



New South Wales

Licensing and Registration (Uniform Procedures) Amendment (Photo ID) Bill 2004

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 *Licensing and Registration (Uniform Procedures) Act 2002* (the **Principal Act**) to provide for arrangements under which applicants for selected licences and certificates of registration will be able to satisfy a requirement to provide a photograph of themselves for the purpose of the licence or certificate of registration by either allowing access to a photograph already held by the Roads and Traffic Authority (the **RTA**) (such as a driver licence photograph) or by having the photograph taken and provided by the RTA.

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 Principal Act 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.

Schedule 1 Amendment of Licensing and Registration (Uniform Procedures) Act 2002

Schedule 1 [5] inserts a new Part 4A into the Principal Act to provide for the arrangements referred to in the Overview.

The proposed Part contains the following provisions:

- (a) Proposed section 80A provides for the application of the proposed Part to selected licences and certificates of registration.
- (b) Proposed section 80B contains definitions of expressions used in the proposed Part.
- (c) Proposed section 80C provides for the Director-General of the Department of Commerce to enter into arrangements (*photo-access arrangements*) with the RTA, licensing and registration authorities and service providers to facilitate the provision by the RTA to those authorities of photographs of applicants for licences and certificates of registration to which the proposed Part applies. An applicant required to provide a photograph can be required to provide the photograph by means of the photo-access arrangements. Applicants will have a choice of authorising the use of a photograph already held by the RTA or having a new photograph taken by the RTA.
- (d) Proposed section 80D provides further detail on what the photo-access arrangements can include, such as provision for the exchange of information between the RTA and participating authorities for the purposes of identity checks and provision for service providers to provide information services on behalf of the RTA and participating authorities in connection with the arrangements.
- (e) Proposed section 80E authorises the RTA, participating authorities and service providers to enter into the photo-access arrangements and extends their functions to include functions conferred or imposed by the photo-access arrangements.
- (f) Proposed section 80F requires a participating authority to accept a photograph provided under the photo-access arrangements unless the arrangements permit rejection of the photograph in certain limited circumstances.
- (g) Proposed section 80G provides for the application of provisions of proposed sections 80H–80K for the security and protection of photographs to photographs held by the RTA, a participating authority or a service provider that were taken or provided for the purposes of the photo-access arrangements. These provisions do not extend to photographs held by the RTA that are already held by the RTA (which are the subject of existing security and protection provisions of the *Road Transport (Driver Licensing) Act 1998*).
- (h) Proposed section 80H limits the purposes for which photographs can be kept and used by the RTA, a participating authority or a service provider.

- (i) Proposed section 80I limits the purposes for which photographs can be released by the RTA, a participating authority or a service provider.
- (j) Proposed section 80J provides for the RTA to be the public sector agency responsible under the *Privacy and Personal Information Protection Act 1998* for giving a person access to their photograph and making appropriate alterations at their request.
- (k) Proposed section 80K requires the Director-General to ensure that the photo-access arrangements make appropriate provision for service providers under the arrangements to comply with sections 80H and 80I and information protection principles under the *Privacy and Personal Information Protection Act 1998*.

Schedule 1 [6] inserts a new Schedule 3A into the Principal Act to list the legislative provisions that provide for the selected licences and certificates of registration to which the photo-access arrangements will apply.

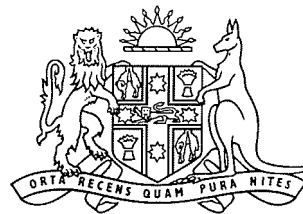
Schedule 1 [1]–[4] make consequential amendments.

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

Schedule 2 makes consequential amendments to the *Road Transport (Driver Licensing) Act 1998* to authorise photographs kept by the RTA under that Act (such as driver licence photographs) to be used, kept and released for the purposes of the photo-access arrangements.

