

TRAFFIC (ROAD SAFETY) AMENDMENT ACT 1989 No. 153

NEW SOUTH WALES



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SCHEDULE 1 - AMENDMENT OF TRAFFIC ACT 1909



TRAFFIC (ROAD SAFETY) AMENDMENT ACT 1989 No. 153

NEW SOUTH WALES



Act No. 153, 1989

An Act to amend the Traffic Act 1909 with respect to offences and penalties; to provide for the monitoring of heavy motor vehicles and vehicles carrying dangerous goods; to amend the Motor Vehicles Taxation Act 1988; and for other purposes. [Assented to 8 December 1989]

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Traffic (Road Safety) Amendment Act 1989.

Commencement

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

Amendment of Traffic Act 1909 No. 5

3. The Traffic Act 1909 is amended as set out in Schedule 1.

**Amendment of Motor Vehicles Taxation Act 1988 No. 111, sec. 17
(Exemptions granted by Minister)**

4. The Motor Vehicles Taxation Act 1988 is amended by inserting at the end of section 17 (1) (n) the following matter:

; or

- (o) any motor vehicle of a type or description approved by the Minister for the purposes of this paragraph that is fitted with a monitoring device of a type or description so approved.

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(Sec. 3)

(1) Section 2 (**Definitions**):

In section 2 (1), insert in alphabetical order the following definitions:

"Coach" means a motor vehicle which is:

- (a) constructed principally to carry persons; and
- (b) equipped to seat more than 8 adult persons; and
- (c) used to convey passengers for hire or reward or in the course of trade or business.

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"Heavy motor vehicle" means:

- (a) a motor vehicle that has a manufacturer's gross vehicle mass exceeding 13.9 tonnes (being the maximum laden mass at which the manufacturer recommends the vehicle be operated); or
- (b) a motor vehicle and trailer combination that has a manufacturer's gross combination mass exceeding 13.9 tonnes (being the maximum laden mass at which the manufacturer recommends the combination be operated).

(2) Section 3 (**Regulations**):

(a) Section 3 (1) (r):

Omit the paragraph, insert instead:

- (r) impose a penalty not exceeding 20 penalty units for a contravention of any regulation or any provision of or condition attached to any licence, exemption or permit granted under the regulations;

(b) Section 3 (1) (t1) (iv):

At the end of the subparagraph, insert "and".

(c) Section 3 (1) (t1) (v):

Omit "documents, the installation and operation of monitoring devices in motor vehicles and the inspection of those records, documents or monitoring devices by any member of the police force or any other specified person; and ", insert instead "documents."

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(d) Omit section 3 (1) (t1) (vi) and (1C).

(3) Section 4A (Speed limits):

(a) Section 4A (1A):

After section 4A (1), insert:

(1A) A person who on any length of public street drives a motor vehicle at a speed which exceeds, by more than 45 kilometres per hour, the speed limit applicable to that length of public street is guilty of an offence under this Act and liable to a penalty not exceeding 20 penalty units and, in addition:

(a) the person is disqualified by a conviction for the offence (and without any specific order) for 3 months from holding a driver's licence; or

(b) where the court on the conviction thinks fit to order a longer period of disqualification, the person is disqualified for the period specified in the order.

(b) Section 4A (2), (7), (8):

Omit "subsection (1)" wherever occurring, insert instead "this section".

(c) Section 4A (2A):

After section 4A (2), insert:

(2A) If, on a prosecution of a person for an offence under subsection (1A), the court is satisfied that the person exceeded the relevant speed limit, but is not satisfied that it was exceeded by more than 45 kilometres per hour, the court may convict the person of an offence under subsection (1).

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(4) Section 4E (**Prescribed concentration of alcohol in person's blood**):

(a) Section 4E (1):

Omit the definition of "driver's licence", insert instead:

"**driver's licence**" does not (except in subsection (1B)) include a provisional licence or a learner's licence issued under the regulations;

(b) Section 4E (1B):

After section 4E (1A), insert:

(1B) For the purposes of this section, a person is a **special category driver** in respect of a motor vehicle:

(a) if the person:

- (i) is the holder of a learner's licence; or
- (ii) is the holder of a first-year provisional licence,

for motor vehicles of a class that includes that motor vehicle; or

(b) if the person is not the holder of a licence which authorises the person to drive that motor vehicle because:

- (i) the person's driver's licence is suspended or has been cancelled; or
 - (ii) the person has been disqualified from holding or obtaining a driver's licence; or
 - (iii) the person's application for a driver's licence has been refused; or
 - (iv) the person (never having had authority to drive the vehicle in New South Wales by virtue of being the holder of a licence or permit issued in a place outside New South Wales) has never obtained a driver's licence;
- or

(c) if the person has no authority to drive that motor vehicle in New South Wales because:

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- (i) the person is not the holder of a driver's licence; and
 - (ii) an authority which the person had to drive the vehicle in New South Wales by virtue of being the holder of a licence or permit issued in a place outside New South Wales is suspended or has been cancelled.
- (c) Section 4E (1D), (1JA) (a):
Omit "the holder of a learner's licence in respect of the motor vehicle or of a first-year provisional licence" wherever occurring, insert instead "a special category driver".
- (d) Section 4E (1E):
At the end of section 4E (1E) (b), insert:
; or
(b1) being the holder of a driver's licence, occupies the seat in a motor vehicle next to a holder of a learner's licence who is driving the vehicle,
- (e) Section 4E (1F):
At the end of section 4E (1F) (b), insert:
; or
(b1) being the holder of a driver's licence, occupies the seat in a motor vehicle next to a holder of a learner's licence who is driving the vehicle,
- (f) Section 4E (1G):
At the end of section 4E (1G) (b), insert:
; or
(b1) being the holder of a driver's licence, occupies the seat in a motor vehicle next to a holder of a learner's licence who is driving the vehicle,

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- (g) Section 4E (1I), (1J), (1K) (a), (b):
Omit "(a) or (b)" wherever occurring, insert instead "(a), (b) or (b1)".
- (h) Omit section 4E (1L).
- (i) Section 4E (2A):
At the end of section 4E (2A) (b), insert:
; or
(c) being the holder of a driver's licence, is or was occupying the seat in a motor vehicle next to a holder of a learner's licence while the holder of the learner's licence is or was driving the vehicle upon a public street,
- (j) Omit section 4E (2AA).
- (k) Section 4E (3) (a):
Omit "a preceding subsection", insert instead "subsection (2A)".
- (l) Section 4E (3) (a) (i):
Omit "the holder of a learner's licence or of a first-year provisional licence", insert instead "a special category driver in respect of the motor vehicle concerned".
- (m) Section 4E (3) (b), (5) (c), (6):
Omit "a preceding subsection of this section" wherever occurring, insert instead "subsection (2A)".
- (n) Section 4E (7) (b), (11), (15):
Omit "(2A) (a) or (b) or (2AA)" wherever occurring, insert instead "(2A) (a), (b) or (c)".
- (o) Section 4E (11), (12) (a):
Omit ", (1G) or (1L)" wherever occurring, insert instead "or (1G)".

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- (p) Section 4E (11) (a):
Omit "or (1L)".
- (q) Section 4E (13) (a):
Omit ", (1L)".
- (5) Section 4G (**Analysis of samples of blood**):
 - (a) Section 4G (8) - (11):
Omit ", (1G) or (1L)" wherever occurring, insert instead "or (1G)".
 - (b) Section 4G (8):
Omit "4E (2A) (a) or (b) or (2AA)", insert instead "4E (2A) (a), (b) or (c)".
 - (c) Section 4G (8) (a):
Omit "or (1L)".
- (6) Section 5 (**Offences**):
Section 5 (2) (c):
After "driver's licence", insert "(other than a provisional licence or a learner's licence issued under the regulations)".
- (7) Section 10 (**Court may impose penalty and disqualify driver on conviction**):
 - (a) Section 10 (1):
Omit "\$500", insert instead "20 penalty units".
 - (b) Section 10 (5):
Omit ", (1L)".

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(8) Section 10A (**Disqualification for certain major offences**):

Section 10A (1) (b) (ii):

Omit the subparagraph, insert instead:

- (ii) an offence under section 4AA, section 4E (1D), (1E) (a) or (b), (1F) (a) or (b), (1G) (a) or (b) or (7), section 4F (7), section 5 (2) (a) or (b), section 5AC (2) or section 8 (2); or

(9) Section 10AA (**Effect of disqualification**):

At the end of section 10AA (1) (b), insert:

; and

- (c) no licence may be obtained by the person during the period of disqualification.

(10) Section 10B (**Suspension of licence by Commissioner of Police**):

Omit section 10B (4).

