

Passed by both Houses



New South Wales

Road Transport (Vehicle Registration) Amendment (Written-off Vehicles) Bill 2010

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I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2010*



New South Wales

Road Transport (Vehicle Registration) Amendment (Written-off Vehicles) Bill 2010

Act No , 2010

An Act to amend the *Road Transport (Vehicle Registration) Act 1997* and other legislation with respect to the notification, registration and management of written-off vehicles; to repeal the *Road Transport (General) Amendment (Written-off Vehicles) Act 2007*; and for other purposes.

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Road Transport (Vehicle Registration) Amendment (Written-off Vehicles) Act 2010*.

2 Commencement

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

3 Repeal of Road Transport (General) Amendment (Written-off Vehicles) Act 2007 No 52

The *Road Transport (General) Amendment (Written-off Vehicles) Act 2007* is repealed.

Schedule 1 Amendment of Road Transport (Vehicle Registration) Act 1997 No 119

[1] Section 4 Definitions

Omit the definition of *registered*. Insert instead:

registered, in relation to a registrable vehicle, means registered on the Register of Registrable Vehicles under this Act.

[2] Part 2AA

Insert after section 16:

Part 2AA Written-off vehicles

Division 1 Preliminary

16A Definitions

In this Part:

authorisation to repair means an authorisation to repair a written-off vehicle issued by the Authority under this Part.

authorised officer has the same meaning as it has in the *Road Transport (General) Act 2005*.

auto-dismantler has the same meaning as it has in the *Motor Dealers Act 1974* and includes any other person declared to be an auto-dismantler by the regulations under this Act.

certificate of compliance means a certificate of compliance issued by a licensed repairer under this Part.

commencement day means the day on which this Part commences.

dealer has the same meaning as it has in the *Motor Dealers Act 1974* and includes any other person declared to be a dealer by the regulations under this Act.

former written-off vehicle has the meaning given by section 16B (1).

insurer means a person who carries on the business of insuring vehicles and includes any other person declared to be an insurer by the regulations.

licensed repairer means a person who holds a licence under the *Motor Vehicle Repairs Act 1980*.

non-repairable damage means damage of a class, or damage caused in circumstances, prescribed by the regulations.

notifiable vehicle—see section 16G.

register of written-off vehicles means the register of written-off vehicles kept by the Authority under this Part.

self-insurer means any person who, in the course of a business, is the registered operator for 5 or more notifiable vehicles (or any other number of notifiable vehicles that may be prescribed by the regulations) in respect of each of which there is no insurance policy with an insurer covering loss or damage.

statutory written-off vehicle has the meaning given by section 16B (1).

total loss—see section 16H.

vehicle identifier, in relation to a vehicle, means:

- (a) in the case of a vehicle manufactured before 1 January 1989—the number quoted on the compliance plate that uniquely identifies the vehicle and sets it apart from similar vehicles and that corresponds to the identification number of the vehicle that is permanently recorded elsewhere on the vehicle, or
- (b) in any other case—the unique vehicle identification number (or “VIN”) allocated to the vehicle in accordance with the International Standards Organisation’s vehicle identification system required under an Australian Design Rule adopted by the regulations.

Division 2 Restrictions on registration of certain written-off vehicles

16B Register of written-off vehicles

- (1) The Authority is to keep a register of written-off vehicles that records information about vehicles that the Authority has reason to believe:
 - (a) are written-off vehicles (**statutory written-off vehicles**), or
 - (b) were previously written-off vehicles but which have since been repaired and then registered (**former written-off vehicles**).
- (2) The register is to contain such information and be in such form as the Authority thinks appropriate.
- (3) In this section **written-off vehicle** includes any vehicle:
 - (a) that has been assessed to be a total loss by a person in accordance with Division 3, or

- (b) that has been disposed of to an auto-dismantler by a self-insurer, or
- (c) that has been demolished or dismantled by an auto-dismantler, or
- (d) that is in the control of an auto-dismantler and is intended to be demolished or dismantled, or
- (e) that was recorded on the register of written-off vehicles on the commencement day, or
- (f) that is prescribed by the regulations.

