

# Road Transport (Driver Licensing) Act 1998 No 99

[1998-99]



New South Wales

## Status Information

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### Provisions in force

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### Notes—

- **Does not include amendments by**  
[Graffiti Legislation Amendment Act 2012 No 57](#) (not commenced)

### Authorisation

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# Road Transport (Driver Licensing) Act 1998 No 99



New South Wales

An Act to provide for the licensing of drivers and for related matters as part of the system of nationally consistent road transport laws and for additional matters relating to learner and provisional licences; to make consequential and other amendments to the [Traffic Act 1909](#) and other Acts; and for other purposes.

## Part 1 Preliminary

### Note—

This Act and the regulations made under it form part of the **road transport legislation** identified by section 5 of the [Road Transport \(General\) Act 2005](#). Other road transport legislation includes the [Motor Vehicles Taxation Act 1988](#), the [Road Transport \(General\) Act 2005](#), the [Road Transport \(Safety and Traffic Management\) Act 1999](#), the [Road Transport \(Vehicle Registration\) Act 1997](#) and the statutory rules made under those Acts. As part of the road transport legislation, this Act is subject to various provisions in the [Road Transport \(General\) Act 2005](#) concerning the administration and enforcement of the road transport legislation generally.

### 1 Name of Act

This Act is the [Road Transport \(Driver Licensing\) Act 1998](#).

### 2 Commencement

This Act commences on a day or days to be appointed by proclamation.

### 3 Objects of Act

The objects of this Act are:

- (a) to provide for the establishment of a driver licensing system, in accordance with agreements scheduled to the [National Road Transport Commission Act 1991](#) of the Commonwealth, as part of a uniform national approach to driver licensing, that is designed to provide:
  - (i) uniform licence classes for the drivers of motor vehicles, and
  - (ii) uniform attendant eligibility criteria for those licence classes, and
- (b) to define the responsibilities of people in respect of driver licensing, and

- (c) to provide a means of identifying persons as licensed drivers of motor vehicles, and
- (d) to facilitate the regulation of drivers of motor vehicles in the interests of safety and efficiency and law enforcement generally, and
- (e) to provide a means of enforcing safety standards relating to the driving of motor vehicles on roads and road related areas, and
- (f) to facilitate:
  - (i) the recovery of expenses incurred in administering the driver licensing system, and
  - (ii) the collection of fees payable under this Act or the regulations, and
- (g) to provide for other matters relating to learner licences and provisional licences, and
- (h) to improve road safety and transport efficiency and reduce the costs of administering road transport.

**Note—**

This Act and the regulations under this Act establish a driver licensing system, including a demerit points system and providing for the issue, suspension, cancellation and renewal of driver licences and the classes of driver licences. Licences may be cancelled for offences under the *Fines Act 1996* as a result of failure to pay fines, in addition to the Authority's powers of cancellation under this Act and the regulations.

The Commonwealth Act referred to in paragraph (a) has been repealed and replaced by the *National Transport Commission Act 2003* of the Commonwealth, and the agreements scheduled to the repealed Act have been independently terminated and replaced by the *Inter-Governmental Agreement for Regulatory and Operational Reform in Road, Rail and Intermodal Transport*.

#### **4 Definitions**

Expressions used in this Act that are defined in the Dictionary at the end of this Act have the meanings given to them in the Dictionary unless the context or subject-matter otherwise indicates or requires.

#### **5 Application of Commonwealth [Acts Interpretation Act 1901](#)**

- (1) The provisions of the [Acts Interpretation Act 1901](#) of the Commonwealth apply to the interpretation of this Act and the regulations, except that, in relation to New South Wales:
  - (a) "Gazette" is to refer to the New South Wales Government Gazette, and
  - (b) "Minister" is to refer to the responsible Minister of New South Wales.
- (2) This section does not prevent the [Interpretation Act 1987](#) from applying to this Act and the regulations to the extent that it can do so consistently with the application of the [Acts Interpretation Act 1901](#) of the Commonwealth.

## **6 Act to bind Crown**

- (1) This Act binds the Crown in right of New South Wales and, in so far as the legislative power of the Parliament of New South Wales permits, the Crown in all its other capacities.
- (2) This Act does not make the Crown liable to be prosecuted for an offence.

## **7 Notes**

Notes included in this Act do not form part of this Act.

# **Part 2 Driver licensing system**

## **Division 1 Functions of Authority generally**

### **8 Functions of Authority**

The functions of the Authority under this Act are as follows:

- (a) to administer the driver licensing system established by this Act and the regulations,
- (b) to maintain a driver licence register in accordance with this Act and the regulations,
- (c) to maintain a demerit points register in accordance with this Act and the regulations,
- (d) to provide information about drivers in accordance with the regulations,
- (e) to exercise such other functions as are conferred or imposed by or under this Act.

### **9 Authority not to issue or renew licence in certain circumstances**

- (1) The Authority must not issue a driver licence to a person unless it is satisfied that the person is a resident of this State and that:
  - (a) the person is eligible to be issued with, or to apply for, the driver licence, and
  - (b) if the person is the holder of an Australian driver licence or a licence to drive a motor vehicle in a foreign country, that licence has been surrendered,in accordance with the regulations.
- (2) However, the Authority may issue a driver licence to a person without the person surrendering the person's licence to drive a motor vehicle in a foreign country in circumstances prescribed by the regulations.
- (3) The Authority must not renew a driver licence of a person if it is satisfied that the person is no longer a resident of this State.
- (4) Subsections (1) and (3), to the extent that they require a person to be a resident of

this State, do not apply to a person who resides temporarily outside this State.

- (5) This section does not limit the other circumstances in which the Authority may refuse to issue or renew a licence.

## **10 Fixing fees**

- (1) The Authority may, by notice published in the Gazette, fix fees, or amend or revoke fees, for services provided by the Authority in connection with the licensing of drivers, or the renewal or late renewal of driver licences, and other matters related to services provided by the Authority under this Act or the regulations.
- (2) This section does not prevent any other law fixing fees for services provided by the Authority or fees being fixed under the regulations.

## **11 Mutual recognition**

- (1) The Authority must, in accordance with the regulations, recognise:
- (a) driver licences issued by another jurisdiction, and
  - (b) licence conditions that apply to those licences, other than conditions that apply only in circumstances that are unique to that other jurisdiction or that are prescribed by the regulations.
- (2) The regulations may provide for the effect of the recognition of driver licences and licence conditions by the Authority.
- (3) If:
- (a) a person:
    - (i) commits an offence in this State that is included in the national schedule of demerit points, or
    - (ii) pays the amount specified in a penalty notice for such an offence, and
  - (b) the person holds a driver licence issued by another driver licensing authority,
- the Authority must, as soon as practicable, transmit all relevant information about the offence to the other driver licensing authority.
- (4) If:
- (a) a person:
    - (i) commits an offence in this State that is included in the national schedule of demerit points, or
    - (ii) pays the amount specified in a penalty notice for such an offence, and



(b) the person is not the holder of an Australian driver licence,

the Authority must transmit the relevant information about the offence to the driver licensing authority of the jurisdiction in which the person ordinarily resides.

(5) However, the Authority is not required to transmit any information until after:

(a) if the person appeals against a conviction for the offence and the appeal is dismissed or discontinued, the dismissal or discontinuance of the appeal, or

(b) if the person does not appeal, the last time at which the person could have appealed, or

(c) if the person does not pay the penalty specified in a penalty notice issued to the person in respect of the offence and the person does not elect to have the matter dealt with by a court, the time for the person to have the matter so dealt with has elapsed.

(6) If the Authority receives information about a person from another driver licensing authority under a provision of a law of the other jurisdiction that corresponds to this section, the Authority must take the action it would have taken if the offence had been committed in this State.

## **12 Security of information in registers**

(1) The Authority must ensure that information contained in a driver licence register established under the regulations or the demerit points register that is of a personal nature or that has commercial sensitivity for the person about whom it is kept is not released except as provided by the regulations or under another law.

(2) However, if the register includes any photograph to which Part 5 applies, Part 5 (rather than the regulations) applies to the release of that photograph.

## **13 Delegation by Authority**

(1) The Authority may, by signed instrument, delegate to a person prescribed by the regulations all or any of its powers (other than this power of delegation) under this Act or the regulations.

(2) Nothing in this section affects any other power or delegation that the Authority has under any other Act.

## **Division 2 Demerit points system**

### **Subdivision 1 Demerit points register and offences**

#### **14 Demerit points register**

(1) The Authority must maintain a demerit points register in accordance with this Act and

the regulations.