(11) Sections 10C-10E:

After section 10B, insert:

Immediate suspension of licence in certain circumstances

10C. (1) If a person is charged by a member of the Police Force with an offence under section 4E (1G) or (7) or section 4F (7), the same or another member of the Police Force may, at any time within 48 hours after the person has been charged, give the person a notice, in a form approved by the Authority:

- (a) informing the person that every licence held by the person is suspended:
 - (i) on and from a date specified in the notice; or
 - (ii) if the notice so specifies - immediately on receipt of the notice,

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until the charge is heard and determined by a court (or until the charge is withdrawn, if that should happen); and

- (b) informing the person of the right of appeal conferred by section 10E; and
- (c) requiring the person:
 - (i) to surrender every such licence, on or before a date specified in the notice, to a member of the Police Force; or
 - (ii) if the notice so specifies - to surrender every such licence in the person's possession immediately to the member of the Police Force who gave the person the notice.

(2) Any licences held by a person to whom a notice under this section is given are suspended, in accordance with the terms of the notice, until the charge is heard and determined by a court or withdrawn.

(3) Particulars of each notice given under this section are to be forwarded to the Authority immediately after the notice is given.

(4) A person who is given a notice under this section and who does not surrender his or her licences in compliance with the notice is guilty of an offence.

(5) If on the determination of the charge by a court the person is disqualified from holding or obtaining a licence for a specified time:

- (a) the court must take into account the period of suspension under this section when deciding whether to make any order under section 10A; and
- (b) to the extent (if any) that the court so orders, a suspension under this section may be regarded as satisfying all or part of any mandatory minimum period of disqualification required by that section to be imposed when the charge is proved.

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- (6) For the purposes of this section:
- (a) a person is charged with an offence when particulars of the offence are notified in writing to the person by a member of the Police Force; and
 - (b) a charge is withdrawn when the person charged is notified in writing of that fact by a member of the Police Force or when it is withdrawn before the court; and
 - (c) a charge is determined by a court when the offence is proved or the information is dismissed.

Suspension of driving privileges of visiting driver

10D. (1) If:

- (a) a person is charged by a member of the Police Force with an offence under section 4E (1G) or (7) or section 4F (7); and
- (b) the person is not the holder of a licence but, being the holder of a licence or permit issued in a place outside New South Wales, has the benefit of any provision of the regulations conferring on the person authority to drive in New South Wales,

the same or another member of the Police Force may, at any time within 48 hours after the person has been charged, give the person a notice, in a form approved by the Authority, informing the person:

- (c) that his or her authority to drive in New South Wales is suspended:
 - (i) on and from a date specified in the notice; or
 - (ii) if the notice so specifies - immediately on receipt of the notice,until the charge is heard and determined by a court or is withdrawn (if that should happen); and
- (d) of the right of appeal conferred by section 10E.

(2) Any authority of a person to whom a notice under this section is given to drive in New South Wales is suspended, in accordance with the terms of the notice, until

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the charge is heard and determined by a court or withdrawn.

(3) Particulars of each notice given under this section are to be forwarded to the Authority immediately after the notice is given.

(4) For the purposes of this section:

- (a) a person is charged with an offence when particulars of the offence are notified in writing to the person by a member of the Police Force; and
- (b) a charge is withdrawn when the person charged is notified in writing of that fact by a member of the Police Force or when it is withdrawn before the court; and
- (c) a charge is determined by a court when the offence is proved or the information is dismissed.

Appeal against suspension of licence

10E. (1) A person whose licence is suspended under section 10C, or whose authority to drive in New South Wales is suspended under section 10D, may, at any time before the charge that occasioned the suspension has been heard and determined by a court or withdrawn, appeal against the suspension to a Local Court constituted by a Magistrate.

(2) The suspension is not stayed by lodgment of an appeal under this section.

(3) The court:

- (a) is not to uphold the appeal unless it is satisfied that there are exceptional circumstances justifying a lifting of the suspension; and
- (b) is not, for the purposes of this subsection, to take into account the circumstances of the offence.