16C Registration of written-off vehicles

- (1) The Authority must not register, renew or transfer the registration of any vehicle (or if the vehicle is registered, the Authority must cancel the registration of the vehicle) if its vehicle identifier is the same as the vehicle identifier of a statutory written-off vehicle or an interstate written-off vehicle.
- (2) However, subsection (1) does not apply if the vehicle is the subject of an authorisation to repair and:
 - (a) the application for registration is accompanied by a certificate of compliance in relation to the vehicle, or
 - (b) the Authority is satisfied that the vehicle is of a class exempt by the regulations from the obligation to be the subject of a certificate of compliance.
- (3) The Authority must not cancel the registration of a vehicle unless it has first given the registered operator of the vehicle at least 14 days' notice of the proposed cancellation.
- (4) The Authority must not register, renew or transfer the registration of a vehicle if to do so would breach a condition imposed by the Authority on an authorisation to repair.
- (5) In this section:
 - interstate written-off vehicle* means a vehicle recorded on a register of written-off vehicles (however described) of another Australian jurisdiction as:
 - (a) a statutory written-off vehicle or similar (being a vehicle that is not permitted to be registered in that jurisdiction by the vehicle registration authority of that jurisdiction), or

- (b) a repairable written-off vehicle or similar (being a vehicle that may in certain circumstances be registered in that jurisdiction), but only if that vehicle has not been registered in this or another jurisdiction since being so recorded.

16D Authority must refuse certain applications for authorisations

- (1) The Authority must refuse an application for the issue of an authorisation to repair a written-off vehicle if the Authority reasonably believes any one or more of the following:
 - (a) that the vehicle has suffered non-repairable damage,
 - (b) that the vehicle is prescribed by the regulations as a non-eligible vehicle,
 - (c) that the applicant is prescribed by the regulations as a non-eligible person.
- (2) This section does not limit the circumstances in which the Authority may refuse the issue of an authorisation to repair.

16E Applications for authorisations

- (1) An eligible person may apply to the Authority for the issue of an authorisation to repair a vehicle.
- (2) An application for the issue of an authorisation:
 - (a) must be in a form approved by the Authority, and
 - (b) must be accompanied by a record of an assessment made in accordance with Division 3 that the vehicle has not suffered non-repairable damage, and
 - (c) must be accompanied by any fee fixed for that purpose by the Authority under section 8.
- (3) The Authority may require an applicant to submit such other information as the Authority thinks fit.
- (4) In determining an application, the Authority must take into consideration any factors prescribed by the regulations.
- (5) The Authority may refuse the application or may issue an authorisation to repair the vehicle unconditionally or subject to any of the following conditions:
 - (a) a condition that the vehicle cannot be registered in the name of a person other than the applicant for a specified period or for an indefinite period,
 - (b) any condition of a class prescribed by the regulations.

- (6) If the vehicle is of a class of vehicles exempt by the regulations from the obligation to be the subject of a certificate of compliance, the authorisation to repair must state that fact.

Division 3 Assessment of damaged vehicles

16F Definitions

In this Division:

assessor means an insurer, self-insurer, auto-dismantler, dealer or other person prescribed by the regulations.

vehicle damage assessment means an assessment made by or on behalf of, and in the course of business of, an assessor as to whether or not a notifiable vehicle (anywhere in Australia) is a total loss.

16G Notifiable vehicles

- (1) For the purposes of this Part, a vehicle is a **notifiable vehicle** if the vehicle:
- (a) complies (or complied at the time of manufacture) with the requirements of all Australian Design Rules adopted by the regulations applying to it, and
 - (b) is not more than 15 years old (age being determined from the date of manufacture) or, if the regulations prescribe a different age, not more than the age so prescribed, and
 - (c) is located anywhere in Australia but is linked to the State because:
 - (i) it is registered in the State, or
 - (ii) it was last registered in the State, or
 - (iii) it has never been registered in Australia, but one or more of the incidents that caused the vehicle to be assessed as a total loss occurred in the State, and
 - (d) is not:
 - (i) a motor vehicle that has a GVM greater than 4.5 tonnes, or
 - (ii) a trailer that has a GVM greater than 4.5 tonnes.
- (2) For the purposes of this Part, a vehicle is also a **notifiable vehicle** if it is a vehicle prescribed by the regulations.

