

Explanatory note

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

Overview of Bill

The object of this Bill is:

- (a) to amend the Road Transport (Driver Licensing) Act 1998 and the Road Transport (Driver Licensing) Regulation 1999 to provide for a penalty of driver licence disqualification for the offence of learner driver driving unaccompanied by a supervising driver, and
- (b) to amend the Road Transport (General) Act 2005 to enable the immediate suspension of a driver licence by police for a speeding offence by a learner or provisional driver that involves exceeding a speed limit by more than 30 but not more than 45 kilometres an hour, or for an offence of learner driver driving unaccompanied by a supervising driver, and
- (c) to amend the Road Transport (General) Act 2005 and the Road Transport (Safety and Traffic Management) Act 1999 to enable regulations to be made with respect to the prevention and management of driver fatigue, and speeding compliance, in relation to heavy vehicles and heavy combinations, and

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- (d) to amend the Road Transport (General) Act 2005 with respect to the relationship between obligations under certain road laws and obligations under occupational health and safety legislation, and
- (e) to amend the Roads Act 1993:
 - (i) to clarify that a camera designed to photograph a vehicle as it is driven past a toll point may be an approved toll camera for the purposes of that Act whether or not it photographs all such vehicles or only those driven in contravention of a requirement to pay a toll, and
 - (ii) to extend the time within which proceedings may be brought for an alleged toll offence under that Act from 6 months to 12 months, and
 - (iii) to provide for the issue of evidentiary certificates with respect to various matters.

The Bill also makes minor, ancillary and consequential amendments to that legislation.

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 amendments to the Acts and Regulation set out in Schedules 1–5.

Clause 4 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the Interpretation Act 1987 provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendment of Road Transport (Driver Licensing) Act 1998

Regulation-making power for penalty of licence disqualification

Schedule 1 inserts new section 19A into the Road Transport (Driver Licensing) Act 1998 to allow the regulations to provide for a penalty (in addition to any monetary penalty) of driver licence disqualification for the offence under the regulations of learner driver driving unaccompanied by a supervising driver.

Schedule 2 Amendment of Road Transport (Driver Licensing) Regulation 1999

Penalty of licence disqualification

Clause 12 (1) of the Road Transport (Driver Licensing) Regulation 1999 (the Regulation) provides for an offence of learner driver driving unaccompanied by a supervising driver (the unaccompanied learner offence) for which the maximum penalty is 20 penalty units, or \$2,200.

Schedule 2 [1] amends clause 12 of the Regulation to provide for a person who is convicted of the unaccompanied learner offence to be disqualified from holding a driver licence, automatically, for 3 months, or for such other period as the court on conviction may order, being:

(a) between 3 and 12 months, or

(b) less than 3 months if the person's driver licence or authority to drive in New South Wales has been suspended for a period under section 205 or 206 of the Road Transport (General) Act 2005 and the disqualification period when added to the suspension period results in a total period of no less than 3 months.

The disqualification is in addition to any other penalty imposed for the offence.

As a consequence of the amendment made by Schedule 2 [1], Schedule 2 [2] amends Schedule 2 to the Regulation (which specifies offences in respect of which demerit points are incurred) to remove reference to the unaccompanied learner offence.

Savings and transitional provision

Schedule 2 [3] inserts into the Regulation a savings and transitional provision concerning the application of the amendments made by Schedule 2 [1] and [2].

Schedule 3 Amendment of Road Transport (General)

Act 2005

Immediate suspension of driver licences by police

Section 205 (1A) of the Road Transport (General) Act 2005 (the Principal Act) enables a police officer to suspend immediately any driver licence held by a person if it appears to the police officer that the person has committed a speeding offence that involves exceeding a speed limit by more than 45 kilometres per hour.

Schedule 3 [2] substitutes section 205 (1A) and inserts new section 205 (1B) into the Principal Act to enable a police officer to suspend immediately any driver licence held by a person also if it appears to the police officer that the person has committed:

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(a) a speeding offence that involves exceeding a speed limit by more than 30, but not more than 45, kilometres an hour, as the holder of a learner licence or provisional licence for the class of vehicle being driven, or

(b) an offence under the regulations of learner driver driving unaccompanied by a supervising driver.

Schedule 3 [3]–[5] make consequential amendments.

Schedule 3 [1] inserts new section 204A into the Principal Act containing definitions of terms used in sections 205 and 206 of the Principal Act. Schedule 3 [6] and [7] omit a definition which Schedule 3 [1] reinserts in new section 204A.

Immediate suspension of visiting drivers' driving privileges by police

Section 206 (2A) of the Principal Act enables a police officer to suspend immediately a visiting driver's authority to drive in New South Wales if it appears to the police officer that the person has committed a speeding offence that involves exceeding a speed limit by more than 45 kilometres per hour.

Schedule 3 [11] substitutes section 206 (2A) and inserts new section 206 (2B) into the Principal Act to enable a police officer to suspend immediately a visiting driver's authority to drive in New South Wales also if it appears to the police officer that the person has committed an offence referred to in paragraph (a) or (b) above. Schedule 3 [8]–[10] make consequential amendments.

Savings and transitional provisions

Schedule 3 [12] allows savings and transitional regulations to be made as a consequence of the enactment of the proposed Act. Schedule 3 [13] inserts into the Principal Act provisions of a savings and transitional nature concerning the application and effect of the amendments made by Schedule 3 to sections 205 and 206 of the Principal Act.

