

# Road Transport Amendment (Driver Licence Disqualification) Act 2017 No 46

[2017-46]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Note**

Amending Acts and amending provisions are subject to automatic repeal pursuant to sec 30C of the [Interpretation Act 1987 No 15](#) once the amendments have taken effect.

### Authorisation

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# Road Transport Amendment (Driver Licence Disqualification) Act 2017 No 46



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# Road Transport Amendment (Driver Licence Disqualification) Act 2017 No 46



New South Wales

An Act to amend the *Road Transport Act 2013* with respect to driver licence disqualification and unauthorised driving.

## 1 Name of Act

This Act is the *Road Transport Amendment (Driver Licence Disqualification) Act 2017*.

## 2 Commencement

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

## Schedule 1 Amendment of *Road Transport Act 2013* No 18

### [1] Section 53 Driver must be licensed

Omit “imprisonment for a period of 18 months” from section 53 (3).

Insert instead “imprisonment for 6 months”.

### [2] Section 53 (4)

Omit the subsection.

### [3] Section 54 Driving or making licence applications while disqualified or licence suspended or cancelled

Omit “imprisonment for 18 months” and “imprisonment for 2 years” from the maximum penalty in section 54 (1), (3) and (4) wherever occurring.

Insert instead “imprisonment for 6 months” and “imprisonment for 12 months”, respectively.

### [4] Section 54 (5)

Omit the maximum penalty at the end of the subsection. Insert instead:

Maximum penalty: 30 penalty units (in the case of a first offence) or 50 penalty units or

imprisonment for 6 months or both (in the case of a second or subsequent offence).

**[5] Section 54 (8)-(10)**

Omit the subsections.

**[6] Section 116 Conduct associated with road and drag racing and other activities**

Omit section 116 (7). Insert instead:

(7) If a person is convicted by a court of an offence against subsection (2) (a), (b), (c) or (d) in relation to a motor vehicle:

- (a) except as provided by paragraph (b)—the person is disqualified from holding a driver licence by the conviction and without any specific order of a court for 12 months, or
- (b) if the court at the time of the conviction thinks fit to order a shorter or a longer period of disqualification—the person is disqualified from holding a driver licence for the period specified in the order.

**[7] Section 204 Court may disqualify driver on conviction**

Omit “Subject to any mandatory disqualification provision and Division 2, a court” from section 204 (1).

Insert instead “A court”.

**[8] Section 204 (3A)**

Insert after section 204 (3):

(3A) This section is subject to Division 2 and to any provision of this Act:

- (a) that provides for a minimum period of disqualification of a person from holding a driver licence when a court orders a disqualification on the conviction of the person for an offence, or
- (b) that provides for a mandatory period of disqualification on the conviction of a person for an offence.

**[9] Section 204 (6), definition of “mandatory disqualification provision”**

Omit the definition.

**[10] Section 205A**

Insert after section 205:

**205A Disqualification for certain unauthorised driving offences**

- (1) A person who is convicted of an offence against this Act specified in the Table to this section:
  - (a) is automatically disqualified from holding a driver licence for the default period of disqualification specified in the Table in respect of that offence, or
  - (b) if the court that convicts the person thinks fit to order a shorter or longer period of disqualification (but not shorter than the minimum period of disqualification specified in the Table in respect of that offence)—is disqualified from holding a driver licence for the period specified in the order.
- (2) Any disqualification under this section is in addition to any penalty imposed for the offence.

**Table**

	<b>Offence</b>	<b>Default period of disqualification</b>	<b>Minimum period of disqualification</b>
1	Section 53 (3)—second or subsequent offence (Driver never licensed)	12 months	3 months
2	Section 54 (1), (3) or (4)—first offence (Driving while disqualified, suspended or after licence refusal or cancellation)	6 months	3 months
3	Section 54 (1), (3) or (4)—second or subsequent offence	12 months	6 months
4	Section 54 (5)—first offence (Driving after licence suspended or cancelled for non-payment of fine)	3 months	1 month
5	Section 54 (5)—second or subsequent offence	12 months	3 months

**[11] Section 206B**

Insert after section 206A:

**206B Effect of immediate or other licence suspension on period of disqualification**

- (1) This section applies where a driver licence has been suspended under section 224 or under any other provision of this Act or the statutory rules for an alleged offence.
- (2) A court that determines a charge for the offence (or for a related offence) is

required to take into account the period of suspension when deciding on any period of disqualification from holding or obtaining a driver licence on conviction for the offence (or for the related offence).

