

1999
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Urban Services)

**Road Transport (Driver Licensing) Bill
1999**

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**Road Transport (Driver Licensing) Bill
1999**

**A BILL
FOR**

An Act to provide for the licensing of drivers and for related matters as part of the system for nationally consistent road transport law, to provide for additional matters about learner, probationary, provisional, public vehicle and restricted licences, and for other purposes

The Legislative Assembly for the Australian Capital Territory enacts as follows:

PART 1—PRELIMINARY

Note This Act and the regulations made under it form part of the road transport legislation. Other road transport legislation includes the *Road Transport (Alcohol and Drugs) Act 1977*, the *Road Transport (Dimensions and Mass) Act 1990*, the *Road Transport (General) Act 1999*, the *Road Transport (Safety and Traffic Management) Act 1999*, the *Road Transport (Vehicle Registration) Act 1999* and the regulations made under those Acts. As part of the road transport legislation, this Act is subject to various provisions in the *Road Transport (General) Act 1999* about the administration and enforcement of the road transport legislation generally.

1 Name of Act

This Act is the *Road Transport (Driver Licensing) Act 1999*.

2 Commencement

This Act commences on 1 December 1999.

3 Objects of Act (NSW s 3)

The objects of this Act are—

- (a) to provide for a driver licensing system in the ACT that is—
- (i) consistent with the agreements scheduled to the *National Road Transport Commission Act 1991* (Cwlth); and
 - (ii) part of the uniform national road transport legislation envisaged by that Act and the uniform national approach to driver licensing; and
 - (iii) designed to provide uniform licence classes for drivers of motor vehicles, and uniform eligibility criteria for those licence classes; and
- (b) to define the responsibilities of people in relation to driver licensing; and
- (c) to provide a way of authorising the driving of motor vehicles on roads and road related areas and of identifying people as licensed drivers of motor vehicles; and
- (d) to facilitate the regulation of drivers of motor vehicles in the interests of road safety and transport efficiency and law enforcement generally; and
- (e) to provide a way 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 of administering the driver licensing system; and
 - (ii) the collection of fees determined for this Act under the *Road Transport (General) Act 1999*; and

- (g) to provide for other matters relating to learner, probationary, provisional, public vehicle and restricted licences; and
- (h) to improve road safety and transport efficiency, and reduce the costs of administering road transport.

5 *Note* This Act and the regulations under this Act establish a driver licensing system, including a demerit points system, and provide for the classes of driver licences and for the issue, suspension, cancellation and renewal of driver licences.

4 Definitions—the dictionary (NSW s 4)

The dictionary at the end of this Act is part of this Act.

10 *Note 1* The dictionary defines certain words and expressions, and includes references (*signpost definitions*) to other words and expressions defined elsewhere in this Act or elsewhere in the road transport legislation.

15 For example, the signpost definition '*public vehicle—see the Road Transport (General) Act 1999, section 100*' means the expression 'public vehicle' is defined in section 100 of that Act and the definition applies to this Act.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see *Interpretation Act 1967*, s 11F and s 11G).

5 Notes (NSW s 7)

20 (1) A note in this Act is explanatory and is not part of this Act.

(2) In this section—

note includes material enclosed in brackets in section headings.

25 *Note* For comparison, a number of sections of this Act contain bracketed notes in their headings drawing attention to equivalent or comparable (though not necessarily identical) provisions of other Acts. Abbreviations in the notes include the following—

- MTA: *Motor Traffic Act 1936*, as in force immediately before the commencement of this Act
- NSW: *Road Transport (Driver Licensing) Act 1998* (NSW).

PART 2—DRIVER LICENSING SYSTEM

Division 2.1—Functions and powers of road transport authority generally

6 Functions of road transport authority (NSW s 8)

5 The functions of the road transport authority under this Act are—

- (a) to administer the driver licensing system established under this Act; and
- (b) to keep a driver licence register under this Act; and
- (c) to keep a demerit points register under this Act; and
- 10 (d) to provide information about drivers in accordance with this Act and other laws in force in the Territory; and
- (e) to administer any scheme for driver training or the accreditation of driving instructors established under the regulations; and
- 15 (f) to exercise any other functions given to the authority under this Act.

7 Powers of road transport authority

In exercising functions under this Act, the road transport authority may, in accordance with this Act—

- (a) issue or refuse to issue a driver licence to a person; and
- 20 (b) renew or refuse to renew a driver licence issued to a person; and
- (c) cancel or suspend a driver licence issued to a person; and
- (d) impose conditions on a driver licence; and
- (e) collect fees, charges and other amounts determined for this Act under the *Road Transport (General) Act 1999*; and
- 25 (f) exercise other powers given to the authority under this Act.

8 Keeping of registers (NSW s 14 (5), s 35)

- (1) The driver licence register and demerit points register may include information given to the road transport authority under this Act and any other information the authority considers appropriate.
- 30 (2) The driver licence register and demerit points register may be kept in the form of, or as part of, 1 or more computer databases or in any other form the road transport authority considers appropriate.
- (3) The road transport authority may correct any mistake, error or omission in the driver licence register or the demerit points register subject to
- 35 the requirements (if any) of the regulations.

(4) This section does not limit the functions of the road transport authority in relation to the driver licence register or demerit points register.

9 Security of information in registers (NSW s 12)

5 The road transport authority must ensure that information in the driver licence register or demerit points register that is of a personal nature or has commercial sensitivity for the person about whom it is kept is released only in accordance with this Act or another law in force in the Territory.

Division 2.2—Issue of licences and mutual recognition

10 **10 When road transport authority may issue or renew driver licences (NSW s 9)**

(1) The road transport authority may issue a driver licence (including a driver licence as varied) to a person only if—

- 15 (a) the authority is satisfied the person is a resident of the ACT; and
(b) the person is eligible under this Act to be issued with the driver licence; and
(c) the person has surrendered, in accordance with the regulations, any Australian driver licence or external driver licence held by the person.

