

[Act 1999 No 19]



New South Wales

Road Transport Legislation Amendment Bill 1999

Explanatory note

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

This Bill is cognate with the *Road Transport (General) Bill 1999*.

Overview of Bill

The objects of this Bill are:

- (a) to repeal the *Traffic Act 1909* (and the regulations made under that Act) and various other Acts that amend that Act, and
 - (b) to make amendments to various other Acts and Regulations consequent on those repeals and the enactment of the proposed *Road Transport (General) Act 1999* and proposed *Road Transport (Safety and Traffic Management) Act 1999*, and
-

- (c) to amend the *Subordinate Legislation Act 1989*:
- (i) to exempt certain proposed principal statutory rules from the requirement under that Act to prepare a regulatory impact statement in respect of matters involving the implementation of an intergovernmental agreement scheduled to the *National Road Transport Commission Act 1991* of the Commonwealth that have been the subject of regulatory assessment in accordance with such an agreement, and
 - (ii) to postpone the date of the staged repeal of certain regulations under the *Traffic Act 1909* from 1 September 1999 to 1 December 1999 to enable New South Wales to implement the proposed *Australian Road Rules* on the latter date in accordance with a nationally agreed timetable, and
- (d) to make interim amendments to the *Traffic Act 1909* and other amendments to the *Road Transport (Driver Licensing) Act 1998* and the *Road Transport (Vehicle Registration) Act 1997*.

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, except for Schedule 4 (and so much of proposed section 4 as relates to Schedule 4) which commence on the date of assent.

Clause 3 is a formal provision that repeals the Acts and regulations set out in Schedule 1.

Clause 4 is a formal provision giving effect to the amendments to Acts and regulations set out in Schedules 2–4.

Schedule 1 Repeals

Schedule 1 repeals the following Acts and regulations:

General Traffic Regulations 1916

General Traffic (Pedestrian) Regulations 1937

Motor Traffic Regulations 1935

Traffic Act 1909 No 5

Traffic Amendment (Confiscation of Keys and Driving Prevention) Act 1998 No 1

Traffic Amendment (Disqualification for Speeding) Act 1997 No 132
Traffic Amendment (Learner Driver Supervisors) Act 1996 No 75
Traffic Amendment (Pay Parking Schemes) Act 1998 No 20
Traffic Amendment (Penalties and Disqualifications) Act 1998 No 70
Traffic Amendment (Speeding Anti-evasion Measures) Act 1998 No 152
Traffic Amendment (Street and Illegal Drag Racing) Act 1996 No 145
Traffic Amendment (Street and Illegal Drag Racing) Act 1997 No 74
Traffic Amendment (Tyre Deflation—Police Pursuits) Act 1998 No 112
Traffic Amendment (Variable Speed Limits) Act 1998 No 27
Traffic Amendment (Vehicle Identification) Act 1996 No 146
Traffic and Crimes Amendment (Menacing and Predatory Driving) Act 1997 No 75
Traffic Legislation Amendment Act 1997 No 115
Traffic (Savings and Transitional) Regulation 1993

Schedule 2 Consequential amendment of Acts

Schedule 2 makes amendments to various Acts consequent on the repeal of the Acts and Regulations set out in Schedule 1 and the enactment of the proposed *Road Transport (General) Act 1999* and the proposed *Road Transport (Safety and Traffic Management) Act 1999*.

In particular, the following amendments should be noted:

Road Transport (Driver Licensing) Act 1998 No 99 (Schedule 2.36)

Item [1] inserts a note in the *Road Transport (Driver Licensing) Act 1998* explaining the inter-relationship between the Act, the proposed *Road Transport (General) Act 1999* and other road transport legislation.

Items [3] and [16] omit references to the Ministerial Council referred to in the *National Road Transport Commission Act 1991* of the Commonwealth and replace them with references to the successor body, namely, the Australian Transport Council.

Item [6] omits section 25 (Production of licence to court) of the *Road Transport (Driver Licensing) Act 1998* because an equivalent provision will be located in proposed section 22 of the proposed *Road Transport (General) Act 1999*. It also re-enacts the provisions of sections 6 and 7A of the *Traffic Act 1909* as in force immediately before their repeal by Schedule 1 to the proposed Act.

Items [4], [7]–[12], [15], [17] and [18] omit or amend provisions of the Act as a consequence of relevant provisions being located in the proposed *Road Transport (General) Act 1999*. Item [18] also amends the definition of **road related area** in the Dictionary of the Act to make it consistent with the definition of that expression in the proposed *Road Transport (General) Act 1999* and *Road Transport (Safety and Traffic Management) Act 1999* by including the shoulder of a road.

The other items make amendments that are consequential on the repeal of the *Traffic Act 1909* and the enactment of equivalent provisions in the proposed *Road Transport (Safety and Traffic Management) Act 1999*.

Road Transport (Vehicle Registration) Act 1997 No 119 (Schedule 2.38)

Item [1] inserts a note in the *Road Transport (Vehicle Registration) Act 1997* explaining the inter-relationship between the Act, the proposed *Road Transport (General) Act 1999* and other road transport legislation.

Items [6] and [12] re-enact sections 7B and 11C of the *Traffic Act 1909* as in force immediately before their repeal by Schedule 1.

Items [2], [4], [5], [7]–[11], [13] and [14] omit or amend provisions of the *Road Transport (Vehicle Registration) Act 1997* that are to be relocated in the proposed *Road Transport (General) Act 1999*. Item [2] also amends the definition of **road related area** in the Dictionary of the Act to make it consistent with the definition of that expression in the proposed *Road Transport (General) Act 1999* and *Road Transport (Safety and Traffic Management) Act 1999* by including the shoulder of a road.

