

New South Wales

Road Transport (Driver Licensing) Amendment Bill 1999

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 (Driver Licensing) Act 1998* so as to set out the circumstances in which the Roads and Traffic Authority may retain and use photographs of people who have applied for driver licences, “proof of age” cards or certain other licences. This Bill also makes minor amendments to road transport legislation concerning the cancellation or suspension of driver licences.

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.

Clause 3 is a formal provision giving effect to the amendments to the *Road Transport (Driver Licensing) Act 1998* set out in Schedule 1.

Clause 4 is a formal provision giving effect to the amendments to the *Road Transport (Driver Licensing) Act 1998* and the *Road Transport Legislation Amendment Act 1999* set out in Schedule 2.

Schedule 1 Amendments relating to use of photographs

Current protection of photographs provided to RTA by applicants for driver licences

The *Road Transport (Driver Licensing) Act 1998* provides for the Roads and Traffic Authority (the **RTA**) to administer the driver licensing system established by the Act. Section 32 of the Act provides for the RTA to refuse to issue or renew a driver licence if the applicant has not either submitted to the taking of a photograph by an RTA officer or provided a photograph to the RTA or has not satisfactorily established his or her identity and residential address. At present, section 32 (2) of the Act prohibits the RTA from using photographs taken or provided under the section for the purpose of forming a record of the people in the photographs.

Current protection of photographs provided to RTA for other purposes

In addition to its role in driver licensing, the RTA is responsible for the issue of “proof of age” cards (used as a means of proving age and identity when entering registered clubs, hotels or the casino or when purchasing tobacco). The RTA is also responsible for producing licences under the *Firearms Act 1996* and the *Security Industry Act 1997*, on behalf of the Commissioner for Police. The information protection principles set out in the *Privacy and Personal Information Protection Act 1998* apply to the collection, retention and use by the RTA of personal information.

Proposed amendments

Schedule 1 amends the *Road Transport (Driver Licensing) Act 1998* so as to impose limits on the retention and use by the RTA of photographs provided to it in relation to driver licensing, “proof of age” cards and firearms and security industry licensing.

Schedule 1 [3] inserts Part 5 (Protection of stored photographs) which applies to all photographs taken by or provided to the RTA. The proposed Part will allow for such photographs to be kept and used by the RTA only for specified purposes. Under the proposed amendment, the stored photographs may be used to assist the RTA in detecting a fraudulent application for a driver licence or the registration of a vehicle or for the renewal of a licence or registration. The stored photographs may also assist the RTA in dealing with a situation where a licence or “proof of age” card has previously been issued as a result of a fraudulent application (which may only be detected when a different person later legitimately attempts to obtain a driver licence or renewal in his or her real name).

Proposed Part 5 makes the following provisions concerning the protection of photographs provided to the RTA:

Proposed section 39 specifies the photographs to which the proposed Part applies. They are:

- (a) photographs taken or provided in relation to applications for the issue or renewal by the RTA of a driver licence, and
- (b) photographs taken or provided for the purpose of applications for the issue or renewal by the RTA of a “proof of age” card, and
- (c) photographs taken or provided for the purpose of applications for the issue or renewal by the Commissioner of Police of a licence under the *Firearms Act 1996* or the *Security Industry Act 1997* and forwarded by the Commissioner of Police to the RTA.

Proposed section 40 prohibits the RTA from keeping or using the photographs except for the purposes listed in the proposed section. Those purposes include reproducing the likeness of a person on a driver licence or a “proof of age” card or on a licence under the *Firearms Act 1996* or the *Security Industry Act 1997*. Photographs may also be used by the RTA for the purpose of determining the identity of any person in the course of determining whether or not to issue, replace or renew a driver licence or a “proof of age” card, or whether or not to register, or renew the registration of, a vehicle under the *Road Transport (Vehicle Registration) Act 1997*.

Proposed section 41 prevents the RTA from releasing photographs except to the Police Service (in accordance with any protocol approved by the Privacy Commissioner), to the person in the photograph, for the purposes of certain criminal proceedings or fine recovery proceedings, as required by law or in accordance with the regulations.

Schedule 1 [1] and **[2]** make consequential amendments.