- (2) The Authority must record, in the demerit points register, against a person the number of demerit points specified in the regulations if the person:
  - (a) is convicted of an offence specified in the national schedule of demerit points or any other offence specified in the regulations, or recognised, under section 15, or
  - (b) pays the whole or any part of the penalty specified in a penalty notice issued to the person in respect of the offence, or
  - (c) has not paid the penalty specified in a penalty notice issued to the person in respect of the offence, the person has not elected to have the matter dealt with by a court and the time for the person to have the matter so dealt with has lapsed.
- (3) Demerit points incurred by a person for an offence for which demerit points may be incurred under this Act or the regulations are to be recorded in the demerit points register in respect of the day on which the offence was committed.
- (3A) To avoid doubt, the Authority is not to record demerit points against a person under this Division in respect of an offence if the court makes an order under section 10 of the *Crimes (Sentencing Procedure) Act 1999* in respect of the offence.
- (4) (Repealed)
- (5) Without limiting any other provision of this section, the Authority may correct any mistake, error or omission in the demerit points register, subject to any requirements of the regulations.

**Note—**

If the holder of a driver licence issued by another driver licensing authority commits an offence in this State that warrants demerit points, the Authority must transmit all relevant information about the offence to the other authority (see section 11 (3)).

## **15 Offences for which demerit points are incurred**

- (1) The regulations may prescribe:
  - (a) the offences (relating to the driving or use of motor vehicles), and the number of demerit points incurred for each offence, that comprise the national schedule of demerit points, and
  - (b) additional offences (relating to the driving or use of motor vehicles) created under a law of this State for which demerit points may be incurred and the number of demerit points incurred for each offence.
- (2) The Authority may, by notice published in the Gazette:
  - (a) recognise offences (relating to the driving or use of motor vehicles) created under

a law of this State or another jurisdiction that are not on the national schedule of demerit points as being offences for which the Authority will record demerit points against persons, and

(b) specify the number of demerit points incurred for each of those offences.

- (3) The Authority may, by notice published in the Gazette, revoke the recognition of an offence under subsection (2) or amend the number of demerit points specified for an offence. Any such revocation or amendment takes effect on the day the notice is published in the Gazette, or on such later day as may be specified in the notice.
- (4) A regulation or a notice under this section may specify different numbers of demerit points for the same offence in different circumstances (whether or not the offence is contained in the national schedule of demerit points).
- (5) An offence is taken to be recognised under this section on the day the notice is published in the Gazette, or on such later day as may be specified in the notice.
- (6) A revocation or amendment under subsection (3) does not affect any demerit points incurred before the revocation or amendment takes effect.

## **Subdivision 2 Consequences for unrestricted licence holders who incur demerit points**

### **16 Suspension of licence**

- (1) (Repealed)
- (2) **Licence suspension for demerit points** The Authority must give a notice of licence suspension to the holder of an unrestricted driver licence who incurs 13 or more demerit points (or in the case of a professional driver 14 or more demerit points) within the 3 year period ending on the day on which the person last committed an offence for which demerit points have been recorded against the person.
- (3) Despite subsection (2), the Authority is not required to take action under that subsection if it is of the opinion:
  - (a) that it would be unreasonable to do so, having regard to the date when any relevant offence was committed, or
  - (b) it would be more appropriate for the person to be dealt with under sections 16AA (2) and 16A.
- (4) The notice of licence suspension must specify the date on which the suspension is to take effect and must contain any other matters specified by the regulations. The date specified must not be earlier than 28 days after the notice is given.
- (5) The period of licence suspension under subsection (2) is the period applicable under

the following table:

**Licence suspension for demerit points**

<b>Number of demerit points incurred within previous 3 years</b>	<b>Period of licence suspension</b>
13 (or 14 in the case of a professional driver) to 15	3 months
16 to 19	4 months
20 or more	5 months

- (6) If a person who has been served with a notice of licence suspension does not make an election under subsection (8), all driver licences held by the person are suspended for the period applicable under this section on and from the date specified in the notice.
- (7) On the commencement of a period of suspension or a period of good behaviour (see subsection (8)), all demerit points recorded in the demerit points register against the person at the date of the notice are taken to be deleted.
- (8) **Alternative to suspension** A person who incurs at least 13 demerit points (or in the case of a professional driver 14 demerit points) within the 3 year period ending on the day on which the person last committed an offence for which demerit points have been recorded against the person may, after being served with a notice of licence suspension by the Authority (but before the commencement of the period of suspension), notify the Authority in a form approved by the Authority that he or she elects, as an alternative to undergoing the suspension, to be of good behaviour for a period of 12 months on and from the day on which the licence would otherwise be suspended.
- (9) If a person who makes an election in accordance with subsection (8) incurs 2 or more demerit points during the 12 months' good behaviour period, the Authority must give the person a notice suspending all driver licences held by the person, commencing on a day specified in the notice, for twice the period that would have applied to the person under this section if the person had not made the election.
- (10) On the commencement of the period of suspension referred to in subsection (9), all demerit points recorded in the demerit points register against the person at the date of the notice, and taken into account for the purpose of the notice, are taken to be deleted.
- (11) Despite subsections (7) and (10), demerit points incurred by a person:
- (a) after the person is served with a notice of licence suspension but before the suspension begins, or
  - (b) if the person makes an election in accordance with subsection (8), after the

person is served with the notice of licence suspension and before the 12 months' period of good behaviour begins,

are not taken to be deleted under this section when the suspension or period of good behaviour begins and are to be taken into account for the purposes of subsection (2) or section 16A (1) from the end of the period of licence suspension or period of good behaviour.

- (12) Nothing in subsection (7) or (10) prevents the Authority from retaining records of deleted demerit points incurred by any person.

#### **16AA Consequences in relation to licence applications**

- (1) Demerit points recorded against a person must be taken into account if the person subsequently obtains or applies for a driver licence within 3 years of the date of the offence for which the demerit points are incurred.
- (2) For the purposes of subsection (1), if a person applies for a driver licence (including for the renewal of a licence) having incurred 13 or more demerit points (or in the case of a professional driver 14 or more demerit points) within a 3 year period ending on the day on which the applicant last committed an offence for which demerit points have been recorded against the applicant:
- (a) the Authority may refuse the person's application and take action under section 16A, or
- (b) the Authority may grant the licence and take action under section 16.

#### **16A Licence ineligibility**

- (1) **Licence ineligibility for demerit points** The Authority may give a notice of licence ineligibility to the applicant for a licence (not being a provisional licence or learner licence) who incurs 13 or more demerit points (or in the case of a professional driver 14 or more demerit points) within the 3 year period ending on the day on which the person last committed an offence for which demerit points have been recorded against the person.
- (2) However, the Authority may not give a person both a notice of licence ineligibility and a notice of licence suspension under section 16 in respect of the same 3 year period.
- (3) The notice of licence ineligibility must specify the date on which the ineligibility is to take effect (not being a date that is earlier than the date on which the notice is given) and must contain any other matters specified by the regulations. If the notice is delivered to the applicant personally, the specified date is taken to be the date on which it is so delivered unless the notice provides for a later date.
- (4) The period of licence ineligibility under subsection (1) is the period applicable under the following table:

**Table**  
**Licence ineligibility for demerit points**

<b>Column 1</b>	<b>Column 2</b>
<b>Number of demerit points incurred within previous 3 years</b>	<b>Period of licence ineligibility</b>
13 (or 14 in the case of a professional driver) to 15	3 months
16 to 19	4 months
20 or more	5 months

- (5) If a person who has been served with a notice of licence ineligibility does not make an election under subsection (7), the person is not entitled:
- (a) to be issued with a driver licence for the ineligibility period applicable under this section on and from the date specified in the notice, and
  - (b) to apply for a driver licence for that period.
- (6) On the commencement of an ineligibility period or a period of good behaviour (see subsection (7)), all demerit points recorded in the demerit points register against the person at the date of the notice are taken to be deleted.
- (7) **Alternative to ineligibility** A person who incurs at least 13 demerit points (or in the case of a professional driver 14 demerit points) within the 3 year period ending on the day on which the person last committed an offence for which demerit points have been recorded against the person may notify the Authority in a form approved by the Authority that he or she elects, as an alternative to undergoing the ineligibility period, to be of good behaviour for a period of 12 months on and from the day on which the licence ineligibility would otherwise have had effect.
- (8) If a person who makes an election in accordance with subsection (7) incurs 2 or more demerit points during the 12 months' good behaviour period:
- (a) the Authority must give the person a notice suspending all driver licences held by the person, commencing on a day specified in the notice, for twice the period that would have applied to the person under this section if the person had not made the election, and
  - (b) all driver licences held by the person are suspended for that period on and from the date specified in the notice.
- (9) On the commencement of the period of suspension referred to in subsection (8), all demerit points recorded in the demerit points register against the person at the date of the notice, and taken into account for the purpose of the notice, are taken to be

deleted.