- (3) An offence is related to another offence if it relates to the same act or omission that gave rise to the other offence.
- (4) The period of suspension satisfies all or the relevant part of any minimum period of disqualification that is or is required to be imposed under this Act on conviction for the offence (or for the related offence). Accordingly, the total of the period of suspension and of the period of disqualification is not to be less than that minimum period of disqualification.
- (5) The court may order that the period of disqualification ends on a day specified by the court.

**[12] Section 207A**

Insert after section 207:

**207A Commencement of disqualification**

- (1) The disqualification of a person from holding a driver licence as a consequence of being convicted of an offence by a court begins on the day that the court convicts the person unless the court orders that the disqualification begin on a later day specified by the court.
- (2) This section is subject to section 206A.

**[13] Section 208 Application of Division**

Omit section 208 (2).

**[14] Part 7.4, Division 3 Habitual traffic offenders**

Omit the Division.

**[15] Part 7.4, Division 3A**

Insert before Division 4 of Part 7.4:

**Division 3A Removal of licence disqualifications**

**221A Definitions**

In this Division:

***disqualified person*** means a person who is subject to a licence disqualification.

**driving offence** means:

- (a) a major offence, or
- (b) an offence against the road transport legislation that relates to the driving of a motor vehicle (other than a parking offence).

**licence disqualification** means a disqualification (imposed before or after the commencement of this Division) from holding or obtaining a driver licence that is imposed by a court or by the operation of this Act, and includes any consecutive or concurrent licence disqualification and any period of disqualification which does not commence until other disqualifications or other periods of licence cancellations or suspensions are completed.

**pending proceedings for a driving offence** means:

- (a) court proceedings for an alleged driving offence that have not been finally determined, or
- (b) a penalty notice issued for an alleged driving offence if:
  - (i) the amount payable under the penalty notice has not been paid (in part or in full), and
  - (ii) an election has not been made to have the matter determined by a court, and
  - (iii) a penalty notice enforcement order under Part 3 of the *Fines Act 1996* has not been issued in respect of the penalty notice, and
  - (iv) a formal decision has not been made to withdraw or cease enforcement action on the penalty notice.

**relevant offence-free period**, in relation to a disqualified person who has applied under this Division for the removal of his or her licence disqualifications, means:

- (a) 4 years, if any of those licence disqualifications was imposed because the person was convicted of:
  - (i) a major offence, or
  - (ii) an offence of exceeding a speed limit prescribed under this Act by more than 30 kilometres per hour, or
  - (iii) an offence against section 115 (1), 116 (2) or 117 (2), or
  - (iv) any other offence prescribed by the statutory rules, or
- (b) 2 years, if all those licence disqualifications were imposed by this Act because the person was declared (or taken to have been declared) an habitual traffic

offender under Division 3 (as in force immediately before its repeal), or

(c) 2 years, in any other case.

**road transport legislation** includes the *Heavy Vehicle National Law (NSW)*, but does not include:

- (a) the *Motor Vehicles Taxation Act 1988* or the regulations made under that Act, or
- (b) Schedule 2 or statutory rules made for the purposes of that Schedule.

**221B Local Court may remove licence disqualifications after relevant offence-free period**

- (1) The Local Court may, by order on application made in accordance with this Division, remove all licence disqualifications to which a disqualified person is then subject if:
  - (a) the disqualified person has not been convicted of any driving offence for conduct during the relevant offence-free period before the removal of the licence disqualifications, and
  - (b) the Local Court considers that it is appropriate to do so.

**Note—**

See section 221D for persons who are not eligible to apply for the removal of licence disqualifications because of convictions at any previous time for certain serious offences.

- (2) The Local Court must take into account the following in determining whether it is appropriate to remove the licence disqualifications:
  - (a) the safety of the public,
  - (b) the applicant's driving record (including the record before the relevant offence-free period and the record for driving offences and other offences under the road transport legislation and for pending proceedings for alleged driving offences),
  - (c) whether the applicant drove or was in a position to drive a vehicle during the relevant offence-free period,
  - (d) any relevant conduct of the applicant subsequent to the licence disqualifications,
  - (e) the nature of the offence or offences giving rise to the licence disqualifications,
  - (f) any other relevant circumstances (including, without limitation, the impact of the licence disqualifications on the applicant's capacity to carry out family or

carer responsibilities or on the applicant's capacity to travel for the purposes of employment, business, education or training, the applicant's health and finances and the availability of alternative forms of transport),

