

Passed by both Houses



New South Wales

Road Transport Amendment (Digital Licensing) Bill 2020

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I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney,*

, 2020



New South Wales

Road Transport Amendment (Digital Licensing) Bill 2020

Act No _____, 2020

An Act to amend the *Road Transport Act 2013* to provide for the further use of digital driver licences; to amend the *Licensing and Registration (Uniform Procedures) Act 2002* to provide for the use and sharing of information by licensing authorities; and for related purposes.

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts—

1 Name of Act

This Act is the *Road Transport Amendment (Digital Licensing) Act 2020*.

2 Commencement

This Act commences on the date of assent to this Act.

Schedule 1 Amendment of Road Transport Act 2013 No 18

[1] Section 4 Definitions

Omit the definition of *driver licence* from section 4(1). Insert in alphabetical order—

driver licence means a document, including an electronic document, issued in accordance with this Act or the regulations, demonstrating that a person has been authorised to drive one or more classes of motor vehicle on a road or road related area.

use of a digital driver licence means displaying the digital driver licence, in accordance with section 61C, to a person for a purpose, including for one of the following purposes—

- (a) demonstrating that a person is the holder of a driver licence,
- (b) providing evidence or proof of the licence holder's age, address or identity,
- (c) satisfying a requirement under this Act, or another Act or law, to hold, produce or display, however described, a driver licence.

[2] Section 56 Purposes for which photographs may be kept and used

Omit "photo-access arrangements" from section 56(1)(d).

Insert instead "information-access arrangements".

[3] Section 57 Release of photographs prohibited

Omit "photo-access arrangements" from section 57(1)(f).

Insert instead "information-access arrangements".

[4] Section 61A Definitions

Omit "evidence of the issue of a driver licence using information (including a photograph) from the NSW driver licence register relating to the holder of a driver licence" from the definition of *digital driver licence*.

Insert instead "an electronic document demonstrating that a person has been authorised to drive one or more classes of motor vehicle on a road or road related area".

[5] Section 61A, definition of "relevant purpose"

Omit the definition.

[6] Section 61C Use of digital driver licence

Omit section 61C(1)–(3). Insert instead—

- (1) The holder of a digital driver licence may use the digital driver licence by displaying it on a mobile phone or other electronic device in accordance with this section.
- (2) For the avoidance of doubt, a person who displays a digital driver licence in accordance with this section for the purpose of satisfying a requirement under this Act, or another Act or law, to hold, produce or display, however described, a driver licence to another person is taken to have satisfied that requirement.

[7] Section 61E Release of information for digital driver licences

Omit "to the Secretary or the Chief Executive Officer of Service NSW if the release of information is for the purpose of the issue of a digital driver licence".

Insert instead—

if the release of information is for the purpose of—

- (a) the issue of a digital driver licence, or
- (b) the use of a digital driver licence, or
- (c) verifying the authenticity of a digital driver licence.

[8] Section 278A

Insert after section 278—

278A References to holder of driver licence in other Acts or laws

- (1) For the avoidance of doubt, a reference in an Act or law to the holder of a driver licence, however described, is a reference to a person who has been issued, in accordance with this Act or the regulations, a driver licence.
- (2) A person ceases to be the holder of a driver licence if the licence expires, and is not renewed, or the person is required to surrender the driver licence.

[9] Schedule 1 Examples of statutory rule-making powers

Insert after clause 1(2)(f)—

- (fa) the use of a digital driver licence, including prescribing circumstances in which a digital driver licence must not be used, and

Schedule 2 Amendment of Licensing and Registration (Uniform Procedures) Act 2002 No 28

[1] Part 4A

Omit the Part. Insert instead—

Part 4A Retention, use and protection of information

Division 1 Preliminary

80A Application of Part

This Part applies to information, including photographs, obtained by a licensing authority in connection with—

- (a) an application for the issue of a licence, or
- (b) a licence issued by the authority.