20 (2) However, the road transport authority may issue the driver licence to the person without the person surrendering an Australian driver licence or external driver licence if the authority is satisfied the licence has been stolen, lost or destroyed.

25 (3) Also, if the person holds an external driver licence, the road transport authority may issue the driver licence to the person without the person surrendering the external driver licence in the circumstances prescribed under the regulations.

(4) The road transport authority must not renew a person's driver licence if the authority is satisfied the person is no longer a resident of the ACT.

30 (5) Subsections (1) and (4), as far as they require a person to be a resident of the ACT, do not apply to a person who lives temporarily outside the ACT.

(6) This section does not limit the other circumstances in which the road transport authority may refuse to issue, vary or renew a driver licence.

11 Mutual recognition of Australian driver licences
(NSW s 11 (1)-(2))

(1) The road transport authority must, in accordance with the regulations, recognise—

- 5 (a) Australian driver licences issued by the licensing authorities of other jurisdictions; and
- (b) conditions that apply to those licences, other than conditions that apply only in circumstances that are unique to another jurisdiction or that are prescribed under the regulations.

10 (2) The regulations may make provision for or with respect to the effect of the recognition of licences and licence conditions by the road transport authority.

12 Mutual recognition of demerit points (NSW s 11 (3)-(6))

15 (1) If the holder of an Australian driver licence issued by the licensing authority of another jurisdiction incurs demerit points for an offence against a Territory law that is included in the national schedule of demerit points, the road transport authority must give all relevant information about the offence to the licensing authority of the other jurisdiction.

Note Subsection 13 (2) deals with when demerit points are incurred.

20 (2) If a person, who is not the holder of an Australian driver licence and who ordinarily lives in another jurisdiction, incurs demerit points for an offence against a Territory law that is included in the national schedule of demerit points, the road transport authority must give all relevant information about the offence to the other jurisdiction.

25 (3) However, the road transport authority is not required to give information under subsection (1) or (2) about a person convicted, or found guilty, of an offence until—

- 30 (a) if the person does not appeal against the conviction or finding—the last day when the person could have appealed against the conviction or finding; or
- (b) if the person appeals against the conviction or finding—the appeal is dismissed or discontinued.

35 (4) If the road transport authority receives information about a person from the licensing authority of another jurisdiction under a provision of a law of the other jurisdiction that corresponds to subsection (1) or (2), the authority must take the action under this Act that the authority would have taken if the offence had been committed in the ACT against a Territory law.

Division 2.3—Demerit points system

13 Recording of demerit points (NSW s 14 (2), 16 (1))

(1) In this section—

demerit points offence means—

- 5 (a) an offence included in the national schedule of demerit points; or
- (b) any other offence prescribed under the regulations made under the *Road Transport (General) Act 1999* for subsection 14 (1) of this Act; or
- 10 (c) an offence recognised under subsection 14 (2) of this Act.

(2) A person incurs demerit points for a demerit points offence if—

- (a) the person is convicted or found guilty of the offence; or
- 15 (b) the person is served with an infringement notice for the offence and pays (in whole or in part) the infringement notice penalty for the offence; or
- (c) the person is served with an infringement notice for the offence, the person does not pay the infringement notice penalty for the offence or give a notice disputing liability for the offence in accordance with the *Road Transport (General) Act 1999*, and the
- 20 time within which payment can be made or the notice given under that Act has passed.

(3) If a person incurs demerit points for a demerits points offence, the road transport authority must record in the demerit points register the number of demerit points incurred by the person for the offence.

25 (4) Demerit points incurred by a person for a demerit points offence must be recorded in the demerit points register for the day when the offence was committed.

14 Offences for which demerit points are incurred (NSW s 15)

30 (1) The regulations made under the *Road Transport (General) Act 1999* may prescribe—

- (a) the offences (relating to the use of motor vehicles), and the number of demerit points incurred for each offence, that make up the national schedule of demerit points; and
- 35 (b) additional offences (relating to the use of motor vehicles) against Territory law for which demerit points may be incurred and the number of demerit points incurred for each offence.

- (2) The Minister may, by notice—
- (a) recognise offences (relating to the use of motor vehicles) against the law of another jurisdiction that are not included in the national schedule of demerit points as offences for which demerit points may be incurred; and
- (b) state the number of demerit points incurred for each offence.
- (3) The Minister may, by notice, revoke the recognition of an offence under subsection (2) or amend the number of demerit points stated for an offence.
- (4) A regulation under the *Road Transport (General) Act 1999* or a notice under this section may provide for different numbers of demerit points for the same offence in different circumstances (whether or not the offence is included in the national schedule of demerit points).
- (5) An offence is recognised under this section on the day the relevant notice is published or notified in the Gazette or, if a later day is stated in the notice, on the later day.
- (6) A revocation or amendment under subsection (3) takes effect on the day the notice making the revocation or amendment is published or notified in the Gazette or, if a later day is stated in the notice, on the later day.
- (7) However, the revocation or amendment does not affect any demerit points incurred before the revocation or amendment begins.
- (8) A notice under subsection (2) or (3) is a disallowable instrument for the *Subordinate Laws Act 1989*.

15 Warning notices (MTA s 180T)

- (1) This section applies to the holder of a driver licence, other than a learner licence, probationary licence, provisional licence or restricted licence.

Note Learner, probationary, provisional and restricted licences are dealt with under the regulations, see s 22.

- (2) If the person incurs 7 or more demerit points within the 3 year period ending on the day when the person last committed an offence for which demerit points have been recorded against the person, the road transport authority must send a notice to the person—
- (a) reminding the person of the number of demerit points incurred by the person; and
- (b) warning the person about the relevant provisions of this Act.
- (3) Failure to comply with subsection (2) does not affect the validity of anything done by the road transport authority or a court.

