

# Road Transport (General) Regulation 1999

[1999-619]



New South Wales

## Status Information

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### Provisions in force

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### Authorisation

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## Contents

<b>Part 1 Preliminary</b> .....	4
1 Name of Regulation .....	4
2 Commencement .....	4
3 Definitions .....	4
4 Notes .....	4
<b>Part 2 Written off and wrecked vehicles</b> .....	4
5 Interpretation .....	4
6 Definition of “wrecked” in section 56 of Act .....	6
7 Prescribed information to be given to Authority by insurers.....	6
8 Prescribed information to be given to Authority by auto-dismantlers .....	7
9 Prescribed information to be given to Authority by dealers.....	7
10 Section 60 of Act not to apply to certain vehicles .....	8
<b>Part 3 Special service requirements for road transport legislation</b> .....	8
11 Service of notices on persons under Road Transport (Driver Licensing) Act 1998 .....	8
12 Service of notices on registered operators and delivery of things to Authority under the Road Transport (Vehicle Registration) Act 1997 .....	9
<b>Part 4 Impounded vehicles</b> .....	10
13 Impounding fee .....	10
14 Towing fee for impounded vehicles .....	10
15 Disposal of impounded vehicles or vehicles forfeited to the Crown .....	12

**Part 5 Database of declarations and orders concerning operation of road transport legislation**

..... 12

16 Information to be maintained on database of declarations and orders ..... 12

17 Access to database..... 13

**Part 6 Miscellaneous** ..... 13

18 Fees for information from records of Authority ..... 13

19 Offence: unlawful destruction of penalty notices ..... 13

20 Offence: failure to comply with order, notice, direction, requirement or request ..... 13

21 Offence: false or misleading information..... 13

22 Prescribed speeding offences ..... 14

23 General defence of accident or reasonable effort ..... 14

24 Effect of provisions in other legislation that are inconsistent with road transport legislation..... 14

25 Savings and transitional provisions ..... 14

26 Road transport legislation..... 14

**Schedule 1 Fees and other charges** ..... 15

**Schedule 2 Savings and transitional provisions** ..... 15

# Road Transport (General) Regulation 1999



New South Wales

## Part 1 Preliminary

### 1 Name of Regulation

This Regulation is the *Road Transport (General) Regulation 1999*.

### 2 Commencement

This Regulation commences on 1 December 1999.

### 3 Definitions

In this Regulation:

**motor registry** means a place at which registration of a vehicle can be effected by or on behalf of the Authority.

**the Act** means the *Road Transport (General) Act 1999*.

### 4 Notes

The explanatory note, table of contents and notes in the text of this Regulation do not form part of this Regulation.

#### Note—

For the purposes of comparison, a number of provisions of this Regulation contain bracketed notes in headings drawing attention (“cf”) to equivalent or comparable, though not necessarily identical, provisions of Acts and other Regulations. Abbreviations in the notes include:

- Traffic Act: *Traffic Act 1909* (as in force immediately before the repeal of the Regulation)
- MTR: *Motor Traffic Regulations 1935* (as in force immediately before the repeal of the Regulations)

## Part 2 Written off and wrecked vehicles

### 5 Interpretation (cf MTR, r 117A)

In this Part:

**affected late model motor vehicle** means a late model motor vehicle within the meaning of Division 3 of Part 4 of the Act that is:

- (a) a motor vehicle that has a tare weight of 5 tonnes or less, or
- (b) a trailer that has a tare weight of 2.5 tonnes or less.

**auto-dismantler** has the same meaning as it has in Division 3 of Part 4 of the Act.

**dealer** has the same meaning as it has in Division 3 of Part 4 of the Act.

**insurer** has the same meaning as it has in Division 3 of Part 4 of the Act.

**motor bike** has the same meaning as it has in the [Road Transport \(Safety and Traffic Management\) \(Road Rules\) Regulation 1999](#).

**motor car** means a motor vehicle (except a motor bike) that is constructed principally for the conveyance of persons.

**motor lorry** has the same meaning as it has in the [Road Transport \(Safety and Traffic Management\) \(Road Rules\) Regulation 1999](#).

**registration number** of a motor vehicle includes, in the case of a vehicle the registration of which has expired, the registration number of the vehicle immediately before its registration expired.

**relevant identification information** for any motor vehicle means the following:

- (a) the registration number of the vehicle,
- (b) the vehicle identifier of the vehicle,
- (c) the make of the vehicle,
- (d) whether the vehicle is a:
  - (i) motor car, or
  - (ii) motor lorry, or
  - (iii) motor bike, or
  - (iv) trailer,
- (e) whether the damage to the vehicle was caused by hail, water, impact, fire or professional stripping,
- (f) the location and severity of the damage to the vehicle described by reference to such codes or terms as may be approved by the Authority from time to time,
- (g) the extent to which the damage to the vehicle is repairable described by reference to such codes or terms as may be approved by the Authority from time to time.

