

2004

**THE LEGISLATIVE ASSEMBLY FOR
THE AUSTRALIAN CAPITAL TERRITORY**

**ROAD TRANSPORT (DRIVER LICENSING)
AMENDMENT REGULATION 2004 (No 1)**

**SL2004-59
Explanatory Statement**

Circulated by authority of

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Road Transport (Driver Licensing) Amendment Regulation 2004 (No 1)

Explanatory Statement

Background

The *Road Transport (Driver Licensing) Amendment Regulation 2004 (No 1)* (the amending regulation) amends the *Road Transport (Driver Licensing) Regulation 2000* (the principal regulation).

The Road Transport (Driver Licensing) Act 1999

The *Road Transport (Driver Licensing) Act 1999* regulates driver licensing and provides for, among other things, a demerits points system for drivers.

Section 13A of the Act provides that the Road Transport Authority must record demerit points in the demerit points register for a demerits point offence where a person is served with an infringement notice for the offence and the person pays the penalty for the offence or does not dispute the offence within the time allowed.

Demerit points are taken to have been incurred on the day the person, against whom they are recorded, committed the relevant offence.

Under section 16 of the Act where the holder of a full driver licence incurs 12 or more demerit points within a 3 year period, the Road Transport Authority must serve a notice of licence suspension. The period of licence suspension imposed will vary from 3 to 5 months depending on the number of demerit points incurred in the relevant 3 year period.

Section 17 of the Act provides that where an applicant for issue or renewal of a driver licence has incurred 12 or more demerit points in the 3 years preceding the date of the person's last recorded demerit points offence, the Road Transport Authority may refuse the application and serve a notice of

licence ineligibility or issue the licence and serve a notice of licence suspension.

Under section 19 of the Act a person served with a notice of licence suspension can elect, as an alternative to undergoing a period of licence suspension, to be of good behaviour for the period of 12 months from when the suspension would have taken effect.

Section 22 of the Act provides for regulations to be made in support of the provisions of the Act dealing with the demerit points system. Section 22(2)(d) provides that regulations may make provision in relation to disregarding demerit points, or deleting demerit points from the demerit points register, and the circumstances when such action may or must be taken. Section 22(2)(e) provides the regulations may make provision in relation to other consequences for a person in relation to demerit points incurred by the person.

The Road Transport (Driver Licensing) Regulation 2000

The principal regulation does not include any provisions relating to the disregarding or deleting of demerit points from the demerit points register.

The Road Transport (Driver Licensing) Amendment Regulation 2004 (No 1)

The amending regulation inserts a **new section 137A** into the principal regulation. This is to the effect that where the issuing of a traffic infringement notice for an alleged offence has resulted in demerit points being recorded against the person to whom the infringement notice was issued and the infringement notice is subsequently withdrawn the demerit points recorded in relation to the alleged offence must be removed from the demerit points register. (Traffic infringement notices can be withdrawn pursuant to section 31 of the *Road Transport (General) Act 1999*.)

The ***new section 137A*** further provides that any period of licence ineligibility, suspension or cancellation, or period of good behaviour ends on the withdrawal of the infringement notice.

These amendments will enable appropriate action to be taken to remove demerit points and reverse their effect where an infringement notice for an offence, which gave rise to the demerit points having been incurred, is later withdrawn.

Detail of amendments

Clauses 1, 2 and 3 – formal provisions

Clauses 1, 2 and 3 of the amending regulation are formal provisions setting out the name of the amending regulation, the commencement arrangements and the name of the principal regulation being amended.

Clause 4 – new section 137A

Clause 4 inserts **new section 137A** into the principal regulation. This new section sets out the consequence for demerit points where an infringement notice, which resulted in those demerit points being recorded, is withdrawn.

New subsection 137A(1) provides that **new section 137A** applies in relation to a person if:

- (a) an infringement notice for a demerits points offence is served on the person; and
- (b) demerit points for the offence are recorded against the person in the demerit points register; and
- (c) the infringement notice is withdrawn.

New subsection 137A(2) is to the effect that the relevant demerit points are taken never to have been recorded and the Road Transport Authority must delete the demerit points from the register.

The purpose of **new subsection 137A(3)** is to reverse the effect of a person having incurred demerit points for an offence in respect of which the infringement notice is withdrawn. It is, therefore, to the effect that certain actions, including:

- (a) sending a person a warning notice;

- (b) refusal of an application of a driver licence;
- (c) service of a notice of ineligibility to obtain a driver licence or a period of ineligibility or disqualification;
- (d) service of a notice of licence suspension or a suspension of a licence;
- (e) making of an election to be of good behaviour by a person;
- (f) service of a notice of additional provisional class suspension; and
- (g) service of a notice of licence cancellation or a licence cancellation;

which may have been taken against a person as a result of incurring demerit points are taken never to have happened.

In addition, ***new subsection 137A(3)(h)*** provides that the deletion of demerit points from the register because one of the listed actions has happened is taken never to have occurred. This is necessary because when action such as suspension of a licence is taken against a driver licence holder as a result of demerit points being incurred, all the demerit points incurred up to and including the demerit points which resulted in that action being taken are deleted from the register. This is so that, after the taking of that action, the licence holder will start with a “clean slate” on the demerit points register.

The intent of ***new subsection 137A(3)(h)*** is to ensure that when demerit points are removed from the register because the infringement notice giving rise to those particular demerit points has been withdrawn, any other demerit points deleted, as a result of action taken against the licence holder, are restored.

New subsection 137A(4) is to the effect that, without limiting the effect of ***new subsection 137A(2)***, any period of licence ineligibility, disqualification, good behaviour, licence suspension or licence cancellation to which a person is subject because of the recording of demerit points ends by force of ***new subsection 137A(2)***.

New subsection 137A(5) makes clear that the requirement of ***new subsection 137A(2)*** to delete demerit points incurred as a result of an offence for which the infringement notice is withdrawn does not prevent the Road Transport Authority from keeping a record of deleted demerit points. Such records may be kept for administrative and audit purposes.

New subsection 137A(6) is included to make it clear that ***new subsection 137A(5)*** must be read as being subject to ***new subsection 137A(2)***.

Schedule 1

Schedule 1 amends various division and section headings in the principal regulation to more accurately reflect the content of those divisions and sections and insert a note in relation to section 138.