

## TRAFFIC (ROAD SAFETY) AMENDMENT BILL 1989

### NEW SOUTH WALES



### EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to amend the Traffic Act 1909 for purposes connected with road safety, with particular reference to the driving of heavy trucks and coaches and drink-drive and speeding offences.

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Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a proclaimed day or proclaimed days.

Clause 3 is a formal provision that gives effect to the Schedule of amendments to the Principal Act.

Clause 4 amends the Motor Vehicles Taxation Act 1988 to allow the Minister for Transport to grant an exemption or partial exemption from the obligation to pay tax in respect of the registration of motor vehicles that have monitoring devices fitted to them as required by the proposed Part 3A of the Principal Act (to be inserted by Schedule 1 (12) of the proposed Act).

#### SCHEDULE 1 - AMENDMENT OF TRAFFIC ACT 1909

##### Meaning of "heavy motor vehicle" and "coach"

Schedule 1 (1) inserts definitions of these terms into the Principal Act.

##### Increased penalties for breaches of the Principal Act and regulations

Schedule 1 (2) (a) amends section 3 (1) so as to increase from \$500 to 20 penalty units (currently \$2,000) the maximum penalty which the regulations under that Act are able to impose for a breach of the regulations or of a condition attached to a driver's licence.

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Schedule 1 (7) raises the general penalty ceiling applicable to offences under the Principal Act from \$500 to 20 penalty units.

**Grossly excessive speeding**

Schedule 1 (3) amends section 4A so as to increase the penalty for speeding in cases where the speed travelled exceeds the speed limit by more than 45 km/hr. The maximum penalty on conviction will be 20 penalty units (currently \$2,000).

In addition, a conviction for this speeding offence is to carry a mandatory minimum disqualification from driving for a period of 3 months.

The amendments made by Schedule 1 (13) are also, in part, directed at speeding drivers. Section 11AB of the Principal Act is amended so as to make explicit the power of the Roads and Traffic Authority (RTA) to cancel or suspend a licence when an infringement notice for a speeding offence prescribed by the regulations is paid or is dealt with by enforcement order under the Justices Act 1902. (The Authority has this power only if the offender does not elect to have the matter dealt with by a court.)

**Special category drivers**

At present, the drink-drive provisions of the Principal Act prescribe a legal limit of 0.02 grammes of alcohol in 100 millilitres of blood for certain drivers, namely learner drivers and the holders of provisional licences who have not held a full licence for more than a year.

The amendments made by Schedule 1 (4) (b), (c) and (l) apply the same limit to an expanded category of drivers. Those newly affected are:

- \* persons whose licences are cancelled or suspended;
- \* persons disqualified from holding or obtaining a driver's licence;
- \* persons whose applications for licences have been refused;
- \* persons who have never held a licence;
- \* interstate or overseas drivers whose authority to drive in New South Wales has been cancelled or suspended.

**Persons accompanying learners**

At present, section 4E (1L) of the Principal Act provides that a licensed person occupying the seat next to a learner driver is guilty of an offence (maximum penalty \$1,000) if the person exceeds the 0.05 legal limit.

Schedule 1 (4) (d), (e) and (f) amend section 4E so that the person accompanying a learner driver will be liable to the same scale of penalties as a driver if the person has a blood alcohol content of 0.05 grammes of alcohol in 100 millilitres of blood or more.

The amendments made by Schedule 1 (4) (g) - (k) and (m) - (q), and by Schedule 1 (5) and (8), are consequential.

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### **Effect of disqualification from driving**

Schedule 1 (9) amends section 10AA of the Principal Act to make it clear that, during a period when a person is disqualified from driving, the person cannot obtain any further licence.

### **Suspension of licences by police**

Schedule 1 (11) inserts new sections 10C, 10D and 10E into the Principal Act. Proposed section 10C will enable members of the Police Force to suspend the licences of persons charged with certain offences. The offences are:

- \* driving with the high range prescribed concentration of alcohol (PCA) (i.e. 0.15 or more);
- \* refusing a breath analysis;
- \* accompanying a learner while being in the high range PCA;
- \* refusing to provide a blood sample at a hospital following an accident.

The licence remains suspended until the charge is dealt with (unless the driver appeals successfully against the suspension).

Proposed section 10D applies the principles of proposed section 10C to the driving privileges, in New South Wales, of interstate or overseas drivers.