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(12) Part 3A:

Before Part 4, insert:

**PART 3A - MONITORING OF HEAVY VEHICLES
AND VEHICLES CARRYING DANGEROUS LOADS**

Definitions

10F. (1) In this Part:

"approved" means approved by the Authority;

"automatic data", in relation to a journey made by a motor vehicle, means recordings (made by mechanical or electronic means, or by both of those means, in an approved form, and to an approved degree of accuracy) of:

- (a) the lengths of time for which the vehicle is driven, and for which it is standing, during the journey; and
- (b) the speeds at which the vehicle is driven (measured continuously or at approved intervals) during the journey; and
- (c) the distance travelled during each period when the vehicle is driven during the journey,

being recordings made by a monitoring device;

"manual data", in relation to a journey made by a motor vehicle, means recordings made by hand of:

- (a) the date, time and place of commencement, and of completion, of the journey; and
- (b) the times at which the vehicle is driven, and at which it is standing, during the journey; and
- (c) the name of each driver, and the times at which each driver was in charge of the vehicle, during the journey; and
- (d) the registration number of the vehicle; and
- (e) the name of each person making each of the abovementioned recordings;

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"monitoring device" means a device which, when fitted to a motor vehicle, is capable of producing automatic data for a journey made by the vehicle;

"owner", in relation to a motor vehicle, includes:

- (a) every person who is the owner or a joint owner or part owner of the vehicle and any person who has the use of the vehicle under a lease or hire-purchase agreement (but not the lessor while the vehicle is being leased under any such agreement); and
- (b) the person in whose name the vehicle is registered (except as provided by paragraph (c)); and
- (c) if the vehicle has been sold or otherwise disposed of by a previous registered owner who has complied with the provisions of the regulations applicable to him or her regarding the sale or disposal - the person to whom it was sold or otherwise disposed of;

"prescribed officer" means a person:

- (a) who is employed:
 - (i) by the Authority; or
 - (ii) as an inspector under the Dangerous Goods Act 1975; or
 - (iii) in some other capacity prescribed by the regulations; and
- (b) who is authorised for the purposes of this Part by the regulations;

"vehicle movement record", in relation to a journey made by a vehicle, means a record, in durable and graphic form, consisting of:

- (a) manual data for the journey; and
- (b) either:
 - (i) corresponding automatic data for the journey produced by a monitoring

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- device, except where subparagraph (ii) applies; or
- (ii) where the automatic data is stored electronically in a monitoring device - a graphic representation, produced by an approved method, of that data.

(2) The regulations may prescribe the manner in which the Authority may signify any approval for the purposes of this Part.

Application of this Part

10G. (1) This Part applies to:

- (a) any motor vehicle (being a coach or heavy motor vehicle) of a class or description prescribed by the regulations, except in such circumstances as may be so prescribed; and
- (b) any motor vehicle which, because it carries dangerous goods within the meaning of the Dangerous Goods Act 1975, is required by the regulations under that Act, or under any code prescribed by regulations under this Act, to have a sign exhibited on it.

(2) This Part applies to vehicles, drivers and owners whether or not:

- (a) the vehicles are registered in New South Wales; or
- (b) the drivers hold licences issued in New South Wales; or
- (c) the owners ordinarily reside (or, being corporations, are incorporated or have their principal places of business) in New South Wales.

Vehicles to be fitted with monitoring devices in working order

10H. (1) A motor vehicle to which this Part applies is not to be used on any journey made wholly or partly on a public street or public streets in New South Wales, unless:

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- (a) a monitoring device is fitted to the vehicle; and
- (b) the device is producing automatic data for the journey.

(2) If a vehicle is used in contravention of this section, the owner of the vehicle is guilty of an offence.

Maximum penalty: 50 penalty units.

Vehicle movement record to be preserved

10I. (1) A vehicle movement record relating to each journey commenced, on or after the commencement of this section, by a vehicle to which this Part applies is to be preserved for a period of at least 12 months after the date of commencement of the journey.

(2) If this section is not complied with, the owner of the vehicle is guilty of an offence.

Maximum penalty: 50 penalty units.

Vehicle movement record to be carried by driver

10J. (1) A motor vehicle to which this Part applies must not be used for any journey made wholly or partly on a public street or public streets unless a duly completed vehicle movement record is carried, in accordance with this section, by the driver of the vehicle at all times while the vehicle is in the State during the journey.

(2) The record that must be carried on any day is to relate to any journey or part of a journey made by the vehicle, whether in or outside New South Wales, during the period of 14 days immediately preceding that day.

(3) If a vehicle is used in contravention of this section, the owner and the driver of the vehicle are each guilty of an offence and are each liable to a penalty not exceeding 50 penalty units.

