



New South Wales

# Road Transport and Related Legislation Amendment Bill 2017

## 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 Act 2013*:
  - (i) to increase the maximum penalty that can be prescribed for offences in the statutory rules under that Act, and
  - (ii) to allow for the use of traffic enforcement devices under that Act for detecting vehicles in contravention of dimension requirements, and
  - (iii) to establish the NSW written-off heavy vehicles register,
- (b) to amend the *Driving Instructors Act 1992*:
  - (i) to include testers and assessors as kinds of driving instructors for the purposes of that Act, and
  - (ii) to make further provisions concerning the eligibility of applicants to apply for driving instructor licences, and
  - (iii) to enable the regulations under that Act to prescribe classes or types of driving instructor licences, and
  - (iv) to make further provisions concerning the grounds for suspending or cancelling driving instructor licences and to enable a caution to be given as an alternative, and
  - (v) to increase the period within which appeals under that Act may be brought, and
  - (vi) to enable the Local Court to make prohibition orders on additional grounds, and
  - (vii) to make further provision concerning the service of documents under that Act,

- (c) to amend the *Point to Point Transport (Taxis and Hire Vehicles) Act 2016*:
  - (i) to allow notifiable occurrences to be prescribed by the regulations alone, and
  - (ii) to allow holders of authorisations and taxi licences to surrender them, and
  - (iii) to enable authorised officers to be accompanied by assistants when entering premises, and
  - (iv) to alter requirements concerning the return of authorisations and taxi number-plates, and
  - (v) to give the Point to Point Transport Commissioner additional powers to obtain information from persons, and
  - (vi) to alter certain notification requirements, and
  - (vii) to alter the limitation period for the commencement of proceedings for offences,
- (d) to make consequential amendments to the *Driving Instructors Regulation 2016*, *Point to Point Transport (Taxis and Hire Vehicles) Regulation 2017* and *Road Transport (General) Regulation 2013*.

## 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.

## Schedule 1 Amendment of Road Transport Act 2013 No 18

### 1.1 Amendment concerning maximum penalty for offences against statutory rule

**Schedule 1.1** increases the current maximum penalty that can be prescribed for an offence against the statutory rules under the *Road Transport Act 2013* from 34 penalty units (currently, \$3,740) to 50 penalty units (currently, \$5,500).

### 1.2 Amendments concerning detection of dimension offences

**Schedule 1.2** provides for the approval and use of traffic enforcement devices (including devices that are camera devices) to detect offences against the *Road Transport Act 2013* or the statutory rules under that Act (or the *Heavy Vehicle National Law (NSW)* or the regulations in force for the purposes of that Law) that involve driving vehicles in contravention of maximum dimension requirements applicable to them.

### 1.3 Amendments concerning written-off heavy vehicles

**Schedule 1.3** inserts a new Part 4.5A dealing with written-off heavy vehicles. The new Part includes the following provisions:

Division 1 defines words and expressions used in Part 4.5A.

Division 2 requires Roads and Maritime Services (**RMS**) to maintain a register of written-off heavy vehicles (called the **NSW written-off heavy vehicles register**).

The Division requires RMS not to register, renew or transfer the registration of any heavy vehicle (or if the vehicle is registered, RMS must cancel the registration of the vehicle) if its vehicle identifier is the same as:

- (a) a statutory written-off heavy vehicle or an interstate written-off heavy vehicle, or
- (b) a written-off heavy vehicle that RMS reasonably believes has suffered non-repairable damage.

Division 3 sets out procedures, notifications and other requirements in connection with the assessment of damage to certain heavy vehicles.

Division 4 contains miscellaneous provisions concerning the issuing of heavy vehicle certificates of compliance by licensed repairers, access to and use of the NSW written-off heavy vehicles register, statutory rules for the purposes of Part 4.5A and certificate evidence.

**Schedule 1.3** also renames the existing NSW written-off vehicles register as the NSW written-off light vehicles register and makes other consequential amendments to the Act.

#### **1.4 Amendment concerning savings and transitional provisions**

**Schedule 1.4** provides for written-off vehicles registered in the current NSW written-off vehicles register to continue to be registered in the renamed NSW written-off light vehicles register.

### **Schedule 2 Amendment of Driving Instructors Act 1992 No 3**

**Schedule 2 [1]** recognises that the primary objects of the *Driving Instructors Act 1992* (the *principal Act*) include ensuring minimum standards of performance for driving instructors.