(10) Despite subsections (6) and (9), demerit points incurred by a person:

(a) after the person is served with a notice of licence ineligibility but before the licence ineligibility takes effect, or

(b) if the person makes an election in accordance with subsection (7), after the person is served with the notice of licence ineligibility and before the 12 months' period of good behaviour begins,

are not taken to be deleted under this section when the licence ineligibility takes effect or period of good behaviour begins and are to be taken into account for the purposes of subsection (1) or section 16 (2) from the end of the licence ineligibility or period of good behaviour.

(11) Nothing in subsection (6) or (9) prevents the Authority from retaining records of deleted demerit points incurred by any person.

### **Subdivision 3 Consequences for learner or provisional licence holders who incur demerit points**

#### **17 Threshold number of demerit points for learner or provisional licence holders**

In this Subdivision, the ***threshold number of demerit points*** is:

(a) for the holder of a learner licence or a provisional P1 licence, 4 or more demerit points, and

(b) for the holder of a provisional P2 licence, 7 or more demerit points.

#### **17A Consequences generally**

If the holder of a learner licence or a provisional licence incurs the threshold number of demerit points within the 3 year period ending on the day on which the person last committed an offence for which demerit points have been recorded against the person, the Authority may:

(a) issue a notice of suspension or cancellation of licence under section 17B, or

(b) if the person subsequently applies for a driver licence:

(i) refuse the application and issue a notice of licence ineligibility under section 17C, or

(ii) (if the driver licence applied for is a learner or provisional licence) grant the licence and issue a notice of suspension or cancellation of licence under section 17B.

### **17B Suspension or cancellation of licence**

- (1) The Authority may give a notice of licence suspension or cancellation to the holder of a learner licence or a provisional licence who incurs the threshold number of demerit points within the 3 year period ending on the day on which the person last committed an offence for which demerit points have been recorded against the person.
- (2) A notice of licence suspension must specify the date on which the suspension is to take effect and any driver licence to which the notice applies, and must contain any other matters specified by the regulations. The date specified must not be earlier than 28 days after the notice is given.
- (3) If a person is served with a notice of licence suspension under this section, all driver licences held by the person in relation to which the threshold number of demerit points is the same or lower than the number of demerit points taken into account for the purposes of the notice, are suspended on and from the date, and for the period, specified in the notice.
- (4) On the commencement of a period of suspension, all demerit points recorded in the demerit points register against the person at the date of the notice, and taken into account for the purpose of the notice, are taken to be deleted.
- (5) Nothing in subsection (4) prevents the Authority from retaining records of deleted demerit points incurred by any person.
- (6) The regulations may make provision for or with respect to the following matters:
  - (a) notices of cancellation to holders of learner licences or provisional licences who incur the threshold number of demerit points,
  - (b) the circumstances in which the Authority may issue a notice of cancellation to holders of learner licences or provisional licences who incur the threshold number of demerit points,
  - (c) prescribing the driver licences held by a person that may be cancelled as a consequence of incurring demerit points the subject of a notice of cancellation served on the person,
  - (d) the deletion of demerit points recorded in the demerit points register against a person on cancellation of the person's licence.

### **17C Licence ineligibility**

- (1) The Authority may give a notice of licence ineligibility to the applicant for a licence (including a provisional licence or learner licence) who incurs the threshold number of demerit points within the 3 year period ending on the day on which the person last committed an offence for which demerit points have been recorded against the person.



- (2) However, the Authority may not give a person both a notice of licence ineligibility and a notice of licence suspension or cancellation under section 17B in respect of the same 3 year period.
- (3) The notice of licence ineligibility must specify the date on which the ineligibility is to take effect (not being a date that is earlier than the date on which the notice is given), the period of ineligibility and any licence to which the notice applies, and must contain any other matters specified by the regulations. If the notice is delivered to the applicant personally, the specified date is taken to be the date on which it is so delivered unless the notice provides for a later date.
- (4) Except as provided by subsection (5), a person who has been served with a notice of licence ineligibility under this section is not entitled to apply for or be issued with any driver licence on and from the date, and for the period, specified in the notice.
- (5) Subsection (4) does not prevent a person served with a notice of licence ineligibility under this section who holds a driver licence of a licence class different from that the subject of the application in relation to which the notice is given, from applying for or being issued with:
  - (a) a renewal of that licence, or
  - (b) a higher grade of that class of licence.
- (6) On the commencement of an ineligibility period, all demerit points recorded in the demerit points register against the person at the date of the notice, and taken into account for the purpose of the notice, are taken to be deleted.
- (7) Nothing in subsection (6) prevents the Authority from retaining records of deleted demerit points incurred by any person.
- (8) In this section, a reference to a grade of driver licence is a reference to a learner licence, a provisional P1 licence, a provisional P2 licence or an unrestricted licence (ordered from lowest to highest).

## **Subdivision 4 General matters relating to demerit points**

### **17D Determining demerit thresholds where combined licences**

- (1) If a person holds 2 classes of driver licence and a different threshold number of demerit points applies to each of those licences:
  - (a) demerit points incurred on the licence to which the higher threshold applies may be counted only towards the threshold applying to that licence, and
  - (b) demerit points incurred on the licence to which the lower threshold applies may be counted towards either threshold.

- (2) If a person holds 2 classes of driver licence and the same threshold number of demerit points applies to both of those licences, demerit points incurred on either licence may be counted towards the threshold.
- (3) If a person who makes an election in accordance with section 16 (8) or 16A (7) holds 2 classes of driver licence, demerit points incurred on either licence may be counted towards the threshold number of demerit points referred to in section 16 (9) or 16A (8), respectively.
- (4) For the purposes of subsections (1) and (2), the threshold number of demerit points applying to a licence is:
  - (a) for an unrestricted licence, the threshold of 13 or more demerit points (or in the case of a professional driver 14 or more demerit points) applying to the holder of an unrestricted licence under Subdivision 2, and
  - (b) for a learner, provisional P1 or provisional P2 licence, the threshold applying to the holders of those licences under Subdivision 3.

### **18 Demerit points penalties**

- (1) A period of licence suspension under section 16 or 17B is in addition to any period of licence suspension imposed under another law of this State.
- (2) Demerit points recorded in the demerit points register against a person are not affected by a period of licence suspension or disqualification imposed by a court in Australia, or under another law in force in this State.
- (3) Nothing in this section prevents the regulations from requiring the Authority to take into account any prior period of suspension ended by a disqualification when determining whether to issue a new driver licence to a person who has completed any such period of disqualification.
- (4) The Authority may decide to suspend or cancel a driver licence under this Division without the holder of the licence having been provided an opportunity to show cause why the licence should not be suspended or cancelled.

### **18A Evidence that person is professional driver**

- (1) The Authority may, for the purpose of determining whether a person is a professional driver under this Division, request the person to provide the Authority with information (including in the form of a statutory declaration) as to the primary work of the person.
- (2) The Authority is entitled to treat a person who has been requested to provide that information as not being a professional driver unless any such requested information is provided to the Authority in accordance with the request.
- (3) A request for information under this section may be made in connection with an

application by the person for the issue or renewal of a driver licence or by written notice to the person.

## **Division 3 Regulations**

### **19 Regulations generally**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) The regulations may apply, adopt or incorporate, whether wholly or in part or with or without modifications, publications of the National Transport Commission (formerly the National Road Transport Commission) that have been approved by the Australian Transport Council or any other publication, either as published or as in force from time to time.
- (3) The regulations may create offences punishable by a penalty not exceeding 20 penalty units.

### **19A Penalty of driver licence disqualification**

- (1) In addition to a penalty referred to in section 19 (3), the regulations may provide for a person who is convicted of a relevant offence:
  - (a) to be automatically disqualified by virtue of the conviction from holding a driver licence for a period not exceeding 3 months, or
  - (b) to be disqualified by order of the court that convicts the person of the offence from holding a driver licence for such period as the court thinks fit (whether for a period that is shorter or longer than a period of automatic disqualification referred to in paragraph (a)).

- (2) In this section:

**relevant offence** means an offence under the regulations of being the holder of a learner licence driving unaccompanied by a supervising driver.