80B Definitions

In this Part—

information means information, including photographs, obtained from an applicant in connection with an application for a licence made by the applicant or from the holder of a licence in connection with the licence.

information-access arrangement—see section 80C(1).

issue, in relation to a licence, includes grant or renew.

licence means a licence, registration, permit or other authorisation issued under an Act or other statutory instrument.

licensing authority means a person or body authorised under an Act or statutory instrument to grant a licence.

relevant criminal proceedings means—

- (a) criminal proceedings under the legislation under which an application for a licence is made or a licence is issued, or
- (b) proceedings under Part 5, Division 3 of the *Crimes Act 1900* in relation to a licence.

service provider—see section 80C(1)(b).

Division 2 Information-access arrangements

80C Arrangements for provision of information in connection with licences

- (1) A licensing authority may enter into the following arrangements (**information-access arrangements**) to facilitate the provision or sharing of information to which this Part applies—
 - (a) arrangements with another licensing authority for the provision or sharing of information as a means of compliance with a lawful requirement that an applicant provide information in connection with an application for a licence,
 - (b) arrangements with a person or body (a **service provider**) for the provision by the service provider of information services in connection with the arrangements referred to in paragraph (a), being services relating to the collection, processing, disclosure or use of, or provision of access to, information.

- (2) A licensing authority may only provide or share information under an information-access arrangement if—
 - (a) the information was obtained by the licensing authority from an applicant in connection with an application for the issue of a licence or from the holder of a licence in connection with the licence held, and
 - (b) the applicant consented to the sharing of the information under information-access arrangements.
- (3) A licensing authority may only request information under an information-access arrangement in respect of an applicant for the issue of a licence if the licensing authority has obtained the consent of the applicant to collect the information under an information-access arrangement.
- (4) Despite subsection (2), a licensing authority may provide or share information under an information-access arrangement without the consent of the applicant for a purpose referred to in section 80I(1)(d) or (e).

80D What information-access arrangements can provide for

Without limiting the matters that may be provided for in information-access arrangements, the arrangements may include provision for or with respect to the following—

- (a) authorising a licensing authority to take, store, use and provide information for the purposes of the arrangements, including information already held by the licensing authority in the exercise of any other functions of the licensing authority,
- (b) authorising the collection of information by a licensing authority for use in connection with applications, including information to assist the licensing authority to identify applicants,
- (c) authorising the disclosure by a licensing authority to another licensing authority of information held by the licensing authority for the purpose of assisting in verifying the identity of an applicant,
- (d) providing for the exercise by a service provider for or on behalf of a licensing authority of any functions of the licensing authority under the arrangements,
- (e) providing for the sharing of information to update and maintain consistent records between licensing authorities,
- (f) the fees to be paid by a licensing authority or applicant for or in connection with services provided by another licensing authority under the arrangements.

80E Functions for purposes of information-access arrangements

- (1) Licensing authorities and service providers are authorised to enter into the information-access arrangements under this Part.
- (2) Licensing authorities and service providers have and may exercise the functions conferred or imposed on them by or under the information-access arrangements.
- (3) Licensing authorities are authorised to charge and recover any fees that the information-access arrangements provide are payable to a licensing authority.
- (4) This section does not limit any power of a licensing authority to charge or recover a fee under another Act or otherwise.

80F Licensing authorities required to accept photographs provided under information-access arrangements

- (1) A photograph of an applicant provided under information-access arrangements is to be accepted by a licensing authority as having been provided by the applicant, unless the licensing authority is permitted under the arrangements to reject the photograph.
- (2) A licensing authority may reject a photograph provided under an information-access arrangement, but only in the following circumstances—
 - (a) the photograph is not a sufficiently recent photograph, having regard to the need for the photograph to be adequate for use as a means of identification until the end of the period of currency of the licence or certificate of registration concerned,
 - (b) the image quality or other technical qualities of the photograph are not adequate, having regard to any special aspects of the purpose for which the photograph is to be used,
 - (c) the circumstances prescribed by the regulations as justifying the rejection of the photograph by a licensing authority.

Division 3 Security and protection of photographs

80G Photographs to which Division applies

This Division applies to photographs held by a licensing authority or service provider that were—

- (a) taken by the authority or service provider and are subject to information-access arrangements, or
- (b) provided to the authority or service provider under an information-access arrangement.

