 1 Amendment of Road Transport Act 2013 No 18

Removal of outstanding driver licence disqualification periods

Schedule 1 [15] inserts proposed Division 3A into Part 7.4 to enable a person who is disqualified from holding or obtaining a driver licence as a consequence of committing motor vehicle offences or being declared as an habitual traffic offender to apply to the Local Court for an order removing his or her driver licence disqualifications. An order may be made if the person has not been convicted of any driving offence for the relevant offence-free period (being 4 years for disqualifications arising from certain serious offences and 2 years in other cases) and the Local Court considers that it is appropriate taking into account relevant circumstances such as the safety of the public, the person's complete driving record and the person's family and employment obligations.

A person will be ineligible to apply for the removal of disqualifications if the person has been convicted of serious offences under the Act or the *Crimes Act 1900* of causing death or grievous bodily harm by the use of a motor vehicle, of predatory or menacing driving, of failing to stop and assist after an accident and of certain other serious driving offences.

Abolition of habitual traffic offender scheme

Schedule 1 [14] repeals Division 3 of Part 7.4 (Habitual traffic offenders), which provides for the declaration of habitual traffic offenders and the imposition of additional periods of driver licence disqualification.

Schedule 1 [13] makes a consequential amendment to omit section 208 (2) of the Act.

Penalties and driver licence disqualifications for offences by disqualified drivers or by drivers not holding a licence

Division 2 of Part 3.4 of the Act makes it an offence for a person to drive a motor vehicle while unlicensed or to employ or permit an unlicensed driver to drive a motor vehicle. It also makes it an offence for a person to drive a motor vehicle (or apply for a driver licence) while disqualified or if the person's driver licence has been cancelled or suspended. In addition to specifying the maximum fines or periods of imprisonment that may be imposed for offences, sections 53 and 54 provide for automatic disqualification of drivers for stated periods on conviction of first or second or subsequent offences.

Schedule 1 [1], [3] and [4] decrease the maximum periods of imprisonment that may be imposed for offences against sections 53 and 54 relating to driving without a licence (eg 6 months in cases where a current period of 18 months applies and 12 months in some cases where a current period of 2 years applies). In the case of the cancellation or suspension of a licence for non-payment of a fine, a period of imprisonment of 6 months will only apply for a second or subsequent offence.

Schedule 1 [10] inserts proposed section 205A to provide for the period of driver licence disqualification in relation to offences against sections 53 and 54. The Table to the proposed section provides for default periods of disqualification but confers a discretion on the court to impose a shorter or longer period (but not shorter than the minimum period specified in the Table for the offence).

Schedule 1 [2] and [5] omit the existing provisions in sections 53 and 54 relating to driver licence disqualification for offences under those sections.

Schedule 1 [6] provides that the court may increase or decrease the 12-month period of driver licence disqualification for offences under section 116 relating to certain conduct associated with road or drag racing in the same way it may do so for the 12-month period of disqualification for offences under section 115 relating to road or drag racing.

Schedule 1 [7]–[9] make consequential amendments.

Commencement of disqualification period etc

Schedule 1 [12] inserts section 207A to make it clear that disqualification periods commence on the date of conviction unless the court orders a later date, so that disqualification periods for a number of offences are not cumulative unless the court so orders.

Schedule 1 [11] inserts section 206B to consolidate provisions (currently in section 224 and the statutory rules) that require a court to take a period of immediate or other suspension under a police licence suspension notice into account in deciding any period of licence disqualification following conviction for the offence or for any back-up or related offence in respect of the offence for which the suspension notice was given. **Schedule 1 [16]** makes a consequential amendment.

Immediate driver licence suspensions

Schedule 1 [17] amends section 225 to ensure that the period of an immediate driver licence suspension (that is, a driver licence suspension imposed by a police officer when a driver is charged with certain serious driving offences) has effect despite any other suspension to which the licence is subject or the lifting of that other suspension.