### **20 Driver licensing system**

- (1) The regulations are to provide for a system of licensing drivers of motor vehicles that are used on roads or road related areas that:
  - (a) provides a means of authorising the driving of motor vehicles on roads and road related areas, and
  - (b) enables the identification of persons as licensed drivers of motor vehicles.
- (2) Without limiting the scope of regulations under subsection (1), the regulations may:

- (a) provide for the issue or refusal to issue driver licences and renewal of driver licences or refusal of renewal, and for the imposition of conditions on driver licences, and for the replacement of and refusal to replace driver licences, and
- (b) provide for the cancellation, variation and suspension of driver licences, and
- (c) fix the periods for which a driver licence or renewal remains in force, and
- (d) require the production of specified information by:
  - (i) applicants for driver licences or renewals or variation of driver licences, or
  - (ii) holders of driver licences, and
- (e) provide for the recognition by the Authority of things done under a corresponding law of another jurisdiction, and
- (f) fix fees for services provided by the Authority in connection with the licensing of drivers or the renewal or late renewal of driver licences and other matters related to services provided under this Act or the regulations, and
- (g) provide for a refund, or partial refund, of fees fixed under this Act or the regulations (including refunds resulting from concessions for fees), and
- (h) provide for concessions (either in part or in full) for fees fixed under this Act or the regulations for specified classes of people, and
- (i) provide for the collection and recovery of fees fixed under this Act or the regulations, and
- (j) provide for the approval by the Authority of the form in which applications are to be made to the Authority, and the form in which documents are to be issued by the Authority, for the purposes of this Act and the regulations, and
- (k) provide that this Act or the regulations, or specified provisions of this Act or the regulations, do not apply to a driver, or drivers of a kind, identified in the regulations, and
- (l) allow the Authority to revoke, in the manner and in circumstances specified in the regulations, an exemption for a driver, or drivers of a kind, given under a regulation made for the purposes of paragraph (k), and
- (m) prescribe different classes of driver licences, and grade each class by reference to the driving skills required for each class, and the eligibility criteria for the issue of each class of licence, and
- (m1) make provision for or with respect to extending the period for which a person is required to hold a provisional licence if the person:

- (i) is convicted or found guilty of an offence under section 129 (Minor must not use false evidence of age) of the *Liquor Act 2007*, or
- (ii) is issued with a penalty notice under section 150 of the *Liquor Act 2007* in respect of an alleged offence under section 129 of that Act, and
- (n) allow the Authority to exempt a person or class of persons from the requirement to hold a driver licence or a driver licence of a particular class (whether or not subject to conditions imposed by the Authority), and
- (o) provide for the maintenance of a driver licence register and matters relating to the demerit points register, and
- (p) prescribe:
  - (i) the form in which the Authority is to issue evidence of the authority to drive a motor vehicle provided by a driver licence, and
  - (ii) the circumstances in which that evidence must be surrendered or returned to the Authority, and
- (q) provide for the issue of certificates by the Authority for the purposes of section 26 (1), and
- (r) regulate the payment and application of fees paid under this Act or the regulations, and
- (s) enable the Authority to correct any mistake, error or omission in the driver licence register, and
- (t) provide for competency based assessment schemes relating to driver licensing, and
- (u) provide for the service of notices or other documents by the Authority and the date on which the service of any such notice or other document is to be taken to have been effected, and
- (v) require persons who are:
  - (i) applicants for driver licences or renewal or variation of driver licences, and
  - (ii) holders of driver licences,to submit to tests or retesting or medical or other examinations for the purpose of assessing fitness to hold or continue to hold a driver licence, or a varied driver licence, and
- (w) provide for the waiver of fees, and

(x) provide for driver training schemes.

(3) The classes of driver licence that may be prescribed include, but are not limited to, conditional licences, provisional licences and learner licences.

(4) The regulations may impose a fee in respect of services provided by the Authority in connection with the licensing of drivers or the renewal or late renewal of driver licences, and other matters related to services provided under this Act or the regulations, despite the fact that the fee may also comprise a tax.

(5) Any regulation made under subsection (2) (m1) has effect despite anything to the contrary in section 150 (5) of the [Liquor Act 2007](#).

## Part 2A Interlock devices

### 21 Definitions

In this Part:

**approved interlock device**—see section 21A.

**approved interlock installer**—see section 21B (1).

**approved interlock service provider**—see section 21B (2).

**interlock device** means a device designed to:

- (a) analyse a breath sample for the presence of alcohol, and
- (b) prevent a motor vehicle from being started if it detects more than a certain concentration of alcohol.

**interlock driver licence**—see section 21C (2) (a).

**maintenance**, in relation to an interlock device, includes (but is not limited to) the following:

- (a) the retrieval of any information that is stored electronically by or with the device,
- (b) any work that improves or augments the functionality of the device.

### 21A Approved interlock devices

In this Part, an **approved interlock device** is an interlock device of a type approved by the Authority by order published in the Gazette.

**Note—**

The Authority may amend or repeal an order made under this section. See section 43 of the [Interpretation Act 1987](#).

**Editorial note—**

For orders under this section, see Gazettes No 138 of 12.9.2003, p 9349; No 147 of 17.9.2004, p 7587 and No 63 of 17.4.2009, p 1685.

### **21B Approved interlock installers and service providers**

- (1) In this Part, an **approved interlock installer** means a person approved in writing by the Authority as a person who may install and remove approved interlock devices in motor vehicles for the purposes of this Part.
- (2) In this Part, an **approved interlock service provider** means a person approved in writing by the Authority as a person who may carry out maintenance to ensure the proper operation of approved interlock devices, or conduct inspections of such devices, for the purposes of this Part.
- (3) A person may be both an approved interlock installer and approved interlock service provider for the purposes of this Part.
- (4) The Authority may revoke any approval given to a person under this section by written notice given to the person.

**Note—**

Section 44 of the [Road Transport \(General\) Act 1999](#) provides for the service and giving of documents to persons under the road transport legislation, which includes this Act.

- (5) The Authority is not liable in civil proceedings (whether for negligence or otherwise) for anything done or omitted to be done by an approved interlock installer or approved interlock service provider in exercising (or purportedly exercising) any function under this Act or the regulations. In particular, the Authority is not vicariously liable for any such act or omission.

### **21C Regulations may provide for installation, maintenance and use of interlock devices**

- (1) Without limiting section 20, the regulations may make provision for or with respect to the installation, removal and maintenance of interlock devices on motor vehicles and the use of such devices (whether or not for the purposes of a disqualification suspension order within the meaning of section 190 of the [Road Transport \(General\) Act 2005](#)).
- (2) Without limiting the scope of the regulations under subsection (1), the regulations may:
  - (a) provide for the issue of conditional licences (**interlock driver licences**) that restrict the holders of such licences to driving motor vehicles fitted with approved interlock devices by approved interlock installers, and
  - (b) require (or authorise the Authority to require) applicants for interlock driver licences to submit to medical consultations before such applicants can be issued with such licences or at any time during which such licences are in force, and

- (c) prescribe additional conditions (or authorise the Authority to impose conditions) that holders of interlock driver licences must observe, including (but not limited to) the following:
  - (i) conditions relating to the maximum concentration of alcohol that may be present in the breath or blood of holders of such licences when they drive motor vehicles,
  - (ii) conditions relating to the installation, maintenance and removal of interlock devices (including the payment of costs relating to such installation, maintenance or removal),
  - (iii) conditions relating to the inspection of interlock devices (or motor vehicles fitted with such devices) and the provision of information relating to such inspections to the Authority,
  - (iv) conditions relating to the provision of any data or other information collected by an interlock device (including the payment of any costs relating to the provision of such data or other information),
  - (v) any other conditions relating to the use of interlock devices, and
- (d) provide for certain motor vehicles (or classes of motor vehicles) not to be driven by holders of interlock driver licences,
- (e) provide for the Authority to inspect motor vehicles fitted with interlock devices (or require such motor vehicles to be inspected by other persons), and
- (f) specify procedures (or authorise the Authority to specify procedures) for approved interlock installers and approved interlock service providers to observe when installing, removing, inspecting or carrying out maintenance on approved interlock devices, and
- (g) provide for applications by persons to be approved by the Authority as approved interlock installers or approved interlock service providers and for fees payable in respect of such applications, and
- (h) authorise a police officer:
  - (i) to stop and inspect motor vehicles that the officer reasonably suspects may be fitted with an interlock device, and
  - (ii) to seize any such motor vehicles or devices where the device is fitted to a motor vehicle driven by the holder of an interlock driver licence and the officer reasonably suspects that the device has been used in contravention of this Act or the regulations, and
- (i) provide for offences relating to the following:



- (i) the use of approved interlock devices, or the use of devices that are not approved interlock devices, by holders of interlock driver licences,
- (ii) tampering or other interference with approved interlock devices fitted to motor vehicles driven (or to be driven) by holders of interlock driver licences, or with breath samples provided for such devices,
- (iii) the installation, maintenance or removal of interlock devices that are used (or may be used) by holders of interlock driver licences,
- (iv) the provision of data or information concerning interlock devices that are used (or may be used) by holders of interlock driver licences,
- (v) any other acts or omissions that may assist the holder of an interlock driver licence in contravening any conditions of the licence or committing an offence against this Act or the regulations.

