

[Act 1998 No 99]



New South Wales

Road Transport (Driver Licensing) Bill 1998

Explanatory note

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

Overview of Bill

The objects of this Bill are:

- (a) to enable the establishment of a system for licensing drivers that will be part of a nationally consistent scheme for driver licensing and to provide necessary powers for the making of regulations about issuing licences, renewal of licences, cancelling, varying and suspending licences, licence classes, qualifications for licences, testing and other related matters, and
 - (b) to provide for the establishment of a demerit points system for the suspension and cancellation of licences that is intended to be part of a nationally consistent demerit points system, and
 - (c) to provide for learner and provisional licences in a way that is consistent with the treatment of other licences, and
 - (d) to make other savings and transitional provisions, and
 - (e) to make consequential and other amendments to certain Acts.
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The provisions of the proposed Act reflect, with some variations and additions, the Primary Principles relating to driver licensing laws prepared by the National Road Transport Commission of the Commonwealth after consultation with the States and Territories, as part of the national road transport reform process.

Part 1 Preliminary

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 sets out the objects of the proposed Act. These include the establishment of a driver licensing scheme as part of a uniform national approach to driver licensing. the definition of responsibilities with respect to driver licensing. the provision of a means of identifying persons as licensed drivers. the provision of a means of enforcing road safety standards and other objects related to driver licensing and its purposes. Additional matters include the testing of drivers and provision for competency based assessment schemes.

Clause 4 provides that expressions used in the proposed Act have the meanings set out in the Dictionary at the end of the proposed Act.

Clause 5 applies the *Acts Interpretation Act 1901* of the Commonwealth to the proposed Act.

Clause 6 provides that the proposed Act binds the Crown but provides that the Crown will not be liable to be prosecuted for an offence.

Clause 7 provides that notes included in the proposed Act do not form part of the proposed Act.

Part 2 Driver licensing system

Division 1 Functions of Authority generally

Clause 8 sets out the principal functions of the Roads and Traffic Authority (the *Authority*) under the proposed Act. They are to administer the driver licensing system. to maintain a driver licence register. to maintain a demerit points register. to provide information and to exercise such other functions as are conferred by or under the proposed Act.

Clause 9 prohibits the Authority from issuing a driver licence unless it is satisfied that a person is a resident of this State, is eligible for a licence and has surrendered any licence issued elsewhere in Australia or overseas. A licence will not be able to be renewed if a person no longer resides within this State.

Clause 10 gives the Authority power to fix fees for services provided by the Authority in connection with the licensing of drivers and other matters.

Clause 11 provides for the recognition of driver licences issued by other States or Territories and for information about offences. incurring demerit points. that are committed by drivers licensed in other States or Territories to be given to the relevant driver licensing authority by the Authority. The Authority must also take the same action, if it receives information about offences committed in other jurisdictions by drivers licenced in this State. as it would have taken if the offences had been committed in this State.

Clause 12 prevents the Authority from releasing information contained in any driver licence register maintained by it or the demerit points register that is of a personal nature or has commercial sensitivity except as provided by the regulations or under another law.

Clause 13 confers on the Authority power to delegate its functions under the proposed Act.

Division 2 Demerit points system

Clause 14 sets out the Authority's obligations to maintain a demerit points register and to record the appropriate number of points against a person where an offence is committed and the relevant proceedings are completed. If a person is not licensed in Australia. any points are to be taken into account if the person subsequently applies for or obtains a driver licence in this State.

Clause 15 enables reputations to be made prescribing offences for which offenders will incur demerit points and also enables the Authority. by notice published in the Gazette. to recognise additional offences as offences that incur demerit points for offenders and specify the points incurred for each offence. The offences may be under the law of this State or another jurisdiction. The regulations are to set out the offences that are to be included in the uniform national schedule of demerit points.

Clause 16 sets out the consequences of incurring 12 or more demerit points within a 3 year period before an offence is committed for persons who hold licences other than provisional or learner licences. If that number of points is

incurred, a notice of licence suspension for the period specified in the proposed section is issued by the Authority. A person who receives a notice may elect (within 21 days) to be of good behaviour for 12 months. If such an election is made, the suspension does not commence but will commence for twice the original period if the person incurs 2 or more demerit points during the good behaviour period. Demerit points incurred after a notice of suspension, and before suspension or the good behaviour period begins, will be taken into account from the end of the suspension period or the good behaviour period.

Clause 17 enables the Authority to suspend or cancel a provisional licence if the holder of the licence incurs more than 4 demerit points and enables regulations to be made as to notices to be given, periods of suspension and circumstances when suspension will be imposed.

Clause 18 provides that periods of suspension under the proposed Act will be in addition to periods of suspension imposed under other laws of this State and that any such other periods of suspension or of disqualification will not affect demerit points incurred under the proposed Act. It also provides that the Authority may decide not to provide an opportunity to show cause where a driver licence is suspended or cancelled under the proposed Division.

Division 3 Regulations

Clause 19 sets out the general regulation-making power under the proposed Act.

Clause 20 sets out particular regulation-making powers relating to the proposed driver licensing system and the identification of licensed drivers. The powers relate to matters including the issue and refusal of driver licences, the renewal of driver licences, the periods driver licences are to be in force, the fixing of fees, the collection of licence fees, the refunds of fees, the classes of driver licences, the maintenance of the driver licence register and the demerit points register, the form of driver licences and other matters.

Clause 21 provides for the review of prescribed decisions under the proposed Act by the Administrative Decisions Tribunal.

Part 3 Offences

Clause 22 makes it an offence to obtain a driver licence by false statement or misrepresentation or other dishonest means or to possess, without lawful excuse, a driver licence obtained by such means. There will be a maximum penalty of 20 penalty units (\$2,200).