16H Vehicles that are a total loss

- (1) For the purposes of this Part, a vehicle is a **total loss** if it has been damaged, dismantled or demolished to the extent that its salvage value as a written off vehicle plus the cost of repairing the vehicle for use on a road would be more than:
 - (a) the market value of the vehicle immediately before the damage, dismantling or demolition, or
 - (b) if the vehicle is insured for a specified amount (known as the sum insured), that specified amount.
- (2) The regulations may:
 - (a) prescribe other cases as cases in which a vehicle is a total loss for the purposes of this Part, and
 - (b) prescribe exceptions to this section.
- (3) In this section:

market value of a vehicle means the price that the vehicle would bring at open market, as determined (having regard to local market prices and the age and condition of the vehicle) by the person who assesses whether or not the vehicle is a total loss.

salvage value of a vehicle means the value of the vehicle if sold for scrap or parts, or in a damaged state, as determined by the person who assesses whether or not the vehicle is a total loss.

16I Assessments as to whether a vehicle is a total loss

- (1) An assessor must ensure that any vehicle damage assessment made by or on behalf of the assessor is made by a person who:
 - (a) has the training, qualification or experience prescribed by the regulations for the purposes of this section, or
 - (b) acts on the advice of a person who has such training, qualifications or experience.Maximum penalty: 20 penalty units.
- (2) The Authority may, by notice in writing, exempt a person from subsection (1), before the relevant assessment is carried out. Such an exemption has effect only for the time specified in the exemption and if any conditions to which it is subject are complied with.
- (3) This section does not have effect until 6 months after the commencement day.

16J Factors relevant to assessments

An assessor must ensure that any vehicle damage assessment made by or on behalf of the assessor:

- (a) includes an assessment of whether the vehicle has suffered non-repairable damage, and
- (b) bases any calculation of the cost of repair of the vehicle (for the purposes of assessing whether the vehicle is a total loss) on the standard of repairs, and the repair methods, prescribed by the regulations in relation to vehicles of that type.

Maximum penalty:

- (a) in the case of a corporation, 250 penalty units for a first offence or 500 penalty units for a second or subsequent offence, or
- (b) in any other case, 50 penalty units for a first offence or 100 penalty units for a second or subsequent offence.

16K Provision of results of assessments

- (1) An assessor must, if requested to do so by the registered operator or owner of a notifiable vehicle or a person authorised by the Authority, provide the operator, owner or person with a written record of any vehicle damage assessment made by or on behalf of the assessor of that vehicle setting out:

- (a) a statement as to whether or not the vehicle has suffered non-repairable damage, and
- (b) any other information prescribed by the regulations.

Maximum penalty: 20 penalty units.

- (2) An assessor must, if directed in writing to do so by an authorised officer, provide the Authority with a written record of any vehicle damage assessment made by or on behalf of the assessor setting out:

- (a) a statement as to whether or not the vehicle has suffered non-repairable damage, and
- (b) any other information specified in the direction.

Maximum penalty: 20 penalty units.

- (3) More than one direction may be issued under subsection (2).

Note. Section 307C of the *Crimes Act 1900* makes it an offence for a person to produce a record under this section if the person does so knowing that the record is false or misleading.