**vehicle identifier** has the same meaning as it has in Division 3 of Part 4 of the Act.

**wrecked** has the same meaning as it has in Division 3 of Part 4 of the Act.

**written off** has the same meaning as it has in Division 3 of Part 4 of the Act.

**6 Definition of “wrecked” in section 56 of Act** (cf MTR, r 117B)

A motor vehicle in any of the following states or conditions, or damaged in the following manner, is prescribed as **wrecked** for the purposes of section 56 (b) of the Act:

- (a) a motor vehicle (other than a motor bike) that is:
  - (i) immersed in salt water for any period above the doorsill level, or
  - (ii) immersed in fresh water up to the dashboard or steering wheel for more than 48 hours,
- (b) a motor bike that is:
  - (i) fully immersed in salt water for any period, or
  - (ii) fully immersed in fresh water for more than 48 hours,
- (c) a motor vehicle that is burnt to such an extent that it is fit only for wrecking or scrap,
- (d) a motor vehicle that is stripped of all, or a combination of most, interior and exterior body parts, panels and components (for example, engine, wheels, bonnet, guards, doors, boot lid),
- (e) a motor vehicle that is damaged by collision, fire, flood, accident, trespass or other event to the extent that its fair salvage value plus the cost of repairing the vehicle for use on a road or road related area would be more than the fair market value of the vehicle immediately before the event that caused the damage.

**7 Prescribed information to be given to Authority by insurers** (cf MTR, r 117C)

The following information is prescribed for the purposes of section 59 (1) of the Act in respect of each affected late model motor vehicle written off (anywhere in Australia) in the course of the business carried on by an insurer:

- (a) the relevant identification information for the vehicle,
- (b) the date on which the vehicle is written off by the insurer,
- (c) the name and address of the insurer,
- (d) the telephone and facsimile numbers (if any) of the insurer (unless the information is lodged electronically with the Authority),
- (e) if the insurer has a customer number issued to it by the Authority and the information

is lodged with the Authority in paper form—the customer number of the insurer,

- (f) the name and driver licence number (if any) of the person providing the information if that person is providing the information on behalf of the insurer,
- (g) the date on which the information referred to in paragraphs (a)–(f) is provided.

**8 Prescribed information to be given to Authority by auto-dismantlers** (cf MTR, r 117D)

The following information is prescribed for the purposes of section 60 (1) of the Act in respect of each affected late model motor vehicle that is demolished or dismantled (anywhere in Australia) in the course of a business carried on by an auto-dismantler:

- (a) the relevant identification information for the vehicle,
- (b) the date on which the auto-dismantler commenced work in the course of the auto-dismantler's business for the purpose of demolishing or dismantling the vehicle,
- (c) the name and address of the auto-dismantler,
- (d) the telephone and facsimile numbers (if any) of the auto-dismantler (unless the information is lodged electronically with the Authority),
- (e) if the auto-dismantler has a customer number issued to the auto-dismantler by the Authority and the information is lodged with the Authority in paper form—the customer number of the auto-dismantler,
- (f) the name and driver licence number (if any) of the person providing the information if that person is providing the information on behalf of the auto-dismantler,
- (g) the date on which the information referred to in paragraphs (a)–(f) is provided.

**9 Prescribed information to be given to Authority by dealers** (cf MTR, r 117E)

The following information is prescribed for the purposes of section 61 (1) of the Act in respect of each affected late model motor vehicle that is in the care, custody or control (anywhere in Australia) of a dealer and that has been written off:

- (a) the relevant identification information for the vehicle,
- (b) the date on which the vehicle came into the care, custody or control of the dealer,
- (c) the name and address of the dealer,
- (d) the telephone and facsimile numbers (if any) of the dealer (unless the information is lodged electronically with the Authority),
- (e) if the dealer has a customer number issued to the dealer by the Authority and the information is lodged with the Authority in paper form—the customer number of the dealer,

- (f) the name and driver licence number (if any) of the person providing the information if that person is providing the information on behalf of the dealer,
- (g) the date on which the information referred to in paragraphs (a)–(f) is provided.

**10 Section 60 of Act not to apply to certain vehicles** (cf MTR, r 117F)

Section 60 of the Act does not apply to any motor vehicle that is demolished or dismantled by an auto-dismantler if the auto-dismantler obtained the vehicle from an insurer or dealer who is or was required to provide information to the Authority concerning the vehicle under section 59 or 61 of the Act.

### **Part 3 Special service requirements for road transport legislation**

**11 Service of notices on persons under [Road Transport \(Driver Licensing\) Act 1998](#)** (cf MTR, r 128)

- (1) For the purposes of sections 44 (3) and 45 (2) of the Act, the provisions of this clause set out the only manner in which a notice under the driver licensing law may be served or given.
- (2) The Authority may serve a notice under the driver licensing law on a person by sending the notice by post or by some other means to the person's last known residential address, or the address for service of notices (if any) recorded in the driver licence register.
- (3) The date on which a person is taken to have been served with a notice under the [Road Transport \(Driver Licensing\) Regulation 1999](#) is:
  - (a) if the notice is sent by mail—the fourth working day after the notice was posted, or
  - (b) if the notice was delivered to the person personally—the date when it is so delivered.
- (4) If a person's residential address or address for service of notices is in another jurisdiction, the Authority may request the driver licensing authority of another jurisdiction to act on its behalf in serving a notice on the person or in performing any other act that the Authority could lawfully perform in this jurisdiction.
- (5) If the Authority receives a request under a provision of the corresponding law of another jurisdiction that corresponds with subclause (4), it may act on behalf of the driver licensing authority of that jurisdiction accordingly.
- (6) If it is provided in the [Road Transport \(Driver Licensing\) Regulation 1999](#) that any notification, document or thing must be forwarded, surrendered or delivered to the Authority, it is sufficient compliance with any such provision if the notification, document or thing is forwarded or surrendered to or delivered at a motor registry



within the time prescribed by that Regulation.