**Schedule 2 [2]** amends the definition of *driving instructor* to include a person who tests or assesses another person for the purpose of enabling that other person to obtain a driver licence or have it varied. Currently, the definition is limited to a person who instructs another person for the purpose of teaching that other person to drive a motor vehicle. **Schedule 2 [3] and [8]** make consequential amendments.

**Schedule 2 [4]** requires an applicant for a driving instructor licence to either hold a working with children check clearance granted under the *Child Protection (Working with Children) Act 2012* that is applicable to the work to be permitted by the licence or have a current application for such clearance under that Act. However, **Schedule 2 [7]** provides that an applicant will be exempt from this requirement if:

- (a) the applicant would be exempt from a working with children check clearance under the *Child Protection (Working with Children) Act 2012* for the work permitted by the licence, or
- (b) RMS exempts the person (or a class of persons to which the person belongs) from the requirement where the licence to be issued is limited to the instruction of individuals who are 18 years old or older.

**Schedule 2 [5]** provides that an applicant for a driving instructor licence is not eligible to be issued with a licence if the applicant is subject to an interim bar under the *Child Protection (Working with Children) Act 2012*.

**Schedule 2 [6]** prevents RMS from authorising an applicant for a driving instructor licence to undertake a course in driving instruction unless it is satisfied that the applicant is of both good repute and good character.

**Schedule 2 [9]** requires RMS to refuse an application for a driving instructor licence if it is not satisfied that the applicant is of both good repute and good character.

**Schedule 2 [10]** requires RMS to refuse an application for a driving instructor licence if it is of the opinion that it would not be in the public interest for the applicant to hold a licence having regard to the applicant's record of offences (within the State or elsewhere) involving motor vehicles. Currently, RMS can only take into account convictions for offences.

**Schedule 2 [11]** enables RMS to refuse an application for a driving instructor licence if:

- (a) the applicant has been found guilty of an offence (within the State or elsewhere) or is charged with an offence (within the State or elsewhere), and
- (b) RMS is satisfied that granting the application would be inconsistent with any of the primary objects of the principal Act.

**Schedule 2 [12]** makes it clear that RMS may refuse an application for a driving instructor licence if the holder has engaged in misconduct regardless of whether it was an offence.

**Schedule 2 [13]** removes a power for RMS to limit a driving instructor licence to classes of vehicles by using the licence conditions. **Schedule 2 [25]** makes a consequential amendment to enable the regulations to prescribe types or classes of licences.

**Schedule 2 [14]** enables RMS to suspend or cancel a driving instructor licence if the holder has been found guilty of, or has charges pending before a court for, an offence (within the State or elsewhere) and RMS is satisfied that suspending or cancelling the licence will promote one or more of the primary objects of the principal Act. **Schedule 2 [15]** makes a consequential amendment.

**Schedule 2 [16]** makes it clear that RMS may suspend or cancel a driving instructor licence if the holder has engaged in misconduct regardless of whether it was an offence.

**Schedule 2 [17]** enables RMS to suspend or cancel a driving instructor licence if:

- (a) the holder of the licence does not hold a working with children check clearance under the *Child Protection (Working with Children) Act 2012* or does not have a current application for such clearance under that Act, or
- (b) RMS is satisfied that the holder of the licence is not a person of good repute or good character, or
- (c) RMS is satisfied that the holder of the licence is not a fit and proper person to act as a driving instructor, or
- (d) RMS has reason to believe that the holder of the licence has engaged in bribery or fraud relating to the testing of applicants for driver licences under the *Road Transport Act 2013* or former *Road Transport (Driver Licensing) Act 1998* (or corresponding licences under the law in any other State, or in any Territory or country) or the issue of those licences, or
- (e) having regard to the objects of the principal Act, RMS is of the opinion that the holder of the licence is a person who no longer displays the competencies, or is no longer suitable, to act as a driving instructor, or
- (f) RMS is of the opinion that it would not be in the public interest for the holder of the licence to continue to hold a licence having regard to his or her record of offences (within the State or elsewhere) involving motor vehicles.

**Schedule 2 [18]** enables RMS to issue a caution instead of suspending or cancelling a driving instructor licence.

**Schedule 2 [19]** makes a consequential amendment to remove a provision that currently requires RMS to cancel a driving instructor licence on some of the discretionary grounds inserted by Schedule 2 [17].