Proposed section 10E allows the affected licensee or visitor to appeal to a Local Court against the suspension.

### **Monitoring of certain coaches and heavy vehicles, vehicles carrying dangerous goods etc.**

Schedule 1 (12) inserts a new Part 3A into the Principal Act, the provisions of which may be explained as follows:

Proposed section 10F defines "monitoring device", "owner", "prescribed officer", "vehicle movement record" and other expressions for the purposes of the new Part. A monitoring device is a device which automatically produces particulars of time, speed and distance for inclusion in a vehicle movement record for a vehicle. (A tachograph is perhaps the best-known kind of monitoring device.) A vehicle movement record is a record of each length of time for which a vehicle is driven and the speeds at which, and distances for which, it is driven, together with other particulars relating to the vehicle and the journey being made in it.

Proposed section 10G provides that the new Part will apply to coaches and heavy motor vehicles of a kind prescribed by the regulations and also to vehicles carrying dangerous goods. The new Part will apply to vehicles and drivers from other States and from Territories as well as those from New South Wales.

Proposed section 10H requires monitoring devices in working order to be correctly fitted to vehicles to which the new Part applies. Failure to observe this requirement is an offence by the vehicle owner (maximum penalty 50 penalty units (currently \$5,000)).

Proposed section 10I requires the owner of the vehicle to preserve vehicle movement records. The records must be kept for at least 12 months.

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Proposed section 10J requires a vehicle movement record to be carried by the driver. The record has to show times, speeds, distances and other particulars of driving in New South Wales or elsewhere during the preceding 14 days.

Proposed section 10K enables roadside inspection of monitoring devices by police, and of journey records and log book records by authorised officers of the RTA and authorised inspectors under the Dangerous Goods Act 1975. Drivers of the relevant vehicles may be stopped at random for the purpose of these inspections.

Proposed section 10L allows police to seize a monitoring device (and any recordings contained in it) following a fatal accident involving a truck, bus or other vehicle required to be fitted with one, or if the mechanism appears to have been tampered with, or if the driver has committed a major traffic offence. In addition, police and RTA officers are authorised to seize records relating to the driving of the vehicle if the records appear to have been fraudulently compiled or to relate to another vehicle or to belong to another driver.

Proposed section 10M requires the owners of vehicles to produce vehicle movement records to the RTA on demand. Failure to do so is an offence (maximum penalty 50 penalty units).

Proposed section 10N prohibits tampering with a monitoring device or vehicle movement record (maximum penalty 50 penalty units in each case). The section makes explicit the power of the RTA to cancel the driver's licence of a person who commits either of these offences.

Proposed section 10O enables persons or vehicles to be exempted by the RTA from the operation of any of the provisions of the proposed Part.

Proposed section 10P provides that a vehicle movement record is not admissible in any criminal proceedings except proceedings for an offence concerning tampering with a monitoring device or vehicle movement record or for a major offence (as defined in the Principal Act).

The amendments made by Schedule 1 (2) (b) - (d) are consequential.

**Downgrading of licences**

Section 1 (15) inserts a new section 11AE so as to enable the Authority, when cancelling a licence for an offence involving excessive speeding or because of a bad driving record, to issue the licensee with a licence of a different class. Under the proposed section the Authority will be able in effect to "downgrade" the licence of an offender who holds a licence to drive heavy motor lorries and coaches by cancelling it and issuing the offender with a licence to drive only lighter vehicles.

The amendment made by Schedule 1 (16) is consequential.

**Effect of suspension of licences**

Schedule 1 (14) repeals and substitutes section 11AC of the Principal Act. The proposed section consolidates existing provisions of the Act concerning the effect of licence suspension, replacing existing sections 10B (4) (repealed by Schedule 1 (10)) and 11AB (3) (repealed by Schedule 1 (13)).

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The proposed section applies to licence suspensions generally, including those carried out by the police in accordance with amendments made by the proposed Act.

### **Appeal proceedings**

Section 22 of the Principal Act provides an appeal to the Local Court for any person aggrieved by a decision of the RTA concerning his or her licence.

Schedule 1 (17) amends the section to enable the court, when an appellant before it is challenging or intends to challenge more than one decision of the Authority affecting the same licence, to adjourn proceedings in respect of one such challenge pending the hearing of another, or until such time as all challenges can be heard together.

### **Statute law revision**

Schedule 1 (4) (a) and (6) make minor amendments by way of statute law revision.

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