Schedule 4 Amendments relating to fatigue management and speeding compliance

Fatigue management

In February 2007, the Australian Transport Council endorsed the adoption by Australian jurisdictions of model Heavy Vehicle Driver Fatigue provisions. The amendments made by the proposed Schedule facilitate the adoption in this State of legislation that reflects the provisions endorsed by the Australian Transport Council. Schedule 4.1 [2] inserts proposed section 11B into the Road Transport (General) Act 2005 (the Principal Act). The proposed section enables regulations to be made for or with respect to the management and prevention of driver fatigue in connection with the driving of heavy vehicles and heavy combinations. In addition to (and without limiting) that general power there is also power to make regulations for or with respect to matters including the duties of drivers, employers of drivers, prime contractors, operators, schedulers, consignors, consignees, loading managers, loaders and unloaders, the duties of other persons, the periods drivers spend resting and working, records in respect of heavy vehicles or heavy combinations and other matters.

Schedule 4.1 [1] amends section 3 of the Principal Act to make regulations under proposed section 11B applicable road laws for the purposes of certain enforcement provisions of the Principal Act. Among other things, this will enable various inspection and other powers of authorised officers in relation to load restraint etc offences to be exercised in relation to fatigue-related offences.

Schedule 4.1 [3] and [4] amend sections 130 and 146 of the Principal Act as a consequence of the amendment made by Schedule 4.1 [1] and the amendment made by Schedule 4.2.

Schedule 4.1 [5] inserts proposed section 154A into the Principal Act. The proposed section enables authorised officers to direct drivers who have committed fatigue-related offences to take rests and to work for specified periods and to give other directions. It will be an offence to contravene a direction.

Schedule 4.1 [6] amends section 180 of the Principal Act so as to enable a Local Court to impose the maximum penalty permitted to be imposed under proposed section 11B (which is 250 penalty units).

Schedule 4.2 repeals the provisions of the Road Transport (Safety and Traffic Management) Act 1999 that permit regulations to be made about fatigue management, as a consequence of the insertion of proposed section 11B into the Principal Act.

Speeding compliance

In February 2007, the Australian Transport Council endorsed the adoption by Australian jurisdictions of model Speeding Compliance provisions. The amendments made by the proposed Schedule facilitate the adoption in this State of legislation that reflects the provisions endorsed by the Australian Transport Council.

Schedule 4.1 [2] inserts proposed section 11C into the Principal Act. The proposed section enables regulations to be made for or with respect to the management and prevention of speeding in connection with heavy vehicles and heavy combinations. In addition to (and without limiting) that general power there is also power to make regulations for or with respect to matters including the duties of employers of drivers, prime contractors, schedulers, operators, consignors and consignees and other persons.

Schedule 4.1 [1] amends section 3 of the Principal Act to make regulations under

proposed section 11C applicable road laws for the purposes of certain enforcement provisions of the Principal Act. Among other things, this will enable various inspection and other powers of authorised officers in relation to load restraint etc offences to be exercised in relation to speeding-related offences.

Schedule 4.1 [6] amends section 180 of the Principal Act so as to enable a Local Court to impose the maximum penalty permitted to be imposed under proposed section 11C (which is 250 penalty units).

Occupational health and safety legislation

Schedule 4.1 [7] inserts proposed section 244A into the Principal Act. The proposed section makes it clear that the provisions of applicable road laws (that is, mass, dimension and load provisions, fatigue management provisions and speeding compliance provisions for heavy vehicles and heavy combinations and enforcement provisions) do not preclude, or otherwise affect, the operation of occupational health and safety legislation. A person is not required to comply with a provision of an applicable road law if the person would by so doing contravene a provision of the occupational health and safety legislation. A person is not liable to be punished twice for an act or omission that is an offence under both an applicable road law and the occupational health and safety legislation.

Schedule 5 Amendment of Roads Act 1993

Approved toll cameras

Section 250A of the Roads Act 1993 (the Principal Act) provides for the use of digital photographs taken by approved toll cameras as evidence of an offence under the Roads (General) Regulation 2000 of failure or refusal to pay a toll or charge.

Schedule 5 [4] substitutes the definition of approved toll camera in section 250A (1) of the Principal Act (which currently relates to cameras designed to take, and to record information specified in the definition on, a photograph of a vehicle driven in contravention of a requirement to pay a toll) so that it relates to cameras designed to take a photograph of a vehicle as it is driven past a toll point and to record on the photograph the information specified in the definition.

However, Schedule 5 [5] inserts new section 250A (1A) into the Principal Act to make it clear that the fact that a camera takes a photograph of a vehicle only if it is driven in contravention of a requirement to pay a toll, or records the specified information only on such photographs, does not prevent the camera from being an approved toll camera.

Schedule 5 [6] amends section 250A of the Principal Act to clarify that section 250A (5) (which allows a person who acquires information in the exercise of functions connected with the use or operation of an approved toll camera to divulge that information to certain persons and entities) applies only in respect of information acquired in relation to a vehicle driven in contravention of a requirement to pay a relevant toll (as is currently the case).

Schedule 5 [9] inserts definitions of toll operator and toll point into the Dictionary to the Principal Act as a consequence of the amendments made by Schedule 5 [2] and [4].

Evidentiary certificates

Schedule 5 [2] and [3] amend section 248 of the Principal Act to provide for the issue of evidentiary certificates with respect to various matters (such certificates being admissible in legal proceedings as to the matters which they certify).

Time limit for proceedings for non-payment of toll

Schedule 5 [1] amends section 242 of the Principal Act to extend from 6 months to 12 months the time within which proceedings may be brought for an alleged offence under the Roads (General) Regulation 2000 of failure or refusal to pay a toll or charge.

Savings and transitional provisions

Schedule 5 [7] allows savings and transitional regulations to be made as a

consequence of the enactment of the proposed Act. Schedule 5 [8] inserts into the Principal Act other provisions of a savings and transitional nature concerning the application and effect of the amendments made by Schedule 5 [1]–[5].