80H Keeping and use of photographs

- (1) A photograph to which this Division applies may be kept and used by a licensing authority or service provider for one or more of the following purposes only—
 - (a) to assist a licensing authority to verify the identity of a person whose photograph is taken or provided by another licensing authority under information-access arrangements or to assist another licensing authority to verify the identity of an applicant,
 - (b) to facilitate reproducing the likeness of a person on a licence in connection with which the photograph was taken or provided,
 - (c) the exercise of any function conferred or imposed by or under the information-access arrangements,
 - (d) a purpose that is reasonably necessary for the proper exercise of any of the investigative functions of the licensing authority or its conduct of any lawful investigation,
 - (e) for an investigation relating to or leading to relevant criminal proceedings or for the conduct of relevant criminal proceedings,
 - (f) for a photograph to which Part 4 of the *Photo Card Act 2005* applies— a purpose for which the photograph may be kept and used by Transport for NSW under that Part,

- (g) for a photograph to which Part 3.5 of the *Road Transport Act 2013* applies—a purpose for which the photograph may be kept and used under that Part by the Authority within the meaning of that Act.
- (2) The photograph may be used for a purpose set out in this section at the time that the photograph was obtained or at a later time.

80I Release of photographs

- (1) A licensing authority or service provider must ensure that a photograph to which this Division applies is not released except—
 - (a) in the exercise of any function conferred or imposed by or under the information-access arrangements, or
 - (b) for a purpose that is reasonably necessary for the proper exercise of an investigative function of the authority or service provider or its conduct of a lawful investigation, or
 - (c) for an investigation relating to or leading to relevant criminal proceedings or for the conduct of relevant criminal proceedings, or
 - (d) as provided under any other law, or
 - (e) to the person whose likeness is shown in the photograph, or
 - (f) as authorised or required under Part 4 of the *Photo Card Act 2005* in respect of the release of photographs to which that Part applies, or
 - (g) as authorised or required under Part 3.5 of the *Road Transport Act 2013* in respect of the release of photographs to which that Part applies.
- (2) If the Privacy Commissioner has approved a protocol that is applicable to the release of a photograph under subsection (1)(b) or (c), the photograph must not be released otherwise than in accordance with the protocol.

Division 4 Miscellaneous

80J Access to and alteration of information

- (1) Sections 14 and 15 of the *Privacy and Personal Information Protection Act 1998* do not apply to a licensing authority or service provider in respect of information obtained under an information-access arrangement, except as provided by this section.

Note. Sections 14 and 15 continue to apply in respect of a licensing authority or service provider in respect of information and photographs obtained directly from an applicant in connection with an application.
- (2) If an individual makes a request of a licensing authority under section 14 of the *Privacy and Personal Information Protection Act 1998* and the licensing authority obtained information about the individual under an information-access arrangement, the licensing authority is to—
 - (a) provide the individual with the information in accordance with that section, and
 - (b) specify the licensing authority or service provider from which the information was obtained.
- (3) If an individual makes a request of a licensing authority under section 15 of the *Privacy and Personal Information Protection Act 1998* and the licensing authority obtained information about the individual under an information-access arrangement, the licensing authority is to—
 - (a) forward the request to the licensing authority or service provider from which the information was obtained, and

- (b) notify the individual of the licensing authority or service provider to whom the request has been forwarded.

80K Application of privacy principles to private sector service providers

In the case of a service provider that is not a public sector agency under the *Privacy and Personal Information Protection Act 1998*, a licensing authority is not to enter into information-access arrangements with the service provider unless satisfied that the arrangements make appropriate provision for compliance by the service provider, in connection with its functions under the arrangements, with—

- (a) sections 80H and 80I, and
- (b) the information protection principles under the *Privacy and Personal Information Protection Act 1998* that would be applicable to the service provider if the service provider were a public sector agency under that Act.

[2] Section 84

Insert after section 83—

84 Regulations

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

[3] Schedule 3A Licences and registration to which Part 4A of Act applies

Omit the Schedule.