16 Consequences of incurring demerit points—holder of licence
(NSW s 16 (2)-(3))

(1) This section applies to a person if—

- 5 (a) the person is the holder of a driver licence, other than a learner licence, probationary licence, provisional licence or restricted licence; and
- 10 (b) the person incurs 12 or more demerit points within the 3 year period ending on the day when the person last committed an offence for which demerit points have been recorded against the person.

(2) The road transport authority must serve a notice of licence suspension on the person under section 18.

(3) However, the road transport authority is not required to serve a notice of suspension on the person if the authority is of the opinion—

- 15 (a) that it would be unreasonable to do so, having regard to when any offence for which demerit points were incurred was committed; or
- (b) that it would be more appropriate for a notice of licence ineligibility to be served on the person under section 20.

17 Consequences of incurring demerit points—applicant for issue or renewal of licence (NSW s 14 (3)-(4), s 16A (1)-(2))

20

(1) This section applies to a person if—

- 25 (a) the person applies to the road transport authority for a driver licence (including the renewal of a driver licence), other than a learner licence, probationary licence, provisional licence or restricted licence; and
- (b) the person has incurred 12 or more demerit points within the 3 year period ending on the day when the person last committed an offence for which demerit points have been recorded against the person.

30 (2) The road transport authority may—

- (a) refuse the person's application and serve a notice of licence ineligibility on the person under section 20; or
- (b) issue the licence and serve a notice of licence suspension on the person under section 18.

35 (3) However, the road transport authority must not serve a notice of licence ineligibility and a notice of licence suspension on the person for the same 3 year period.

18 Licence suspension (NSW s 16 (4)-(7), (10)-(12))

(1) A notice of licence suspension served on a person by the road transport authority under this section—

- (a) must state the date of the notice; and
- 5 (b) must state the date, not earlier than 21 days after the notice is served on the person, when the suspension of the person's driver licence is to begin (the *date of effect*); and
- (c) must state the period of licence suspension; and
- 10 (d) must include any other information required under the regulations; and
- (e) may include any additional information the road transport authority considers appropriate.

(2) The period of licence suspension is the period, beginning on the date of effect, applying under the table of licence suspension for demerit points.

15 **Table of licence suspension for demerit points**

item	number of demerit points incurred within previous 3 years	period of licence suspension
1	12 to 15	3 months
2	16 to 19	4 months
3	20 or more	5 months

(3) If the person does not make an election under section 19, the person's driver licence is suspended for the period of licence suspension.

20 (4) A person whose driver licence is suspended under this section is not entitled to apply for, or be issued with, a restricted licence during the suspension period.

25 (5) At the beginning of the period of licence suspension under this section or, if the person makes an election under section 19, the 12 months period of good behaviour under that section, all demerit points recorded in the demerit points register against the person on the date of the notice of licence suspension under this section, and taken into account for the notice, are taken to be deleted.

(6) Subsection (5) does not prevent the road transport authority keeping records of deleted demerit points.

(7) In this section—

previous 3 years means the 3 year period ending on the day when the person last committed an offence for which demerit points have been recorded against the person.

5 **19 Good behaviour alternative to licence suspension**
(NSW s 16 (8)-(12))

(1) If a person is served with a notice of licence suspension under section 18, the person may elect, as an alternative to undergoing the period of licence suspension applying under the notice, to be of good behaviour for
10 12 months beginning on the day when the licence would otherwise have been suspended.

(2) The election must be made by notice given to the road transport authority before the period of licence suspension begins.

(3) If the person makes the election and incurs 2 or more demerit points
15 during the 12 month good behaviour period, the road transport authority must serve a notice of licence suspension on the person under this section.

(4) The notice of licence suspension—

- (a) must state the date of the notice; and
- 20 (b) must state the date, not earlier than 21 days after the notice is served on the person, when the suspension of the person's driver licence is to begin (the *date of effect*); and
- (c) must state the period of licence suspension; and
- (d) must include any other information required under the regulations; and
- 25 (e) may include any additional information the road transport authority considers appropriate.

(5) The period of licence suspension is the period, beginning on the date of effect, that is twice as long as the period of licence suspension that would have applied to the person if the person had not made the election.

30 (6) If the person is served with a notice of licence suspension under this section, the person's driver licence is suspended for the period of licence suspension.

(7) A person whose driver licence is suspended under this section is not entitled to apply for, or be issued with, a restricted licence during the
35 suspension period.

(8) At the beginning of the period of licence suspension under this section, all demerit points recorded in the demerit points register against the

person on the date of the notice of licence suspension under this section, and taken into account for the notice, are taken to be deleted.

(9) Subsection (8) does not prevent the road transport authority keeping records of deleted demerit points.

5 **20 Licence ineligibility (NSW s 16A (3)-(6), (10)-(11))**

(1) A notice of licence ineligibility served on a person by the road transport authority under this section—

- (a) must state the date of the notice; and
- 10 (b) must state the date, not earlier than 21 days after the notice is served on the person, when the ineligibility of the person to obtain a driver licence is to begin (the *date of effect*); and
- (c) must state the period of licence ineligibility; and
- (d) must include any other information required under the regulations; and
- 15 (e) may include any additional information the road transport authority considers appropriate.

(2) The period of licence ineligibility is the period, beginning on the date of effect, applying under the table of licence ineligibility for demerit points.

Table of licence ineligibility for demerit points

item	number of demerit points incurred within previous 3 years	period of licence ineligibility
1	12 to 15	3 months
2	16 to 19	4 months
3	20 or more	5 months

20 (3) If the person does not make an election under section 21, the person is disqualified from obtaining a driver licence during the period of licence ineligibility and is not entitled to apply for, or be issued with, a restricted licence during that period.

25 (4) At the beginning of the period of licence ineligibility under this section or, if the person makes an election under section 21, the 12 months period of good behaviour under that section, all demerit points recorded in the demerit points register against the person on the date of the notice of licence ineligibility under this section, and taken into account for the notice, are taken to be deleted.

