



New South Wales

Road Transport Legislation Amendment Bill 2020

Explanatory note

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

Overview of Bill

The object of this Bill is to make miscellaneous amendments to the *Road Transport Act 2013* and related legislation following a statutory review of the Act.

The Bill amends the *Road Transport Act 2013* (the *principal Act*) as follows—

- (a) to increase from 6 months to 2 years the period within which proceedings for certain offences must be commenced,
- (b) to require Transport for NSW, when cancelling or suspending a driver licence for certain speeding offences or alcohol or other drug related driving offences, to take into account any period of suspension already served by the driver,
- (c) to allow the Commissioner of Police to suspend a foreign driver licence holder who is caught speeding by more than 30 kilometres per hour or who has been issued with penalty notices for offences for which the total demerit point value is 13 or more,
- (d) to allow statutory rules to provide for the suspension or cancellation of the registration of a motor vehicle if it displays offensive or discriminatory material,
- (e) to make other minor and miscellaneous amendments.

The Bill also—

- (a) amends the *Driving Instructors Act 1992* to remove the requirement for the Commissioner of Police to inquire into the character of applicants for driving instructor licences, and
- (b) amends the *Photo Card Act 2005* to enable—
 - (i) Transport for NSW to use and release information contained in the Photo Card Register for purposes related to digital Photo Cards, and

- (ii) the statutory rules to provide for the use of personal or commercially sensitive information in the Photo Card Register, and
- (c) amends the *Road Transport (General) Regulation 2013* to—
 - (i) increase from 6 months to 2 years the period within which proceedings for certain offences under the *Road Transport (Vehicle Registration) Regulation 2017* must be commenced, and
 - (ii) make consequential amendments, and
- (d) amends the *Road Transport (Vehicle Registration) Regulation 2017* to enable Transport for NSW to suspend the registration of a registrable vehicle if the registered operator of the vehicle has committed the offence of failing to nominate the driver of a vehicle who committed a camera recorded offence, rather than only if it is the registered operator's second or subsequent offence of that kind, and
- (e) makes consequential amendments to the *Fines Act 1996* and the *Road Transport (Driver Licensing) Regulation 2017*.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act.

Schedule 1 Amendment of Road Transport Act 2013 No 18

Second and subsequent offences

Schedule 1[2]–[7] provide that for the purpose of determining whether an offence is a second or subsequent offence, the 5-year period commences on the date of the earlier offence.

Schedule 1[8] provides that for the purpose of determining whether an offence is a second or subsequent offence, a court may find that a previous offence committed in another jurisdiction is an equivalent offence to a new offence.

Demerit points

Schedule 1[12] provides that demerit points, incurred by a learner or provisional licence holder, for offences taken into account for a notice of licence suspension or licence ineligibility are taken to be deleted from the NSW demerit points register on the commencement of the period of suspension or ineligibility or on determination of an appeal in relation to the suspension or ineligibility. **Schedule 1[10] and [11]** are consequential amendments.

Use of information and photographs by Transport for NSW

Schedule 1[36] provides that Transport for NSW may use information recorded in the NSW registers required to be kept under the principal Act for the purpose of exercising its functions, including delegated functions. This does not affect the provisions of Part 3.5 of the principal Act in relation to protection of stored photographs.

Schedule 1[14] authorises Transport for NSW to release certain photographs stored by Transport for NSW—

- (a) with the consent of the person whose photograph it is, and
- (b) in relation to licences under the *Tattoo Parlours Act 2012*.

Schedule 1[13] provides that the restrictions on the use of photographs stored by Transport for NSW do not apply to a photograph provided to Transport for NSW by a person for the sole purpose of establishing the person's identity.

Liability for camera recorded offences and parking offences

Schedule 1[17] and [19] provide that if a person nominates another person as the person in charge of a vehicle, the nomination must include the date of birth and licence details of the person in charge, rather than the name and address only. **Schedule 1[24] and [26]** are consequential amendments.

Schedule 1[25] increases the maximum penalty from 100 penalty units to 200 penalty units for a corporation that commits an offence relating to failing to correctly nominate the person in charge of the vehicle at the time of an offence.

Dealing with offences

Schedule 1[27] updates the provision that enables penalty notices to be issued for offences under the road transport legislation and other related legislation, in line with the standard penalty notice provision in other NSW legislation. **Schedule 1[18], [20]–[23] and [35]** are consequential amendments.

Schedule 1[28] amends section 200 to—

- (a) increase from 100 penalty units to 200 penalty units the maximum penalty the Local Court may impose for an offence against section 188(1) or (2) or 189(4), and
- (b) clarify that Transport for NSW can commence proceedings for offences against the road transport legislation.

