



New South Wales

# Road Transport Legislation Amendment (Penalties and Other Sanctions) Bill 2018

## Explanatory note

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

## Overview of Bill

The objects of this Bill are:

- (a) to allow for the issue of penalty notices in respect of certain alcohol and other drug related driving offences, while maintaining other relevant sanctions (including licence suspensions) in respect of those offences, and
- (b) to ensure that certain offences that are dealt with by way of penalty notice are included for the purposes of determining whether a new offence is a second or subsequent offence, and
- (c) to increase the maximum penalties for certain alcohol and other drug related driving offences, and
- (d) to permit Roads and Maritime Services (*RMS*) to require persons convicted of certain alcohol and other drug related driving offences to undertake education programs and to suspend or cancel any licence held by an offender until the offender has completed the program, and
- (e) to expand the definition of *drug* to include substances that can impair, or deprive a person of, normal mental or physical faculties, and
- (f) to create an offence for conduct that results in damage, disruption or obstruction and certain other conduct on the Sydney Harbour Bridge and other major bridges and tunnels.

## 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.

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

**Schedule 1 [1]** defines *alcohol or other drug related driving offence* to be an offence that involves the presence of alcohol in a person's breath or blood or the presence of a drug (other than alcohol) in a person's oral fluid, blood or urine and that is prescribed by the statutory rules.

**Schedule 1 [2]** gives effect to the object set out in paragraph (e) of the Overview above.

**Schedule 1 [3]** makes it clear that an offence is, for the purposes of the *Road Transport Act 2013*, taken to have been dealt with by way of penalty notice if the whole or any part of the amount specified in the notice has been paid or the time within which the accused person may elect to have the matter dealt with by the court has lapsed. **Schedule 2.1 [1]** makes a consequential amendment.

**Schedule 1 [4]** ensures that alcohol and other drug related driving offences that are dealt with by way of penalty notice are considered when determining whether a new conviction is for a second or subsequent offence. **Schedule 1 [5]** makes a consequential amendment.

**Schedule 1 [6] and [7]** allow RMS to cancel or suspend, for up to 3 months, the driver licence of a person who has committed an alcohol or other drug related driving offence that was dealt with by way of penalty notice.

**Schedule 1 [8]** increases the monetary penalties for novice range, special range and low range prescribed concentration of alcohol offences and offences relating to the presence of a drug (other than alcohol) in a person's oral fluid, blood or urine.

**Schedule 1 [9]** provides that the disqualification period applicable to a person convicted of a major offence is the period specified for a second or subsequent offence if, in the period of 5 years before the conviction, the person committed a major offence and that was dealt with by way of penalty notice.

**Schedule 1 [10]–[13]** extend the mandatory alcohol interlock program to include all middle range prescribed concentration of alcohol offences and offences for the use or attempted use of a vehicle under the influence of alcohol or any other drug. Currently, only second or subsequent offences are covered by that program.

**Schedule 1 [14]** gives effect to the object set out in paragraph (d) of the Overview above. **Schedule 1 [19] and [20]** make consequential amendments.

**Schedule 1 [15]–[17]** allow for the issue of immediate licence suspension notices by police officers where a driver has committed an offence relating to novice range, special range or low range prescribed concentration of alcohol.

**Schedule 1 [18]** allows for the imposition of sanctions in relation to a vehicle used in the commission of a middle range or high range prescribed concentration of alcohol offence or an offence of refusing to submit to a test or provide a sample if the person has, in the 5 years before the offence, been convicted of an alcohol-related major offence.

## **Schedule 2      Amendment of other legislation**

**Schedule 2.1** amends the *Point to Point Transport (Taxis and Hire Vehicles) Regulation 2017* to provide that a person is prohibited from driving a taxi or hire vehicle if the person committed a special range prescribed concentration of alcohol offence or a drug related driving offence and the offence is dealt with by way of a penalty notice. Prior to the amendment of the *Road Transport (General) Regulation 2013* by the proposed Act, penalty notices could not be issued in relation to those offences.