Schedule 2 Amendments relating to cancellation or suspension of driver licences

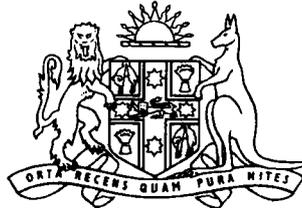
Schedule 2.1 amends section 33 of the *Road Transport (Driver Licensing) Act 1998*. That section enables a driver licence to be cancelled or suspended by the RTA if a driver pays a fine under a penalty notice in relation to a prescribed speeding offence. As currently worded, the section contains a superfluous reference to another provision of another Act rather than a reference to the provision itself.

The proposed amendments restore the intended meaning of the provision by removing that reference. The amended provision makes it clear that offences are to be prescribed for the purposes of section 33 of the *Road Transport (Driver Licensing) Act 1998* rather than for the purposes of any other provision.

Schedule 2.1 also validates the cancellation or suspension of certain licences under that section.

Schedule 2.2 [1] updates the terminology used in a provision.

Schedule 2.2 [2] omits an uncommenced amendment to section 33 of the *Road Transport (Driver Licensing) Act 1998* as a consequence of the amendment proposed to be made to that section by Schedule 2.1 [1].



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Road Transport (Driver Licensing) Amendment Bill 1999

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New South Wales

Road Transport (Driver Licensing) Amendment Bill 1999

No. , 1999

A Bill for

An Act to amend the *Road Transport (Driver Licensing) Act 1998* so as to set out the circumstances in which the Roads and Traffic Authority may retain and use photographs of people who have applied for driver licences, “proof of age” cards or certain other licences; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Road Transport (Driver Licensing) Amendment Act 1999</i> .	3 4
2 Commencement	5
(1) Except as provided by subsections (2) and (3), this Act commences on the date of assent.	6 7
(2) Schedule 1 commences on a day or days to be appointed by proclamation.	8 9
(3) Schedule 2.1 [1] commences on the date of commencement of the <i>Road Transport (Safety and Traffic Management) Act 1999</i> or the date of assent to this Act, whichever occurs later.	10 11 12
3 Amendment of Road Transport (Driver Licensing) Act 1998 No 99	13
The <i>Road Transport (Driver Licensing) Act 1998</i> is amended as set out in Schedule 1.	14 15
4 Further amendments	16
Each Act specified in Schedule 2 is amended as set out in that Schedule.	17 18

Schedule 1	Amendments relating to use of photographs	1
		2
	(Section 3)	3
[1]	Section 12 Security of information in registers	4
	Insert at the end of section 12:	5
	(2) However, if the register includes any photograph to which Part 5 applies, Part 5 (rather than the regulations) applies to the release of that photograph.	6 7 8
[2]	Section 32 Additional matters relating to identity	9
	Omit section 32 (2) and (3).	10
[3]	Part 5	11
	Insert after section 38:	12
	Part 5 Protection of stored photographs	13
	39 Photographs to which this Part applies	14
	This Part applies to:	15
	(a) photographs taken or provided in relation to applications for the issue or renewal by the Authority of a driver licence, and	16 17 18
	(b) photographs taken or provided for the purpose of applications for the issue or renewal by the Authority of a “proof of age” card, and	19 20 21
	(c) photographs:	22
	(i) taken or provided for the purpose of applications for the issue or renewal by the Commissioner of Police of a licence under the <i>Firearms Act 1996</i> or the <i>Security Industry Act 1997</i> , and	23 24 25 26
	(ii) forwarded by the Commissioner of Police to the Authority.	27 28