#### **21D Financial assistance for use of approved interlock devices**

- (1) The Authority must establish a scheme under which persons seeking to gain the use of, or who are using, approved interlock devices may obtain financial assistance for the installation, removal or maintenance of such devices.
- (2) The Authority may approve the provision of financial assistance under this section subject to any means tests and conditions as may be determined by the Authority from time to time.
- (3) If it is a condition of the provision of any financial assistance provided under this section that all or part of it be repaid in specified circumstances, the amount of financial assistance that becomes repayable on the occurrence of those circumstances is a debt due to the Crown recoverable in a court of competent jurisdiction.
- (4) For the purposes of subsection (3), a certificate issued by the Authority that certifies that it was a condition of the provision of financial assistance that all or part of it be repaid in specified circumstances is prima facie evidence that the assistance was provided on that condition.
- (5) Payments of financial assistance are to be paid from the Roads and Maritime Services Fund established by section 77 of the *Transport Administration Act 1988*.

### **Part 3 Offences**

#### **22 Obtaining driver licence by false statements**

- (1) A person must not:
  - (a) by a false statement or any misrepresentation or other dishonest means, obtain or attempt to obtain a driver licence or the renewal of a driver licence, or

(b) without lawful authority or excuse, possess a driver licence obtained or renewed using those means.

Maximum penalty: 20 penalty units.

- (2) A driver licence so obtained or renewed is void, and the Authority may alter the driver licence register accordingly.
- (3) Subsection (1) does not apply to a driver licence receipt issued by another jurisdiction.

### **23 Unlawful possession of driver licence**

(1) A person who, without lawful authority or excuse, has in his or her possession:

- (a) an Australian driver licence, or
- (b) any article resembling an Australian driver licence and calculated to deceive,
- is guilty of an offence.

Maximum penalty: 20 penalty units.

(2) A person who alters a driver licence in a way that is calculated to deceive is guilty of an offence.

Maximum penalty: 20 penalty units.

(3) A person who produces a driver licence altered in a manner that is calculated to deceive is guilty of an offence.

Maximum penalty: 20 penalty units.

(4) A person who forges or fraudulently alters or uses, or fraudulently lends or allows to be used by any other person, a driver licence is guilty of an offence.

Maximum penalty: 20 penalty units.

### **24 Seizure of driver licences**

(1) A police officer or a person authorised in writing by the Authority:

- (a) to whom any Australian driver licence, or any article resembling an Australian driver licence, is produced by a person representing it to be the person's driver licence, and
- (b) who reasonably suspects that the licence or article:
- (i) has been obtained in contravention of section 22, or
- (ii) is unlawfully in the possession of the person who produced it,

may, with no authority other than this section, seize the licence or article.

- (2) A person by whom any licence or article is produced as referred to in subsection (1) (a) and who fails to provide, at the request of a police officer or authorised person to whom it was produced (and on being supplied with adequate materials), a specimen of his or her signature is guilty of an offence.

Maximum penalty: 20 penalty units.

- (3) The grounds on which a reasonable suspicion, sufficient to authorise a seizure under this section, may be formed include (but are not limited to) any one or more of the following:
- (a) a lack of resemblance between the person depicted in a photograph affixed to the Australian driver licence or article, purporting to be a photograph of the holder, and the person who produced the Australian driver licence or article,
  - (b) a lack of resemblance between a signature inscribed on the Australian driver licence or article, purporting to be the signature of the holder, and a specimen signature provided by the person who produced the Australian driver licence or article,
  - (c) a refusal by the person, after producing the Australian driver licence or article, to comply with a request under subsection (2).
- (4) An Australian driver licence or article seized under this section must be forwarded to the Authority. The Authority may:
- (a) return the Australian driver licence to the person who produced it, if it is satisfied that the driver licence was lawfully in the possession of the person who produced it, or
  - (b) in any other case, deal with it in such manner as it thinks fit.
- (5) The holder of a genuine and valid Australian driver licence seized under this section does not commit any offence merely because he or she is not in possession of the licence at any time after the seizure and before the licence is returned.

## **25 Driver must be licensed**

- (1) A person must not, unless exempted by the regulations:
- (a) drive a motor vehicle on any road or road related area without being licensed for that purpose, or
  - (b) employ or permit any person not so licensed to drive a motor vehicle on any road or road related area.

Maximum penalty: 20 penalty units.

- (2) A person who has never been licensed must not, unless exempted by the regulations, drive a motor vehicle on any road or road related area without being licensed for that purpose.

Maximum penalty: 20 penalty units (in the case of a first offence) or 30 penalty units or imprisonment for a period 18 months or both (in the case of a second or subsequent offence).

- (3) If a person is convicted of an offence under subsection (2) (being a second or subsequent offence), the person is disqualified by the conviction (and without any specific order) for a period of 3 years from holding a driver licence. The disqualification is in addition to any penalty imposed for the offence.

**Note—**

Section 189 of the *Road Transport (General) Act 2005* provides for the effect of a disqualification (whether or not by order of a court).

- (4) For the purposes of subsection (2), a person has never been licensed in connection with an offence if the person has not held a driver licence (or equivalent) of any kind in Australia for the period of at least 5 years immediately before the commission of the offence.
- (5) An offence under this section is a second or subsequent offence for the purposes of this section if:
- (a) it is the second or subsequent occasion on which the person is convicted of an offence against this section within the period of 5 years immediately before the person is convicted of the offence, or
  - (b) within the period of 5 years immediately before the person is convicted of the offence, the person was convicted of:
    - (i) an offence under section 6 (1C) or 7A of the *Traffic Act 1909* (as in force before its repeal), or
    - (ii) an offence under section 25 (2).
- (6) A person who has never been licensed cannot be convicted under both this section and section 25A in respect of driving on the same occasion. However, nothing in this section prevents the person from being convicted of an offence under section 25A in respect of driving that constitutes an offence under this section.
- (7) A person cannot be convicted under both subsection (1) (a) and (2) in respect of driving on the same occasion. A person charged with an offence under subsection (2) can be convicted instead of an offence under subsection (1) (a), but a person charged with an offence under subsection (1) (a) cannot be convicted instead of an offence under subsection (2).

- (8) Subsection (1) does not apply to or in respect of a light rail vehicle within the meaning of the *Road Transport (Safety and Traffic Management) Act 1999*.

**25A Offences committed by disqualified drivers or drivers whose licences are suspended or cancelled**

- (1) A person who is disqualified by or under any Act from holding or obtaining a driver licence must not:
- (a) drive a motor vehicle on a road or road related area during the period of disqualification, or
  - (b) make an application for a driver licence during the period of disqualification and in respect of the application state his or her name falsely or incorrectly or omit to mention the disqualification.

Maximum penalty: 30 penalty units or imprisonment for 18 months or both (in the case of a first offence) or 50 penalty units or imprisonment for 2 years or both (in the case of a second or subsequent offence).

- (1A) Subsection (1) does not apply to a driver of a motor vehicle in relation to a period of disqualification the commencement and completion dates of which have been altered by operation of section 188A of the *Road Transport (General) Act 2005* unless the Authority has given written notice of the altered dates to the driver before the driver is alleged to have driven the vehicle.

**Note—**

Section 239 of the *Road Transport (General) Act 2005* (and regulations made for the purposes of that section) provide for the service and giving of documents to persons under the road transport legislation, which includes this Act.

- (2) A person whose driver licence is suspended (otherwise than under section 66 of the *Fines Act 1996*) must not:
- (a) drive on a road or road related area a motor vehicle of the class to which the suspended driver licence relates, or
  - (b) make an application for a driver licence during the period of suspension for a motor vehicle of the class to which the suspended driver licence relates and in respect of such an application state his or her name falsely or incorrectly or omit to mention the suspension.

Maximum penalty: 30 penalty units or imprisonment for 18 months or both (in the case of a first offence) or 50 penalty units or imprisonment for 2 years or both (in the case of a second or subsequent offence).

- (3) A person whose application for a driver licence is refused or whose driver licence is cancelled (otherwise than under section 66 of the *Fines Act 1996*) must not:

- (a) drive on a road or road related area a motor vehicle of the class to which the cancelled licence or the refused application related without having subsequently obtained a driver licence for a motor vehicle of that class, or
- (b) make an application for a driver licence for a motor vehicle of the class to which the cancelled licence or the refused application related and in respect of the application state his or her name falsely or incorrectly or omit to mention the cancellation or refusal.