Clause 23 makes it an offence to possess an Australian driver licence, or an article resembling an Australian driver licence, without lawful excuse. It also makes it an offence to alter a driver licence, or to produce a driver licence that is altered, in a way that is calculated to deceive, or to forge, or fraudulently use, alter or lend, a driver licence. There will be a maximum penalty of 20 penalty units (\$2,200).

Clause 24 enables a police officer or other authorised person to seize a driver licence or article that is produced to the police officer or person if he or she reasonably suspects that it has been obtained in contravention of proposed section 22 or is unlawfully in the possession of the person who produced it. The proposed section also sets out the grounds on which a reasonable suspicion may be based, requires any seized licence to be forwarded to the Authority and provides for its disposal by the Authority.

Clause 25 makes it an offence for a person to fail to produce his or her driver licence to a court, when requested to do so by the court, if charged with a breach of the proposed Act or regulations under the proposed Act. There will be a maximum penalty of 20 penalty units (\$2,200).

Clause 26 provides for documents signed by the Authority and relating to matters on its records to be admitted as evidence in court proceedings. The proposed section also enables courts to admit as evidence documents issued under laws of other jurisdictions relating to driver licences, driving offences and demerit points.

Clause 27 provides that proceedings for offences under the proposed Act are to be taken before a Local Court constituted by a Magistrate sitting alone.

Part 4 Miscellaneous

Clause 28 enables the Minister to make an order suspending the operation of the regulations or specified provisions of the regulations. Any such order must be consistent with provisions relating to application orders and emergency orders in the *National Road Transport Commission Act 1991* of the Commonwealth.

Clause 29 enables the Minister to declare, by notice published in the Gazette, that the proposed Act and the regulations, or specified provisions of the proposed Act or the regulations, apply to specified areas or do not apply to specified roads or road related areas.

Clause 30 enables the Minister to declare, by notice published in the Gazette, that the proposed Act and the regulations, or specified provisions of the proposed Act or the regulations, do not apply to a person or vehicle in 3 specified location or circumstance.

Clause 31 indemnifies individuals from civil liability for acts or omissions done in good faith in the course of carrying out duties under the proposed Act or the regulations. It also indemnifies individuals from civil or criminal liability for carrying out a test or examination and, in good faith, expressing opinions to the Authority as a result of reporting information to the Authority disclosing that a person is or may be unfit to drive or that licensing a person to drive may be dangerous.

Clause 32 provides for matters relating to requirements to be photographed for the purposes of a driver licence. It enables the Authority to refuse to issue or renew a driver licence if an applicant fails to attend to have a photograph taken or, in a case where it is impracticable to attend, fails to provide a photograph or sufficient evidence as to identity and residential address. The proposed section also contains restrictions on the use of photographs by the Authority and requires negatives to be destroyed following the issue of the relevant driver licence. It makes it an offence, with a maximum penalty of 20 penalty units, to reproduce the photographic likeness of a person depicted, or to be depicted, in a licence.

Clause 33 enables the Authority to cancel a licence because of a speeding offence if a speeding offence is dealt with by way of penalty notice.

Clause 33 enables the Authority to recover any unpaid fees payable under the proposed Act or regulations as a debt due to the Authority in a court of competent jurisdiction.

Clause 35 provides that any driver licence register and the demerit points register may be kept in the form of, or as part of, one or more computer databases or in such other form as the Authority considers appropriate.

Clause 36 is a formal provision giving effect to Schedules 1 and 2, which contain consequential amendments to Acts.

Clause 37 is a formal provision giving effect to Schedule 3, which contains savings, transitional and other provisions consequent on the enactment of the proposed Act.

Clause 38 provides for the review of the proposed Act 5 years after the date of assent to the proposed Act.

Schedules

Schedule 1 contains consequential amendments to various Acts. In particular, it contains amendments to the *Traffic Act 1909* that remove provisions dealing with the licensing of drivers under that Act, and other related matters, that are dealt with in the proposed Act.

Schedule 2 contains amendments to the *Traffic Act 1909* relating to penalties for offences and licence disqualifications. In particular, the amendments provide for the following:

- (a) The increase in the maximum penalty for a second or subsequent offence of driving under the influence of alcohol or any other drug from 20 penalty units to 30 penalty units and 9 months imprisonment to 12 months imprisonment.
- (b) The increase in the maximum penalty for a second or subsequent offence of refusing a drug test or altering its results from 30 penalty units to 50 penalty units and 18 months imprisonment to 2 years imprisonment.
- (c) The increase in the automatic licence disqualification, from 1 year to 3 years, for a first offence of refusing a drug test or altering its results, and from 3 years to 5 years for a second or subsequent such offence.
- (d) The creation of a separate offence of driving without a licence when never having been licensed in the previous 5 years to make certain the occasions when an offence is committed in those circumstances. Under recent amendments to the Act, increased maximum penalties and automatic licence disqualifications apply to any such second or subsequent offence (namely, 18 months imprisonment and 3 years automatic licence disqualification).
- (e) The restriction of the increased penalties and disqualifications for that offence of driving without a licence when never having been licensed so that they apply to persons never having been licensed in Australia rather than to persons never having been licensed in any other part of the world.
- (f) The removal of the restriction against the application of "on-the-spot" fines for offences carrying 3 penalty of a term of imprisonment in the case of that offence of driving without a licence when never having been licensed. At the time of the offence, a police officer issuing a traffic infringement notice may not be in a position to determine whether it is a second offence.

A reference in paragraphs (a) and (b) above to increased penalties for a second or subsequent offence includes a first offence if the person has in the previous 5 years been convicted of another major traffic offence.

Schedule 3 contains savings, transitional and other provisions consequent on the enactment of the proposed Act.

The **Dictionary** contains definitions of words and expressions used in the proposed Act.