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Explanatory note



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No. , 2004

A Bill for

An Act to amend the *Licensing and Registration (Uniform Procedures) Act 2002* to make further provision for the provision of photographs by applicants; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Licensing and Registration (Uniform Procedures) Amendment (Photo ID) Act 2004</i> .	3 4
2 Commencement	5
This Act commences on a day or days to be appointed by proclamation.	6
3 Amendment of Licensing and Registration (Uniform Procedures) Act 2002 No 28	7 8
The <i>Licensing and Registration (Uniform Procedures) Act 2002</i> is amended as set out in Schedule 1.	9 10
4 Amendment of Road Transport (Driver Licensing) Act 1998 No 99	11
The <i>Road Transport (Driver Licensing) Act 1998</i> is amended as set out in Schedule 2.	12 13

Schedule 1	Amendment of Licensing and Registration (Uniform Procedures) Act 2002	1 2 3
	(Section 3)	4
[1] Section 2A		5
	Insert after section 2:	6
2A Notes		7
	Notes included in this Act do not form part of this Act.	8
[2] Section 14 Provision of further information and supporting evidence		9
	Insert after section 14 (1):	10
	Note. Part 4A makes special provision for photographic identification for some licences.	11 12
[3] Section 43 Provision of further information and supporting evidence		13
	Insert after section 43 (1):	14
	Note. Part 4A makes special provision for photographic identification for some registration.	15 16
[4] Section 70 Provision of further information and supporting evidence		17
	Insert after section 70 (1):	18
	Note. Part 4A makes special provision for photographic identification for some registration.	19 20
[5] Part 4A		21
	Insert after Part 4:	22
Part 4A Special provisions for ID photographs		23
Division 1 Application and interpretation		24
80A Application of Part		25
(1)	This Part applies to a licence or certificate of registration under such of the legislative provisions referred to in Schedules 1, 2 and 3 as are referred to in Schedule 3A.	26 27 28
(2)	A statutory rule that establishes, amends or repeals a licensing or registration scheme may amend Schedule 3A so as to include, amend or omit any matter arising from the establishment, amendment or repeal of the scheme.	29 30 31 32

80B Interpretation	1
(1) In this Part:	2
<i>applicant</i> means an applicant under Part 2, 3 or 4 in respect of a licence or certificate of registration to which this Part applies.	3 4
<i>Director-General</i> means the Director-General of the Department of Commerce.	5 6
<i>photograph</i> includes a digitised, electronic or computer generated image, and electronic data and other information used to create or generate a photograph.	7 8 9
<i>RTA</i> means the Roads and Traffic Authority.	10
(2) Expressions used in this Part have the same meaning as they have in Parts 2, 3 and 4 in respect of the particular licence or certificate of registration to which the use of the expression relates.	11 12 13
Division 2 Photo-access arrangements	14
80C Arrangements for the provision of photographs of applicants	15
(1) The Director-General may enter into the following arrangements (<i>photo-access arrangements</i>) to facilitate the provision to licensing and registration authorities of photographs of applicants in connection with applications to which this Part applies:	16 17 18 19 20
(a) arrangements with the RTA and a licensing or registration authority (a <i>participating authority</i>) for the RTA to provide the participating authority on behalf of an applicant with a photograph of the applicant as a means of compliance with a lawful requirement that a photograph of the applicant be provided in connection with the application concerned,	21 22 23 24 25 26 27
(b) arrangements with a person or body (a <i>service provider</i>) for the provision by the service provider of information services for or on behalf of the RTA or a participating authority in connection with the arrangements referred to in paragraph (a), being services relating to the collection, processing, disclosure or use of, or provision of access to, information (including photographs).	28 29 30 31 32 33 34
(2) A participating authority is entitled to require that a photograph that an applicant is required to provide to the authority in connection with an application to the authority must be provided under and in accordance with the photo-access arrangements.	35 36 37 38

- (3) The photo-access arrangements must afford an applicant the choice of having a photograph of the applicant provided by means of the provision of an existing photograph already held by the RTA or by means of the provision of a new photograph to be taken by the RTA.

