



New South Wales

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.

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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.



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Road Transport Legislation Amendment (Miscellaneous Provisions) Bill 2009

No. , 2009

A Bill for

An Act to make miscellaneous amendments to the road transport legislation and related amendments to the *Fines Act 1996*.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Road Transport Legislation Amendment (Miscellaneous Provisions) Act 2009</i> .	3 4
2 Commencement	5
(1) This Act commences on the date of assent to this Act, except as provided by subsection (2).	6 7
(2) Schedules 1.2 [4]–[11], 1.3 and 2 commence on a day or days to be appointed by proclamation.	8 9

Schedule 1 Amendment of road transport legislation

1.1 Road Transport (Driver Licensing) Act 1998 No 99

[1] Section 25 Driver must be licensed

Omit “not been” and “being convicted of the offence” from section 25 (4).

Insert instead “never been” and “the commission of the offence”, respectively.

[2] Section 25A Offences committed by disqualified drivers or drivers whose licences are suspended or cancelled

Omit section 25A (6).

[3] Section 25A (10)

Omit the subsection. Insert instead:

(10) For the purposes of subsection (7), the *relevant disqualification period* is:

- (a) in the case of a first offence under subsection (1), (2) or (3) (a)—12 months, or
- (b) in the case of a first offence under subsection (3A)—3 months, or
- (c) in the case of a second or subsequent offence—2 years.

(11) For the purposes of determining both the maximum penalty and the disqualification period for any offence under this section, an offence is a *second or subsequent offence* if:

- (a) in relation to an offence under subsection (1), (2) or (3):
 - (i) it is the second or subsequent occasion on which the person is convicted of any offence under subsection (1), (2) or (3) within the period of 5 years immediately before the person is convicted of the offence, or
 - (ii) within the period of 5 years immediately before the person is convicted of the offence, the person was convicted of a major offence within the meaning of the *Road Transport (General) Act 2005*, or
 - (iii) within the period of 5 years immediately before the person is convicted of the offence, the person was convicted of an offence under section 6 (1C) or 7A of the *Traffic Act 1909* (as in force before its repeal), or

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(iv)	within the period of 5 years immediately before the person is convicted of the offence, the person was convicted of an offence under section 25 (2), or	1 2 3
(b)	in relation to an offence under subsection (3A)—it is the second or subsequent occasion on which the person is convicted of an offence under subsection (3A) within the period of 5 years immediately before the person is convicted of the offence.	4 5 6 7 8
[4]	Schedule 3 Savings, transitional and other provisions	9
	Insert at the end of clause 1 (1):	10
	<i>Road Transport Legislation Amendment (Miscellaneous Provisions) Act 2009</i> (to the extent that it amends this Act)	11 12
[5]	Schedule 3	13
	Insert at the end of the Schedule (with appropriate Part and clause numbers):	14
Part	Provisions consequent on enactment of Road Transport Legislation Amendment (Miscellaneous Provisions) Act 2009	15 16 17
	Application of amendments to sections 25 and 25A	18
(1)	The amendments made to section 25 of this Act by the amending Act extend to any proceedings for an offence against section 25 (2) that were not finally determined when the amendments commenced.	19 20 21 22
(2)	The amendments made to section 25A of this Act by the amending Act extend (and are taken always to have extended) to offences under that section for which persons were convicted before the commencement of the amendments.	23 24 25 26
(3)	Subject to the regulations, subclause (2) applies to offences under section 25A (3A) as if:	27 28
(a)	any reference in section 25A (11) (a), as inserted by the amending Act, to an offence under section 25A (1), (2) or (3) included a reference to an offence under section 25A (3A) for which a person was convicted before the commencement of the amendments to section 25A, and	29 30 31 32 33

