

## Explanatory note

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

### Overview of Bill

The objects of this Bill are:

(a) to amend the Road Transport (Driver Licensing) Act 1998 (the Principal Act):

(i) to provide for a demerit points system for learner drivers, and to provide more comprehensively for a demerit points system for provisional drivers, and

(ii) to clarify the effect of a notice of licence suspension or licence ineligibility issued for incurring demerit points, where the driver holds licences for more than one class of vehicle, and

(b) to amend the Road Transport (Driver Licensing) Regulation 2008:

(i) to clarify the point at which a person who is issued a notice of licence suspension for incurring a threshold number of demerit points becomes ineligible to apply for a driver licence, and

(ii) to make certain speeding offences demerit point offences for learner drivers, and

(c) to amend the Road Transport (General) Regulation 2005 to provide learner and provisional drivers with a right of appeal to the Local Court against a decision of the RTA to issue a notice of licence suspension or licence ineligibility.

The Bill also makes minor, ancillary and consequential amendments to the legislation referred to above.

### 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 on a day or days to be appointed by proclamation.

Clause 3 is a formal provision that gives effect to the amendments to the Principal Act set out in Schedule 1.

Clauses 4 and 5 are formal provisions that give effect to the amendments to the Road Transport (Driver Licensing) Regulation 2008 and the Road Transport (General) Regulation 2005 set out in Schedules 2 and 3, respectively.

Clause 6 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the Interpretation Act 1987 provides that the repeal of an amending Act does not affect the amendments made by that Act.

### Schedule 1 Amendment of Road Transport (Driver Licensing) Act 1998

#### Demerit points system for provisional and learner drivers

Currently, section 17 of the Principal Act enables the Roads and Traffic Authority (the RTA) to suspend or cancel a provisional licence if the holder of the licence incurs 4 or more demerit points. The Principal Act does not apply the demerit points system to learner drivers.

Schedule 1 [19] inserts a new Subdivision (Subdivision 3) into Division 2 of Part 2 of the Principal Act (proposed sections 17–17C) which provides more comprehensively for the demerit points system in its application to provisional drivers (including providing for the issue of notices of licence ineligibility) and which applies the system to learner drivers.

Proposed section 17 defines the expression threshold number of demerit points for the purposes of the new Subdivision, being 4 demerit points for the holder of a learner or provisional P1 licence and 7 demerit points for the holder of a provisional P2 licence.

Proposed section 17A sets out the actions the RTA may take if the holder of a learner licence or a provisional licence incurs the threshold number of demerit points within

the 3 year period ending on the day on which the person last committed an offence for which demerit points have been recorded against the person. In these circumstances, the Authority may issue a notice of licence suspension or cancellation or, if the person subsequently applies for a driver licence, either refuse the application and issue a notice of licence ineligibility, or (if the driver licence applied for is a learner or provisional licence) grant the licence and issue a notice of licence suspension or cancellation.

Proposed section 17B enables the RTA to give a notice of licence suspension or cancellation to the holder of a learner or provisional licence who incurs the threshold number of demerit points within the 3 year period ending on the day on which the person last committed an offence for which demerit points have been recorded against the person.

If a person is served with a notice of licence suspension under the proposed section, all driver licences held by the person in relation to which the threshold number of demerit points is the same or lower than the number of demerit points taken into account for the purposes of the notice, are suspended on and from the date, and for the period, specified in the notice.

Proposed section 17B also enables regulations to be made with respect to various matters concerning notices of cancellation.

Proposed section 17C enables the RTA to give a notice of licence ineligibility to the applicant for a licence (including a provisional licence or learner licence) who incurs the threshold number of demerit points within the 3 year period ending on the day on which the person last committed an offence for which demerit points have been recorded against the person. However, the RTA may not give a person both a notice of licence ineligibility and a notice of licence suspension or cancellation under section 17B in respect of the same 3 year period.

A person who has been served with a notice of licence ineligibility under the proposed section is not entitled to be issued with or apply for any driver licence for the ineligibility period specified in the notice other than a renewal of a driver licence of a class different from that the subject of the application in relation to which the notice is given or a higher grade of that class of licence. (Classes of licence are established in the regulations under the Principal Act. The reference to a grade of driver licence is a reference to a learner, provisional P1, provisional P2 or an unrestricted licence, ordered from lowest to highest.)

Schedule 1 [22] amends section 18 (1) of the Principal Act to extend that provision (which provides that periods of licence suspension under section 16 of the Principal Act are in addition to any periods of suspension imposed under other laws of this State) to periods of licence suspension under proposed section 17B.

Effect of notices issued under section 16 or 16A on combined licence holders

Schedule 1 [9] amends section 16 (6) of the Principal Act to make it clear that where a person holds combined driver licences (for example, a motorcycle licence and a car licence), all driver licences held by the person (rather than the person's driver licence, as is currently the case) are suspended if the person is served with a notice of licence suspension for incurring 12 or more demerit points and does not opt for a period of good behaviour.

Similarly, Schedule 1 [11], [15] and [16] amend sections 16 (9) and 16A (8) (a) and (b) of the Principal Act to make it clear that all driver licences held by a person (rather than the person's driver licence) are suspended if the person is served with a notice of licence suspension for incurring 2 or more demerit points during a period of good behaviour taken under those sections.

Determining demerit point thresholds where combined licences

Schedule 1 [20] inserts a new section 17D into the Principal Act to clarify how demerit points incurred by the holder of combined driver licences (for example, a

learner motorcycle licence and an unrestricted car licence) are to be counted towards the demerit point thresholds applying to those licences.