Additional sanctions concerning vehicles for unauthorised driving offences

Schedule 1 [18]–[20] amend Part 7.6 of the Act to enable the additional sanctions concerning vehicles that may be imposed under that Part (such as vehicle impounding or confiscation of number-plates) to be imposed for certain offences under sections 53 and 54 by disqualified or unlicensed drivers. The additional sanctions apply to recidivist offenders and to offenders committing speeding offences of 30 km/hr or more over the speed limit (instead of 45 km/hr or more that currently applies for drivers generally).

Savings and transitional provisions

Schedule 1 [21] amends Schedule 4 to the Act to make provisions of a savings or transitional nature consequent on the enactment of the proposed Act.



New South Wales

Road Transport Amendment (Driver Licence Disqualification) Bill 2017

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New South Wales

Road Transport Amendment (Driver Licence Disqualification) Bill 2017

No. , 2017

A Bill for

An Act to amend the *Road Transport Act 2013* with respect to driver licence disqualification and unauthorised driving.

The Legislature of New South Wales enacts:

1

1 Name of Act

2

This Act is the *Road Transport Amendment (Driver Licence Disqualification) Act 2017*.

3

4

2 Commencement

5

This Act commences on a day or days to be appointed by proclamation.

6

Schedule 1	Amendment of Road Transport Act 2013 No 18	1
[1] Section 53 Driver must be licensed		2
	Omit “imprisonment for a period of 18 months” from section 53 (3).	3
	Insert instead “imprisonment for 6 months”.	4
[2] Section 53 (4)		5
	Omit the subsection.	6
[3] Section 54 Driving or making licence applications while disqualified or licence suspended or cancelled		7
	Omit “imprisonment for 18 months” and “imprisonment for 2 years” from the maximum penalty in section 54 (1), (3) and (4) wherever occurring.	8 9 10
	Insert instead “imprisonment for 6 months” and “imprisonment for 12 months”, respectively.	11 12
[4] Section 54 (5)		13
	Omit the maximum penalty at the end of the subsection. Insert instead:	14
	Maximum penalty: 30 penalty units (in the case of a first offence) or 50 penalty units or imprisonment for 6 months or both (in the case of a second or subsequent offence).	15 16 17
[5] Section 54 (8)–(10)		18
	Omit the subsections.	19
[6] Section 116 Conduct associated with road and drag racing and other activities		20
	Omit section 116 (7). Insert instead:	21
	(7) If a person is convicted by a court of an offence against subsection (2) (a), (b), (c) or (d) in relation to a motor vehicle:	22
	(a) except as provided by paragraph (b)—the person is disqualified from holding a driver licence by the conviction and without any specific order of a court for 12 months, or	23 24 25 26
	(b) if the court at the time of the conviction thinks fit to order a shorter or a longer period of disqualification—the person is disqualified from holding a driver licence for the period specified in the order.	27 28 29
[7] Section 204 Court may disqualify driver on conviction		30
	Omit “Subject to any mandatory disqualification provision and Division 2, a court” from section 204 (1).	31 32
	Insert instead “A court”.	33
[8] Section 204 (3A)		34
	Insert after section 204 (3):	35
	(3A) This section is subject to Division 2 and to any provision of this Act:	36
	(a) that provides for a minimum period of disqualification of a person from holding a driver licence when a court orders a disqualification on the conviction of the person for an offence, or	37 38 39
	(b) that provides for a mandatory period of disqualification on the conviction of a person for an offence.	40 41

[9] Section 204 (6), definition of “mandatory disqualification provision” 1
 Omit the definition. 2

[10] Section 205A 3
 Insert after section 205: 4

205A Disqualification for certain unauthorised driving offences 5

- (1) A person who is convicted of an offence against this Act specified in the Table to this section: 6
 7
- (a) is automatically disqualified from holding a driver licence for the 8
 default period of disqualification specified in the Table in respect of that 9
 offence, or 10
- (b) if the court that convicts the person thinks fit to order a shorter or longer 11
 period of disqualification (but not shorter than the minimum period of 12
 disqualification specified in the Table in respect of that offence)—is 13
 disqualified from holding a driver licence for the period specified in the 14
 order. 15
- (2) Any disqualification under this section is in addition to any penalty imposed 16
 for the offence. 17