30 (5) Subsection (4) does not prevent the road transport authority keeping records of deleted demerit points.

(6) In this section—

previous 3 years means the 3 year period ending on the day when the person last committed an offence for which demerit points have been recorded against the person.

5 **21 Good behaviour alternative to licence ineligibility**
(NSW s 16A (7)-(11))

10 (1) If a person is served with a notice of licence ineligibility under section 20, the person may elect, as an alternative to undergoing the period of licence ineligibility applying under the notice, to be of good behaviour for 12 months beginning on the day when the period of licence ineligibility would otherwise have begun.

(2) The election must be made by notice given to the road transport authority before the period of licence ineligibility begins.

15 (3) If the person makes the election and incurs 2 or more demerit points during the 12 months good behaviour period, the road transport authority must serve a notice of licence suspension on the person under this section.

(4) The notice of licence suspension—

- 20 (a) must state the date of the notice; and
(b) must state the date, not earlier than 21 days after the notice is served on the person, when the suspension of the person's driver licence is to begin (the *date of effect*); and
(c) must state the period of licence suspension; and
(d) must include any other information required under the regulations; and
25 (e) may include any additional information the road transport authority considers appropriate.

(5) The period of licence suspension is the period, beginning on the date of effect, that is twice as long as the period of licence ineligibility that would have applied to the person if the person had not made the election.

30 (6) If the person is served with a notice of licence suspension under this section, the person's driver licence is suspended for the period of licence suspension.

35 (7) A person whose driver licence is suspended under this section is not entitled to apply for, or be issued with, a restricted licence during the suspension period.

(8) At the beginning of the period of licence suspension under this section, all demerit points recorded in the demerit points register on the date

of the notice of licence suspension under this section, and taken into account for the notice, are taken to be deleted.

(9) Subsection (8) does not prevent the road transport authority keeping records of deleted demerit points.

5 **22 Demerit points incurred by learner, probationary, provisional and restricted licence holders etc (NSW s 17)**

(1) The regulations may make provision for or with respect to the suspension or cancellation by the road transport authority of—

- 10 (a) a learner licence, probationary licence, provisional licence or restricted licence; or
(b) another driver licence held by the holder of a restricted licence; or
(c) an additional provisional class of a driver licence;

if the holder of the licence incurs the prescribed number or more of demerit points.

15 (2) Without limiting subsection (1), the regulations may make provision for or with respect to—

- (a) warning, suspension and cancellation notices for the holder of a driver licence mentioned in that subsection; or
20 (b) periods of suspension and periods of inability to obtain a driver licence; or
(c) the circumstances in which suspension rather than cancellation may be imposed; or
(d) disregarding, or deleting from the demerit points register, demerit
25 points incurred by an applicant for, or the holder of, a driver licence or additional provisional class mentioned in subsection (1) and the circumstances in which such action may or must be taken; or
(e) other consequences of the holder of a driver licence mentioned in subsection (1) incurring demerit points.

30 **23 Demerit points incurred but not taken into account for notice of licence suspension etc (NSW s 16 (11), 16A (10))**

(1) This section applies to—

- 35 (a) demerit points incurred by a person on or before the date of a notice of licence suspension or ineligibility served on the person under this Division and that were not taken into account for the notice; and

(b) demerit points incurred by the person after the date of the notice and—

- 5 (i) before the period of licence suspension or licence ineligibility applying under the notice begins; or
- (ii) if the person elects under this Division to be of good behaviour for 12 months—before the period of good behaviour begins.

10 (2) The demerit points are only taken into account in relation to the person from the end of the period of licence suspension or ineligibility applying under the notice or, if the person elects under this Division to be of good behaviour for 12 months, from the end of the good behaviour period.

24 Demerit points not affected by licence suspension etc under another law (NSW s 18 (1)-(3))

15 (1) A period of licence suspension under this Division is additional to any period of licence suspension otherwise imposed under Territory law.

(2) A period of disqualification from obtaining a driver licence under this Division is additional to any period of disqualification otherwise imposed under Territory law.

20 (3) 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 Part 3 or any other Territory law.

25 (4) This section does not prevent the regulations from requiring the road transport authority to take into account an earlier period of suspension ended by a disqualification in deciding whether to issue a new driver licence to a person who has completed the period of disqualification.

25 Issue of licence suspension notice etc (NSW s 18 (4))

The road transport authority may give a notice of suspension or licence ineligibility to a person under this Division without giving the person an opportunity to make representations why the notice should not be given.

30 ***Division 2.4—Regulations***

26 General regulation-making power (NSW s 19 (1), (3))

(1) The Executive may make regulations for the purposes of this Act.

(2) The regulations may create offences punishable by maximum penalties not exceeding 20 penalty units.

27 **Regulations may apply certain documents etc**
(NSW s 19 (2), MTA s 218)

(1) The regulations—

- 5 (a) may apply, adopt or incorporate, entirely or in part and with or without changes, publications of the National Road Transport Commission approved, or of matters approved, by the Australian Transport Council or any other publication (including an Act or regulation of another jurisdiction), as in force at a particular time or as in force from time to time; and
- 10 (b) may apply to any provision of the regulations, entirely or in part and with or without changes, the provisions of the Criminal Code set out in the Schedule to the *Criminal Code Act 1995* (Cwlth).

(2) For the regulations, the regulations may define a word or expression (or apply, adopt, or incorporate a definition of a word or expression in a publication mentioned in paragraph (1) (a)) defined by this Act—

- 15 (a) in the same (or in substantially the same) way as it is defined by this Act; or
- (b) by reference to a matter included in the word or expression as defined by this Act; or
- 20 (c) by reference to a combination of matters included in the word or expression as defined by this Act and in any other word or expression defined by this Act (but not in a way that exceeds the power to make regulations about those matters); or
- 25 (d) for applying, adopting or incorporating a publication of the National Road Transport Commission approved, or of matters approved, by the Australian Transport Council—in the same way as it is defined in the publication despite anything in this Act or other road transport legislation.