16L Information about written-off and demolished vehicles

- (1) An assessor must ensure that the Authority is provided with the information required by the regulations concerning each notifiable vehicle that is assessed as being a total loss in the course of a vehicle damage assessment conducted by or on behalf of the assessor:
 - (a) within 7 days after the assessment and before the vehicle is sold or otherwise disposed of, or
 - (b) within any other time prescribed by the regulations.
- (2) A self-insurer must ensure that the Authority is provided with the information required by the regulations concerning each notifiable vehicle that is taken to be a total loss by virtue of being disposed of by the self-insurer (anywhere in Australia) to an auto-dismantler:
 - (a) within 7 days after the vehicle is disposed of, or
 - (b) within any other time prescribed by the regulations.
- (3) An auto-dismantler must ensure that the Authority is provided with the information required by the regulations concerning each notifiable vehicle that the auto-dismantler intends to demolish or dismantle (anywhere in Australia) in the course of the business carried on by the auto-dismantler:
 - (a) within 7 days after the auto-dismantler forms the intention to demolish or dismantle the vehicle, or
 - (b) within any other time prescribed by the regulations.
- (4) Despite subsection (3), the information must be provided before the part of the vehicle to which the vehicle identifier is attached is sold or otherwise disposed of.
- (5) A person (other than an insurer) is not guilty of an offence against this section in respect of a failure to provide information concerning a notifiable vehicle if the person satisfies the court that the person believed, on reasonable grounds, that the required information concerning the vehicle had already been provided to the Authority by another person under this section.
Maximum penalty: 20 penalty units.

16M Maintenance of records

- (1) An assessor must maintain, and keep for at least 7 years, the following records in relation to each vehicle damage assessment made by or on behalf of the assessor:
 - (a) the records required by the regulations,

- (b) any other records that the Authority, by notice in writing, requires the assessor to maintain.
- (2) An authorised officer may, for the purposes of determining whether this Part has been complied with, direct in writing any person to produce any records required to be maintained under this Division.
- (3) A person must comply with such a direction within the time specified in the direction.
Maximum penalty: 20 penalty units.

16N False assessments

A person must not induce, attempt to influence, or coerce the making of a false vehicle damage assessment or a vehicle damage assessment that does not comply with this Part.

Maximum penalty:

- (a) in the case of a corporation, 250 penalty units for a first offence or 500 penalty units for a second or subsequent offence, or
- (b) in any other case, 50 penalty units for a first offence or 100 penalty units for a second or subsequent offence.

16O Removal of vehicle identifiers

An assessor must ensure that reasonable steps are taken to remove, deface, obliterate or destroy the vehicle identifier on any part of a vehicle that has been assessed as being a total loss by or on behalf of the assessor, if required to do so:

- (a) by the regulations, or
- (b) by notice in writing served on the assessor by the Authority.

Maximum penalty: 20 penalty units.

16P Duty to attach written-off warning label to written-off vehicles

- (1) An assessor must ensure that a written-off warning label is attached, in accordance with the regulations, at all times to any vehicle in the person's possession or control that has been assessed as being a total loss:
 - (a) to the part of the vehicle to which the vehicle identifier is attached (in the case of a dismantled vehicle), or
 - (b) to the vehicle (in any other case).

- (2) The label must be attached within the period in which the information must be provided to the Authority about the vehicle under section 16L.

Maximum penalty: 20 penalty units.

Division 4 General

16Q Certificates of compliance

- (1) A licensed repairer may issue, in a form approved by the Authority, a certificate of compliance in relation to a vehicle if:
- (a) the repairer's licence is of a class that authorises the repairer to repair the type of vehicle, and the type of vehicle damage, the subject of certification, and
 - (b) the licensed repairer is satisfied that the standard of repairs, and the repair methods used, are in accordance with the requirements adopted by or set out in the regulations.

- (2) A licensed repairer must not issue a certificate of compliance that he or she knows, or ought reasonably to know, is false or misleading in a material particular.

Maximum penalty: 20 penalty units.

- (3) A person must not attempt to obtain a certificate of compliance by a false or misleading statement or any misrepresentation or other dishonest means.

Maximum penalty: 20 penalty units.

- (4) The Authority may do any of the following in respect of a vehicle that is the subject of a certificate of compliance referred to in subsection (2) or (3):

- (a) amend the register of written-off vehicles accordingly,
- (b) suspend the registration of the vehicle,
- (c) refuse to transfer the registration of the vehicle,
- (d) cancel the registration of the vehicle.