(4) It is a defence to a prosecution for an offence under this section if the defendant satisfies the court:

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- (a) that the monitoring device fitted to the vehicle was of a type that stores automatic data electronically; and
- (b) that the compilation of the vehicle movement record required to be carried by the driver on the date of the alleged offence would have required the production of a graphic representation of data which, on that date, were stored in the monitoring device; and
- (c) that, in the circumstances of the case, the required record could not reasonably be expected to have been compiled by that date.

(5) Nothing in this section requires the carriage of a vehicle movement record relating to the use, before the commencement of this section, of any vehicle.

Inspection of monitoring devices and records carried on vehicles

10K. (1) A member of the Police Force may inspect any motor vehicle to which this Part applies in order to ascertain:

- (a) whether a monitoring device is fitted to the vehicle; and
- (b) whether any device so fitted appears to be operating correctly.

(2) For the purposes of an inspection under subsection (1), a member of the Police Force may require the driver to operate the vehicle and to co-operate in any other manner reasonably necessary to facilitate the inspection.

(3) A prescribed officer may:

- (a) require the driver of a motor vehicle to which this Part applies to produce for inspection:
 - (i) his or her licence to drive the vehicle (whether issued in New South Wales or elsewhere); and

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- (ii) any record required by this Part or the regulations to be carried by the driver of the vehicle during the journey; and
 - (iii) any record carried by the driver in connection with the business to which the journey relates; and
- (b) make copies of, or take extracts from, any such record; and
- (c) make reasonable inquiries of the driver concerning any entries in any such record that are made by the driver.
- (4) For the purposes of this section:
- (a) a member of the Police Force wearing the uniform of the Force; or
 - (b) a prescribed officer identifying himself or herself in the manner required by the regulations,
- may by any reasonably clear signal require the driver of any vehicle to which this Part applies to stop and park the vehicle.
- (5) A member of the Police Force or a prescribed officer may require a vehicle and its driver to stay for such time as is reasonably necessary for the exercise of a power conferred on the member or officer by this section.
- (6) A person must not:
- (a) obstruct or hinder a member of the Police Force or a prescribed officer in the exercise of a power conferred by this section; or
 - (b) fail to comply with a requirement made under this section.

Maximum penalty: 50 penalty units.

Seizure of monitoring devices and records

10L. (1) A member of the Police Force may disconnect and take and retain possession of a monitoring device that

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is fitted to a motor vehicle to which this Part applies, together with any automatic data stored in the device:

- (a) if the vehicle has been involved in an accident in which any person was killed; or
- (b) if the member of the Police Force reasonably believes that the monitoring device or any part of its mechanism has been improperly interfered with; or
- (c) if the member of the Police Force reasonably believes that the driver has committed a major offence involving the vehicle during the journey then being undertaken by the vehicle.

(2) A member of the Police Force or a prescribed officer may take and retain possession of any record carried, pursuant to a requirement of this Part or the regulations, by the driver of a motor vehicle to which this Part applies if the member or officer reasonably believes:

- (a) that false entries have been made in the record; or
- (b) that the record is unlawfully in the possession of the driver; or
- (c) that the record does not relate to the vehicle concerned.

(3) A member of the Police Force or a prescribed officer may take and retain possession of any document which the driver of a motor vehicle to which this Part applies represents to be a record required by this Part or the regulations to be carried by the driver but which the member or officer reasonably believes is not such a record.

(4) A person must not obstruct or hinder a member of the Police Force or a prescribed officer in the exercise of a power conferred by this section.

Maximum penalty: 50 penalty units.

Production of records by vehicle owners

10M. (1) The Authority, by notice in writing served on any owner of a vehicle to which this Part applies, may

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require the owner to produce vehicle movement records to the Authority.

(2) The notice may require the production of:

- (a) all vehicle movement records relating to journeys undertaken in the vehicle during the 12 months preceding the date of service of the notice; or
- (b) such of those records as the notice specifies.

(3) The notice is not complied with if the records are not produced at a place, and within a time, specified by the notice.

(4) The owner of a vehicle must comply with a notice under this section.

Maximum penalty: 50 penalty units.

(5) Vehicle movement records produced to the Authority, whether in compliance with a notice under this section or otherwise, may be retained by the Authority for analysis, and while they are so retained, the owner of the vehicle is exempted from the requirements of any further notice under this section in relation to them.