Table 18

	Offence	Default period of disqualification	Minimum period of disqualification
1	Section 53 (3)—second or subsequent offence (Driver never licensed)	12 months	3 months
2	Section 54 (1), (3) or (4)—first offence (Driving while disqualified, suspended or after licence refusal or cancellation)	6 months	3 months
3	Section 54 (1), (3) or (4)—second or subsequent offence	12 months	6 months
4	Section 54 (5)—first offence (Driving after licence suspended or cancelled for non-payment of fine)	3 months	1 month
5	Section 54 (5)—second or subsequent offence	12 months	3 months

[11] Section 206B 19
 Insert after section 206A: 20

206B Effect of immediate or other licence suspension on period of disqualification 21

- (1) This section applies where a driver licence has been suspended under 22
 section 224 or under any other provision of this Act or the statutory rules for 23
 an alleged offence. 24
- (2) A court that determines a charge for the offence (or for a related offence) is 25
 required to take into account the period of suspension when deciding on any 26
 period of disqualification from holding or obtaining a driver licence on 27
 conviction for the offence (or for the related offence). 28

(3)	An offence is related to another offence if it relates to the same act or omission that gave rise to the other offence.	1 2
(4)	The period of suspension satisfies all or the relevant part of any minimum period of disqualification that is or is required to be imposed under this Act on conviction for the offence (or for the related offence). Accordingly, the total of the period of suspension and of the period of disqualification is not to be less than that minimum period of disqualification.	3 4 5 6 7
(5)	The court may order that the period of disqualification ends on a day specified by the court.	8 9
[12]	Section 207A	10
	Insert after section 207:	11
	207A Commencement of disqualification	12
(1)	The disqualification of a person from holding a driver licence as a consequence of being convicted of an offence by a court begins on the day that the court convicts the person unless the court orders that the disqualification begin on a later day specified by the court.	13 14 15 16
(2)	This section is subject to section 206A.	17
[13]	Section 208 Application of Division	18
	Omit section 208 (2).	19
[14]	Part 7.4, Division 3 Habitual traffic offenders	20
	Omit the Division.	21
[15]	Part 7.4, Division 3A	22
	Insert before Division 4 of Part 7.4:	23
	Division 3A Removal of licence disqualifications	24
221A	Definitions	25
	In this Division:	26
	<i>disqualified person</i> means a person who is subject to a licence disqualification.	27 28
	<i>driving offence</i> means:	29
(a)	a major offence, or	30
(b)	an offence against the road transport legislation that relates to the driving of a motor vehicle (other than a parking offence).	31 32
	<i>licence disqualification</i> means a disqualification (imposed before or after the commencement of this Division) from holding or obtaining a driver licence that is imposed by a court or by the operation of this Act, and includes any consecutive or concurrent licence disqualification and any period of disqualification which does not commence until other disqualifications or other periods of licence cancellations or suspensions are completed.	33 34 35 36 37 38
	<i>pending proceedings for a driving offence</i> means:	39
(a)	court proceedings for an alleged driving offence that have not been finally determined, or	40 41