Item [3] repeals section 15 (2) (j) as a consequence of the repeal of section 18A of the *Traffic Act 1909* and its replacement by proposed sections 7 and 43 of the proposed *Road Transport (General) Act 1999*.

Transport Administration Act 1988 No 109 (Schedule 2.49)

The amendments to the *Transport Administration Act 1988* re-enact in the Act provisions relating to the safety and traffic management functions of the Roads and Traffic Authority that are presently contained in Part 1A, Part 3C and Part 3D of the *Traffic Act 1909*.

Other important classes of amendments

Schedule 2 also replaces definitions of *owner* in provisions in various Acts that are presently defined in terms of concepts used in the *Traffic Act 1909* (for instance, the concept of owner in section 18A) and the *Road Transport (Vehicle Registration) Act 1997* (for instance, the concept of registered operator) with the concept of the responsible person of a vehicle within the meaning of the *Road Transport (General) Act 1999*. The introduction of this new concept will ensure that such definitions of *owner* will be consistently defined throughout the statute book.

Schedule 3 Consequential amendment of Regulations

Schedule 3 makes amendments to various Regulations consequent on the repeal of the Acts and Regulations referred to in Schedule 1 and the enactment of the proposed *Road Transport (General) Act 1999* and the proposed *Road Transport (Safety and Traffic Management) Act 1999*.

Schedule 4 Other amendment of Acts

4.1 Road Transport (Driver Licensing) Act 1998 No 99

Items [1] amends section 14 of the *Road Transport (Driver Licensing) Act 1998* to make clear that the accrual of demerit points will be taken into account for the purposes of that section whether or not a person holds an Australian driver licence.

Item [2] replaces section 14 (4) with a new provision to enable the Authority to refuse or otherwise deal with applications for a driver licence in accordance with proposed section 16A if the applicant has incurred 12 or more demerit points within a 3 year period ending on the day on which the applicant last committed an offence for which demerit points have been recorded against the applicant.

Item [3] amends section 16 (3) of the Act to make it clear that the Authority does not have to give a person a suspension notice under that section if it thinks that it would be more appropriate for it to deal with the person under proposed section 16A.

Item [4] amends section 16 (8) of the Act to enable a person who has incurred 12 or more demerit points within a 3 year period ending on the day on which the person last committed an offence for which demerit points have been recorded against the person to elect to be subject to a good behaviour requirement at any time before his or her licence is due to be suspended under the section. It also requires the election to be made in a form approved by the Authority. At present, the election needs to be made within 21 days before a notice of suspension is issued to the person and must be in writing.

Item [5] inserts a new section 16A in the Act to enable the Authority to determine applications for a licence by a person who has incurred 12 or more demerit points within a 3 year period ending on the day on which the person last committed an offence for which demerit points have been recorded against the person in a similar way as it determines suspensions under section 16. In particular, the new provision enables the Authority to serve notice on licence applicants who have incurred demerit points that they are ineligible to apply for licences for periods comparable to the periods of suspension referred to in section 16 (5). At present, the Authority must grant a new licence to such persons and then impose a period of suspension under section 16. The new provision will obviate the need to renew the licence and then suspend it.

Items [6] and [7] amend section 33 to allow the Authority to suspend driver licences for certain speeding offences as well as cancel licences.

Item [8] updates section 33 (5) by adding a reference to section 4A (5BA) of the *Traffic Act 1909*.

Item [9] makes it clear that if a person's licence expires during a suspension period imposed under section 16, 16A or 33 (as amended), the person will not be able to obtain another licence until the period expires and will be guilty of an offence of driving during a suspension period if he or she drives during the balance of the unexpired suspension period.

Item [10] makes an amendment in the nature of statute law revision to section 34.

Item [11] inserts a provision in Schedule 3 to validate an election by a holder of a driver licence before the commencement of Schedule 4.1 to the proposed Act to be of good behaviour for a specified period as an alternative to having his or her application for a licence refused by the Authority.

4.2 Road Transport (Vehicle Registration) Act 1997 No 119

The amendment to the *Road Transport (Vehicle Registration) Act 1997* enables the regulations to provide for the waiver and postponement of fees under that Act.

4.3 Subordinate Legislation Act 1989 No 146

Item [1] amends section 10 of the *Subordinate Legislation Act 1989* to postpone the date of the staged repeal of certain regulations under the *Traffic Act 1909* from 1 September 1999 to 1 December 1999 to enable New South Wales to implement the proposed *Australian Road Rules* on the latter date in accordance with a nationally agreed timetable.

Item [2] amends Schedule 3 to the *Subordinate Legislation Act 1989* to ensure that proposed principal statutory rules concerning matters involving the substantial implementation of an intergovernmental agreement scheduled to the *National Road Transport Commission Act 1991* of the Commonwealth that have been the subject of regulatory assessment in accordance with such an agreement are exempt from the general requirement under the Act for the preparation of a regulatory impact statement for a proposed principal statutory rule. Although statutory rules that are substantially uniform or complementary with the legislation of the Commonwealth or other States are already exempt, the exemption does not cover statutory rules made in New South Wales before the relevant legislation is introduced in the Commonwealth or other States and does not cover nationally agreed provisions that are implemented in New South Wales by statutory rules where neither the Commonwealth or another State has implemented the provisions as part of its law.

4.4 Traffic Act 1909 No 5

The amendment to the *Traffic Act 1909* ensures that a driver licence issued in this State is taken to have been cancelled if the person is disqualified in another State or Territory from holding an Australian driver licence. This amendment will take effect on the date of assent to the proposed Act.