(6) A notice under this section does not require the production of a vehicle movement record being carried by the driver of a vehicle in accordance with a requirement of this Part.

Tampering with monitoring devices or vehicle movement records

10N. (1) A person must not adjust any part of the mechanism of a monitoring device, fitted to a vehicle to which this Part applies, in such a manner that the accuracy of a vehicle movement record for the vehicle will be reduced.

Maximum penalty: 50 penalty units.

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(2) A person must not make any false entry in, or otherwise falsify, a vehicle movement record.

Maximum penalty: 50 penalty units.

(3) Without limiting any power conferred on the Authority by or under this Act, the Authority may cancel the licence or licences of a person who commits an offence under this section.

Exemptions

10O. (1) The Authority may, in accordance with the regulations, exempt any person or vehicle or any class of persons or vehicles from the operation of all or any of the provisions of this Part.

(2) An exemption:

- (a) may be absolute or subject to conditions; and
- (b) if subject to conditions, has effect only while the conditions are observed.

Evidence of vehicle movement record

10P. (1) A vehicle movement record is not admissible in evidence in any criminal proceedings unless:

- (a) the proceedings are proceedings for:
 - (i) an offence under section 10N; or
 - (ii) aiding, abetting, counselling or procuring the commission of an offence under that section; or
 - (iii) a major offence; or
- (b) the record is adduced by the defendant.

(2) Nothing in this section affects the admissibility in any civil proceedings of a vehicle movement record.

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(13) Section 11AB (**Suspension or cancellation of drivers' licences by the Authority**):

Omit section 11AB (3), insert instead:

(3) Without limiting any power of the Authority under subsection (1), a licence may be cancelled or suspended by the Authority because of an alleged speeding offence if, in respect of the alleged offence:

- (a) the licensee has paid a penalty prescribed for the purposes of section 18B; or
- (b) an order has been made under section 100L of the Justices Act 1902 against the licensee.

(4) In subsection (3), "**speeding offence**" means an offence:

- (a) that involves exceeding a speed limit (within the meaning of section 4A); and
- (b) that is prescribed for the purposes of that subsection.

(5) If a person's licence is cancelled by the Authority under this section, the Authority may refuse to issue the person with any further licence for a period determined by the Authority and specified in a notice served on the person under section 21 in respect of the cancellation.

(6) Nothing in this section limits any discretion of the Authority to decline to issue a licence to a person.

(14) Section 11AC:

Omit the section, insert instead:

Effect of suspension of licence

11AC. (1) A licence that is suspended has no legal effect during the period of suspension.

(2) During the period of suspension:

- (a) a person whose licence is suspended is to be taken, for the purposes of any Act or any instrument made

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under an Act, to be a person who does not hold a licence; and

(b) the person is precluded from obtaining any further licence (otherwise than by renewal of the suspended licence at the end of its term).

(3) The Authority may renew a driver's licence:

(a) which the Authority has decided to suspend, whether or not the period of suspension has commenced; or

(b) which has been otherwise suspended,

but renewal of the licence does not affect the period of suspension.

(15) Section 11AE:

After section 11AD, insert:

Downgrading of licences

11AE. (1) If a licence is cancelled:

(a) by the operation of this Act as a result of the imposition on the licensee of a period of disqualification from holding a licence; or

(b) by the Authority under section 11AB:

(i) because of the licensee's driving record of offences or alleged offences; or

(ii) because of an alleged speeding offence referred to in section 11AB (3),

the Authority may, if the offence or offences (or alleged offence or offences) that gave rise to the cancellation arose wholly or mainly out of the use of a motor vehicle of a class prescribed for the purposes of this section, issue the former licensee with another licence (being one that does not authorise the driving of motor vehicles of that class) in substitution for the cancelled licence.

(2) The regulations may make provision with respect to the exercise by the Authority of its power under this

SCHEDULE 1 - AMENDMENT OF TRAFFIC ACT
1909 - *continued*

section, and that power is to be exercised in conformity with any such provision.

(3) Nothing in this section:

- (a) limits any discretion of the Authority to decline to issue a licence to a person; or
- (b) permits the issue of any licence to a person who for the time being is disqualified from holding one.

(16) Section 18B (**Penalty notices for certain offences**):

After section 18B (4), insert:

(4A) Subsection (4) does not affect any power of the Authority under section 11AB or 11AE.