Effect of expiry of driver licence during suspension period

Schedule 1 [24] extends section 33A of the Principal Act to suspensions under proposed section 17B so that, if a person's licence expires during a suspension period imposed under the proposed section, the person will not be able to obtain another licence until the period expires and will be guilty of an offence of driving during a suspension period if he or she drives during the balance of the unexpired suspension period. (The regulations currently contain a similar provision relating to suspensions of provisional licences under existing section 17 of the Principal Act.)

Commencement day for periods of suspension or licence ineligibility under sections 16 and 16A

Schedule 1 [9], [10] and [16] amend sections 16 (6) and (8) and 16A (5), (7) and (8) of the Principal Act to resolve an inconsistency between the commencement day for a period of suspension or licence ineligibility that is required by the Principal Act to be specified in a notice of suspension or licence ineligibility, and the day on which the Principal Act provides that the suspension is to take effect, by providing that a period of suspension or licence ineligibility under those sections is to start on and from (rather than from, as is currently the case) the suspension date, or the ineligibility date, specified in the relevant notice.

Similarly, Schedule 1 [10] amends sections 16 and 16A to provide that a period of good behaviour under those sections is to start on and from (rather than from) the day on which the licence would otherwise be suspended or on which the licence ineligibility would otherwise have effect.

Purposes for which demerit points incurred in certain intervening periods may be taken into account

Presently, demerit points incurred by a person after he or she is served with a notice of licence suspension under section 16 of the Principal Act but before the suspension (or good behaviour period, if that option is taken) begins are to be taken into account from the end of the suspension (or good behaviour period) only for the purpose of issuing a further notice of suspension under that section.

Similarly, demerit points incurred by a person after he or she is served with a notice of licence ineligibility under section 16A of the Principal Act but before the licence ineligibility takes effect (or good behaviour period begins, if that option is taken) are to be taken into account from the end of the licence ineligibility (or good behaviour period) only for the purpose of issuing a further notice of licence ineligibility under that section.

Schedule 1 [12] and [17] amend sections 16 (11) and 16A (10) of the Principal Act to provide that demerit points incurred by a person in these intervening periods may be taken into account from the end of the suspension or licence ineligibility (or good behaviour period) for the purpose of issuing either a further notice of suspension under section 16 or a notice of licence ineligibility under section 16A.

Schedule 1 [17] also substitutes section 16A (10) to correct the formatting of some of the text of that provision.

Structural and other miscellaneous amendments

Schedule 1 [1], [3], [19] and [20] insert Subdivision headings into Division 2 of Part 2 of the Principal Act.

Schedule 1 [2] relocates existing section 16 (1) of the Principal Act. Schedule 1 [5] makes a consequential amendment.

Schedule 1 [4], [14] and [21] substitute the headings to sections 16, 16A and 18, respectively, of the Principal Act.

Schedule 1 [6] rewords part of section 16 (2) of the Principal Act to take into account the application of the section to holders of more than one class of licence.

Schedule 1 [7] omits notes in the Principal Act that will no longer be relevant as a

result of the amendments made by Schedule 1 [19].

Schedule 1 [8] substitutes a cross reference in section 16 of the Principal Act as a consequence of the amendment made by Schedule 1 [13].

Schedule 1 [13] restates and relocates current section 14 (3) and (4). In restating section 14 (3) as section 16AA (1), a superfluous qualification is omitted, and in restating section 14 (4) as section 16AA (2), a redundant cross-reference is removed.

Schedule 1 [18] amends section 16A of the Principal Act to correct a cross reference.

Schedule 1 [23] substitutes section 33 (1) (a) and (b) of the Principal Act to make the wording consistent with that in section 14 (2) (b) and (c) dealing with the same process and to take into account recent amendments to the Fines Act 1996 that allow part payments of amounts payable under penalty notices or penalty reminder notices.

Schedule 1 [27] inserts definitions of provisional P1 licence and provisional P2 licence for the purposes of the Principal Act.

Savings and transitional provisions

Schedule 1 [25] provides for the making of savings and transitional regulations consequent on the enactment of the proposed Act.

Schedule 1 [26] inserts a new Part 5 into Schedule 3 to the Principal Act containing savings and transitional provisions consequent on the enactment of the proposed Act.

New Part 5 also contains a provision to validate anything done or omitted to be done before the commencement of the amendments made by Schedule 1 [9]–[12] and [15]–[17] that would have been valid had those amendments been in force when the thing was done or omitted to be done.

Schedule 2 Amendment of Road Transport (Driver Licensing) Regulation 2008

Schedule 2 [1] and [2] omit provisions that are no longer necessary given the power of the RTA to issue notices of licence ineligibility under proposed section 17C.

Currently, under clause 42 of the Road Transport (Driver Licensing) Regulation 2008) (the Regulation), a person whose driver licence has been suspended is ineligible to apply for a driver licence for the duration of the suspension.

Schedule 2 [3] qualifies clause 42 in relation to suspensions under Division 2 of Part 2 of the Act (that is, suspensions for incurring demerit points) by providing that a person who is issued with a notice of licence suspension under that Division is ineligible to apply for any driver licence from the date the notice is issued until the end of the licence suspension (or, if the notice is issued under section 16 and the person elects to be of good behaviour, until the person so elects).

Schedule 2 [4] omits clause 42 (5) of the Regulation consequential on the amendment made by Schedule 1 [24] and makes another consequential amendment.

Schedule 2 [5] amends clause 54 of the Regulation consequential on the amendments made by Schedule 1 [19].

Schedule 2 [6]–[11] amend Schedules 1 and 2 to the Regulation to make specified speeding offences demerit point offences for learner drivers, and to make consequential amendments.

Schedule 3 Amendment of Road Transport (General) Regulation 2005

Schedule 3 provides for appeals to the Local Court against a decision of the RTA to issue a notice of licence suspension under proposed section 17B (1) or a notice of licence ineligibility under proposed section 17C (1).