(3) If a regulation applies, adopts or incorporates a publication (or provision of a publication) of the National Road Transport Commission approved, or of matters approved, by the Australian Transport Council, evidence of the publication or provision may be given in a proceeding—

- 30 (a) by the production of a document purporting to be a copy of it and purporting to be published by or on behalf of the National Road Transport Commission; or
- 35 (b) by the production of a document purporting to be a copy of it and purporting to be printed by the government printer or by the authority of the Government of any jurisdiction.

(4) In this section, a reference to a *publication of the National Road Transport Commission* includes a reference to a document published on behalf of the National Road Transport Commission.

28 Driver licensing system (NSW s 20)

5 (1) Without limiting section 26 (General regulation-making power), the regulations are to provide for a system of licensing drivers of motor vehicles used on roads or road related areas that provides a way of authorising the driving of motor vehicles on roads and road related areas and identifying people as licensed drivers of motor vehicles.

(2) Without limiting the scope of regulations under subsection (1), the regulations may—

- 10 (a) make provision for or with respect to—
 - (i) the issue or refusal to issue driver licences; and
 - (ii) the renewal and the refusal to renew driver licences; and
 - (iii) the imposition of conditions on driver licences; and
 - (iv) the replacement of and refusal to replace driver licences; and
- 15 (b) make provision for or with respect to 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 information by—
 - 20 (i) applicants for driver licences or for renewals or variation of driver licences; or
 - (ii) holders of driver licences; and
- (e) make provision for or with respect to the recognition by the road transport authority of things done under a corresponding law; and
- 25 (f) provide that this Act, or a stated provision of this Act, does not apply to persons prescribed under the regulations; and
- (g) allow the road transport authority to revoke, in the way and in circumstances prescribed under the regulations, an exemption given under a regulation made for paragraph (f); and
- 30 (h) prescribe different classes and kinds of driver licences, grade each class or kind by reference to the driving skills required for the class or kind, and prescribe the eligibility criteria for the issue of each class or kind of licence; and
- 35 (i) allow the road transport authority to exempt persons from holding a driver licence (whether or not subject to conditions imposed by the authority); and
- (j) make provision for or with respect to the keeping of the driver licence register or demerit points register; and
- (k) prescribe the circumstances in which driver licences must be surrendered or returned to the road transport authority; and

- 5
- (l) make provision for or with respect to the disclosure of personal information in the driver licence register or demerit points register; and
- (m) make provision for or with respect to competency-based assessment schemes relating to driver licensing; and
- (n) require persons who are—
- 10 (i) applicants for driver licences or for renewal or variation of driver licences; and
- (ii) holders of driver licences; and
- (iii) persons exempted under the regulations from holding a driver licence;
- to submit to tests or medical or other examinations to assess fitness to obtain, hold or continue to hold a driver licence, or a varied driver licence; and
- 15 (o) make provision for or with respect to driver training schemes; and
- (p) make provision for or with respect to the accreditation of driving instructors, including the conduct and content of driving instruction and examinations.
- 20 (3) The kinds of driver licence that may be prescribed include, but are not limited to, conditional licences, learner licences, probationary licences, provisional licences, public vehicle licences and restricted licences.

PART 3—OFFENCES

29 Obtaining licence by false statements etc
(NSW s 22, MTA s 177 (a))

(1) A person must not—

- 5 (a) by a false statement, a misrepresentation or other dishonest means obtain a driver licence (including a driver licence as varied) or the renewal of a driver licence; or
- (b) without lawful authority or excuse, possess an Australian driver licence or external driver licence obtained or renewed (whether in
10 the ACT or elsewhere) using those means.

Maximum penalty: 20 penalty units.

(2) A driver licence so obtained or renewed is void, and the road transport authority may alter the driver licence register accordingly.

30 Unlawful possession of licence etc
15 (NSW s 23, MTA s 177 (c), (d))

(1) A person must not, without lawful authority or excuse, possess—

- (a) an Australian driver licence or external driver licence issued to someone else; or
- 20 (b) an Australian driver licence or external driver licence that has been forged, fraudulently changed or changed in a way calculated to deceive; or
- (c) anything resembling an Australian driver licence or external driver licence that is calculated to deceive.

Maximum penalty: 20 penalty units.

25 (2) A person must not—

- (a) forge or fraudulently change or use an Australian driver licence or external driver licence; or
- (b) fraudulently lend or allow to be used by someone else an Australian driver licence or external driver licence.

30 Maximum penalty: 20 penalty units.

(3) A person must not change an Australian driver licence or external driver licence in a way calculated to deceive.

Maximum penalty: 20 penalty units.

(4) A person must not, without lawful authority or excuse, deface, damage, or otherwise interfere with, an Australian driver licence or external driver licence.

Maximum penalty: 20 penalty units.

5 **31 Driver must be licensed (NSW s 25, MTA s 176 (1))**

(1) A person must not drive a motor vehicle on a road or road related area unless the person—

- (a) is the holder of an Australian driver licence that authorises the person to drive a motor vehicle of that kind; or
10 (b) is exempted under the regulations from holding an Australian driver licence.

Maximum penalty: 20 penalty units.

(2) A person who is not, and never has been, the holder of an Australian driver licence must not drive a motor vehicle on a road or road related area unless the person is exempted under the regulations from holding an Australian driver licence.
15

Maximum penalty:

- (a) for a first offender—20 penalty units; or
20 (b) for a repeat offender—50 penalty units, imprisonment for 6 months or both.

(3) If—

- (a) a court convicts a person, or finds a person guilty, of an offence against subsection (2); and
(b) the person is a repeat offender;
25 the person is automatically disqualified from obtaining a driver licence for 3 years or, if the court orders a longer period, the longer period.

