

Road Transport Legislation (Speed Limiters) Amendment Bill 2004
New South Wales

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 (Safety and Traffic Management) Act 1999* (the **Principal Act**) and a regulation made under that Act to make further provision with respect to compliance with, and enforcement of, requirements for the speed limiting of heavy vehicles.

At present, the responsible person for a vehicle to which Part 11 of the *Road Transport (Safety and Traffic Management) (Road Rules) Regulation 1999* applies is guilty of an offence punishable by a maximum penalty of 20 penalty units (\$2,200) if the responsible person causes, permits or allows the heavy vehicle to be used unless the speed at which the vehicle is capable of being driven is limited, in the manner prescribed by the regulations, to not more than 100 km/h.

The proposed amendments transfer this offence provision, with modifications, to the Principal Act. Under the new offence provision, the responsible person will be guilty of an offence, punishable by a maximum of 30 penalty units (\$3,300) in the case of an individual or 150 penalty units (\$16,500) in the case of a corporation, if the speed of the vehicle is not limited at which it is driven on a road or road related area, in the manner prescribed by the regulations, to not more than 100 km/h. Proof that a vehicle has been driven on a road or road related area at a speed of more than 115 km/h will be evidence (unless contrary evidence as to that speed is adduced) that the vehicle was not speed limited as required. It will be a defence to a prosecution for the new offence if the defendant proves that the vehicle was a stolen vehicle or had been illegally taken or used or that the vehicle is speed limited as required but that the circumstances in which it was travelling at the time meant that the speed limiter did not operate to limit the speed to 100 km/h. The latter defence recognises that the gradient of a length of road or road related area may in certain circumstances affect the speed of a vehicle even if it is properly speed limited. The proposed new offence is to be an absolute offence and so it will be no defence that the defendant had a mistaken but reasonable belief as to the facts that constituted the offence.

The Bill also amends the *Road Transport (General) (Penalty Notice Offences) Regulation 2002* to make the new offence a penalty notice 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 that gives effect to the amendment to the Principal Act set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the amendments to the *Road Transport (Safety and Traffic Management) (Road Rules) Regulation 1999* and *Road Transport (General) (Penalty Notice Offences) Regulation 2002* set out in Schedule 2.

Schedule 1 Amendment of Road Transport (Safety and Traffic Management) Act 1999

Schedule 1 inserts Division 2A (proposed sections 69A–69F) into Part 5 of the Principal Act.

Proposed section 69A contains definitions used in the proposed Division. A vehicle is **speed limiter compliant** if the speed at which it is capable of being driven is limited, in the manner prescribed by the regulations, to not more than 100 km/h.

Proposed section 69B provides for the application of the proposed Division to vehicles prescribed by the regulations. The vehicles concerned are to be those to which Part 11 of the *Road Transport (Safety and Traffic Management) (Road Rules) Regulation 1999* currently applies. **Schedule 2.2 [1]** makes a consequential amendment to the Regulation to achieve this. The section also makes it clear that the proposed Division applies to vehicles whether or not registered in New South Wales and to the drivers of and responsible persons for those vehicles.

Proposed section 69C is the new offence provision described in the Overview above. Proposed section 69D provides for the use of certificates issued by certain authorised persons as evidence that a vehicle is speed limiter compliant.

Proposed section 69E enables evidence to be given that a vehicle was driven at more than 115 km/h by a measurement of speed obtained by the use of an approved speed measuring device and recorded by an approved camera recording device.

Proposed section 69F makes it clear that the proposed Division does not affect the liability of any person who commits a speeding offence and that the giving of evidence of the measurement of speed obtained by the use of an approved speed measuring device and recorded by an approved camera recording device in proceedings for a speed limiter offence does not prevent the use of that same evidence in proceedings for a speeding offence.

Schedule 2 Amendment of regulations

Schedule 2.1 amends the *Road Transport (General) (Penalty Notice Offences) Regulation 2002* to make the new offence a penalty notice offence.

Schedule 2.2 makes amendments to the *Road Transport (Safety and Traffic Management) (Road Rules) Regulation 1999* that are consequential on the transfer of the offence provision currently contained in clause 140 of the Regulation to the Principal Act as described in the Overview above. The amendments have the effect of preserving the existing application of the offence to the heavy vehicles described in clause 139 of the Regulation and the existing prescribed requirements as to the manner in which the vehicles are to be speed limited.