(b)	section 25A (11) (b), as inserted by the amending Act, were limited to the determination of whether an offence under section 25A (3A) for which a person is convicted after that commencement is a second or subsequent offence.	1 2 3 4 5
(4)	Nothing in subclause (2) or (3) affects any judgment or order of a court that was given or made before the introduction day in its application to the parties to the proceedings in which the judgment or order was given or made.	6 7 8 9
(5)	In particular, nothing in subclause (2) or (3) affects the judgment of the Court of Criminal Appeal in <i>Director of Public Prosecutions v Partridge</i> [2009] NSWCCA 75 in its application to the parties to that case.	10 11 12 13
(6)	For the purposes of this clause, proceedings are not finally determined if:	14 15
(a)	any period for bringing an appeal as of right in respect of the proceedings has not expired (ignoring any period that may be available by way of extension of time to appeal), or	16 17 18
(b)	any appeal in respect of the proceedings is pending (whether or not it is an appeal brought as of right).	19 20
(7)	In this clause:	21
	amending Act means the <i>Road Transport Legislation Amendment (Miscellaneous Provisions) Act 2009</i> .	22 23
	introduction day means the day on which the Bill for the amending Act was first introduced into Parliament.	24 25
1.2	Road Transport (General) Act 2005 No 11	26
[1]	Section 3 Definitions	27
	Insert in alphabetical order in section 3 (1):	28
	Australian registrable vehicles register means:	29
(a)	the Register within the meaning of the <i>Road Transport (Vehicle Registration) Act 1997</i> , or	30 31
(b)	a register maintained under the law of another jurisdiction that corresponds, or substantially corresponds, to the Register within the meaning of the <i>Road Transport (Vehicle Registration) Act 1997</i> .	32 33 34 35
[2]	Section 3 (1), definition of “registered operator”	36
	Insert “, or a person recorded in an Australian registrable vehicles register,” after “Australian applicable road law” wherever occurring.	37 38

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[3] Section 3 (1), definition of “registration”	1
Insert “or in an Australian registrable vehicles register” after “law”.	2
[4] Section 179 Liability of responsible person for vehicle for designated offences	3
Omit “statutory declaration” wherever occurring in section 179 (3) (a) (i), (4) and (7).	4
Insert instead “relevant nomination document”.	5
[5] Section 179 (6)	6
Omit “20 penalty units” and “5 penalty units”.	7
Insert instead “100 penalty units” and “50 penalty units”, respectively.	8
[6] Section 179 (7)	9
Omit “10 penalty units” and “5 penalty units”.	10
Insert instead “100 penalty units” and “50 penalty units”, respectively.	11
[7] Section 179 (8A)–(8D)	12
Insert after section 179 (8):	13
(8A) Nominations by corporations	14
The Authority may approve one or more documents (<i>approved nomination documents</i>) for use by corporations when nominating other persons under this section as persons in charge of vehicles for which the corporations are the responsible persons.	15
(8B) Without limiting subsection (8A), the Authority may approve documents under that subsection:	16
(a) to be provided in printed or electronic form (or both), and	17
(b) to be used in relation to more than one designated offence involving one or more vehicles for which a corporation is the responsible person.	18
(8C) If a corporation that is the responsible person for a vehicle supplies an approved nomination document to an authorised officer for the purpose of subsection (3) or (4) instead of a statutory declaration, an authorised officer may, by written notice served on the corporation (a <i>verification notice</i>), require it to supply a statutory declaration for use in court proceedings that verifies such of the nominations contained in the approved nomination document as are specified in the verification notice.	19
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(8D)	A corporation served with a verification notice must supply the required statutory declaration within the period specified in the notice (being a period of not less than 7 days after the date of service).	1 2 3 4
	Maximum penalty: 100 penalty units.	5
[8]	Section 179 (9)	6
	Omit “under subsection (3), (4) or (7A)”.	7
	Insert instead “supplied for the purposes of subsection (3), (4), (7A) or (8C)”.	8
[9]	Section 179 (10)	9
	Omit “or (4)”. Insert instead “, (4) or (8C)”.	10
[10]	Section 179 (10)	11
	Insert at the end of the subsection:	12
	Note. The Authority may approve a nomination document under subsection (8A) for use by a corporation instead of a statutory declaration that relates to more than one designated offence involving one or more vehicles for which the corporation is the responsible person. See subsection (8B).	13 14 15 16 17
[11]	Section 179 (12)	18
	Insert in alphabetical order:	19
	<i>relevant nomination document</i> means:	20
	(a) in the case of a responsible person that is a corporation served with a penalty notice in relation to a designated offence:	21 22 23
	(i) an approved nomination document under subsection (8A), or	24 25
	(ii) a statutory declaration, or	26
	(b) in the case of a responsible person that is a corporation served with a court attendance notice in relation to a designated offence—a statutory declaration, or	27 28 29
	(c) in the case of a responsible person for a vehicle who is a natural person—a statutory declaration.	30 31
[12]	Section 181 Period within which proceedings for operator onus offences may be commenced	32 33
	Insert “or an offence under section 179 (7)” after “section 179” in the definition of <i>operator onus offence</i> in section 181 (2).	34 35