(4) A disqualification under this section is in addition to any penalty imposed for the offence.

Note Under s 66 (1) of the *Road Transport (General) Act 1999* the disqualification of a person from holding or obtaining a driver licence (whether or not by order of a court) operates to cancel any driver licence held by the person.
30

(5) For subsections (2) and (7), a person is taken to never to have been the holder of an Australian driver licence if the person has not held an Australian driver licence at any time within 5 years before being convicted, or found guilty, of the offence concerned.
35

(6) For subsections (2) and (3)—

- (a) a person who is convicted, or found guilty, of an offence against subsection (2) (the *current offence*) is a *repeat offender* in

relation to the current offence if the person has been convicted, or found guilty, of an offence against the subsection within 5 years before being convicted or found guilty of the current offence; and

5 (b) a person who is convicted, or found guilty, of an offence against subsection (2) is a *first offender* in relation to the offence if the person is not a repeat offender in relation to the offence.

10 (7) A person who has never been the holder of an Australian driver licence cannot be convicted or found guilty of an offence against both this section and section 32 in relation to driving a motor vehicle on the same occasion.

(8) However, this section does not prevent the person from being convicted or found guilty of an offence against section 32 in relation to driving a motor vehicle that is an offence against this section.

15 (9) A person cannot be convicted or found guilty against both subsections (1) and (2) in relation to driving a motor vehicle on the same occasion.

20 (10) However, a person charged with an offence against subsection (2) can be convicted or found guilty instead of an offence against subsection (1), but a person charged with an offence against subsection (1) cannot be convicted or found guilty instead of an offence against subsection (2).

32 Offences committed by disqualified drivers etc (NSW s 25A)

(1) A person who is disqualified by a court in Australia or under the law of any jurisdiction from holding or obtaining an Australian driver licence must not—

25 (a) drive a motor vehicle on a road or road related area during the period of disqualification except in accordance with a restricted licence issued to the person; or

30 (b) apply for a driver licence during the period of disqualification and in, or in relation to, the application state his or her name falsely or incorrectly or omit to mention the disqualification.

Maximum penalty:

(a) for a first offender—50 penalty units, imprisonment for 6 months or both; or

35 (b) for a repeat offender—100 penalty units, imprisonment for 12 months or both.

(2) A person whose Australian driver licence is suspended by a court in Australia or under the law of any jurisdiction must not—

40 (a) drive a motor vehicle on a road or road related area during the period of suspension except in accordance with a restricted licence issued to the person; or

- (b) apply for a driver licence during the period of suspension and in, or in relation to, the application state his or her name falsely or incorrectly or omit to mention the suspension.

Maximum penalty:

- 5 (a) for a first offender—50 penalty units, imprisonment for 6 months or both; or
(b) for a repeat offender—100 penalty units, imprisonment for 12 months or both.

10 (3) A person whose application for an Australian driver licence is refused in any jurisdiction, or whose Australian driver licence is cancelled by a court in Australia or under the law of any jurisdiction (other than under subsection 66 (1) of the *Road Transport (General) Act 1999* or a corresponding provision of the law of another jurisdiction), must not—

- 15 (a) drive a motor vehicle on a road or road related area without having subsequently obtained an Australian driver licence; or
(b) apply for a driver licence and in, or in relation to, the application state his or her name falsely or incorrectly or omit to mention the refusal or cancellation.

Maximum penalty:

- 20 (a) for a first offender—50 penalty units, imprisonment for 6 months or both; or
(b) for a repeat offender—100 penalty units, imprisonment for 12 months or both.

25 (4) Paragraph (3) (b) does not apply if the person has obtained an Australian driver licence after any such refusal or cancellation on an application that stated his or her name correctly and mentioned the refusal or cancellation.

30 (5) The regulations may provide that paragraph (1) (a), (2) (a) or (3) (a) does not apply to the driving of a motor vehicle in circumstances prescribed under the regulations.

(6) If a court convicts a person, or finds a person guilty, of an offence against subsection (1), (2) or (3), the person is automatically disqualified from holding or obtaining a driver licence—

- 35 (a) for a first offender—for 12 months or, if the court orders a longer period, the longer period; or
(b) for a repeat offender—for 24 months or, if the court orders a longer period, the longer period.

40 *Note* Under s 66 (1) of the *Road Transport (General) Act 1999* the disqualification of a person from holding or obtaining a driver licence (whether or not by order of a court) operates to cancel any driver licence held by the person.

(7) If a person is already disqualified from holding or obtaining a driver licence, or the person's driver licence is suspended, the disqualification takes effect at the end of the disqualification or suspension.

5 (8) A disqualification under this section is in addition to any penalty imposed for the offence.

(9) In this section—

10 (a) a person who is convicted, or found guilty, of an offence against this section (the *current offence*) is a *repeat offender* in relation to the current offence if the person has been convicted, or found guilty, of an offence against this section within 5 years before being convicted or found guilty of the current offence; and

(b) a person who is convicted, or found guilty, of an offence against this section is a *first offender* in relation to the offence if the person is not a repeat offender in relation to the offence.

15 **33 Contravention of conditions of restricted licence**
(MTA s 11D, 191H)

(1) The holder of a restricted licence must not, without reasonable excuse, contravene a condition to which the licence is subject.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

20 (2) If the holder of a restricted licence is convicted, or found guilty, by a court of an offence against subsection (1), the licence is automatically cancelled unless the court orders otherwise.

25 (3) If the licence is cancelled under subsection (2), the cancellation takes effect from the time of the conviction or finding or, if the court orders a later date, on the later date.

(4) Subsection (2) does not apply if the licence is cancelled under another provision of the road transport legislation.

30 *Note* Under s 66 (1) of the *Road Transport (General) Act 1999* the disqualification of a person from holding or obtaining a driver licence (whether or not by order of a court) operates to cancel any driver licence held by the person.