Maximum penalty: 30 penalty units or imprisonment for 18 months or both (in the case of a first offence) or 50 penalty units or imprisonment for 2 years or both (in the case of a second or subsequent offence).

(3A) A person whose driver licence is suspended or cancelled under section 66 of the *Fines Act 1996* must not:

- (a) in the case of a suspended licence:
  - (i) drive on a road or road related area a motor vehicle of the class to which the suspended driver licence relates, or
  - (ii) make an application for a driver licence during the period of suspension for a motor vehicle of the class to which the suspended driver licence relates and in respect of such an application state his or her name falsely or incorrectly or omit to mention the suspension, or
- (b) in the case of a cancelled licence:
  - (i) drive on a road or road related area a motor vehicle of the class to which the cancelled licence related without having subsequently obtained a driver licence for a motor vehicle of that class, or
  - (ii) make an application for a driver licence for a motor vehicle of the class to which the cancelled licence related and in respect of the application state his or her name falsely or incorrectly or omit to mention the cancellation.

Maximum penalty: 30 penalty units or imprisonment for 18 months or both (in the case of a first offence) or 50 penalty units or imprisonment for 2 years or both (in the case of a second or subsequent offence).

(3B) In determining any penalty or period of disqualification to be imposed on a person for an offence under subsection (3A), a court must take into account the effect the penalty or period of disqualification will have on the person's employment and the person's ability to pay the outstanding fine that caused the person's driver licence to be suspended or cancelled.

(4) For the purposes of subsection (3) (b) or (3A) (b) (ii), a person who applies for a driver licence for a class of motor vehicle need not mention a previous cancellation of a

driver licence (or refusal of an application for a driver licence) for that class of motor vehicle if the person has obtained a driver licence after any such cancellation or refusal by means of an application that stated his or her name correctly and mentioned the cancellation or refusal.

- (5) Subsections (1), (3) (a) and (3A) (b) (i) do not apply to the driving of a motor vehicle in circumstances prescribed by the regulations.
- (6) (Repealed)
- (7) If a person is convicted by a court of an offence under subsection (1), (2), (3) (a) or (3A), the person:
- (a) is disqualified by the conviction (and without any specific order) for the relevant disqualification period from the date of expiration of the existing disqualification or suspension or from the date of such conviction, whichever is the later, from holding a driver licence, and
  - (b) may also be disqualified, for such additional period as the court may order, from holding a driver licence.

**Note—**

Section 26 of the [Road Transport \(General\) Act 1999](#) provides for the effect of a disqualification (whether or not by order of a court).

- (8) The disqualification referred to in subsection (7) is in addition to any penalty imposed for the offence.
- (9) Subsections (1)–(3) apply to a person who is disqualified from holding a licence, or whose licence is suspended or cancelled, by a court in Australia or under any law in this State or another State or Territory.
- (10) For the purposes of subsection (7), the **relevant disqualification period** is:
- (a) in the case of a first offence under subsection (1), (2) or (3) (a)—12 months, or
  - (b) in the case of a first offence under subsection (3A)—3 months, or
  - (c) in the case of a second or subsequent offence—2 years.
- (11) For the purposes of determining both the maximum penalty and the disqualification period for any offence under this section, an offence is a **second or subsequent offence** if:
- (a) in relation to an offence under subsection (1), (2) or (3):
    - (i) it is the second or subsequent occasion on which the person is convicted of any offence under subsection (1), (2) or (3) within the period of 5 years immediately before the person is convicted of the offence, or

- (ii) within the period of 5 years immediately before the person is convicted of the offence, the person was convicted of a major offence within the meaning of the *Road Transport (General) Act 2005*, or
  - (iii) within the period of 5 years immediately before the person is convicted of the offence, the person was convicted of an offence under section 6 (1C) or 7A of the *Traffic Act 1909* (as in force before its repeal), or
  - (iv) within the period of 5 years immediately before the person is convicted of the offence, the person was convicted of an offence under section 25 (2), or
- (b) in relation to an offence under subsection (3A)—it is the second or subsequent occasion on which the person is convicted of an offence under subsection (3A) within the period of 5 years immediately before the person is convicted of the offence.

**26, 27 (Repealed)**

**Part 4 Miscellaneous**

**28-31 (Repealed)**

**32 Additional matters relating to identity**

- (1) The Authority may refuse to issue or renew a driver licence:
- (a) if the applicant has not attended at a motor registry or another place nominated in or under the regulations and there submitted to the taking, by a person approved by the Authority, of a photograph of the applicant that is suitable for use on the driver licence, or
  - (b) if, in the opinion of the Authority, it is impracticable for the applicant to so attend, the applicant has not provided the Authority with a photograph of the applicant considered by the Authority as suitable for use on the driver licence, or
  - (c) if the applicant has not provided, in support of the application, such evidence as is required by the regulations or the Authority to establish the identity and residential address of the applicant.
- (2), (3) (Repealed)
- (4) A person employed or engaged in connection with any aspect of the production of driver licences that feature a photograph of the holder, or otherwise concerned in the administration of this Act or the regulations, who, otherwise than in the administration of this Act or the regulations:
- (a) reproduces, by photographic or other means, the likeness of a person that is depicted, or is to be depicted, in a licence, or



(b) causes or permits another person to do so,  
is guilty of an offence.

Maximum penalty (subsection (4)): 20 penalty units.

### **33 Cancellation or suspension of driver licence by Authority**

- (1) A driver licence may be cancelled or suspended by the Authority because of an alleged speeding offence, if, in respect of the alleged offence:
  - (a) the holder pays the whole or any part of the penalty specified in a penalty notice issued to the holder in respect of the offence, or
  - (b) the holder has not paid the penalty specified in the penalty notice issued to the holder in respect of the offence and has not elected to have the matter dealt with by a court, and the time for the holder to have the matter so dealt with has lapsed.
- (2) The Authority may decide to cancel or suspend a driver licence under this section without the holder having been provided an opportunity to show cause why the licence should not be cancelled or suspended.
- (3) If a person's driver licence is cancelled by the Authority under this section, the Authority may refuse to issue the person with any further licence for a period determined by the Authority and specified in a notice served on the person by the Authority.
- (3A) If a person's driver licence is suspended by the Authority under this section, the person's licence is suspended for such period as may be determined by the Authority and specified in a notice served on the person by the Authority.
- (4) Nothing in this section limits any discretion of the Authority to decline to issue a driver licence to a person.
- (5) In this section:

**speeding offence** means an offence that involves exceeding a speed limit fixed by or under the *Road Transport (Safety and Traffic Management) Act 1999* and that is prescribed for the purposes of this section.

### **33A Effect of expiry of driver licence during suspension period**

If the driver licence of a person expires during a period of suspension for the licence imposed under the regulations or section 16, 16A, 17B or 33 of this Act or section 204, 205 or 206 of the *Road Transport (General) Act 2005* or section 33, 34 or 35 of the *Road Transport (General) Act 1999*:

- (a) the person cannot apply to the Authority for another driver licence during the

unexpired portion of the suspension period, and

- (b) the person's driver licence is taken to be suspended during the unexpired portion of the suspension period for the purposes of any offence provision under this Act or any other law in relation to driving a vehicle while a person's driver licence is suspended.

#### **34 Unpaid fees and charges**

An amount of any unpaid fees or charges payable under this Act or the regulations is a debt due to the Authority and may be recovered in a court of competent jurisdiction.

#### **35 Form of registers**

Any driver licence register maintained under the regulations 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.

#### **36 (Repealed)**

#### **37 Savings, transitional and other provisions**

Schedule 3 has effect.

#### **38 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

### **Part 5 Protection of stored photographs**

#### **39 Photographs to which this Part applies**

This Part applies to:

- (a) photographs taken or provided in relation to applications for the issue or renewal by the Authority of a driver licence, and
- (b) photographs taken or provided for the purpose of applications for the issue or renewal by the Authority of a "proof of age" card, and
- (c) photographs in the possession of the Authority that were taken or provided for the purpose of applications for the issue or renewal by the Commissioner of Police of the following:

- (i) a licence or permit under the *Firearms Act 1996*,
- (ii) a licence under the *Security Industry Act 1997*,
- (iii) a permit under the *Weapons Prohibition Act 1998*, and
- (d) photographs in the possession of the Authority that were taken or provided for the purpose of applications for the issue or renewal of an operator licence under the *Commercial Agents and Private Inquiry Agents Act 2004*, and
- (e) photographs in the possession of the Authority that were taken or provided for the purposes of applications for the issue of a licence under the *Tattoo Parlours Act 2012*.