80D What the photo-access arrangements can provide for

The photo-access arrangements can include provision for or with respect to the following:

- (a) authorising the RTA to take, store, use and provide photographs for the purposes of the arrangements, including photographs already held by the RTA in the exercise of any other functions of the RTA (such as photographs to which Part 5 of the *Road Transport (Driver Licensing) Act 1998* applies),
- (b) authorising the collection of information by the RTA for use in connection with the arrangements, including information to assist the RTA to identify persons whose photographs are to be taken or provided by the RTA,
- (c) authorising the disclosure by the RTA to a participating authority of information (including photographs) held by the RTA, for the purpose of assisting the authority to verify the identity of an applicant,
- (d) authorising the disclosure by a participating authority to the RTA of information (including photographs) held by the participating authority, for the purpose of assisting the RTA to verify the identity of a person whose photograph is to be taken or provided by the RTA under the arrangements,
- (e) providing for the exercise by a service provider for or on behalf of the RTA or a participating authority of any functions of the RTA or participating authority under the arrangements,
- (f) the fees to be paid to the RTA (by a participating authority or applicant) in connection with any service provided by the RTA under the arrangements.

80E Functions for the purposes of photo-access arrangements

- (1) The RTA, participating authorities and service providers are authorised to enter into the photo-access arrangements under this Part.

(2)	The RTA, participating authorities and service providers have and may exercise such functions as are conferred or imposed on them by or under the photo-access arrangements.	1 2 3
(3)	The RTA is authorised to charge and recover any fees that the photo-access arrangements provide are payable to the RTA. This section does not limit any power of the RTA under the <i>Transport Administration Act 1988</i> or otherwise to charge or recover a fee.	4 5 6 7
80F	Participating authorities required to accept photos provided under photo-access arrangements	8 9
(1)	A photograph of an applicant provided under the photo-access arrangements is to be accepted by a participating authority as having been provided by the applicant, unless the authority is permitted under the arrangements to reject the photograph.	10 11 12 13
(2)	The photo-access arrangements can permit a participating authority to reject a photograph provided under the arrangements but only in the following circumstances:	14 15 16
(a)	the photograph is not a sufficiently recent photograph, having regard to the need for the photograph to be adequate for use as a means of identification until the end of the period of currency of the licence or certificate of registration concerned,	17 18 19 20 21
(b)	the image quality or other technical qualities of the photograph are not adequate, having regard to any special aspects of the purpose for which the photograph is to be used,	22 23 24 25
(c)	the Director-General is satisfied some other good reason exists that justifies rejection of the photograph.	26 27
Division 3	Security and protection of photographs	28
80G	Photographs to which Division applies	29
	This Division applies to the following photographs:	30
(a)	photographs held by the RTA that have been taken pursuant to the photo-access arrangements (not including photographs kept by the RTA under Part 5 of the <i>Road Transport (Driver Licensing) Act 1998</i>),	31 32 33 34
(b)	photographs held by a participating authority or a service provider that have been provided by the RTA pursuant to the photo-access arrangements, whether those photographs were taken by the RTA pursuant to the	35 36 37 38

arrangements or were photographs kept by the RTA under
Part 5 of the *Road Transport (Driver Licensing) Act 1998*.

80H Keeping and use of photographs

- (1) A photograph to which this Division applies may be kept and used by the RTA, a participating authority or a service provider for one or more of the following purposes only:
- (a) to assist the RTA to verify the identity of a person whose photograph is to be taken or provided by the RTA under the arrangements or to assist a participating authority to verify the identity of an applicant,
 - (b) to facilitate reproducing the likeness of a person on a licence or certificate of registration in connection with which the photograph was taken or provided,
 - (c) the exercise of any function conferred or imposed by or under the photo-access arrangements,
 - (d) any purpose that is reasonably necessary for the proper exercise of any of the investigative functions of the participating authority or its conduct of any lawful investigation,
 - (e) for the conduct of relevant criminal proceedings, and any investigation relating to or leading to any such proceedings.
- (2) A photograph may be used for a purpose set out in this section at the time that the photograph is provided or taken or at any later time.
- (3) In this section:
relevant criminal proceedings means:
- (a) criminal proceedings under the legislation under which a licence or certificate of registration to which this Part applies is issued, or
 - (b) proceedings under Division 3 of Part 5 (Forgery and false instrument offences) of the *Crimes Act 1900* in relation to a licence or certificate of registration to which this Part applies.