(17) Section 22 (**Appeals**):

After section 22 (6), insert:

(6A) If in any proceedings concerning a decision of the Authority about a licence it appears to the Court that:

- (a) the licence is affected by another decision of the Authority as well as the one under review in those proceedings; and
- (b) the appellant has commenced or intends to commence appeal proceedings under this section in respect of that other decision,

the Court may adjourn the proceedings pending hearing of that other appeal or so that both appeals may be heard together.

[*Minister's second reading speech made in -
Legislative Assembly on 21 November 1989
Legislative Council on 30 November 1989*]













FIRST PRINT

TRAFFIC (ROAD SAFETY) AMENDMENT BILL 1989

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to amend the Traffic Act 1909 for purposes connected with road safety, with particular reference to the driving of heavy trucks and coaches and drink-drive and speeding offences.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a proclaimed day or proclaimed days.

Clause 3 is a formal provision that gives effect to the Schedule of amendments to the Principal Act.

Clause 4 amends the Motor Vehicles Taxation Act 1988 to allow the Minister for Transport to grant an exemption or partial exemption from the obligation to pay tax in respect of the registration of motor vehicles that have monitoring devices fitted to them as required by the proposed Part 3A of the Principal Act (to be inserted by Schedule 1 (12) of the proposed Act).

SCHEDULE 1 - AMENDMENT OF TRAFFIC ACT 1909

Meaning of "heavy motor vehicle" and "coach"

Schedule 1 (1) inserts definitions of these terms into the Principal Act.

Increased penalties for breaches of the Principal Act and regulations

Schedule 1 (2) (a) amends section 3 (1) so as to increase from \$500 to 20 penalty units (currently \$2,000) the maximum penalty which the regulations under that Act are able to impose for a breach of the regulations or of a condition attached to a driver's licence.

Traffic (Road Safety) Amendment 1989

Schedule 1 (7) raises the general penalty ceiling applicable to offences under the Principal Act from \$500 to 20 penalty units.

Grossly excessive speeding

Schedule 1 (3) amends section 4A so as to increase the penalty for speeding in cases where the speed travelled exceeds the speed limit by more than 45 km/hr. The maximum penalty on conviction will be 20 penalty units (currently \$2,000).

In addition, a conviction for this speeding offence is to carry a mandatory minimum disqualification from driving for a period of 3 months.

The amendments made by Schedule 1 (13) are also, in part, directed at speeding drivers. Section 11AB of the Principal Act is amended so as to make explicit the power of the Roads and Traffic Authority (RTA) to cancel or suspend a licence when an infringement notice for a speeding offence prescribed by the regulations is paid or is dealt with by enforcement order under the Justices Act 1902. (The Authority has this power only if the offender does not elect to have the matter dealt with by a court.)

Special category drivers

At present, the drink-drive provisions of the Principal Act prescribe a legal limit of 0.02 grammes of alcohol in 100 millilitres of blood for certain drivers, namely learner drivers and the holders of provisional licences who have not held a full licence for more than a year.

The amendments made by Schedule 1 (4) (b), (c) and (l) apply the same limit to an expanded category of drivers. Those newly affected are:

- * persons whose licences are cancelled or suspended;
- * persons disqualified from holding or obtaining a driver's licence;
- * persons whose applications for licences have been refused;
- * persons who have never held a licence;
- * interstate or overseas drivers whose authority to drive in New South Wales has been cancelled or suspended.

Persons accompanying learners

At present, section 4E (1L) of the Principal Act provides that a licensed person occupying the seat next to a learner driver is guilty of an offence (maximum penalty \$1,000) if the person exceeds the 0.05 legal limit.

Schedule 1 (4) (d), (e) and (f) amend section 4E so that the person accompanying a learner driver will be liable to the same scale of penalties as a driver if the person has a blood alcohol content of 0.05 grammes of alcohol in 100 millilitres of blood or more.

The amendments made by Schedule 1 (4) (g) - (k) and (m) - (q), and by Schedule 1 (5) and (8), are consequential.

Traffic (Road Safety) Amendment 1989

Effect of disqualification from driving

Schedule 1 (9) amends section 10AA of the Principal Act to make it clear that, during a period when a person is disqualified from driving, the person cannot obtain any further licence.