#### **40 Purposes for which photographs may be kept and used**

- (1) A photograph to which this Part applies may be kept and used by the Authority only for one or more of the following purposes:
  - (a) to reproduce the likeness of a person on a driver licence or on the following:
    - (i) a licence or permit under the *Firearms Act 1996*,
    - (ii) a licence under the *Security Industry Act 1997*,
    - (iii) a permit under the *Weapons Prohibition Act 1998*,
    - (iv) an operator licence under the *Commercial Agents and Private Inquiry Agents Act 2004*,
    - (v) an authority under the *Passenger Transport Act 1990*,
    - (vi) a licence under the *Tattoo Parlours Act 2012*,
  - (b) to assist in determining the identity of any person in the course of determining whether or not to issue, replace or renew a driver licence,
  - (c) to assist in determining the identity of any person in the course of determining whether or not to register, or renew the registration of, a vehicle under the *Road Transport (Vehicle Registration) Act 1997*,
  - (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 *Licensing and Registration (Uniform Procedures) Act 2002*,
  - (d) in connection with an investigation relating to or leading to criminal proceedings against a person under section 22 (1) (a) (for obtaining or attempting to obtain a driver licence or the renewal of a driver licence by a false statement or any misrepresentation or other dishonest means) or under any other provision of this Act,

- (e) in connection with an investigation relating to or leading to criminal proceedings against a person under section 19 of the *Road Transport (Vehicle Registration) Act 1997* (for obtaining registration or unregistered vehicle permits by a false statement or any misrepresentation or other dishonest means),
  - (f) for the conduct of criminal proceedings under this Act or section 19 of the *Road Transport (Vehicle Registration) Act 1997*,
  - (f1) any purpose for which a photograph to which Part 4 (Security arrangements for photographs) of the *Photo Card Act 2005* applies may be kept and used by the Authority under that Part,
  - (f2) any purpose for which a photograph to which Division 3 (Security and protection of photographs) of Part 4A of the *Licensing and Registration (Uniform Procedures) Act 2002* applies may be kept and used by the Authority under that Division,
  - (g) for any other purpose prescribed by the regulations.
- (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.

#### **41 Release of photographs prohibited**

- (1) The Authority must ensure that a photograph to which this Part applies, and any photographic image or other matter contained in any database of such photographs, is not released except:
- (a) to the NSW Police Force, or
  - (b) to a driver licensing authority of another State or Territory, or
  - (b1) to Transport for NSW for the purpose of enabling Transport for NSW to exercise its functions under the *Passenger Transport Act 1990*, or
  - (c) for the purpose of the conduct of any criminal proceedings:
    - (i) under this Act or under any provision of any other road transport legislation (within the meaning of section 5 of the *Road Transport (General) Act 2005*), or
    - (ii) in relation to an operator licence under the *Commercial Agents and Private Inquiry Agents Act 2004*, or
    - (iii) in relation to a licence or permit under the *Firearms Act 1996*, a licence under the *Security Industry Act 1997* or a permit under the *Weapons Prohibition Act 1998*, or
    - (iv) in relation to a licence under the *Tattoo Parlours Act 2012*, or
  - (d) to the Sheriff, for the purpose of any fine recovery proceedings, or

- (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 *Licensing and Registration (Uniform Procedures) Act 2002*, or
  - (e) as provided under any other law, or
  - (f) to the person whose likeness is shown in the photograph or on the database, or
  - (f1) as authorised or required under Part 4 (Security arrangements for photographs) of the *Photo Card Act 2005* in respect of the release of photographs to which that Part applies, or
  - (f2) as authorised or required under Division 3 (Security and protection of photographs) of Part 4A of the *Licensing and Registration (Uniform Procedures) Act 2002* in respect of the release of photographs to which that Division applies, or
  - (g) in accordance with the regulations.
- (2) Any release authorised by subsection (1) (a)–(d), or authorised by regulations made under subsection (1) (g), must be in accordance with any protocol approved by the Privacy Commissioner.
- (3) Despite this section, photographs to which this Part applies, and any photographic image or other matter contained in any database of such photographs, must be provided to the Commissioner of Police on request if the request relates to the administration of the *Security Industry Act 1997*.

## **Schedules 1, 2 (Repealed)**

## **Schedule 3 Savings, transitional and other provisions**

(Section 37)

### **Part 1 General**

#### **1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:
- this Act
  - Road Transport (Driver Licensing) Amendment (Demerit Points System) Act 2008*
  - Fines Further Amendment Act 2008* (to the extent that it amends this Act)
  - Road Transport Legislation Amendment (Miscellaneous Provisions) Act 2009* (to the extent that it amends this Act)

*Road Transport (Driver Licensing) Amendment Act 2010*

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later day.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

## **Part 2 Provisions consequent on enactment of this Act**

### **2 References to licences under *Traffic Act 1909***

Any reference (however expressed) in any other Act or instrument made under any Act or any other instrument of any kind to:

- (a) the licensing or authorising of a person under the *Traffic Act 1909* to drive a motor vehicle or class of motor vehicles, or
- (b) a driver's licence or licence under the *Traffic Act 1909*, or
- (c) a driver's licence,

is taken to be a reference to the licensing of a person under this Act or to a driver licence under this Act or the regulations, as the case requires.

### **3 Offences under *Traffic Act 1909***

- (1) The *Traffic Act 1909*, as in force immediately before the commencement of a relevant item, applies to a relevant offence committed, or alleged to have been committed, before the commencement of that item.
- (2) In this clause:

**relevant item** means an item of Schedule 1.13 to this Act that amends a provision of the *Traffic Act 1909* that contains an offence.

**relevant offence** means an offence under a provision of the *Traffic Act 1909* that is amended by a relevant item.

#### **4 (Repealed)**

#### **5 Existing demerit points**

- (1) A person against whom demerit points are recorded under the *Motor Traffic Regulations 1935*, as in force before the commencement of this clause, is taken to have incurred those demerit points under this Act or the regulations.
- (2) Any such demerit points are taken to be recorded against the person in the demerit points register for the purposes of section 16 and may be taken into account for the purposes of that section.

#### **6 Indemnity**

Nothing in this Act affects an indemnity extended to a person under section 17A of the [Traffic Act 1909](#), as in force immediately before the commencement of Schedule 1.13 [47] to this Act.

#### **7 Certain existing authorities and delegations taken to be delegations under Act**

Any person who, immediately before the commencement of this clause, was:

- (a) authorised by or under the [Traffic Act 1909](#) (as in force immediately before that commencement) to carry out any function of the Authority in relation to the licensing of drivers, or
- (b) a delegate of the Authority in respect of the exercise of any such function,

is taken to be a delegate of the Authority under section 13 of this Act in respect of any corresponding function under this Act or the regulations.

#### **8 Transitional provision—second or subsequent offence of unlicensed driving**

A person who is convicted of an offence under section 6 (1) (a) of the [Traffic Act 1909](#) that was committed before the commencement of this clause is not to be regarded as being convicted of a second or subsequent offence for the purposes of that Act merely because the person had been issued with a penalty notice under section 18B of that Act in respect of an earlier occasion on which the person was alleged to have committed the offence.

### **Part 3 Provisions consequent on enactment of Schedule 4 to [Road Transport Legislation Amendment Act 1999](#)**

#### **9 Validation—licence granted with good behaviour condition granted as alternative to licence refusal**

Any election made by the holder of a driver licence before the commencement of Schedule 4.1 to the [Road Transport Legislation Amendment Act 1999](#) to be of good behaviour for a specified period as an alternative to having his or her application for a licence refused by the Authority:

- (a) is validated to the extent of any invalidity if the election would have been valid had section 14 (as amended) and 16A been in force at the time the election was made, and
- (b) is taken for all purposes to have been an election made under section 16A.

## **Part 4 Provisions consequent on enactment of Road Transport (Driver Licensing) Amendment Act 1999**

### **10 Transitional amendment regarding offences under Traffic Act 1909**

- (1) This clause applies if the *Road Transport (Driver Licensing) Amendment Act 1999* is assented to before the commencement of the *Road Transport (Safety and Traffic Management) Act 1999*.
- (2) Until section 33 (5) is substituted by Schedule 2.1 [1] to the *Road Transport (Driver Licensing) Amendment Act 1999*, section 33 (5) (b) is taken to refer to an offence under section 4A (1A), (1B), (5B) or (5BA) of the *Traffic Act 1909*.