(7) In this clause:

**corresponding law** has the same meaning as it has in the *Road Transport (Driver Licensing) Act 1998*.

**driver licence register** has the same meaning as it has in the *Road Transport (Driver Licensing) Act 1998*.

**driver licensing law** means:

(a) the *Road Transport (Driver Licensing) Act 1998*, and

(b) the *Road Transport (Driver Licensing) Regulation 1999*.

**jurisdiction** has the same meaning as it has in the *Road Transport (Driver Licensing) Act 1998*.

**12 Service of notices on registered operators and delivery of things to Authority under the *Road Transport (Vehicle Registration) Act 1997*** (cf MTR, r 128)

- (1) For the purposes of sections 44 (3) and 45 (2) of the Act, the provisions of this clause set out the only manner in which a notice under the vehicle registration law may be served or given.
- (2) The Authority may serve any notice under the vehicle registration law on the registered operator of a registrable vehicle by sending the notice by post or by some other means to the registered operator's residential address, or to the address for service of notices recorded in the Register in relation to the vehicle.
- (3) The date on which a registered operator is taken to have been served with a notice under the *Road Transport (Vehicle Registration) Regulation 1998* is:
  - (a) if the notice is sent by mail—the fourth working day after the notice was posted, or
  - (b) if the notice is delivered to the person personally—the date when it is so delivered.
- (4) If it is provided in the *Road Transport (Vehicle Registration) Regulation 1998* that any notification, document or thing must be forwarded, surrendered or delivered to the Authority, it is sufficient compliance with any such provision if the notification, document or thing is forwarded or surrendered to or delivered at a motor registry within the time prescribed by that Regulation.

(5) In this clause:

**Register** has the same meaning as it has in the *Road Transport (Vehicle Registration)*

*Act 1997.*

**residential address** has the same meaning as it has in the *Road Transport (Vehicle Registration) Act 1997*.

**Note—**

Section 4 of the *Road Transport (Vehicle Registration) Act 1997* defines **residential address**, in relation to a company or other body corporate, to mean its registered office or any place recorded in the Register as its residential address or business address.

**vehicle registration law** means:

- (a) the *Road Transport (Vehicle Registration) Act 1997*, and
- (b) the *Road Transport (Vehicle Registration) Regulation 1998*.

## Part 4 Impounded vehicles

### 13 Impounding fee (cf MTR, r 142)

For the purposes of clause 5 (2) (a) of Schedule 1 to the Act, the prescribed fee for storage of an impounded vehicle is the fee prescribed by Schedule 1 to this Regulation.

### 14 Towing fee for impounded vehicles (cf MTR, r 142A)

- (1) A fee is payable to the Commissioner of Police by the responsible person for a vehicle that is towed under section 39 of the Act, except as otherwise provided by this clause.
- (2) The fee payable is whichever is the lesser of the following:
  - (a) the actual cost of towing the vehicle,
  - (b) the maximum charge for the time being determined under section 54 of the *Tow Truck Industry Act 1998* (including any surcharge chargeable, in the circumstances of the case, in accordance with a determination under that section) for:
    - (i) in the case of the Sydney metropolitan area—a 50-kilometre tow, or
    - (ii) in any other case—a 100-kilometre tow.
- (3) A fee is not payable under this clause (and if paid, is refundable) unless:
  - (a) a person is convicted of the relevant offence under section 40 or 41 of the *Road Transport (Safety and Traffic Management) Act 1999*, or
  - (b) a penalty notice, issued under Division 1 of Part 3 of the Act in relation to the alleged offence, is dealt with by payment of the penalty prescribed under that Division or by a penalty notice enforcement order under the *Fines Act 1996* that is made, or is taken to have been made, against the person and that is not subsequently quashed or set aside.