- (5) The Authority must not cancel the registration of a vehicle unless it has first given the registered operator of the vehicle at least 14 days' notice of the proposed cancellation.

- (6) A person who is not a licensed repairer must not purport to issue a certificate of compliance or advertise that the person is willing to issue a certificate of compliance.

Maximum penalty: 1,000 penalty units.

16R Access to register of written-off vehicles

- (1) The Authority is not to provide access to the register of written-off vehicles except as provided by this section.
- (2) The Authority may allow the following to have access to the register:
 - (a) a government department, a public authority, a local authority or the NSW Police Force,
 - (b) a government department, a public authority, a local authority or the police force of another State, a Territory or the Commonwealth,
 - (c) Austroads, but only for the purpose of its national database of written-off vehicles and information about them,
 - (d) an insurer, self-insurer, auto-dismantler or dealer,
 - (e) any other person or body, or class of persons or bodies, prescribed by the regulations.
- (3) The Authority may provide a person or body with information contained in the register.
- (4) The Authority may:
 - (a) impose any conditions that the Authority considers appropriate on the provision of access, or the provision of information, under this section, or
 - (b) limit the level of detail to which access is provided under this section as the Authority considers appropriate.

16S Interference with register of written-off vehicles

A person must not, except as authorised by the Authority:

- (a) obtain access to the register of written-off vehicles or information contained in the register, or
- (b) make, alter or delete an entry in the register, or
- (c) interfere with the register in any other way.

Maximum penalty: 250 penalty units.

16T Unauthorised disclosure of information

A person must not disclose any information obtained in connection with the administration or execution of this Part, except:

- (a) in connection with the administration or execution of this Act or the regulations, or

- (b) for the purposes of Austroads administering a national database of written-off vehicles and information about them and allowing driver licensing and vehicle registration authorities in the other States and Territories to have access to the information in the national database, or
 - (c) for the purposes of any legal proceedings arising out of this Act or the regulations or of any report of such proceedings, or
 - (d) to the Motor Vehicle Repair Industry Authority constituted under the *Motor Vehicle Repairs Act 1980* for the purposes of any disciplinary or legal proceedings arising out of that Act or the regulations under that Act, or
 - (e) in the circumstances prescribed by the regulations.
- Maximum penalty: 20 penalty units.

16U Certificate evidence

- (1) A statement in a certificate purporting to have been issued by an Australian Authority or Australian authorised officer that, at a specified time or during a specified period, a specified vehicle was or was not on the register of written-off vehicles or a register of written-off vehicles (however described) kept under a law of another Australian jurisdiction is admissible as evidence in any legal proceedings and is, until admissible evidence is given to the contrary, evidence of the matter certified.
- (2) In this section, *Australian Authority* and *Australian authorised officer* have the same meaning as in the *Road Transport (General) Act 2005*.

16V Regulations

- (1) Without limiting section 14, the regulations may make provision for or with respect to the following matters:
 - (a) any matter relating to the registration of written-off vehicles,
 - (b) any matter relating to the issue of authorisations to repair,
 - (c) any matter relating to the making of vehicle damage assessments under this Part, including the conduct or duties of persons making those assessments,
 - (d) any matter relating to the making and keeping of records under this Part and the furnishing of information and records,

- (e) any matter relating to the issue of certificates of compliance, including the conduct or duties of persons issuing certificates of compliance,
 - (f) any matter relating to written-off warning labels,
 - (g) the disclosure of information obtained in connection with the administration or execution of this Part.
- (2) The regulations may require any person to provide the Authority with the information prescribed by the regulations concerning any notifiable vehicle that is assessed as being a total loss while in the care, custody or control of the person (anywhere in Australia).
 - (3) The regulations may exempt, with or without conditions, any vehicle, any class of vehicles or any class of persons from the operation of all or any of the provisions of this Part.
 - (4) The regulations may adopt a provision set out in any specified publication.