[13] Section 202 Quashing of declaration and bar against appeals	1
Insert after section 202 (3):	2
(4) For the avoidance of doubt, the quashing of a declaration under this section:	3
(a) operates to set aside the disqualification imposed by the declaration on and from the day on which the court makes the order that quashes the declaration, and	4
(b) if the disqualification period has already commenced when the declaration is quashed—does not operate to invalidate or otherwise affect the operation of the disqualification in its application to the habitual traffic offender at any time before the day on which the declaration is quashed.	5
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[14] Schedule 1 Savings, transitional and other provisions	13
Insert at the end of clause 1 (1):	14
<i>Road Transport Legislation Amendment (Miscellaneous Provisions) Act 2009</i> , to the extent that it amends this Act	15
	16
[15] Schedule 1	17
Insert at the end of the Schedule (with appropriate Part and clause numbers):	18
Part Provisions consequent on enactment of Road Transport Legislation Amendment (Miscellaneous Provisions) Act 2009	19
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Definition	22
In this Part:	23
<i>amending Act</i> means the <i>Road Transport Legislation Amendment (Miscellaneous Provisions) Act 2009</i> .	24
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Confirmation of meaning of “registered operator” and “registration”	26
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(1) It is declared that:	28
(a) any reference in this Act to a registered operator of a vehicle has, on and from 30 September 2005, included a reference to a person recorded in an Australian registrable vehicles register as the person responsible for the vehicle, and	29
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(b) any reference in this Act to the registration of a vehicle has, on and from 30 September 2005, included a reference to	34
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the registration of a vehicle in an Australian registrable vehicles register.	1 2
Note. This Act (other than Schedule 3.33 [1]–[3] and [15]–[19] as originally enacted) commenced on 30 September 2005.	3 4
(2) Accordingly, any enforcement action taken under this Act or any related legislation on and from 30 September 2005 that would have been validly taken had subclause (1) been in force when it was taken is (to the extent of any invalidity) taken to be, and always to have been, valid.	5 6 7 8 9
(3) In this clause:	10
enforcement action means:	11
(a) any action taken in relation to a person by reason of the person being a registered operator of, or responsible person for, a vehicle within the meaning of this Act (including the issuing of a penalty notice or the commencement of proceedings for a contravention of a provision of an Act or statutory rule), and	12 13 14 15 16 17
(b) any action taken in relation to a person or vehicle by reason of the registration of a vehicle within the meaning of this Act (including the issuing of a penalty notice or the commencement of proceedings for a contravention of a provision of an Act or statutory rule).	18 19 20 21 22
related legislation means:	23
(a) the <i>Fines Act 1996</i> , and	24
(b) any other Act or statutory rule (or a provision of any other Act or statutory rule) that imposes any obligation or liability, or that confers or imposes a function, on a person by reference to:	25 26 27 28
(i) the person or another person being a registered operator of, or responsible person for, a vehicle within the meaning of this Act, or	29 30 31
(ii) the registration of a vehicle (being registration of a vehicle within the meaning of this Act).	32 33
Effect of quashing of habitual traffic offender declaration	34
Section 202 (4) (as inserted by the amending Act) extends to any declaration of a habitual traffic offender that is in force under Division 3 of Part 5.4 immediately before the commencement of that subsection.	35 36 37 38