Schedule 1[29] extends the period within which proceedings may be brought for certain offences against the principal Act from 6 months to 2 years from the date the offence was alleged to have been committed.

Suspension of foreign driver licence holders

Schedule 1[30] allows the Commissioner of Police to suspend the authority of a foreign driver licence holder to drive in NSW if the holder, in a 3-year period, is issued with penalty notices for offences to a total of 13 or more demerit points. **Schedule 1[1] and [16]** are consequential amendments.

Schedule 1[31] allows a police officer to issue a licence suspension notice immediately to a foreign driver licence holder if it appears to the police officer that the holder has exceeded a speed limit by more than 30 kilometres per hour but less than 45 kilometres per hour.

Seizure and confiscation sanctions for motor vehicles owned by corporations

Schedule 1[32] allows a police officer to seize and impound a motor vehicle, or remove and confiscate number-plates of a motor vehicle, if the police officer reasonably believes the registered operator of the motor vehicle is a corporation and the motor vehicle—

- (a) has been operated on a road so as to commit certain serious offences, or
- (b) has been driven by a disqualified driver at more than 30 kilometres per hour over the speed limit, or
- (c) has been driven by a disqualified driver, or a person who has never been licensed, who has been convicted, more than once in the previous 5-year period, of specified driving while disqualified offences.

Other amendments

Schedule 1[9] removes the requirement for Transport for NSW to keep a public database of declarations and orders made by the Minister for Transport and Roads (the *Minister*) under sections 18 and 19 of the principal Act. Those sections enable the Minister to order that specific areas, vehicles, persons or animals are excluded from the operation of the road transport legislation. The Minister's orders will continue to be published in the Gazette.

Schedule 1[15] requires Transport for NSW to take into account the period of an immediate suspension given to a driver by a police officer in relation to a speeding offence or an alcohol or

other drug related driving offence when Transport for NSW is determining the period of a cancellation or suspension to impose for the same offence.

Schedule 1[33] and [34] enable Transport for NSW to waive or remit certain fees payable for services provided by Transport for NSW without having to publish a notice of the waiver in the Gazette, as is currently the case to amend, waive or revoke fees. The fixing or amending of fees will continue to be published in the Gazette.

Schedule 1[37] enables the statutory rules to provide for the suspension or cancellation of the registration of a registrable vehicle on the grounds of displaying offensive or discriminatory material.

Schedule 1[38] inserts savings and transitional provisions.

Schedule 2 Amendment of other legislation

Schedule 2.1 amends the *Driving Instructors Act 1992* to remove the requirements—

- (a) for Transport for NSW to notify the Commissioner of Police of each application for a driving instructor licence and consider the Commissioner's report, and
- (b) for the Commissioner of Police to inquire into the character of an applicant for a driving instructor licence and provide a report to Transport for NSW.

Schedule 2.2 amends the *Fines Act 1996* in relation to the nomination of another person as the person in charge of a vehicle, where a penalty reminder notice has been issued. The nomination will be required to include the date of birth and licence details of the person in charge, rather than the name and address only.

Schedule 2.3 amends the *Photo Card Act 2005* to enable—

- (a) Transport for NSW to use information contained in the Photo Card Register for the purpose of exercising its functions, including delegated functions, and
- (b) Transport for NSW to release information contained in the Photo Card Register for the purposes of the issue or use of a digital Photo Card or to verify the authenticity of a digital Photo Card, and
- (c) the statutory rules to provide for the use of information in the Photo Card Register that is of a personal nature or is commercially sensitive, in addition to providing for the release of the information, as is currently the case.

Schedule 2.4 amends the *Road Transport (General) Regulation 2013* to—

- (a) extend the period within which proceedings may be brought for certain offences against the *Road Transport (Vehicle Registration) Regulation 2017* from 6 months to 2 years from the date the offence was alleged to have been committed, and
- (b) makes consequential amendments to the removal of the requirement for Transport for NSW to maintain a database containing orders made by the Minister in relation to the application of road transport legislation.

Schedule 2.5 amends the *Road Transport (Driver Licensing) Regulation 2017* to remove the authorisation of Transport for NSW to use the information in the NSW driver licence register for the purpose of exercising its functions, consequential on the proposed insertion of this authorisation into the principal Act.

Schedule 2.6 amends the *Road Transport (Vehicle Registration) Regulation 2017* to enable Transport for NSW to suspend the registration of a registrable vehicle if the registered operator of the vehicle has committed the offence of failing to nominate the driver of a vehicle who committed a camera recorded offence, rather than only if it is the registered operator's second or subsequent offence of that kind.