

Road Transport Legislation Amendment (Miscellaneous Provisions) Bill 2009

Explanatory note

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

Overview of Bill

The objects of this Bill are as follows:

- (a) to amend the *Road Transport (Driver Licensing) Act 1998*:
 - (i) to clarify who is an unlicensed driver for the purposes of section 25 of that Act, and
 - (ii) to confirm the disqualification period applicable to drivers convicted of an offence of driving while disqualified or when the driver's licence is suspended or cancelled if the offence is a second or subsequent offence,
- (b) to amend the *Road Transport (General) Act 2005*:
 - (i) to provide for a simplified process for a corporation served with a penalty notice for a camera recorded traffic offence or parking offence (a **designated offence**) to nominate the person in charge of the vehicle at the time of the offence, and
 - (ii) to increase the penalties for making a false nomination of a person for a designated offence or failing to make such a nomination, and
 - (iii) to increase the period within which a person may be prosecuted for making a false nomination from 6 months to 12 months after the offence, and
 - (iv) to confirm that the quashing of a declaration that a person is a habitual traffic offender only operates prospectively, and
 - (v) to confirm that the expression **registered operator** of a vehicle includes a person who is recorded in an Australian registrable vehicles register as the registered operator of the vehicle and that the expression **registration** includes the registration of a vehicle in such a register,
- (c) to amend the *Road Transport (Safety and Traffic Management) Act 1999* to clarify the operation of section 9 of that Act in its application to novice drivers,
- (d) to make amendments to the *Fines Act 1996* that are consistent with the amendments to the *Road Transport (General) Act 2005* concerning the nomination by corporations of persons for designated offences.

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 the date of assent to the proposed Act, except for certain provisions which will commence on a day or days to be appointed by proclamation.

Schedule 1 Amendment of road transport legislation

Schedule 1.1 Road Transport (Driver Licensing) Act 1998 No 99

Schedule 1.1 [1] amends section 25 of the *Road Transport (Driver Licensing) Act 1998* to make it clear that a person commits the offence of driving a motor vehicle on a road or road related area while never having been licensed if the person has not held a driver licence (or equivalent) of any kind in Australia for the period of at least 5 years immediately before the commission of the offence. The section currently provides for the 5-year period to run from the time before a conviction for the offence. Schedule 1.1 [1] also makes an amendment to section 25 of the *Road Transport (Driver Licensing) Act 1998* in the nature of statute law revision.

Schedule 1.1 [2] and [3] amend section 25A of the *Road Transport (Driver Licensing) Act 1998*:

(a) to confirm that the meaning of second or subsequent offence in section 25A of that Act extends to the determination of disqualification periods for offences under that section as well as to the determination of the maximum penalty for such offences, and

(b) to provide that an offence under section 25A (3A) of that Act (which deals with a person whose driver licence is suspended or cancelled for failure to pay a fine) is a second or subsequent offence only if the same offence was committed by the person concerned within 5 years of the current offence.

The amendment referred to in paragraph (a) above overcomes the decision of the Court of Criminal Appeal in *Director of Public Prosecutions v Partridge* [2009] NSWCCA 75, which decided that a provision in section 25A defining a second or subsequent offence did not apply to the determination of disqualification periods even though the provision expressly provides for its application “for the purposes of this section”.

Schedule 1.1 [4] amends clause 1 of Schedule 3 to the *Road Transport (Driver Licensing) Act 1998* to enable the Governor to make regulations of a savings or transitional nature consequent on the amendment of that Act by the proposed Act.

Schedule 1.1 [5] amends Schedule 3 to the *Road Transport (Driver Licensing) Act 1998* to insert provisions of a savings or transitional nature consequent on the amendment of that Act by the proposed Act.

Schedule 1.2 Road Transport (General) Act 2005 No 11

Schedule 1.2 [2] and [3] amend the definitions of **registered operator** and **registration** in section 3 of the *Road Transport (General) Act 2005* to confirm that those terms include, respectively, persons who are recorded as registered operators of, and vehicles that are registered in, an Australian registrable vehicles register.