(b)	a penalty notice issued for an alleged driving offence if:	1
(i)	the amount payable under the penalty notice has not been paid (in part or in full), and	2
(ii)	an election has not been made to have the matter determined by a court, and	3
(iii)	a penalty notice enforcement order under Part 3 of the <i>Fines Act 1996</i> has not been issued in respect of the penalty notice, and	4
(iv)	a formal decision has not been made to withdraw or cease enforcement action on the penalty notice.	5
	relevant offence-free period , in relation to a disqualified person who has applied under this Division for the removal of his or her licence disqualifications, means:	6
(a)	4 years, if any of those licence disqualifications was imposed because the person was convicted of:	7
(i)	a major offence, or	8
(ii)	an offence of exceeding a speed limit prescribed under this Act by more than 30 kilometres per hour, or	9
(iii)	an offence against section 115 (1), 116 (2) or 117 (2), or	10
(iv)	any other offence prescribed by the statutory rules, or	11
(b)	2 years, if all those licence disqualifications were imposed by this Act because the person was declared (or taken to have been declared) an habitual traffic offender under Division 3 (as in force immediately before its repeal), or	12
(c)	2 years, in any other case.	13
	road transport legislation includes the <i>Heavy Vehicle National Law (NSW)</i> , but does not include:	14
(a)	the <i>Motor Vehicles Taxation Act 1988</i> or the regulations made under that Act, or	15
(b)	Schedule 2 or statutory rules made for the purposes of that Schedule.	16
221B	Local Court may remove licence disqualifications after relevant offence-free period	17
(1)	The Local Court may, by order on application made in accordance with this Division, remove all licence disqualifications to which a disqualified person is then subject if:	18
(a)	the disqualified person has not been convicted of any driving offence for conduct during the relevant offence-free period before the removal of the licence disqualifications, and	19
(b)	the Local Court considers that it is appropriate to do so.	20
	Note. See section 221D for persons who are not eligible to apply for the removal of licence disqualifications because of convictions at any previous time for certain serious offences.	21
(2)	The Local Court must take into account the following in determining whether it is appropriate to remove the licence disqualifications:	22
(a)	the safety of the public,	23
(b)	the applicant's driving record (including the record before the relevant offence-free period and the record for driving offences and other offences under the road transport legislation and for pending proceedings for alleged driving offences),	24

(c)	whether the applicant drove or was in a position to drive a vehicle during the relevant offence-free period,	1 2
(d)	any relevant conduct of the applicant subsequent to the licence disqualifications,	3 4
(e)	the nature of the offence or offences giving rise to the licence disqualifications,	5 6
(f)	any other relevant circumstances (including, without limitation, the impact of the licence disqualifications on the applicant's capacity to carry out family or carer responsibilities or on the applicant's capacity to travel for the purposes of employment, business, education or training, the applicant's health and finances and the availability of alternative forms of transport),	7 8 9 10 11 12
(g)	any other matter prescribed by the statutory rules.	13
(3)	The Local Court must be satisfied that the information provided to the Local Court relating to the applicant's driving record is as current as practicable and have regard to the relevant offence-free period that ends with the date of the latest report of the information provided to the Local Court.	14 15 16 17
(4)	Licence disqualifications that are removed by order of the Local Court cease to have effect (despite anything to the contrary in this Act) on the date the order is made or on such later date as is specified by the Local Court.	18 19 20
(5)	When it removes licence disqualifications, the Local Court is to explain the effect of the order to the applicant and, in particular, that the applicant will require a new driver licence before driving a motor vehicle.	21 22 23
(6)	The relevant registrar of the Local Court is required to notify the Authority and the Commissioner of Police of the determination of an application under this Division.	24 25 26
(7)	The Local Court may adjourn proceedings on an application under this Division so that the applicant may participate in a driver education course or other program the Local Court considers appropriate or for any other reason the Local Court considers appropriate.	27 28 29 30
(8)	An appeal may not be made under the <i>Crimes (Appeal and Review) Act 2001</i> against a decision of the Local Court under this Division.	31 32
(9)	A person who applied to the Local Court for the removal of licence disqualifications under this Division may apply to the Court for the annulment of the dismissal of the application by the Court, but only if the person was not in attendance before the Court when the application was dismissed.	33 34 35 36
(10)	The Local Court may grant an application for an annulment if it is satisfied that, having regard to the circumstances of the case, there is just cause for doing so. If an application for annulment is granted:	37 38 39
(a)	the Court may deal with the application for the removal of the licence disqualifications as if the application had not been dismissed, and	40 41
(b)	section 221C (4) does not apply to a decision to reject an application for the removal of licence disqualifications that is so annulled.	42 43
(11)	Nothing in this Division limits any power that a court has apart from this Division to annul, quash, set aside or vary a licence disqualification.	44 45
221C	Application for removal of licence disqualifications	46
(1)	This section applies to an application to the Local Court for the removal of licence disqualifications under this Division.	47 48