- (g) any other matter prescribed by the statutory rules.
- (3) The Local Court must be satisfied that the information provided to the Local Court relating to the applicant's driving record is as current as practicable and have regard to the relevant offence-free period that ends with the date of the latest report of the information provided to the Local Court.
- (4) Licence disqualifications that are removed by order of the Local Court cease to have effect (despite anything to the contrary in this Act) on the date the order is made or on such later date as is specified by the Local Court.
- (5) When it removes licence disqualifications, the Local Court is to explain the effect of the order to the applicant and, in particular, that the applicant will require a new driver licence before driving a motor vehicle.
- (6) The relevant registrar of the Local Court is required to notify the Authority and the Commissioner of Police of the determination of an application under this Division.
- (7) The Local Court may adjourn proceedings on an application under this Division so that the applicant may participate in a driver education course or other program the Local Court considers appropriate or for any other reason the Local Court considers appropriate.
- (8) An appeal may not be made under the [Crimes \(Appeal and Review\) Act 2001](#) against a decision of the Local Court under this Division.
- (9) A person who applied to the Local Court for the removal of licence disqualifications under this Division may apply to the Court for the annulment of the dismissal of the application by the Court, but only if the person was not in attendance before the Court when the application was dismissed.
- (10) The Local Court may grant an application for an annulment if it is satisfied that, having regard to the circumstances of the case, there is just cause for doing so. If an application for annulment is granted:
- (a) the Court may deal with the application for the removal of the licence disqualifications as if the application had not been dismissed, and
- (b) section 221C (4) does not apply to a decision to reject an application for the removal of licence disqualifications that is so annulled.
- (11) Nothing in this Division limits any power that a court has apart from this

Division to annul, quash, set aside or vary a licence disqualification.

### **221C Application for removal of licence disqualifications**

- (1) This section applies to an application to the Local Court for the removal of licence disqualifications under this Division.
- (2) An application:
  - (a) is to include any relevant matter that the applicant requests the Local Court to take into account in determining the application, and
  - (b) is to be accompanied by an up-to-date statement of the applicant's driving record issued by the Authority, and
  - (c) is to contain particulars of any pending proceedings against the applicant for an alleged driving offence.
- (3) In order to ensure the accuracy and currency of the information available to determine an application, the Local Court may require reports to be provided to the Court in relation to the applicant or require earlier reports to be updated, including:
  - (a) police reports with respect to the criminal record of the applicant, and
  - (b) reports from Roads and Maritime Services with respect to the driving record of the applicant, and
  - (c) reports from the Commissioner of Fines Administration with respect to any penalty notices that are pending proceedings against the applicant for alleged driving offences.
- (4) An application for the removal of licence disqualifications under this Division cannot be made within 12 months after the Local Court has rejected an earlier application for the removal of any of those licence disqualifications.

### **221D Disqualified persons not eligible to apply for removal of licence disqualification**

- (1) A disqualified person is not eligible to make an application to the Local Court for the removal of licence disqualifications under this Division if the disqualified person has at any time been convicted of any of the following offences (whether or not a licence disqualification was imposed in connection with the offence):
  - (a) the offence of murder or manslaughter caused by the use of a motor vehicle,
  - (b) an offence against the *Crimes Act 1900* which comprises or includes causing death, grievous bodily harm or wounding by the use of a motor vehicle,

- (c) an offence against section 51A (Predatory driving) or 51B (Police pursuits) of the *Crimes Act 1900*,
  - (d) an offence against section 117 (1) (Negligent driving) which causes death or grievous bodily harm,
  - (e) an offence against section 118 (1) (Intentional menacing driving),
  - (f) an offence against section 52AB (Offence of failing to stop and assist after vehicle impact causing death or grievous bodily harm) of the *Crimes Act 1900* or an offence against section 146 of this Act that relates to an impact causing death or grievous bodily harm arising from the driving of a motor vehicle.
- (2) A disqualified person is not eligible to make an application to the Local Court for the removal of a licence disqualification under this Division if it is the disqualification of a person from holding a driver licence (other than a learner licence or interlock driver licence) imposed under section 211 (1) (b) or 214 (2).
- (3) A disqualified person is also not eligible to make an application to the Local Court for the removal of a licence disqualification under this Division if the person has committed a driving offence during the relevant offence-free period before the making of the application that would preclude the making of an order to remove those licence disqualifications.