**Schedule 2 [20]** extends from 21 days to 28 days the period within which an appeal against certain licensing decisions of RMS can be commenced in the Local Court after a decision is notified.

**Schedule 2 [21]** extends the power of the Local Court to make a prohibition order against a person (that is, an order prohibiting a person from conducting a driving school or engaging in the control, management or administration of a driving school) so that the order can be made if:

- (a) the Local Court is satisfied that the person is conducting a driving school or engaging in the control, management or administration of a driving school, and
- (b) the person has been found guilty of an offence (within the State or elsewhere), and
- (c) the Local Court is satisfied that the making of the order will promote one or more of the primary objects of the principal Act.

**Schedule 2 [22]** extends from 21 days to 28 days the period within which an appeal against a decision of the Local Court to make or vary a prohibition order can be commenced in the Supreme Court after the order is made or varied. **Schedule 2 [23]** makes consequential amendments.

**Schedule 2 [24]** replaces a provision concerning service of documents for the purposes of the principal Act with the current standard provision used in Acts.

**Schedule 2 [26]** enables the Governor to make regulations of a savings or transitional nature consequent on the enactment of any other Act that amends the principal Act (including the proposed Act).

**Schedule 2 [27]** replaces an outdated reference to regulations being published in the Gazette with a reference to regulations being published on the NSW legislation website.

**Schedule 2 [28]** contains savings and transitional provisions consequent on the amendments made to the principal Act.

## **Schedule 3      Amendment of Point to Point Transport (Taxis and Hire Vehicles) Act 2016 No 34**

**Schedule 3 [1]** inserts the standard definition of *function*.

**Schedule 3 [2]** limits notifiable occurrences that must be reported to the Point to Point Transport Commissioner to accidents or incidents of a kind prescribed by the regulations.

**Schedule 3 [3] and [5]** enable holders of authorisations and taxi licences to surrender them. **Schedule 3 [11]** makes a consequential amendment.

**Schedule 3 [4]** requires the person who facilitates the provision of the taxi service for a taxi licence to be notified by a person who leases or subleases a taxi licence to, or enters into an arrangement to confer the benefit of a taxi licence on, another person. Currently, the requirement is to notify the Point to Point Transport Commissioner.

**Schedule 3 [6]** enables a person, including an interpreter, to accompany an authorised officer entering a premises under Part 7 to assist the authorised officer if the authorised officer considers the assistance is necessary.

**Schedule 3 [7]** removes a requirement for a person to whom an authorisation or taxi licence was granted to immediately return it to the Point to Point Transport Commissioner if the authorisation or licence is suspended or cancelled or otherwise ceases to be in force.

**Schedule 3 [8]** alters a requirement to return number-plates for a taxi so that they have to be returned to RMS instead of the Point to Point Transport Commissioner or the Commissioner of Police.

**Schedule 3 [9]** alters the limitation period for offences against the Act, from not later than 2 years after the date the alleged offence was committed, to 2 years after the offence first comes to the notice of the Point to Point Transport Commissioner.

**Schedule 3 [10]** confers new powers on the Point to Point Transport Commissioner to obtain information from persons for compliance and enforcement purposes. These powers are similar to the powers of the Regulator under section 155 of the *Work Health and Safety Act 2011*.

## **Schedule 4      Consequential amendments**

### **4.1      Driving Instructors Regulation 2016**

**Schedule 4.1 [1]** exempts an employee or a contractor of RMS or Service NSW who assesses or tests a person for the purposes of enabling that person to obtain or vary a driver licence from being a driving instructor who requires a licence.

**Schedule 4.1 [2]** allows service of documents at an electronic address (other than an email address) specified by the person being served of a kind approved by RMS for documents of the kind concerned. The provision is inserted for the purposes of section 58 of the *Driving Instructors Act 1992* (as substituted by Schedule 2).

#### **4.2 Point to Point Transport (Taxis and Hire Vehicles) Regulation 2017**

**Schedule 4.2** makes an amendment that is consequential on the substitution of section 24 (2) of the *Point to Point Transport (Taxis and Hire Vehicles) Act 2016* by Schedule 3.

#### **4.3 Road Transport (General) Regulation 2013**

**Schedule 4.3** prescribes a testing method and inspection period for approved traffic enforcement devices that are approved for dimension measurement for the purposes of proposed section 137A (b) of the *Road Transport Act 2013* to be inserted by Schedule 1.2.