- (4) A fee is not payable under this clause by the responsible person for the vehicle if the person furnishes the Commissioner of Police with a statutory declaration stating:
- (a) that the offence concerned was not committed with the responsible person's consent, and
  - (b) that the responsible person did not know, and could not reasonably be expected to have known, that the vehicle would be used for the commission of the offence, and
  - (c) that:
    - (i) at the time of the offence, the vehicle was being driven by a person whose name and address are supplied in the declaration, or
    - (ii) the responsible person does not know and could not with reasonable diligence have ascertained the name and address of the person who was driving the vehicle at that time.
- (5) A fee that, by virtue of subclause (4), is not payable by the responsible person for the vehicle is payable by the person driving the vehicle at the time of the relevant offence.
- (6) A statutory declaration referred to in subclause (4) that is produced in any proceedings for recovery of a fee under this clause from the driver of a vehicle that alleges that any person was the driver of the vehicle at the time of the offence is evidence of the driver's identity (unless evidence to the contrary is adduced).
- (7) A court:
- (a) before which proceedings for an alleged offence under section 40 or 41 of the *Road Transport (Safety and Traffic Management) Act 1999* are brought, or
  - (b) to which application is made under clause 6 of Schedule 1 to the Act following the impounding of a vehicle for an alleged offence,
- that finds the offence proven may, for reasons of the avoidance of any undue hardship to any person or other injustice perceived by the court, by order direct that the fee prescribed by subclause (2) in relation to the towing of a vehicle in connection with the alleged offence be reduced by such amount as the court may specify or that, in the circumstances of the case, no fee is payable.
- (8) The Commissioner of Police is to give notice of any fee payable under this clause to the responsible person for the vehicle concerned and, except as otherwise provided by this Regulation, the fee is due and payable 14 days after the notice is given.

**15 Disposal of impounded vehicles or vehicles forfeited to the Crown** (cf MTR, r 142B)

- (1) If a vehicle that was impounded under section 39 or 40 of the Act has not been released, in accordance with Schedule 1 to the Act, at the end of the period for which it was liable to be impounded, the Commissioner may, by notice served personally or by post on the registered operator of the vehicle and on every person having a registered interest (as defined in Schedule 1 to the Act), warn the operator and every such person that the vehicle is liable to be offered for sale unless appropriate steps are taken to procure the release of the vehicle.
- (2) For the purposes of clause 9 (1) of Schedule 1 to the Act, a vehicle that has been forfeited to the Crown under section 40 of the Act, or that remains duly impounded for 28 days after service of notices referred to in subclause (1), may be offered for sale, except as provided by subclause (3) or by the order of any court.
- (3) A vehicle may not be offered for sale while any application under clause 5 of Schedule 1 to the Act remains undetermined by the Commissioner or while any application under clause 6 of that Schedule, or any subsequent proceedings arising out of such an application, are pending.
- (4) At any time within 12 months after a vehicle has been sold in accordance with this Regulation, a person may apply to the Commissioner for payment to the person of the balance of the proceeds of sale of the vehicle, after deduction of any storage fees payable under the Act and the reasonable costs of or incidental to the sale.
- (5) The balance of the proceeds of sale may be paid by the Commissioner to any applicant who satisfies the Commissioner, on such evidence as the Commissioner may reasonably require, that:
  - (a) the applicant was lawfully entitled to the vehicle immediately before its sale, and
  - (b) there was a reasonable excuse for the applicant's failure to obtain the release of the vehicle before it was sold.

**Part 5 Database of declarations and orders concerning operation of road transport legislation**

**16 Information to be maintained on database of declarations and orders**

For the purposes of the database referred to in section 13 (1) of the Act, the Authority is:

- (a) to include in the database:
  - (i) a copy of the complete text of each declaration or order made under Division 4 of Part 2 of the Act as soon as is reasonably practicable after its making, and
  - (ii) information concerning the dates on which any such declaration or order has effect or ceases to have effect, and

- (b) to incorporate any amendment to any such declaration or order as soon as is reasonably practicable after the amendment has effect.

#### **17 Access to database**

- (1) For the purposes of section 13 (3) of the Act, the Authority is to give access to information on the database to a member of the public only if the person pays the access fee prescribed by Schedule 1.
- (2) The Authority may waive the fee referred in subclause (1) if it is satisfied that the payment of the fee would result in undue hardship to the person seeking access to information.

### **Part 6 Miscellaneous**

#### **18 Fees for information from records of Authority** (cf MTR, r 127)

- (1) The Authority may issue information from its records (including a certificate under section 46 of the Act) on the payment of the fee prescribed by Schedule 1.
- (2) The Authority may waive the fee referred in subclause (1) if it is satisfied that the payment of the fee would result in undue hardship to the person seeking access to information.

#### **19 Offence: unlawful destruction of penalty notices** (cf MTR, r 130AA)

A person must not, without lawful excuse, remove or deface, destroy or otherwise damage any penalty notice left on or attached to a motor vehicle or trailer under Division 1 of Part 3 of the Act.

Maximum penalty: 20 penalty units.

#### **20 Offence: failure to comply with order, notice, direction, requirement or request** (cf MTR, r 129 (1) (c))

- (1) A person who fails, without reasonable excuse, to comply with any order, notice, direction, requirement or request given or made to the person under this Regulation is guilty of an offence.

Maximum penalty: 20 penalty units.

- (2) A person is not liable to be punished for an offence against subclause (1) for a failure to comply with an order, notice, direction, requirement or request given or made to the person under this Regulation if the person is liable to be punished for an offence in respect of the same failure to comply under another provision of this Regulation.

#### **21 Offence: false or misleading information** (cf MTR, r 129 (1) (d))

A person must not, in purported compliance with any provision of this Regulation, provide

information that the person knows to be false or misleading in a material particular.