Schedule 1.2 [1] inserts a definition of **Australian registrable vehicles register** in section 3 of the *Road Transport (General) Act 2005*. The term is defined to mean:

(a) the Register within the meaning of the *Road Transport (Vehicle Registration) Act 1997*, or

(b) a register maintained under the law of another jurisdiction that corresponds, or substantially corresponds, to the Register within the meaning of the *Road Transport (Vehicle Registration) Act 1997*.

Schedule 1.2 [4] and [7]–[11] amend section 179 of the *Road Transport (General) Act 2005* to enable a corporation that is served with a penalty notice for a designated offence involving a vehicle to nominate the person who was in charge of the vehicle at the time of the offence by means of a nomination document approved by the Roads and Traffic Authority instead of a statutory declaration. The amendments enable an authorised officer to require a corporation that has made a nomination using an approved nomination document to supply subsequently a statutory declaration for use in court proceedings. A failure to provide such a statutory declaration will be an offence attracting a maximum penalty of 100 penalty units (currently, \$11,000). The amendments will not affect the current requirement to supply a statutory declaration if the corporation is served with a court attendance notice instead of a penalty notice or prevent a corporation supplying a statutory declaration if it wishes to do so.

Schedule 1.2 [5] and [6] amend section 179 of the *Road Transport (General) Act 2005* to increase the penalties for making a false nomination of a person for a designated offence or failing to make such a nomination. The new penalties will be 50 penalty units (currently, \$5,500) for a natural person and 100 penalty units (currently, \$11,000) in any other case.

Schedule 1.2 [12] amends section 181 of the *Road Transport (General) Act 2005* to increase the period within which a person may be prosecuted for making a false nomination under section 179 of that Act from 6 months (which is currently provided for in section 179 of the *Criminal Procedure Act 1986*) to 12 months after the offence.

Schedule 1.2 [13] amends section 202 of the *Road Transport (General) Act 2005* to confirm that the quashing of a declaration that a person is a habitual traffic offender by a court under that section only operates prospectively.

Schedule 1.2 [14] amends clause 1 of Schedule 1 to the *Road Transport (General) Act 2005* to enable the Governor to make regulations of a savings or transitional nature consequent on the amendment of that Act by the proposed Act.

Schedule 1.2 [15] amends Schedule 1 to the *Road Transport (General) Act 2005* to insert provisions of a savings or transitional nature consequent on the amendment of that Act by the proposed Act. In particular, these provisions confirm that the definitions of **registered operator** and **registration** (as amended by the proposed Act) applied from 30 September 2005 (being the date when most of the provisions of the *Road Transport (General) Act 2005* commenced). The provisions also validate certain enforcement action taken by reference to these concepts since that time to the extent of any invalidity.

Schedule 1.3 Road Transport (Safety and Traffic Management) Act 1999 No 20

Schedule 1.3 amends the Road Transport (Safety and Traffic Management) Act 1999:

(a) to provide that learner drivers for the purposes of section 9 of that Act include any holder of a driver licence who is learning to drive a motor vehicle of a different class than that for which the holder is licensed where he or she is permitted to do so under the regulations, and

(b) to clarify the circumstances in which the driver of a motor vehicle will be treated as being a novice driver for the purposes of the offence of driving a motor vehicle with the novice range prescribed concentration of alcohol in breath or blood.

Schedule 2 Amendment of Fines Act 1996 No 99

Schedule 2 [1]–[3] make amendments to section 38 of the *Fines Act 1996* that are consistent with the amendments to section 179 of the *Road Transport (General) Act 2005* by Schedule 1.2 concerning the nomination by corporations of persons for designated offences. Section 38 of the *Fines Act 1996* provides for the circumstances in which a person issued with a penalty reminder notice for a vehicle or vessel

offence is not liable to pay a penalty.

Schedule 2 [4] amends clause 1 of Schedule 3 to the *Fines Act 1996* to enable the Governor to make regulations of a savings or transitional nature consequent on the amendment of that Act by the proposed Act.