40	Purposes for which photographs may be kept and used	1
(1)	A photograph to which this Part applies may be kept and used by the Authority only for one or more of the following purposes:	2
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(a)	to reproduce the likeness of a person on a driver licence or a “proof of age” card or on a licence under the <i>Firearms Act 1996</i> or the <i>Security Industry Act 1997</i> ,	5
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(b)	to assist in determining the identity of any person in the course of determining whether or not to issue, replace or renew a driver licence or a “proof of age” card,	8
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(c)	to assist in determining the identity of any person in the course of determining whether or not to register, or renew the registration of, a vehicle under the <i>Road Transport (Vehicle Registration) Act 1997</i> ,	11
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(d)	in connection with an investigation relating to or leading to criminal proceedings against a person under section 22 (1) (a) (for obtaining or attempting to obtain a driver licence or the renewal of a driver licence by a false statement or any misrepresentation or other dishonest means) or under any other provision of this Act,	15
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(e)	in connection with an investigation relating to or leading to criminal proceedings against a person under section 19 of the <i>Road Transport (Vehicle Registration) Act 1997</i> (for obtaining registration or unregistered vehicle permits by a false statement or any misrepresentation or other dishonest means),	22
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(f)	for the conduct of criminal proceedings under this Act or section 19 of the <i>Road Transport (Vehicle Registration) Act 1997</i> ,	28
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(g)	for any other purpose prescribed by the regulations.	31
(2)	A photograph may be used for a purpose set out in this section at the time that the photograph is provided or taken or at any later time.	32
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41 Release of photographs prohibited	1
The Authority must ensure that a photograph to which this Part applies, and any photographic image or other matter contained in any database of such photographs, is not released except:	2
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(a) to the Police Service, in accordance with any protocol approved by the Privacy Commissioner, or	5
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(b) to a driver licensing authority of another State or Territory, or	7
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(c) for the purpose of the conduct of any criminal proceedings:	9
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(i) under this Act or under any provision of any other road transport legislation (within the meaning of section 5 of the <i>Road Transport (General) Act 1999</i>), or	11
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(ii) in relation to a “proof of age” card, or	15
(iii) in relation to a licence under the <i>Firearms Act 1996</i> or the <i>Security Industry Act 1997</i> , or	16
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(d) for the purpose of any fine recovery proceedings, or	18
(e) as provided under any other law, or	19
(f) to the person whose likeness is shown in the photograph or on the database, or	20
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(g) in accordance with the regulations.	22

Schedule 2	Amendments relating to cancellation or suspension of driver licences	1
		2
	(Section 4)	3
2.1	Road Transport (Driver Licensing) Act 1998 No 99	4
[1]	Section 33 Cancellation or suspension of driver licence by Authority	5
	Omit section 33 (5). Insert instead:	6
	(5) In this section:	7
	<i>speeding offence</i> means an offence that involves exceeding a speed limit fixed by or under the <i>Road Transport (Safety and Traffic Management) Act 1999</i> and that is prescribed for the purposes of this section.	8
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[2]	Schedule 3 Savings, transitional and other provisions	12
	Insert after clause 9:	13
Part 4	Provisions consequent on enactment of Road Transport (Driver Licensing) Amendment Act 1999	14
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10	Transitional amendment regarding offences under Traffic Act 1909	17
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	(1) This clause applies if the <i>Road Transport (Driver Licensing) Amendment Act 1999</i> is assented to before the commencement of the <i>Road Transport (Safety and Traffic Management) Act 1999</i> .	19
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	(2) Until section 33 (5) is substituted by Schedule 2.1 [1] to the <i>Road Transport (Driver Licensing) Amendment Act 1999</i> , section 33 (5) (b) is taken to refer to an offence under section 4A (1A), (1B), (5B) or (5BA) of the <i>Traffic Act 1909</i> .	23
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11	Transitional provision regarding offences under Road Transport (Safety and Traffic Management) Act 1999	1
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	Until a regulation is made under section 33 (5), as amended by the <i>Road Transport (Driver Licensing) Amendment Act 1999</i> , the offences prescribed for the purposes of section 33 (5) are all those offences that involve exceeding any speed limit fixed by or under the <i>Road Transport (Safety and Traffic Management) Act 1999</i> , applicable to the relevant driver or vehicle, by more than 30 kilometres per hour.	3
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(1)	This clause applies to a driver licence that was purportedly cancelled or suspended under section 33 of the <i>Road Transport (Driver Licensing) Act 1998</i> on or after the commencement of that section and before the commencement of this clause.	11
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(2)	A driver licence to which this clause applies is taken to have been validly cancelled or suspended if it could have been cancelled or suspended had section 33, as referred to in clause 10 (2), been in force when the driver licence was cancelled or suspended and had offences under section 4A (1A), (1B), (5B) or (5BA) of the <i>Traffic Act 1909</i> been prescribed under section 33 at that time.	15
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2.2	Road Transport Legislation Amendment Act 1999 No 19	22
[1]	Schedule 2 Consequential amendment of Acts	23
	Omit “drivers licence” from section 25 (4) of the <i>Road Transport (Driver Licensing) Act 1998</i> (as proposed to be inserted by Schedule 2.36 [6]).	24
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	Insert instead “driver licence”.	26
[2]	Schedule 2.36 [14]	27
	Omit the item.	28