Maximum penalty: 20 penalty units.

## 22 Prescribed speeding offences

The following offences are prescribed for the purposes of the definition of **prescribed speeding offence** in section 3 (1) of the Act:

- (a) in relation to section 24 (4) (a) of the Act—a speeding offence within the meaning of clause 154 of the *Road Transport (Safety and Traffic Management) (Road Rules) Regulation 1999*, or
- (b) in relation to section 27 (1) (a) (ii) of the Act—a speeding offence within the meaning of clause 154 of the *Road Transport (Safety and Traffic Management) (Road Rules) Regulation 1999* committed in the circumstances referred to in clause 154 (3) of that Regulation.

## 23 General defence of accident or reasonable effort (cf MTR, r 130)

A person is not liable to a penalty for any offence under this Regulation if the person proves to the satisfaction of the court dealing with the case that the offence:

- (a) was the result of accident, or
- (b) could not have been avoided by any reasonable efforts on the person's part.

## 24 Effect of provisions in other legislation that are inconsistent with road transport legislation

- (1) **Royal Botanic Gardens and Domain Trust Act 1980** For the purposes of section 6 (3) of the Act, any provision of the *Royal Botanic Gardens and Domain Trust Act 1980* (or any regulation made under that Act) in respect of parking on trust lands within the meaning of that Act prevails over any inconsistent provision of the road transport legislation concerning parking.
- (2) **Local Government Act 1993** For the purposes of section 6 (3) of the Act, any provision of the *Local Government Act 1993* (or any regulation made under that Act) in respect of the use of skating equipment on public land (within the meaning of that Act) prevails over any inconsistent provision of the road transport legislation concerning the use of such equipment.

## 25 Savings and transitional provisions

Schedule 2 has effect.

## 26 Road transport legislation

Part 10 of the *Road Transport (Mass, Loading and Access) Regulation 1996* is prescribed

for the purposes of section 5 (1) (f) of the Act.

## Schedule 1 Fees and other charges

(Clauses 13, 17 (1) and 18)

Fee or charge category	Provision prescribing fee or charge	Amount payable (\$)
<b>1</b>		
Daily impounding fee for motor vehicle or trailer under clause 5 (2) (a) of Schedule 1 to the Act	clause 13	3
<b>2</b>		
Access to information contained in database of declarations and orders maintained under section 13 (3) of the Act	clause 17 (1)	15
<b>3</b>		
Information from records of the Authority (including certificates and other documents issued under section 46 of the Act)	clause 18	15

## Schedule 2 Savings and transitional provisions

(Clause 25)

### Part 1 Interim appeals and applications to Local Court

#### Division 1 General

##### 1 Definitions

In this Part:

**examiner's authority** has the same meaning as in has in the [Road Transport \(Vehicle Registration\) Regulation 1998](#).

**foreign driver licence** has the same meaning as in has in the [Road Transport \(Driver Licensing\) Regulation 1999](#).

**proprietor's authority** has the same meaning as in has in the [Road Transport \(Vehicle Registration\) Regulation 1998](#).

##### 2 Application of Part

For the purposes of clause 24 of Schedule 2 to the Act, this Part applies to the decisions to which it refers instead of section 48 of the Act or clause 6 of Schedule 1 of that Act.

## Division 2 Appeals concerning vehicle registration

### 3 Appeals concerning examiner's authorities and proprietor's authorities

- (1) Any person aggrieved by a decision of the Authority under the *Road Transport (Vehicle Registration) Regulation 1998* to refuse to issue an examiner's authority or a proprietor's authority or to suspend or cancel such an authority, being a decision notified to the person under clause 69 of the *Road Transport (Vehicle Registration) Regulation 1998*, may appeal against the decision to a Local Court constituted by a Magistrate sitting alone by lodging a notice of appeal with the clerk of any such Court:
  - (a) except as provided by paragraph (b)—not later than 21 days after being so notified, or
  - (b) in the case of a suspension or cancellation of an authority to which clause 69 (3) of the *Road Transport (Vehicle Registration) Regulation 1998* applies—before the date on which the cancellation or suspension would, but for the appeal, take effect.
- (2) A notice of appeal under subclause (1) is to specify the grounds of the appeal.
- (3) The clerk of the Local Court must give notice of the time and place of the hearing of any appeal under subclause (1) to the Authority and to the appellant, and in the notice to the Authority, is to notify the Authority as to the grounds of the appeal.
- (4) The time of the hearing of an appeal under subclause (1) must be not earlier than 21 days after the date on which the notice under subclause (3) is given to the Authority.
- (5) The hearing of an appeal under subclause (1) may proceed despite any omission or error in a notice under subclause (3) or the failure to give any such notice if the Court is satisfied that the appellant and the Authority had knowledge of the time and place of the hearing and were not prejudiced by any such omission or error or by the failure to give any such notice.
- (6) A report furnished under clause 68 of the *Road Transport (Vehicle Registration) Regulation 1998* to the Authority, and certified by the Authority to have been so furnished, is to be received in proceedings before a Local Court under this Regulation as evidence of the contents of the report.