(2)	An application:	1
(a)	is to include any relevant matter that the applicant requests the Local Court to take into account in determining the application, and	2 3
(b)	is to be accompanied by an up-to-date statement of the applicant's driving record issued by the Authority, and	4 5
(c)	is to contain particulars of any pending proceedings against the applicant for an alleged driving offence.	6 7
(3)	In order to ensure the accuracy and currency of the information available to determine an application, the Local Court may require reports to be provided to the Court in relation to the applicant or require earlier reports to be updated, including:	8 9 10 11
(a)	police reports with respect to the criminal record of the applicant, and	12
(b)	reports from Roads and Maritime Services with respect to the driving record of the applicant, and	13 14
(c)	reports from the Commissioner of Fines Administration with respect to any penalty notices that are pending proceedings against the applicant for alleged driving offences.	15 16 17
(4)	An application for the removal of licence disqualifications under this Division cannot be made within 12 months after the Local Court has rejected an earlier application for the removal of any of those licence disqualifications.	18 19 20
221D	Disqualified persons not eligible to apply for removal of licence disqualification	21 22
(1)	A disqualified person is not eligible to make an application to the Local Court for the removal of licence disqualifications under this Division if the disqualified person has at any time been convicted of any of the following offences (whether or not a licence disqualification was imposed in connection with the offence):	23 24 25 26 27
(a)	the offence of murder or manslaughter caused by the use of a motor vehicle,	28 29
(b)	an offence against the <i>Crimes Act 1900</i> which comprises or includes causing death, grievous bodily harm or wounding by the use of a motor vehicle,	30 31 32
(c)	an offence against section 51A (Predatory driving) or 51B (Police pursuits) of the <i>Crimes Act 1900</i> ,	33 34
(d)	an offence against section 117 (1) (Negligent driving) which causes death or grievous bodily harm,	35 36
(e)	an offence against section 118 (1) (Intentional menacing driving),	37
(f)	an offence against section 52AB (Offence of failing to stop and assist after vehicle impact causing death or grievous bodily harm) of the <i>Crimes Act 1900</i> or an offence against section 146 of this Act that relates to an impact causing death or grievous bodily harm arising from the driving of a motor vehicle.	38 39 40 41 42
(2)	A disqualified person is not eligible to make an application to the Local Court for the removal of a licence disqualification under this Division if it is the disqualification of a person from holding a driver licence (other than a learner licence or interlock driver licence) imposed under section 211 (1) (b) or 214 (2).	43 44 45 46 47