[3] Schedule 3 Savings and transitional provisions

Insert at the end of clause 1 (1):

Road Transport (Vehicle Registration) Amendment (Written-off Vehicles) Act 2010

[4] Schedule 3, Part 5

Insert after clause 21:

**Part 5 Provisions consequent on enactment of
Road Transport (Vehicle Registration)
Amendment (Written-off Vehicles) Act 2010**

22 Definition

In this Part:

commencement day means the day on which Part 2AA of this Act commences.

23 Keeping of register of written-off vehicles

- (1) The register kept under section 255 of the *Road Transport (General) Act 2005* immediately before the commencement day is taken to be the register required to be kept under section 16B of this Act.

- (2) As soon as practicable after the commencement day, the Authority must record on the register as statutory written-off vehicles all vehicles that, immediately before that time, were recorded as having the status of being wrecked.
- (3) A vehicle that, immediately before the commencement day, is registered and is recorded on the register of written-off vehicles as a repairable written-off vehicle is, for the purposes of Part 2AA of this Act, taken to be a former written-off vehicle.

24 Existing repairable written-off vehicles may be registered without authorisation to repair or certificate of compliance

- (1) A vehicle is not required to be the subject of an authorisation to repair under section 16C (2) if the vehicle was recorded on the register of written-off vehicles as a repairable written-off vehicle on the commencement day and the vehicle is registered within 2 years after that day. Any such vehicle may, during that 2-year period, be recorded on the register of written-off vehicles as a repairable written-off vehicle.
- (2) An application to register a vehicle that was recorded on the register of written-off vehicles as a repairable written-off vehicle on the commencement day is not required to be accompanied by a certificate of compliance under section 16C (2) in relation to the vehicle if the application is lodged with the Authority within 6 months after the commencement day.

25 Former written-off vehicles may be referred to as repairable written-off vehicles

A vehicle that is recorded on the register of written-off vehicles under Part 2AA of this Act as a former written-off vehicle may also be referred to as a repairable written-off vehicle.

Schedule 2 Amendment of Motor Vehicle Repairs Act 1980 No 71

[1] Section 4 Definitions

Insert in alphabetical order in section 4 (1):

certification work means work relating to the issue of a certificate of compliance under Part 2AA of the *Road Transport (Vehicle Registration) Act 1997*.

[2] Section 42 Grounds on which a licence holder may be dealt with under this Part

Insert after section 42 (1) (d):

(d1) that the holder has been convicted of an offence under, or may have failed to comply with, section 16Q of the *Road Transport (Vehicle Registration) Act 1997* or the regulations made under Part 2AA of that Act,

[3] Section 73 Authority may require information

Insert “or certification work” after “repair work” in section 73 (1).

[4] Section 73 (3)

Insert “, or section 16Q of the *Road Transport (Vehicle Registration) Act 1997*” after “Part 4”.

[5] Section 75 Power of entry and examination

Insert after section 75 (5):

(6) A reference in this section to this Act or the regulations includes a reference to Part 2AA of the *Road Transport (Vehicle Registration) Act 1997* and the regulations made under that Part.

[6] Section 75B Production of records

Insert “, or Part 2AA of the *Road Transport (Vehicle Registration) Act 1997* or the regulations made under that Part” after “regulations” in section 75B (1).

[7] Section 77 Disclosure of information

Insert after section 77 (b):

(b1) to the Roads and Traffic Authority in connection with certification work,

Schedule 3 Amendment of Road Transport (General) Act 2005 No 11

[1] Section 10 Regulations

Omit section 10 (2) (a).

[2] Section 130 Application of Part

Insert after section 130 (1) (a):

- (b) Part 2AA of the *Road Transport (Vehicle Registration) Act 1997*,

[3] Section 230 Certificate evidence

Omit section 230 (1) (k).

[4] Part 6.2 Miscellaneous provisions concerning vehicles and roads

Omit Division 2 (Written off and wrecked motor vehicles).

[5] Schedule 1 Savings, transitional and other provisions

Omit clause 7.