### 4 Determination of appeals

- (1) A Local Court is to hear and determine an appeal made to it under clause 3 and may confirm (with or without variation) or disallow the decision appealed against, or make such other order in the circumstances as to the Court seems just.
- (2) For the purposes of varying a decision of the Authority under subclause (1), the Court may exercise only such powers as the Authority could have exercised under the *Road*



*Transport (Vehicle Registration) Regulation 1998* when making that decision.

- (3) The decision of a Local Court in respect of an appeal made under clause 3 is final and is binding on the appellant and on the Authority.

#### **4A Appeals against certain registration decisions**

- (1) Any person aggrieved by any of the following decisions of the Authority made on or after the commencement of this clause may appeal against the decision to a Local Court constituted by a Magistrate:
- (a) a decision of the Authority to refuse to grant or renew the registration of a registrable vehicle under the vehicle registration law,
  - (b) a decision of the Authority to vary the conditions of the registration of a registrable vehicle under the vehicle registration law,
  - (c) a decision of the Authority to suspend the registration of a registrable vehicle under the vehicle registration law,
  - (d) a decision of the Authority to cancel the registration of a registrable vehicle under the vehicle registration law,
  - (e) a decision of the Authority to suspend the operation of clause 9 or 11 of Schedule 1 to the *Road Transport (Vehicle Registration) Regulation 1998* in relation to a registrable vehicle.
- (2) Notice of any such appeal specifying the grounds of the appeal must be lodged with the clerk of the Local Court to which the appeal is being made not later than 21 days after the date on which the appellant was notified of the decision appealed against by the Authority.
- (3) The clerk of the Local Court must give notice of the time and place of the hearing of any such appeal to the Authority and to the appellant, and in the notice to the Authority must notify the Authority as to the grounds of the appeal.
- (4) The hearing of an appeal may proceed despite any omission or error in a notice under subclause (3) or the failure to give any such notice if the Local Court is satisfied that the appellant and the Authority had knowledge of the time and place of the hearing and were not prejudiced by any such omission or error or by the failure to give any such notice.
- (5) A Local Court must hear and determine an appeal made to it under this clause and may confirm (with or without variation) or disallow the decision appealed against, or make such other order in the circumstances as to the Court seems just.
- (6) For the purposes of varying under subclause (5) a decision of the Authority the Court may exercise only such powers as the Authority could have exercised under the

vehicle registration law when making that decision.

- (7) The decision of a Local Court in respect of an appeal made under this clause is final and binding on the appellant and on the Authority.
- (8) This clause does not apply to the suspension or cancellation of the registration of a vehicle, or the refusal to exercise a function, under Part 4 of the *Fines Act 1996*.
- (9) In this clause, **vehicle registration law** means:
  - (a) the *Road Transport (Vehicle Registration) Act 1997*, and
  - (b) the *Road Transport (Vehicle Registration) Regulation 1998*.

### **Division 3 Appeals concerning driver licensing**

#### **5 Authority to ensure notification of appeal rights**

- (1) In this Division, **affected person** means an applicant for a driver licence, the holder of an Australian driver licence or the holder of a foreign driver licence.
- (2) If an affected person is eligible to appeal to a Local Court under clause 6, the Authority must advise the person of the person's right to appeal.
- (3) The time period specified in clause 6 (4) is taken not to have commenced until an affected person is notified in accordance with this clause.

#### **6 Appeals to Local Court**

- (1) An affected person may appeal to a Local Court constituted by a Magistrate sitting alone against any of the following decisions of the Authority:
  - (a) a decision not to take into account some or all of the period the person has held a licence to drive a motor vehicle in another country under clause 8 (3) of the *Road Transport (Driver Licensing) Regulation 1999*,
  - (b) a decision not to grant an application for the issue, variation or renewal of a driver licence under the *Road Transport (Driver Licensing) Regulation 1999*,
  - (c) a decision to vary, suspend or cancel the person's driver licence under the *Road Transport (Driver Licensing) Act 1998* or the *Road Transport (Driver Licensing) Regulation 1999*.
- (2) An affected person may appeal to a Local Court constituted by a Magistrate sitting alone against a decision of the Authority, based on an opinion formed by the Authority under clause 55 (2) (e) or (f) of the *Road Transport (Driver Licensing) Regulation 1999*, that the person has ceased to be exempt from the requirements of the *Road Transport (Driver Licensing) Act 1998* and that Regulation.

- (3) Despite any other provision of this clause, an appeal under this clause does not permit review of:
- (a) the guilt or innocence of the person concerned, or
  - (b) the imposition of a penalty or the level of a penalty imposed on the person concerned.

**Note—**

The effect of this provision is that, for example, in an appeal against a suspension action taken because of demerit points the Local Court cannot revisit the issue of an offence in relation to which the demerit points were incurred or the imposition of a penalty in relation to such an offence. In any such case, the Local Court may exercise only the powers that the Authority could exercise under the provisions of the Act authorising the suspension (see subclause (8)).

