



New South Wales

# Road Transport (General) Amendment (Operator Onus Offences) Bill 2002

## Explanatory note

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

## Overview of Bill

The object of this Bill is to amend the *Road Transport (General) Act 1999*:

- (a) to increase from 6 months to 1 year the period during which proceedings for a parking offence, camera-detected traffic light offence or camera-recorded speeding offence may be taken, and
- (b) to clarify and streamline the procedures under which a responsible person for a vehicle is required to nominate the person in charge of the vehicle in respect of a parking offence, camera-detected traffic light offence or camera-recorded speeding offence, and
- (c) to increase the penalty for a corporation that is the responsible person for a vehicle and that fails to nominate, or fails to exercise reasonable diligence to ascertain, the person in charge of the vehicle in respect of a parking offence, camera-detected traffic light offence or camera-recorded speeding offence.

## 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 giving effect to the amendments to the *Road Transport (General) Act 1999* set out in Schedule 1.

## Schedule 1 Amendments

**Schedule 1 [1]** inserts proposed section 43 (4A) and (4B) into the Principal Act. Proposed section 43 (4A) clarifies when a penalty notice sent to a person under section 43 (3) or (4) by post is taken to have been served. The proposed subsection provides that a penalty notice sent to a person by post is presumed to be served 7 days after it is posted. However, the person to whom the notice is sent may override that presumption by establishing it was not served during that 7-day period.

**Schedule 1 [5]** is a consequential amendment that allows a certificate signed on behalf of the Commissioner of Police specifying the date on which a penalty notice was posted to a person to be admissible in proceedings and to be evidence of the matters stated in it.

Proposed section 43 (4B) specifies the matters that must be included in a statutory declaration provided under section 43 (3) or (4). A statutory declaration is provided under section 43 (3) or (4) by the responsible person for a vehicle for the purposes of ascertaining who was in charge of the vehicle at the time of the occurrence of a parking offence, camera-detected traffic light offence or camera-recorded speeding offence. Proposed section 43 (4B) provides that the statutory declaration must include the matters prescribed by the regulations. The requirement does not apply to a person served with a penalty notice or summons for a parking offence for which demerit points would not be incurred under the *Road Transport (Driver Licensing) Act 1998*. **Schedule 1 [3]** inserts proposed section 43 (7A). The proposed subsection allows an authorised officer or court to have regard to a statutory declaration in deciding whether the responsible person has exercised reasonable diligence to ascertain the name and address of the person in charge of the vehicle at the time of the offence. **Schedule 1 [4]** inserts a definition of a term used in section 43.

**Schedule 1 [2]** amends section 43 (5) to increase the penalty for a corporation that is the responsible person for a vehicle and that fails to nominate, or fails to exercise reasonable diligence to ascertain, the name and address of the person in charge of the vehicle committing a parking offence, camera-detected traffic light offence or camera-recorded speeding offence.

**Schedule 1 [6]** inserts proposed section 47 (2) and (3). Proposed section 47 (2) extends the period during which proceedings for an operator onus offence may be commenced from the present 6 months after the date of the commission of the offence to 1 year from that date. Proposed section 47 (3) defines an operator onus offence to mean a parking offence, camera-detected traffic light offence or camera-recorded speeding offence.

**Schedule 1 [7]** amends clause 1 of Schedule 2 to enable regulations of a savings or transitional nature to be made as a consequence of the enactment of the proposed Act.

**Schedule 1 [8]** inserts a new Part into Schedule 2. The proposed Part inserts a specific transitional provision consequent on the enactment of the proposed Act.

First print



New South Wales

# Road Transport (General) Amendment (Operator Onus Offences) Bill 2002

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New South Wales

# Road Transport (General) Amendment (Operator Onus Offences) Bill 2002

No. , 2002

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## A Bill for

An Act to amend the *Road Transport (General) Act 1999* to reduce the opportunity for avoidance of infringement notices for operator onus offences; and for other purposes.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Road Transport (General) Amendment (Operator Onus Offences) Act 2002</i> .	3 4
<b>2 Commencement</b>	5
This Act commences on a day or days to be appointed by proclamation.	6 7
<b>3 Amendment of Road Transport (General) Act 1999 No 18</b>	8
The <i>Road Transport (General) Act 1999</i> is amended as set out in Schedule 1.	9 10

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## Schedule 1 Amendments

	1
(Section 3)	2
<b>[1] Section 43 Liability of responsible person for vehicle for designated offences</b>	3 4
Insert after section 43 (4):	5
(4A) For the purposes of subsections (3) and (4), it is presumed that a penalty notice served on a person by post is served on the person 7 days after it is posted, unless the person establishes that it was not received by the person, or was not received by the person within the 7-day period.	6 7 8 9 10
(4B) A statutory declaration under subsection (3) or (4) must include the matters prescribed by the regulations, unless the notice or summons was in respect of a minor parking offence.	11 12 13
<b>[2] Section 43 (5)</b>	14
Omit “10 penalty units”. Insert instead “20 penalty units”.	15
<b>[3] Section 43 (7A)</b>	16
Insert after section 43 (7):	17
(7A) In deciding whether the responsible person for a vehicle has exercised reasonable diligence to ascertain the name and address of the person who was in charge of the vehicle, an authorised officer or court may have regard to the matters set out in a statutory declaration provided by the responsible person under this section.	18 19 20 21 22 23
<b>[4] Section 43 (11)</b>	24
Insert in alphabetical order:	25
<i>minor parking offence</i> means a parking offence for which a person does not incur demerit points under the <i>Road Transport (Driver Licensing) Act 1998</i> .	26 27 28

<b>[5] Section 46 Certificate evidence and other evidentiary provisions</b>	1
Insert after section 46 (7):	2
(7A) A document that appears to be signed on behalf of the Commissioner of Police certifying that a penalty notice was posted to a person on a specified date is admissible in any proceedings and is evidence of the matters stated in it unless there is evidence to the contrary.	3 4 5 6 7
<b>[6] Section 47 Proceedings for offences</b>	8
Insert at the end of the section:	9
(2) Despite any other Act, proceedings for an operator onus offence may be commenced within 1 year after the date of the alleged commission of the offence.	10 11 12
(3) In this section:	13
<i>operator onus offence</i> means any of the following offences (as defined in section 43 (11)):	14 15
(a) a camera-detected traffic light offence,	16
(b) a camera-recorded speeding offence,	17
(c) a parking offence.	18
<b>[7] Schedule 2 Savings, transitional and other provisions</b>	19
Insert at the end of clause 1 (1):	20
<i>Road Transport (General) Amendment (Operator Onus Offences) Act 2002</i>	21 22



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<b>[8] Schedule 2</b>	1
Insert at the end of the Schedule, with appropriate Part and clause numbers:	2
<b>Part Provisions consequent on enactment of Road Transport (General) Amendment (Operator Onus Offences) Act 2002</b>	3 4 5
<b>Offences under amended provisions</b>	6
(1) A provision of this Act as in force immediately before the commencement of the <i>Road Transport (General) Amendment (Operator Onus Offences) Act 2002</i> continues to apply in relation to an operator onus offence committed, or alleged to have been committed, before that commencement as if that Act had not been enacted.	7 8 9 10 11 12
(2) In this clause:	13
<i>operator onus offence</i> means any of the following offences (as defined in section 43 (11)):	14 15
(a) a camera-detected traffic light offence,	16
(b) a camera-recorded speeding offence,	17
(c) a parking offence.	18