### **11 Transitional provision regarding offences under Road Transport (Safety and Traffic Management) Act 1999**

Until a regulation is made under section 33 (5), as amended by the *Road Transport (Driver Licensing) Amendment Act 1999*, the offences prescribed for the purposes of section 33 (5) are all those offences that involve exceeding any speed limit fixed by or under the *Road Transport (Safety and Traffic Management) Act 1999*, applicable to the relevant driver or vehicle, by more than 30 kilometres per hour.

### **12 Validation**

- (1) This clause applies to a driver licence that was purportedly cancelled or suspended under section 33 of the *Road Transport (Driver Licensing) Act 1998* on or after the commencement of that section and before the commencement of this clause.
- (2) A driver licence to which this clause applies is taken to have been validly cancelled or suspended if it could have been cancelled or suspended had section 33, as referred to in clause 10 (2), been in force when the driver licence was cancelled or suspended and had offences under section 4A (1A), (1B), (5B) or (5BA) of the *Traffic Act 1909* been prescribed under section 33 at that time.

## **Part 5 Provisions consequent on enactment of Road Transport (Driver Licensing) Amendment (Demerit Points System) Act 2008**

### **13 Interpretation**

- (1) In this Part:

**amending Act** means the *Road Transport (Driver Licensing) Amendment (Demerit*



*Points System) Act 2008.*

- (2) In this Part, a reference to an old provision is a reference to that provision as in force before its amendment or substitution by the amending Act and a reference to a new provision is a reference to that provision as amended, substituted or inserted by the amending Act.

**14 Existing suspensions**

A notice of suspension given under old section 17 and in force immediately before the commencement of new section 17B is taken to be a notice of suspension given under new section 17B.

**15 Demerit points incurred for offences already committed**

Demerit points incurred by the holder of a provisional licence for offences committed before the commencement of new Subdivision 3 of Division 2 of Part 2, and not taken into account for the purposes of old section 16, 16A or 17 before that commencement, may be taken into account for the purposes of new section 16, 16A or 17B but not new section 17C.

**16 Validation**

Anything done or omitted to be done before the commencement of the amendments made by Schedule 1 [9]-[12] and [15]-[17] and [20] to the amending Act that would have been valid had those amendments been in force when it was done or omitted to be done is validated.

**Part 6 Provisions consequent on enactment of *Fines Further Amendment Act 2008***

**17 Offences under section 25A**

The amendments made to section 25A by Schedule 2.3 to the *Fines Further Amendment Act 2008* do not apply to or in respect of an offence committed or alleged to have been committed before the commencement of those amendments and that section, as in force immediately before those amendments were made, continues to apply in respect of any such offence.

**Part 7 Provisions consequent on enactment of *Road Transport Legislation Amendment (Miscellaneous Provisions) Act 2009***

**18 Application of amendments to sections 25 and 25A**

- (1) The amendments made to section 25 of this Act by the amending Act extend to any proceedings for an offence against section 25 (2) that were not finally determined when the amendments commenced.

- (2) The amendments made to section 25A of this Act by the amending Act extend (and are taken always to have extended) to offences under that section for which persons were convicted before the commencement of the amendments.
- (3) Subject to the regulations, subclause (2) applies to offences under section 25A (3A) as if:
  - (a) any reference in section 25A (11) (a), as inserted by the amending Act, to an offence under section 25A (1), (2) or (3) included a reference to an offence under section 25A (3A) for which a person was convicted before the commencement of the amendments to section 25A, and
  - (b) section 25A (11) (b), as inserted by the amending Act, were limited to the determination of whether an offence under section 25A (3A) for which a person is convicted after that commencement is a second or subsequent offence.
- (4) Nothing in subclause (2) or (3) affects any judgment or order of a court that was given or made before the introduction day in its application to the parties to the proceedings in which the judgment or order was given or made.
- (5) In particular, nothing in subclause (2) or (3) affects the judgment of the Court of Criminal Appeal in *Director of Public Prosecutions v Partridge*[2009] NSWCCA 75 in its application to the parties to that case.
- (6) For the purposes of this clause, proceedings are not finally determined if:
  - (a) any period for bringing an appeal as of right in respect of the proceedings has not expired (ignoring any period that may be available by way of extension of time to appeal), or
  - (b) any appeal in respect of the proceedings is pending (whether or not it is an appeal brought as of right).
- (7) In this clause:

**amending Act** means the [Road Transport Legislation Amendment \(Miscellaneous Provisions\) Act 2009](#).

**introduction day** means the day on which the Bill for the amending Act was first introduced into Parliament.

## Dictionary

(Section 4)

**Australian driver licence** means:

- (a) a driver licence, or

(b) a licence, probationary licence, conditional licence, restricted licence, provisional licence or driver licence receipt (other than a learner licence) issued under a law in force in a State or internal Territory authorising the holder to drive a motor vehicle on a road or road related area.

**Australian Transport Council** means the Australian Transport Council referred to in section 4 of the [National Transport Commission Act 2003](#) of the Commonwealth or its successor.

**Authority** means Roads and Maritime Services constituted under the [Transport Administration Act 1988](#).

**class** of a driver licence means a class of licence established by the regulations.

**conditional licence** means a licence issued as a conditional licence in accordance with the regulations.

**corresponding law** means the law of another jurisdiction under which authority is given to drive motor vehicles on roads or road related areas.

**demerit points register** means the register required to be maintained under section 14.

**drive** includes having control over the steering, movement or propulsion of a vehicle and also includes ride a vehicle.

**driver licence** means:

- (a) a licence (including a conditional licence, a provisional licence and a learner licence) issued in accordance with the regulations authorising the holder to drive one or more classes of motor vehicle on a road or road related area, or
- (b) a driver licence receipt.

**driver licence receipt** means a receipt that:

- (a) is issued following an application for an Australian driver licence and after payment of any applicable fee, and
- (b) authorises the holder to drive one or more classes of motor vehicle on a road or road related area.

**driver licence register** means the register required to be maintained under section 8 and the regulations.

**exercise** of a function includes the performance of a duty.

**function** includes a power, authority and duty.

**jurisdiction** means a State, the Commonwealth or a Territory.

**learner licence** means a licence or permit issued to a person under a law in force in a State or internal Territory to authorise the person to drive a motor vehicle on a road or road related area for the purpose of learning to drive a motor vehicle.

**motor vehicle** means a vehicle that is built to be propelled by a motor that forms part of the vehicle.

**national schedule of demerit points** means the driving offences and corresponding demerit points prescribed in the regulations as comprising the national schedule of demerit points.

**penalty notice** means:

- (a) a notice issued under Part 5.3 of the *Road Transport (General) Act 2005*, or
- (b) a penalty reminder notice issued under the *Fines Act 1996*.

**photograph** includes a digitised, electronic or computer generated image in a form approved by the Authority.

**probationary licence** means a licence to drive a motor vehicle:

- (a) issued to a person who applies for a driver licence following a period of disqualification from driving ordered by a court in Australia, or
- (b) issued to replace an equivalent licence issued under a corresponding law.

**professional driver** means a person whose primary work is personally driving a motor vehicle on roads in or outside of the State, and includes a person of a class prescribed by the regulations as a professional driver, but does not include a person of a class prescribed by the regulations as not a professional driver.

**provisional licence** means a licence (other than a learner licence) to drive a motor vehicle, issued under a law in force in a State or internal Territory, that is subject to conditions, restrictions, or qualifications.

**provisional P1 licence** means:

- (a) a provisional licence issued in accordance with clause 20 (1) of the *Road Transport (Driver Licensing) Regulation 2008*, or
- (b) any class of licence prescribed by the regulations under this Act that replaces any such licence.

**provisional P2 licence** means:

- (a) a provisional licence issued in accordance with clause 27 (1) of the *Road Transport (Driver Licensing) Regulation 2008*, or
- (b) any class of licence prescribed by the regulations under this Act that replaces any such licence.

**restricted licence** means an authority to drive a motor vehicle issued at the direction of a court in Australia that authorises the holder to drive only in the course of his or her employment or in other specified restricted circumstances.

**road** means an area that is open to or used by the public and is developed for, or has as one of its main uses, the driving or riding of motor vehicles.

**road related area** means:

- (a) an area that divides a road, or
- (b) a footpath or nature strip adjacent to a road, or

- (c) an area that is open to the public and is designated for use by cyclists or animals, or
- (d) an area that is not a road and that is open to or used by the public for driving, riding or parking vehicles, or
- (e) a shoulder of a road, or
- (f) any other area that is open to or used by the public and that has been declared under section 15 of the *Road Transport (General) Act 2005* to be an area to which specified provisions of this Act or the regulations apply.