- (4) Notice of any such appeal specifying the grounds of the appeal must be lodged with the clerk of the Local Court to which the appeal is being made not later than 28 days after the date on which the appellant was notified pursuant to clause 5.
- (5) The clerk of the Local Court must give notice of the time and place of the hearing of any such appeal to the Authority and to the appellant, and in the notice to the Authority must notify the Authority as to the grounds of appeal.
- (6) The hearing of the appeal may proceed despite any omission or error in a notice under subclause (5) or the failure to give any such notice if the Court is satisfied that the appellant and the Authority had knowledge of the time and place of the hearing and were not prejudiced by any such omission or error or by the failure to give any such notice.
- (7) A Local Court must hear and determine an appeal made to it under this clause and may confirm (with or without variation) or disallow the decision appealed against, or make such other order in the circumstances as to the Court seems just.
- (7A) A Local Court may only allow an appeal against a decision to suspend a person's driver licence under the *Road Transport (Driver Licensing) Regulation 1999* on the grounds referred to in clause 38 (1A) of that Regulation if the Court is satisfied:
- (a) that there is nothing in the person's medical condition to suggest that the person is, or will again become, incapable of controlling a motor vehicle, and
  - (b) that the incident that led to the suspension of the licence:
    - (i) was caused by something other than the person's medical condition at the time, or
    - (ii) was caused by the person's medical condition at that time, being a condition to which the person is no longer subject.

- (7B) The fact that a person has been acquitted of an offence arising out of the incident that led to the suspension of the person's driver licence, following the person's allegation that the incident was caused by the person's medical condition at that time, is irrelevant to the Local Court's consideration of the matters referred to in subclause (7A) (b).
- (8) For the purposes of varying a decision of the Authority under subclause (7), the Court may exercise only such powers as the Authority could have exercised under the *Road Transport (Driver Licensing) Act 1998* or the *Road Transport (Driver Licensing) Regulation 1999* when making that decision.
- (9) If in any proceedings concerning a decision of the Authority about a licence it appears to the Court that:
- (a) the licence is affected by another decision of the Authority as well as the one under review in those proceedings, and
  - (b) the appellant has commenced or intends to commence appeal proceedings under this clause in respect of that other decision,
- the Court may adjourn the proceedings pending hearing of that other appeal or so that both appeals may be heard together.
- (10) The decision of a Local Court in respect of an appeal made under this clause is final and binding on the appellant and the Authority.

## **7 Stay of decision pending appeal**

- (1) This clause applies to the following decisions:
- (a) a decision by the Authority to suspend, vary or cancel a driver licence under the *Road Transport (Driver Licensing) Act 1998* on any ground other than medical unfitness or incompetence to drive a motor vehicle,
  - (b) a decision by the Authority that an exemption under the *Road Transport (Driver Licensing) Act 1998* from a requirement to hold a driver licence no longer applies to a person.
- (2) If an affected person appeals against a decision, the decision has effect:
- (a) only if the Local Court hearing the appeal confirms the decision or the appeal is withdrawn, and
  - (b) subject to any variation of the decision by the Local Court, and
  - (c) on and from the date on which the Local Court confirms the decision or on such later date as the Local Court may order or, if the appeal is withdrawn, on the date on which it is withdrawn.

## **8 Affected person entitled to be given reasons**

- (1) If an affected person is entitled under clause 6 to appeal to a Local Court against a decision of the Authority, the affected person may apply to the Authority for written reasons for the decision.
- (2) After receiving an application for reasons under subclause (1), the Authority must provide to the affected person, within 14 days of the application being made:
  - (a) the decision of the Authority and the reasons for that decision, and
  - (b) the identity or position of the person who made the decision.
- (3) An application for reasons may be made before or during (or both) the period in which an affected person appeals under clause 6.
- (4) An affected person cannot make an application under this clause if the Authority has already provided the person with the details referred to in subclause (2).

## **Division 4 Other appeals and applications**

### **9 Appeals against driver fatigue decisions**

- (1) A person dissatisfied with a decision that has been reconsidered by the Authority under clause 139 of the *Road Transport (Safety and Traffic Management) (Driver Fatigue) Regulation 1999* may appeal against the decision to a Local Court constituted by a Magistrate sitting alone by lodging a notice of appeal with the clerk of any such Court not later than 28 days after being notified of the decision.
- (2) A notice of appeal under subclause (1) is to specify the grounds of the appeal.
- (3) The clerk of a Local Court must give notice of the time and place of the hearing of any appeal under subclause (1) to the Authority and to the appellant, and in the notice to the Authority, is to notify the Authority as to the grounds of the appeal.
- (4) The time of the hearing of an appeal under subclause (1) must be not earlier than 21 days after the date on which the notice under subclause (3) is given to the Authority.
- (5) The hearing of an appeal under subclause (1) may proceed despite any omission or error in a notice under subclause (3) or the failure to give any such notice if the Court is satisfied that the appellant and the Authority had knowledge of the time and place of the hearing and were not prejudiced by any such omission or error or by the failure to give any such notice.
- (6) A Local Court is to hear and determine an appeal made to it under subclause (1) and may confirm (with or without variation) or disallow the decision appealed against, or make such other order in the circumstances as to the Court seems just.