80I Release of photographs

- (1) The RTA, a participating authority or a service provider must ensure that a photograph to which this Division applies is not released except:

- (a) in the exercise of any function conferred or imposed by or under the photo-access arrangements, or 1
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 - (b) for any purpose that is reasonably necessary for the proper exercise of any of the agency's investigative functions or its conduct of any lawful investigation, or 3
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 - (c) for the purposes of the conduct of relevant criminal proceedings (as defined in section 80H), and any investigation relating to or leading to any such proceedings, or 6
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 - (d) as provided under any other law, or 10
 - (e) to the person whose likeness is shown in the photograph. 11
- (2) Any release authorised by subsection (1) (b) or (c) must be in accordance with any protocol approved by the Privacy Commissioner. 12
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80J Access to and alteration of photographs 15

Sections 14 (Access to personal information held by agencies) and 15 (Alteration of personal information) of the *Privacy and Personal Information Protection Act 1998* do not apply to a participating authority or service provider in respect of photographs to which this Division applies (without affecting the application of those sections to the RTA). 16
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Note. The RTA is the appropriate agency to exercise functions under those sections with respect to the photographs to which this Division applies. 22
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80K Application of privacy principles to private sector service providers 25
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In the case of a service provider that is not a public sector agency under the *Privacy and Personal Information Protection Act 1998*, the Director-General is not to enter into photo-access arrangements with the service provider unless satisfied that the arrangements make appropriate provision for compliance by the service provider, in connection with its functions under the arrangements, with: 27
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- (a) sections 80H and 80I, and 34
- (b) such of the information protection principles under the *Privacy and Personal Information Protection Act 1998* as would be applicable to the service provider if the service provider were a public sector agency under that Act. 35
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[6] Schedule 3A	1
Insert after Schedule 3:	2
Schedule 3A Licences and registration to which Part 4A of Act applies	3 4
(Section 80A)	5
Explosives Act 2003	6
section 11, explosives licence	7
Home Building Act 1989	8
section 19 (1), contractor licence	9
section 24 (1) (a), tradesperson certificate	10
section 24 (1) (b), supervisor certificate	11
section 30 (1), owner-builder permit	12
section 32A (1), building consultancy licence	13
Occupational Health and Safety Regulation 2001	14
clause 284A (1), accreditation of assessors	15
clause 289A (1), certificate of competency to do scheduled work	16
clause 308A (1) (a), certificate of competency to do formwork	17
clause 308A (1) (b), certificate of competency to use explosive-powered tools	18
Property, Stock and Business Agents Act 2002	19
section 17 (1) (a), real estate agent's licence	20
section 17 (1) (b), stock and station agent's licence	21
section 17 (1) (c), business agent's licence	22
section 17 (1) (d), strata managing agent's licence	23
section 17 (1) (e), on-site residential property manager's licence	24
section 17 (1) (f), corporation licence	25
section 17 (1) (g), certificate of registration as a real estate salesperson	26
section 17 (1) (h), certificate of registration as a stock and station salesperson	27
section 17 (1) (i), certificate of registration as a business salesperson	28
section 17 (1) (j), certificate of registration as a registered manager	29

Schedule 2	Amendment of Road Transport (Driver Licensing) Act 1998	1
		2
	(Section 4)	3
[1] Section 40 Purposes for which photographs may be kept and used		4
Insert after section 40 (1) (c):		5
(c1)	in connection with the exercise of functions conferred or imposed on the Authority by or under the photo-access arrangements under Part 4A of the <i>Licensing and Registration (Uniform Procedures) Act 2002</i> ,	6
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		8
		9
[2] Section 41 Release of photographs prohibited		10
Insert after section 41 (1) (d):		11
(d1)	in the exercise of any function conferred or imposed on the Authority by or under the photo-access arrangements under Part 4A of the <i>Licensing and Registration (Uniform Procedures) Act 2002</i> , or	12
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		15