(5) The holder of a licence cancelled under subsection (2) is disqualified from applying for, or being issued with, another restricted licence for the remainder of the period for which the person was originally disqualified from holding or obtaining a driver licence.

PART 4—MISCELLANEOUS

34 Additional matters about identity (NSW s 32)

(1) The road transport authority may refuse to issue or renew a driver licence if—

- 5 (a) the applicant has not gone to a place designated by the road transport authority and had a photograph taken, by a person authorised by the authority to take photographs of applicants, that is suitable for use on the driver licence; or
- 10 (b) in the authority's opinion it is impracticable for the applicant to go to a designated place and the applicant has not given the authority a photograph of the applicant that the authority considers is suitable for use on the driver licence; or
- 15 (c) the applicant has not given, in support of the application, evidence that is required under the regulations or by the authority to establish the applicant's identity or home address.

(2) A photograph taken or provided under this section must not be used by the road transport authority except for the reproduction on a driver licence of a likeness of the person.

20 (3) In particular, any negative of, or data that can be used for reproducing the likeness of a person depicted in, a photograph taken under this section must be destroyed by the road transport authority after the issue or renewal of the driver licence concerned.

25 (4) A person who is employed or engaged in relation to any aspect of the production of driver licences that include a photograph of the holder, or is otherwise concerned in the administration of the road transport legislation, must not reproduce, by photographic or other means, the likeness of a person that is depicted (or is to be depicted) on a licence, otherwise than in the administration of this Act.

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

30 **35 Effect of expiry of driver licence during a suspension period (NSW s 33A)**

If a person's driver licence expires while it is suspended under this Act or any other Territory law—

- 35 (a) the person is not eligible to apply for, or be issued with, another driver licence during the unexpired part of the suspension period; and
- (b) the person's driver licence is taken to be suspended during the unexpired part of the suspension period for any provision of this Act or any other Territory law that creates an offence in relation to

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driving a motor vehicle, or applying for a driver licence, while a person's driver licence is suspended.

36 References to Motor Traffic Act etc

5 In any Act, instrument made under an Act or document, a reference to the *Motor Traffic Act 1936* or the *Motor Traffic Regulations 1934* is, in relation to anything to which this Act applies, a reference to this Act.

PART 5—TRANSITIONAL

Division 5.1—Existing licences, suspensions and disqualifications

37 Definitions for Div 5.1

5 In this Division:

existing disqualification means a disqualification from holding or obtaining a driving licence that was in force under the former Act, or subsection 19 (1) of the *Motor Traffic (Alcohol and Drugs) (Amendment) Act 1997*, immediately before the commencement of this Act, other than a disqualification mentioned in section 291 or 292 of the *Road Transport (General) Act 1999*.

existing licence means a driving licence issued under the former Act that was in force immediately before the commencement of this Act.

existing suspension means a suspension of a driving licence that was in force under the former Act, or section 18 of the *Motor Traffic (Alcohol and Drugs) (Amendment) Act 1997*, immediately before the commencement of this Act, other than a suspension mentioned in section 292 of the *Road Transport (General) Act 1999*.

former Act means the *Motor Traffic Act 1936*, and includes the former regulations.

former regulations means the *Motor Traffic Regulations 1934*.

38 Existing licences

(1) An existing licence is taken, after the commencement of this Act, to be a driver licence under this Act of the class prescribed under the regulations.

(2) The period of the licence under this Act is taken to be the unexpired period of the licence before the commencement.

(3) The licence continues to be subject to an endorsement or condition (however described) to which the licence was subject immediately before the commencement until the endorsement or condition ceases to have effect or it is removed or varied under this Act.

39 Existing demerit points

Demerit points recorded under the former Act immediately before the commencement of this Act are taken, after the commencement, to have been incurred under this Act.

40 Existing licence suspensions or disqualifications

(1) An existing suspension or existing disqualification continues, after the commencement of this Act, until it ceases to have effect or is removed or varied under this Act.

- 5 (2) To remove any doubt, the date when the suspension or disqualification began, and the duration of the suspension or disqualification, are not affected by this section.

41 Period a driver licence held

10 A reference in a Territory law to a person holding, or having held, an Australian driver licence (including holding the licence for a particular period) includes a driving licence held by the person under the former Act or a law of another jurisdiction that corresponds to the former Act.

42 Expiry of Div 5.1

This Division ceases to have effect 6 years after it commences.

15 **Division 5.2—Other matters**

43 Definitions for Div 5.2

In this Division:

former Act means the *Motor Traffic Act 1936*, and includes the former regulations.

- 20 *former regulations* means the *Motor Traffic Regulations 1934*.

44 Existing learner licence receipts

(1) A learner licence receipt issued under the former Act that was in force immediately before the commencement of this Act is taken, after the commencement, to be a driver licence receipt under this Act.

- 25 (2) The period of the receipt under this Act is taken to be the unexpired period of the receipt immediately before the commencement.

45 Existing licence records

30 The record of the particulars of the grant of licences kept under subsection 194 (1) (Record of registration and licences to be kept) of the former Act is taken, after the commencement of this Act, to be the register of driver licences.

46 Demerit points records (NSW Sch 3 cl 5)

The record of demerit points made under section 180P (Recording of demerit points) of the former Act is taken, after the commencement of this Act, to be the register of demerit points.

5 **47 Transitional regulations**

(1) The regulations may prescribe savings or transitional matters necessary or convenient to be prescribed because of the enactment of this Act.

10 (2) Without limiting the scope of subsection (1), the regulations may prescribe matters necessary or convenient to be prescribed for carrying out or giving effect to the provisions of this Act instead of the provisions of the former Act.

(3) Regulations made for this section must not be taken to be inconsistent with this Act as far as they can operate concurrently with this Act.

15 (4) This section is additional to, and does not limit, section 48.

48 Modification of Part's operation

20 The regulations may modify the operation of this Part to make provision with respect to any matter that is not, or not adequately, dealt with in this Part.