Additionally, that Schedule provides that a low range prescribed concentration of alcohol offence that is dealt with by way of penalty notice is to be considered when determining whether an offence is a second or subsequent offence.

**Schedule 2.2 and 2.3 [1]** amend the *Road Transport (Driver Licensing) Regulation 2017* and the *Road Transport (General) Regulation 2013*, respectively, consequent on the amendments made by the proposed Act relating to the suspension of driver licences and extension of provisional licence periods for offences that are dealt with by way of penalty notice.

**Schedule 2.3 [2]** amends the *Road Transport (General) Regulation 2013* to allow for the issue of penalty notices in respect of novice range, special range and low range prescribed concentration of alcohol offences and drug related driving offences (but only for a first offence).

**Schedule 2.4** amends the *Roads Act 1993* to give effect to the object set out in paragraph (f) of the Overview above.



New South Wales

# Road Transport Legislation Amendment (Penalties and Other Sanctions) Bill 2018

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New South Wales

# Road Transport Legislation Amendment (Penalties and Other Sanctions) Bill 2018

No. , 2018

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## **A Bill for**

An Act to amend the *Road Transport Act 2013*, *Roads Act 1993* and other roads legislation to make further provision with respect to the enforcement of that legislation; and for other purposes.

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**The Legislature of New South Wales enacts:**

1

**1 Name of Act**

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This Act is the *Road Transport Legislation Amendment (Penalties and Other Sanctions) Act 2018*.

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4

**2 Commencement**

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This Act commences on a day or days to be appointed by proclamation.

6

<b>Schedule 1</b>	<b>Amendment of Road Transport Act 2013 No 18</b>	1
<b>[1] Section 4 Definitions</b>		2
Insert in alphabetical order in section 4 (1):		3
<i>alcohol or other drug related driving offence</i> means an offence that:		4
(a) involves the presence of alcohol in a person’s breath or blood or the presence of a drug (other than alcohol) in a person’s oral fluid, blood or urine, and		5 6 7
(b) is prescribed by the statutory rules.		8
<b>[2] Section 4 (1), definition of “drug”</b>		9
Insert at the end of paragraph (c):		10
, and		11
(d) any other substance that, when taken by an ordinary person, may deprive the person of, or impair, his or her normal mental or physical faculties (whether temporarily or permanently).		12 13 14
<b>[3] Section 4 (5)</b>		15
Insert after section 4 (4) including the note:		16
(5) For the purposes of this Act, an offence is taken to have been <i>dealt with by way of penalty notice</i> if a penalty notice has been issued for the offence and:		17 18
(a) the whole or any part of the penalty specified in the notice has been paid, or		19 20
(b) the penalty specified in the notice has not been paid, the person to whom it was issued has not elected to have the matter dealt with by a court and the time for the person to have the matter so dealt with has lapsed.		21 22 23
<b>[4] Section 9 Determination of “first offence” and “second or subsequent offence”</b>		24
Insert after section 9 (2):		25
(2A) <b>Second or subsequent offence where previous offence dealt with by way of penalty notice</b>		26 27
If a person is convicted of an offence against this Act (the <i>new offence</i> ), that offence is a <i>second or subsequent offence</i> if:		28 29
(a) within the period of 5 years immediately before being convicted of the new offence, the person committed an alcohol or other drug related driving offence (the <i>previous offence</i> ), and		30 31 32
(b) that previous offence:		33
(i) was against the same provision as, or was an equivalent offence to, the new offence, and		34 35
(ii) was dealt with by way of penalty notice, and		36
(c) the occasion when the new offence occurred was different from the occasion when the previous offence occurred.		37 38
<b>[5] Section 9 (5)</b>		39
Insert “or (2A) (b) (i)” after “subsection (2) (a) (iii)”.		40