1.3 Road Transport (Safety and Traffic Management) Act 1999	1
No 20	2
[1] Section 8 General definitions	3
Insert in alphabetical order in section 8 (1):	4
<i>learner driver</i> , in relation to a motor vehicle, means:	5
(a) a person who holds a learner licence of a class of motor vehicles that includes the motor vehicle, or	6
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(b) a person who is learning to drive the motor vehicle in circumstances where:	8
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(i) the person holds a driver licence of a class of motor vehicles that does not include the motor vehicle, and	10
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(ii) the person is permitted under the regulations to learn to drive the motor vehicle despite not having a driver licence for motor vehicles of that class.	12
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<i>novice driver</i> , in relation to a motor vehicle, means:	15
(a) a person who is the holder of a learner licence or a provisional licence of a class that includes the motor vehicle, or	16
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(b) a person who is not authorised to drive the motor vehicle in New South Wales because the person (in New South Wales or elsewhere) has had his or her application for a learner licence or provisional licence of a class that includes the motor vehicle refused, or	19
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(c) a person who is not authorised to drive the motor vehicle in New South Wales because the person (in New South Wales or elsewhere) has ceased to hold a learner licence or provisional licence of a class that includes the motor vehicle as a result of:	24
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(i) the cancellation or suspension of the licence, or	29
(ii) the disqualification of the person from holding a driver licence, or	30
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(iii) the expiry of the licence, or	32
(d) a person who is not authorised to drive the motor vehicle in New South Wales because the person (in New South Wales or elsewhere) has never obtained a driver licence for any class of motor vehicle.	33
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[2] Section 9 Presence of prescribed concentration of alcohol in person's breath or blood	1
	2
Omit "If a person is the holder of a learner licence or a provisional licence in respect of a motor vehicle, the person" from section 9 (1A).	3
	4
Insert instead "A novice driver".	5
[3] Section 9 (1) (c), (2) (c), (3) (c) and (4) (c)	6
Omit "a holder of a learner licence" wherever occurring.	7
Insert instead "a learner driver".	8
[4] Schedule 2 Savings, transitional and other provisions	9
Insert at the end of clause 1 (1):	10
<i>Road Transport Legislation Amendment (Miscellaneous Provisions) Act 2009</i> , but only to the extent that it amends this Act	11
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Schedule 2 Amendment of Fines Act 1996 No 99

[1] Section 38 Circumstances in which person issued with penalty reminder notice for vehicle or vessel offence is not liable to pay penalty

Omit section 38 (1A) (a). Insert instead:

- (a) in the case of a penalty reminder notice served on a person other than a corporation—be verified by a statutory declaration, and
- (a1) in the case of a penalty reminder notice served on a corporation:
 - (i) be verified by a statutory declaration, or
 - (ii) be a notice of a kind approved for the purposes of subsection (1B), and

[2] Section 38 (1B)–(1E)

Insert after section 38 (1A):

- (1B) The State Debt Recovery Office may approve one or more kinds of notices (*approved notices*) for use by corporations when giving notice for the purposes of subsection (1) (a).
 - (1C) Without limiting subsection (1B), the State Debt Recovery Office may approve notices under that subsection:
 - (a) to be provided in printed or electronic form (or both), and
 - (b) to be used in relation to more than one offence involving one or more vehicles or vessels.
 - (1D) If a corporation gives an approved notice for the purposes of subsection (1) (a) instead of a notice verified by statutory declaration, an appropriate officer for the penalty notice to which the penalty reminder notice relates may, by written notice served on the corporation (a *verification notice*), require the corporation to supply a statutory declaration for use in court proceedings verifying such of the information contained in the approved notice as is specified in the verification notice.
 - (1E) A corporation served with a verification notice must supply the required statutory declaration within the period specified in the notice (being a period of not less than 7 days after the date of service).
- Maximum penalty: 100 penalty units.

[3] Section 38 (3)	1
Omit the subsection. Insert instead:	2
(3) A statutory declaration that relates to more than one vehicle or vessel offence is not a statutory declaration under, or for the purposes of, subsection (1A) or (1D).	3 4 5
[4] Schedule 3 Savings, transitional and other provisions	6
Insert at the end of clause 1 (1):	7
<i>Road Transport Legislation Amendment (Miscellaneous Provisions) Act 2009</i> (to the extent that it amends this Act)	8 9