- (7) The decision of a Local Court in respect of an appeal made under this clause is final and is binding on the appellant and on the Authority.

#### **10 Release of impounded vehicle on application to Local Court**

- (1) An application may be made by any person to a Local Court for the release of a vehicle impounded under section 39 or 40 of the Act into the person's custody.
- (2) An application under this clause stays any order or direction for forfeiture or disposal of the vehicle.
- (3) An application under this clause may be made whether or not an application has been made to the Commissioner of Police under clause 5 of Schedule 1 to the Act.
- (4) The Local Court is entitled in any case to have regard not only to the public interest but to any alleged hardship or other circumstances of the case.
- (5) Subclause (4) applies even though the Commissioner of Police may have refused an application under clause 5 of Schedule 1 to the Act, and the Court may affirm, quash or vary the decision of the Commissioner as justice requires.
- (6) An applicant to whom a vehicle is released by order of the Court must in writing acknowledge receipt of the vehicle from the custody of the Commissioner.
- (7) The Court may determine whether or not the prescribed fees for storage of the vehicle by the Commissioner, or some of those fees, are payable by the applicant to the Commissioner.

#### **10A Appeals concerning Maintenance Management Accreditation Scheme or Mass Management Accreditation Scheme**

- (1) Any person aggrieved by any of the following decisions of the Authority may, after an internal review of the decision is finalised, appeal against the decision to a Local Court constituted by a Magistrate sitting alone:
  - (a) a decision of the Authority under the *Road Transport (Vehicle Registration) Regulation 1998* to vary, suspend or cancel a registered operator's or vehicle's accreditation under the Maintenance Management Accreditation Scheme,
  - (b) a decision of the Authority under the *Road Transport (Mass, Loading and Access) Regulation 1996* to vary, suspend or cancel a registered operator's or vehicle's accreditation under the Mass Management Accreditation Scheme.
- (2) Notice of such an appeal specifying the grounds of the appeal must be lodged with the clerk of the Local Court to which the appeal is being made not later than 21 days after the internal review of the decision being appealed against was finalised.
- (3) The clerk of the Local Court must give notice of the time and place of the hearing of

the appeal to the Authority and to the appellant, and in the notice to the Authority, is to notify the Authority as to the grounds of the appeal.

- (4) The time of the hearing of the appeal must be not earlier than 21 days after the date on which the notice under subclause (3) is given to the Authority.
- (5) The hearing of the appeal may proceed despite any omission or error in a notice under subclause (3) or the failure to give any such notice if the Court is satisfied that the appellant and the Authority had knowledge of the time and place of the hearing and were not prejudiced by any such omission or error or by the failure to give any such notice.
- (6) A Local Court is to hear and determine the appeal and may confirm (with or without variation) or disallow the decision appealed against, or make such other order in the circumstances as to the Court seems just.
- (7) For the purposes of varying a decision of the Authority under subclause (6), the Court may exercise only such powers as the Authority could have exercised under the *Road Transport (Mass, Loading and Access) Regulation 1996* or the *Road Transport (Mass, Loading and Access) Regulation 1996* when making that decision.
- (8) The decision of a Local Court in respect of an appeal made under this clause is final and is binding on the appellant and on the Authority.
- (9) In this clause, **internal review** means:
  - (a) in relation to a decision of the Authority under the *Road Transport (Vehicle Registration) Regulation 1998*—an internal review under clause 78E of that regulation, and
  - (b) in relation to a decision of the Authority under the *Road Transport (Mass, Loading and Access) Regulation 1996*—an internal review under clause 74 of that regulation.

## Part 2 General

### 11 Matters having effect under repealed Motor Traffic Regulations 1935

Any act, matter or thing that, immediately before the repeal of the *Motor Traffic Regulations 1935*, had effect under a provision of those Regulations is taken to have effect under the corresponding provision of the road transport legislation.

### 12 Persons authorised under section 11C of repealed Traffic Act 1909

- (1) Any person who was authorised by the Authority under section 11C of the *Traffic Act 1909* (as in force immediately before the repeal of that section by the *Road Transport Legislation Amendment Act 1999*) to seize number-plates is taken to have been authorised by the Authority to seize number-plates under section 27C of the *Road*

*Transport (Vehicle Registration) Act 1997.*

- (2) Nothing in this clause prevents the revocation or alteration of any such authority.

### **13 Existing breath analysing instruments and breath testing devices preserved**

- (1) An instrument that, immediately before the repeal of the *Traffic Act 1909*, was a breath analysing instrument for the purposes of that Act is taken to be a breath analysing instrument for the purposes of the *Road Transport (Safety and Traffic Management) Act 1999*.
- (2) A device that, immediately before the repeal of the *Traffic Act 1909*, was a device (not being a breath analysing instrument) of a type approved by the Governor by order published in the Gazette as referred to in the definition of **breath test** in section 2 (1) of that Act is taken to be a device approved by the Governor for the purposes of the definition of **breath test** in the Dictionary to the *Road Transport (Safety and Traffic Management) Act 1999*.