(3)	A disqualified person is also not eligible to make an application to the Local Court for the removal of a licence disqualification under this Division if the person has committed a driving offence during the relevant offence-free period before the making of the application that would preclude the making of an order to remove those licence disqualifications.	1 2 3 4 5
221E	Rehearing of order removing licence disqualifications—undisclosed offences during relevant offence-free period	6 7
(1)	This section applies where:	8
(a)	the Local Court makes an order under this Division removing licence disqualifications, and	9 10
(b)	the Authority, after being notified of the order, has reason to believe the applicant has committed a driving offence during the relevant offence-free period ending at the time the order was made that would preclude the making of the order, and	11 12 13 14
(c)	the Authority notifies the relevant registrar of the Local Court of the alleged offence.	15 16
(2)	The relevant registrar, by notice to the applicant for the order, is to advise the applicant that the matter is to be reheard and set the matter down for rehearing by the Local Court.	17 18 19
(3)	On the rehearing, the Local Court may set aside the order and re-determine the application for the order.	20 21
(4)	The Authority is to defer any application for the issue of a driver licence to the applicant for the order until the matter is reheard.	22 23
[16]	Section 225 Effect of immediate licence suspension notice	24
	Omit section 225 (3).	25
[17]	Section 225 (4)	26
	Insert at the end of section 225:	27
(4)	An immediate licence suspension notice has effect even if the driver licence concerned has already been suspended.	28 29
[18]	Section 238 When additional sanctions may be imposed	30
	Insert at the end of section 238 (e):	31
	, or	32
(f)	is being operated on a road by an offending operator who is disqualified from holding or obtaining a driver licence so as to commit an offence (not being a camera recorded offence) of driving a vehicle at a speed more than 30 kilometres per hour over the designated speed limit applying to the driver for the length of road at the time the offence is committed, or	33 34 35 36 37 38
(g)	is being operated on a road by an offending operator:	39
(i)	who is disqualified from holding or obtaining a driver licence, or	40
(ii)	who has never been licensed,	41
	and who has been convicted of an offence against section 53 (3) or 54 (1) on 2 or more previous occasions within the past 5-year period.	42 43

[19] Section 239 Sanctions that may be imposed	1
Insert after section 239 (3):	2
(4) A reference in subsection (3) to 3 months is to be construed as a reference to 6 months if the offending operator is disqualified from holding or obtaining a driver licence and the sanction was imposed in respect of a sanctionable offence committed by the offending operator.	3 4 5 6
[20] Section 248 Retention of motor vehicle impounded or number-plates confiscated under this Part	7 8
Omit section 248 (1) and (2). Insert instead:	9
(1) The Commissioner of Police is to retain a motor vehicle impounded under section 242 (unless it is sooner released under this Part or in accordance with the statutory rules):	10 11 12
(a) for a period of 3 months after it was impounded, except as provided by paragraph (b), or	13 14
(b) for a period of 6 months after it was impounded if the offending operator is disqualified from holding or obtaining a driver licence and the sanction was imposed in respect of a sanctionable offence committed by the offending operator.	15 16 17 18
(2) The Authority is to retain number-plates confiscated under section 239 (unless they are sooner released under this Part or in accordance with the statutory rules):	19 20 21
(a) for a period of 3 months after they were confiscated, except as provided by paragraph (b), or	22 23
(b) for a period of 6 months after they were confiscated if the offending operator is disqualified from holding or obtaining a driver licence and the sanction was imposed in respect of a sanctionable offence committed by the offending operator.	24 25 26 27
[21] Schedule 4 Savings, transitional and other provisions	28
Insert at the end of the Schedule, with appropriate Part and clause numbering:	29
Part Provisions consequent on enactment of the Road Transport Amendment (Driver Licence Disqualification) Act 2017	30 31 32
Definition	33
In this Part:	34
<i>amending Act</i> means the <i>Road Transport Amendment (Driver Licence Disqualification) Act 2017</i> .	35 36
References to first, second or subsequent offences	37
A reference in a provision inserted or amended by the amending Act to a first, second or subsequent offence includes a reference to a first, second or subsequent offence committed before the commencement of the amending Act.	38 39 40 41

Removal of licence disqualifications

A reference in Division 3A of Part 7.4, as inserted by the amending Act, to the relevant offence-free period includes a reference to a period occurring before the commencement of that Division.

Abolition of habitual traffic offenders scheme

- (1) A disqualification from holding a driver licence imposed under Division 3 of Part 7.4 before the repeal of that Division by the amending Act does not cease to have effect because of the repeal of that Division.
- (2) Despite the repeal of Division 3 of Part 7.4, the power of a court under that Division (as in force immediately before its repeal) to quash a declaration of a person as an habitual traffic offender may continue to be exercised by a court despite its repeal.
- (3) Despite the repeal of section 208 (2) by the amending Act, Division 2 of Part 7.4 continues not to apply in respect of a person who continues to be subject to a disqualification from holding a driver licence by the operation of this clause.