**221E Rehearing of order removing licence disqualifications—undisclosed offences during relevant offence-free period**

- (1) This section applies where:
- (a) the Local Court makes an order under this Division removing licence disqualifications, and
  - (b) the Authority, after being notified of the order, has reason to believe the applicant has committed a driving offence during the relevant offence-free period ending at the time the order was made that would preclude the making of the order, and
  - (c) the Authority notifies the relevant registrar of the Local Court of the alleged offence.
- (2) The relevant registrar, by notice to the applicant for the order, is to advise the applicant that the matter is to be reheard and set the matter down for rehearing by the Local Court.
- (3) On the rehearing, the Local Court may set aside the order and re-determine the application for the order.

- (4) The Authority is to defer any application for the issue of a driver licence to the applicant for the order until the matter is reheard.

**[16] Section 225 Effect of immediate licence suspension notice**

Omit section 225 (3).

**[17] Section 225 (4)**

Insert at the end of section 225:

- (4) An immediate licence suspension notice has effect even if the driver licence concerned has already been suspended.

**[18] Section 238 When additional sanctions may be imposed**

Insert at the end of section 238 (e):

, or

- (f) is being operated on a road by an offending operator who is disqualified from holding or obtaining a driver licence so as to commit an offence (not being a camera recorded offence) of driving a vehicle at a speed more than 30 kilometres per hour over the designated speed limit applying to the driver for the length of road at the time the offence is committed, or
- (g) is being operated on a road by an offending operator:
- (i) who is disqualified from holding or obtaining a driver licence, or
  - (ii) who has never been licensed,
- and who has been convicted of an offence against section 53 (3) or 54 (1) on 2 or more previous occasions within the past 5-year period.

**[19] Section 239 Sanctions that may be imposed**

Insert after section 239 (3):

- (4) A reference in subsection (3) to 3 months is to be construed as a reference to 6 months if the offending operator is disqualified from holding or obtaining a driver licence and the sanction was imposed in respect of a sanctionable offence committed by the offending operator.

**[20] Section 248 Retention of motor vehicle impounded or number-plates confiscated**

**under this Part**

Omit section 248 (1) and (2). Insert instead:

- (1) The Commissioner of Police is to retain a motor vehicle impounded under section 242 (unless it is sooner released under this Part or in accordance with the statutory rules):
  - (a) for a period of 3 months after it was impounded, except as provided by paragraph (b), or
  - (b) for a period of 6 months after it was impounded if the offending operator is disqualified from holding or obtaining a driver licence and the sanction was imposed in respect of a sanctionable offence committed by the offending operator.
- (2) The Authority is to retain number-plates confiscated under section 239 (unless they are sooner released under this Part or in accordance with the statutory rules):
  - (a) for a period of 3 months after they were confiscated, except as provided by paragraph (b), or
  - (b) for a period of 6 months after they were confiscated if the offending operator is disqualified from holding or obtaining a driver licence and the sanction was imposed in respect of a sanctionable offence committed by the offending operator.

**[21] Schedule 4 Savings, transitional and other provisions**

Insert at the end of the Schedule, with appropriate Part and clause numbering:

**Part Provisions consequent on enactment of the [Road Transport Amendment \(Driver Licence Disqualification\) Act 2017](#)**

**Definition**

In this Part:

**amending Act** means the [Road Transport Amendment \(Driver Licence Disqualification\) Act 2017](#).

**References to first, second or subsequent offences**

A reference in a provision inserted or amended by the amending Act to a first, second or subsequent offence includes a reference to a first, second or subsequent

offence committed before the commencement of the amending Act.

### **Removal of licence disqualifications**

A reference in Division 3A of Part 7.4, as inserted by the amending Act, to the relevant offence-free period includes a reference to a period occurring before the commencement of that Division.

### **Abolition of habitual traffic offenders scheme**

- (1) A disqualification from holding a driver licence imposed under Division 3 of Part 7.4 before the repeal of that Division by the amending Act does not cease to have effect because of the repeal of that Division.
- (2) Despite the repeal of Division 3 of Part 7.4, the power of a court under that Division (as in force immediately before its repeal) to quash a declaration of a person as an habitual traffic offender may continue to be exercised by a court despite its repeal.
- (3) Despite the repeal of section 208 (2) by the amending Act, Division 2 of Part 7.4 continues not to apply in respect of a person who continues to be subject to a disqualification from holding a driver licence by the operation of this clause.