<b>[6]</b>	<b>Section 59 Cancellation or suspension of driver licence for certain speeding offences or alcohol or other drug related driving offences</b>	1
	Insert “or alleged alcohol or other drug related driving offence” after “speeding offence” in section 59 (1).	2 3 4
<b>[7]</b>	<b>Section 59 (4A)</b>	5
	Insert after section 59 (4):	6
	(4A) For the purposes of subsection (4), a period not exceeding 3 months may be specified in relation to an alleged alcohol or other drug related driving offence.	7 8
<b>[8]</b>	<b>Sections 110 (1)–(3) and 111 (1) and (3)</b>	9
	Omit “10 penalty units” and “20 penalty units” wherever occurring.	10
	Insert instead “20 penalty units” and “30 penalty units”, respectively.	11
<b>[9]</b>	<b>Section 205 Disqualification for certain major offences</b>	12
	Insert “or committed a major offence during that period that was dealt with by way of penalty notice” before “(whether of the same or a different kind)” in section 205 (2) and (3).	13 14
<b>[10]</b>	<b>Section 209 Definitions</b>	15
	Omit “that is a second” wherever occurring in paragraphs (d) and (f) of the definition of <i>mandatory interlock offence</i> in section 209 (1).	16 17
	Insert instead “that is a first offence or a second”.	18
<b>[11]</b>	<b>Section 209 (1), definition of “mandatory interlock offence”, note</b>	19
	Omit the note. Insert instead:	20
	<b>Note.</b> Section 9 (2) and (2A) specify the circumstances in which an offence is a second or subsequent offence (including instances in which the first offence was dealt with by way of penalty notice).	21 22 23
<b>[12]</b>	<b>Section 211 Mandatory interlock orders</b>	24
	Insert after the matter relating to an offence against section 110 (1) (a) or (b), (2) (a), (b) or (c) or (3) (a), (b) or (c) in the Table to the section:	25 26
	An offence against section 110 (4) (a), (b) or (c) that is a first offence by the offender for any other alcohol-related major offence	3 months      6 months      12 months
<b>[13]</b>	<b>Section 211, Table</b>	27
	Omit the matter relating to an offence against section 112 (1) (a), (b) or (c).	28
	Insert instead:	29
	An offence against section 112 (1) (a), (b) or (c) that is a first offence by the offender for any other alcohol-related major offence	6 months      9 months      24 months
	An offence against section 112 (1) (a), (b) or (c) that is a second or subsequent offence by the offender for any other alcohol-related major offence	9 months      12 months      48 months