49 Expiry of Div 5.2

This Division ceases to have effect 15 months after it commences.

DICTIONARY

(See s 4)

5 **additional provisional class**, in relation to an Australian driver licence (including a provisional licence) of a particular class, means any other class of licence that is shown on the licence as a provisional class.

another jurisdiction means a jurisdiction other than the ACT.

Australian driver licence means—

- 10 (a) a driver licence; or
(b) a licence (including a conditional licence, learner licence, probationary licence, provisional licence or restricted licence or a driver licence receipt) issued under the law of another jurisdiction authorising the holder to drive a motor vehicle on a road or road related area.

15 **Australian Transport Council** means the Australian Transport Council mentioned in section 3 of the *National Road Transport Commission Act 1991* (Cwlth) or its successor.

authority—see *road transport authority*.

class, of a driver licence, means a class of driver licence prescribed under the regulations.

20 **conditional licence** means an Australian driver licence that is subject to a condition imposed by the road transport authority or the licensing authority of another jurisdiction.

25 **corresponding law** means a 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 kept under paragraph 6 (c) (Functions of road transport authority).

drive a vehicle includes—

- 30 (a) be in control of the steering, movement or propulsion of the vehicle; and
(b) if the vehicle is a trailer—draw or tow the vehicle; and
(c) if the vehicle can be ridden—ride the vehicle.

driver licence means—

- 5 (a) a licence (including a conditional licence, learner licence, probationary licence, provisional licence or restricted licence) issued under this Act authorising the holder to drive a motor vehicle on a road or road related area; or
- (b) a driver licence receipt issued under this Act.

driver licence receipt means a receipt that—

- 10 (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 a motor vehicle on a road or road related area.

driver licence register means the register required to be kept under paragraph 6 (b) (Functions of road transport authority).

exercise a function includes perform a duty.

15 **external driver licence** means—

- (a) an external Territory driver licence; or
- (b) a foreign driver licence.

20 **external Territory driver licence** means a licence to drive a motor vehicle (however described) issued under the law of an external Territory.

foreign driver licence means a licence to drive a motor vehicle (however described) issued under the law of a foreign country.

function includes power.

infringement notice—

- 25 (a) means a notice served under section 24 (Service of infringement notices generally) or 36 (Service of infringement notices on responsible persons for vehicles) of the *Road Transport (General) Act 1999*; and
- 30 (b) includes a notice (however described) served on a person under the law of another jurisdiction that gives the person the option of paying an amount for an offence instead of being charged with the offence.

infringement notice penalty—

- (a) see the *Road Transport (General) Act 1999*, dictionary; and
- (b) includes an amount payable under an infringement notice served on a person under the law of another jurisdiction.

5 ***jurisdiction*** means a State, the Commonwealth or an internal Territory, including the ACT.

learner licence means an Australian driver licence issued to a person under the law of any jurisdiction that authorises the person to drive a motor vehicle on a road or road related area for the purpose of learning to drive.

licensing authority, for another jurisdiction, means the entity that has functions under the law of the other jurisdiction corresponding to the functions of the road transport authority under this Act.

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

National Road Transport Commission means the National Road Transport Commission established by the *National Road Transport Commission Act 1991* (Cwlth) or its successor.

20 ***national schedule of demerit points*** means the offences, and the number of demerit points incurred for each offence, prescribed under the regulations under the *Road Transport (General) Act 1999* as the national schedule of demerit points.

photograph includes a digitised, electronic or computer generated image in a form approved by the road transport authority.

25 ***probationary licence*** means—

- (a) a driver licence issued under this Act to a person who applies for a licence after a period of disqualification from driving ordered by a court in Australia; or
- (b) an equivalent Australian driver licence issued under a corresponding law.

30 ***provisional licence*** means an Australian driver licence issued as a provisional licence, but does not include an Australian driver licence that includes an additional provisional class merely because it includes the additional provisional class.

35 ***public vehicle***—see the *Road Transport (General) Act 1999*, section 100.

public vehicle licence means a driver licence that authorises the person to drive a public vehicle for hire or reward.

5 **restricted licence** means an Australian driver licence, issued under the authority of a court in Australia, that authorises the holder to drive only in the course of his or her employment or in other restricted circumstances.

10 **road** means an area that is open to or used by the public and is developed for, or has as 1 of its main uses, the driving or riding of motor vehicles, but does not include an area that would otherwise be a road so far as an order under section 12 (Power to include or exclude areas in road transport legislation) of the *Road Transport (General) Act 1999* declares that this Act does not apply to the area.

road related area means—

- 15 (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
20 (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 so far as an order under section 12 (Power to include or exclude areas in road transport legislation) of the *Road Transport (General) Act 1999* declares that this Act applies to the area;
25 but does not include an area that would otherwise be a road related area so far as an order under that section declares that this Act does not apply to the area.

30 **road transport authority** (or *authority*) means the Australian Capital Territory Road Transport Authority.

Note The chief executive of the department responsible for the *Road Transport (General) Act 1999* is the road transport authority (see *Road Transport (General) Act 1999*, s 16).

35 **road transport legislation**—see the *Road Transport (General) Act 1999*, section 6.

the regulations made under this Act includes any publication applied, adopted or incorporated under the regulations, whether entirely or in part and with or without changes.

this Act (or *the Act*) includes the regulations under this Act.

trailer means a vehicle being towed, or built to be towed, by a motor vehicle, but does not include a motor vehicle being towed.

use a vehicle includes drive, park or stop the vehicle on a road or road related area.

5 **vehicle** means—

- (a) any description of vehicle on wheels, other than a vehicle used on a railway or tramway; or
- (b) any other vehicle prescribed under the regulations.

Endnote

Penalty units

Section 33AA of the *Interpretation Act 1967* deals with the meaning of offence penalties that are expressed in penalty units.