<b>[14] Part 7.4, Division 2A</b>	1
Insert after Division 2:	2
<b>Division 2A Driver education programs relating to alcohol or other drugs</b>	3
	4
<b>215C Education program for alcohol and other drug related driving offences</b>	5
(1) The Authority may, by notice in writing, require a person to undertake an alcohol or other drug education program specified in the notice if the person:	6
(a) has been found guilty of an offence against section 110, 111 or 112, or	7
(b) committed an offence against section 110 or 111 that was dealt with by way of penalty notice.	8
(2) A notice under this section must specify the period within which the alcohol or other drug education program must be undertaken and must contain any other matters specified in the statutory rules.	9
(3) The person to whom a notice is given under this section must undertake the program within the period specified by the notice or any longer period that the Authority may allow.	10
(4) Any period of licence suspension, cancellation or other licence ineligibility relating to a person required to undertake an alcohol or other drug education program by a notice given under this section is extended until such time as the person has undertaken, and passed to the satisfaction of the Authority, the alcohol or other drug education program.	11
(5) The Authority may, by notice in writing given to a person who fails to undertake an alcohol or other drug education program in accordance with this section, suspend any driver licence held by the person until such time as the person undertakes the program to the satisfaction of the Authority.	12
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<b>[15] Section 224 When immediate licence suspension notice may be issued by police officer</b>	26
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Insert after section 224 (1) (a):	28
(a1) if it appears to a police officer (whether or not the same police officer) that the driver has committed an offence against section 110 (1), (2) or (3),	29
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	31
<b>[16] Section 224 (4) (a) and (b)</b>	32
Insert “(a1),” after “(a),” wherever occurring.	33
<b>[17] Section 224 (4) (b1) and (b2)</b>	34
Insert after section 224 (4) (b):	35
(b1) if the driver holds a driver licence issued in this jurisdiction and is served with a penalty notice for an offence referred to in subsection (1) (a1)—a statement to the effect that any driver licence held by the person is suspended from a date specified in the notice, or (if the notice so specifies) immediately on receipt of the notice, until whichever of the following happens first:	36
(i) a period of 3 months elapses after the date on which the offence is alleged to have been committed,	37
(ii) if the driver elects to have the matter determined by a court in accordance with Part 3 of the <i>Fines Act 1996</i> —the matter is heard	38
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	and determined by a court or a decision is made not to take or continue proceedings against the person,	1 2
	(iii) a decision is made not to enforce the penalty notice,	3
(b2)	if the driver is an authorised visiting driver and is served with a penalty notice for an offence referred to in subsection (1) (a1)—a statement to the effect that the driver’s authority to drive in this jurisdiction is suspended from a date specified in the notice, or (if the notice so specifies) immediately on receipt of the notice, until whichever of the following happens first:	4 5 6 7 8 9
	(i) a period of 3 months elapses after the date on which the offence is alleged to have been committed,	10 11
	(ii) if the driver elects to have the matter determined by a court in accordance with Part 3 of the <i>Fines Act 1996</i> —the matter is heard and determined by a court or a decision is made not to take or continue proceedings against the person,	12 13 14 15
	(iii) a decision is made not to enforce the penalty notice,	16
<b>[18]</b>	<b>Section 237 Definitions</b>	17
	Insert after paragraph (a) of the definition of <i>sanctionable offence</i> in section 237 (1):	18
	(a1) an offence against section 110 (4) or (5) or clause 16 (1) (b) or 17 (1) (a1) of Schedule 3 (a <i>new offence</i> ), but only if the person has been convicted of an alcohol-related major offence (within the meaning of Division 2 of Part 7.4) during the period of 5 years before the new offence was committed,	19 20 21 22 23
<b>[19]</b>	<b>Section 266 Definitions</b>	24
	Insert after paragraph (e) of the definition of <i>appealable decision</i> in section 266 (1):	25
	(e1) a decision of the Authority to suspend a person’s driver licence under section 215C,	26 27
<b>[20]</b>	<b>Schedule 1 Examples of statutory rule-making powers</b>	28
	Insert at the end of clause 1 (2) (p):	29
	, and	30
	(q) without limiting paragraph (n) or (o), alcohol or other drug education programs to be undertaken by holders of driver licences who have been found guilty of, or have been issued a penalty notice in respect of, an offence under this Act or the statutory rules relating to the use of alcohol or other drugs.	31 32 33 34 35

<b>Schedule 2</b>	<b>Amendment of other legislation</b>	1
<b>2.1</b>	<b>Point to Point Transport (Taxis and Hire Vehicles) Regulation 2017</b>	2
<b>[1]</b>	<b>Clause 24 Disqualifying offences</b>	3
	Insert “whether the previous offence resulted in a finding of guilt or was dealt with by way of penalty notice as referred to in section 4 (5) of that Act” after “a previous offence under that subsection” in clause 24 (3).	4 5 6
<b>[2]</b>	<b>Clause 24 (4A)</b>	7
	Insert after clause 24 (4):	8
	(4A) A person must not drive a taxi or hire vehicle that is being used to provide a passenger service if the person has committed an offence against section 110 (2) or 111 (1) of the <i>Road Transport Act 2013</i> that has been dealt with by way of penalty notice as referred to in section 4 (5) of that Act.	9 10 11 12
<b>2.2</b>	<b>Road Transport (Driver Licensing) Regulation 2017</b>	13
<b>[1]</b>	<b>Clause 35A Authority may extend provisional licence period for provisional P2 licences</b>	14 15
	Omit “section 224 (1) (c)” from clause 35A (1) (c).	16
	Insert instead “section 224 (1) (a1) or (c)”.	17
<b>[2]</b>	<b>Clause 67A</b>	18
	Insert after clause 67:	19
	<b>67A Prescribed alcohol or other drug related driving offences</b>	20
	For the purposes of the definition of <i>alcohol or other drug related driving offence</i> in section 4 (1) of the Act, offences against section 110 (1), (2) or (3) or 111 (1) of the Act are prescribed.	21 22 23
<b>[3]</b>	<b>Clause 96 Interstate and international visitors</b>	24
	Insert after clause 96 (4) (n):	25
	(o) if, in the reasonable opinion of the Authority, the Authority could, under section 59 of the Act, suspend a NSW driver licence held by the visiting driver, if the driver were to hold such a licence, because of an alcohol or other drug related driving offence.	26 27 28 29
<b>[4]</b>	<b>Clause 96 (7A)</b>	30
	Insert after clause 96 (7):	31
	(7A) If the Authority forms an opinion that subclause (4) (o) applies to a visiting driver, the cessation of the exemption applies for the same period of time the driver would be suspended under section 59 of the Act if the driver held a NSW driver licence.	32 33 34 35
<b>[5]</b>	<b>Clause 96 (9)</b>	36
	Omit “(j) or (n)”. Insert instead “(j), (n) or (o)”.	37

<b>2.3 Road Transport (General) Regulation 2013</b>	1
<b>[1] Clause 126 Driver licensing decisions</b>	2
Omit “clause 96 (4) (g), (h) or (i)” from clause 126 (d).	3
Insert instead “clause 96 (4) (g), (h), (i) or (o)”.	4
<b>[2] Schedule 5 Penalty notice offences</b>	5
Insert in appropriate order under the heading <i>Road Transport Act 2013</i> :	6
Section 110 (1)–(3) (but only if the person has not been issued a penalty notice for an alcohol or other drug related driving offence, or convicted of the same or an equivalent offence, in the 5 years before the offence)	Class 1 Level 7
Section 111 (1) (but only if the person has not been issued a penalty notice for an alcohol or other drug related driving offence, or convicted of the same or an equivalent offence, in the 5 years before the offence)	Class 1 Level 7
<b>2.4 Roads Act 1993 No 33</b>	7
<b>Part 9, Division 7</b>	8
Insert after Division 6:	9
<b>Division 7 Trespassing on Sydney Harbour Bridge and other major bridges and tunnels</b>	10 11
<b>144G Damage, disruption or obstruction of Sydney Harbour Bridge and other major bridges and tunnels</b>	12 13
(1) A person must not enter, remain on, climb, jump from or otherwise trespass on any part of the Sydney Harbour Bridge or any other major bridge or tunnel if that conduct:	14 15 16
(a) causes damage to the bridge or tunnel, or	17
(b) seriously disrupts or obstructs vehicles or pedestrians attempting to use the bridge or tunnel, or	18 19
(c) is an offence punishable by imprisonment or is an offence arising under the <i>Summary Offences Act 1988</i> .	20 21
Maximum penalty: 200 penalty units or imprisonment for 2 years, or both.	22
(2) Without limiting subsection (1) (b), a person seriously disrupts or obstructs vehicles or pedestrians attempting to use the bridge or tunnel if, as a result of the person’s conduct, the bridge or tunnel (or any part of the bridge or tunnel) is closed or vehicles or pedestrians are redirected.	23 24 25 26
(3) Nothing in this section prohibits conduct in accordance with the consent or authority of RMS, the NSW Police Force or other public authority.	27 28
(4) It is a defence to the prosecution of an offence against this section if the person charged proves that the person had a reasonable excuse for the conduct concerned.	29 30 31
(5) For the purposes of subsection (4) but without limiting that subsection, a person has a reasonable excuse if the conduct arose from a mechanical fault or breakdown of a motor vehicle.	32 33 34

- (6) In this section: 1
- major bridge or tunnel* means a bridge or tunnel prescribed by the regulations 2  
for the purposes of this section. 3
- vehicle* includes a train. 4