Suspension of licences by police

Schedule 1 (11) inserts new sections 10C, 10D and 10E into the Principal Act. Proposed section 10C will enable members of the Police Force to suspend the licences of persons charged with certain offences. The offences are:

- * driving with the high range prescribed concentration of alcohol (PCA) (i.e. 0.15 or more);
- * refusing a breath analysis;
- * accompanying a learner while being in the high range PCA;
- * refusing to provide a blood sample at a hospital following an accident.

The licence remains suspended until the charge is dealt with (unless the driver appeals successfully against the suspension).

Proposed section 10D applies the principles of proposed section 10C to the driving privileges, in New South Wales, of interstate or overseas drivers.

Proposed section 10E allows the affected licensee or visitor to appeal to a Local Court against the suspension.

Monitoring of certain coaches and heavy vehicles, vehicles carrying dangerous goods etc.

Schedule 1 (12) inserts a new Part 3A into the Principal Act, the provisions of which may be explained as follows:

Proposed section 10F defines "monitoring device", "owner", "prescribed officer", "vehicle movement record" and other expressions for the purposes of the new Part. A monitoring device is a device which automatically produces particulars of time, speed and distance for inclusion in a vehicle movement record for a vehicle. (A tachograph is perhaps the best-known kind of monitoring device.) A vehicle movement record is a record of each length of time for which a vehicle is driven and the speeds at which, and distances for which, it is driven, together with other particulars relating to the vehicle and the journey being made in it.

Proposed section 10G provides that the new Part will apply to coaches and heavy motor vehicles of a kind prescribed by the regulations and also to vehicles carrying dangerous goods. The new Part will apply to vehicles and drivers from other States and from Territories as well as those from New South Wales.

Proposed section 10H requires monitoring devices in working order to be correctly fitted to vehicles to which the new Part applies. Failure to observe this requirement is an offence by the vehicle owner (maximum penalty 50 penalty units (currently \$5,000)).

Proposed section 10I requires the owner of the vehicle to preserve vehicle movement records. The records must be kept for at least 12 months.

Traffic (Road Safety) Amendment 1989

Proposed section 10J requires a vehicle movement record to be carried by the driver. The record has to show times, speeds, distances and other particulars of driving in New South Wales or elsewhere during the preceding 14 days.

Proposed section 10K enables roadside inspection of monitoring devices by police, and of journey records and log book records by authorised officers of the RTA and authorised inspectors under the Dangerous Goods Act 1975. Drivers of the relevant vehicles may be stopped at random for the purpose of these inspections.

Proposed section 10L allows police to seize a monitoring device (and any recordings contained in it) following a fatal accident involving a truck, bus or other vehicle required to be fitted with one, or if the mechanism appears to have been tampered with, or if the driver has committed a major traffic offence. In addition, police and RTA officers are authorised to seize records relating to the driving of the vehicle if the records appear to have been fraudulently compiled or to relate to another vehicle or to belong to another driver.

Proposed section 10M requires the owners of vehicles to produce vehicle movement records to the RTA on demand. Failure to do so is an offence (maximum penalty 50 penalty units).

Proposed section 10N prohibits tampering with a monitoring device or vehicle movement record (maximum penalty 50 penalty units in each case). The section makes explicit the power of the RTA to cancel the driver's licence of a person who commits either of these offences.

Proposed section 10O enables persons or vehicles to be exempted by the RTA from the operation of any of the provisions of the proposed Part.

Proposed section 10P provides that a vehicle movement record is not admissible in any criminal proceedings except proceedings for an offence concerning tampering with a monitoring device or vehicle movement record or for a major offence (as defined in the Principal Act).

The amendments made by Schedule 1 (2) (b) - (d) are consequential.

Downgrading of licences

Section 1 (15) inserts a new section 11AE so as to enable the Authority, when cancelling a licence for an offence involving excessive speeding or because of a bad driving record, to issue the licensee with a licence of a different class. Under the proposed section the Authority will be able in effect to "downgrade" the licence of an offender who holds a licence to drive heavy motor lorries and coaches by cancelling it and issuing the offender with a licence to drive only lighter vehicles.

The amendment made by Schedule 1 (16) is consequential.

Effect of suspension of licences

Schedule 1 (14) repeals and substitutes section 11AC of the Principal Act. The proposed section consolidates existing provisions of the Act concerning the effect of licence suspension, replacing existing sections 10B (4) (repealed by Schedule 1 (10)) and 11AB (3) (repealed by Schedule 1 (13)).

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The proposed section applies to licence suspensions generally, including those carried out by the police in accordance with amendments made by the proposed Act.

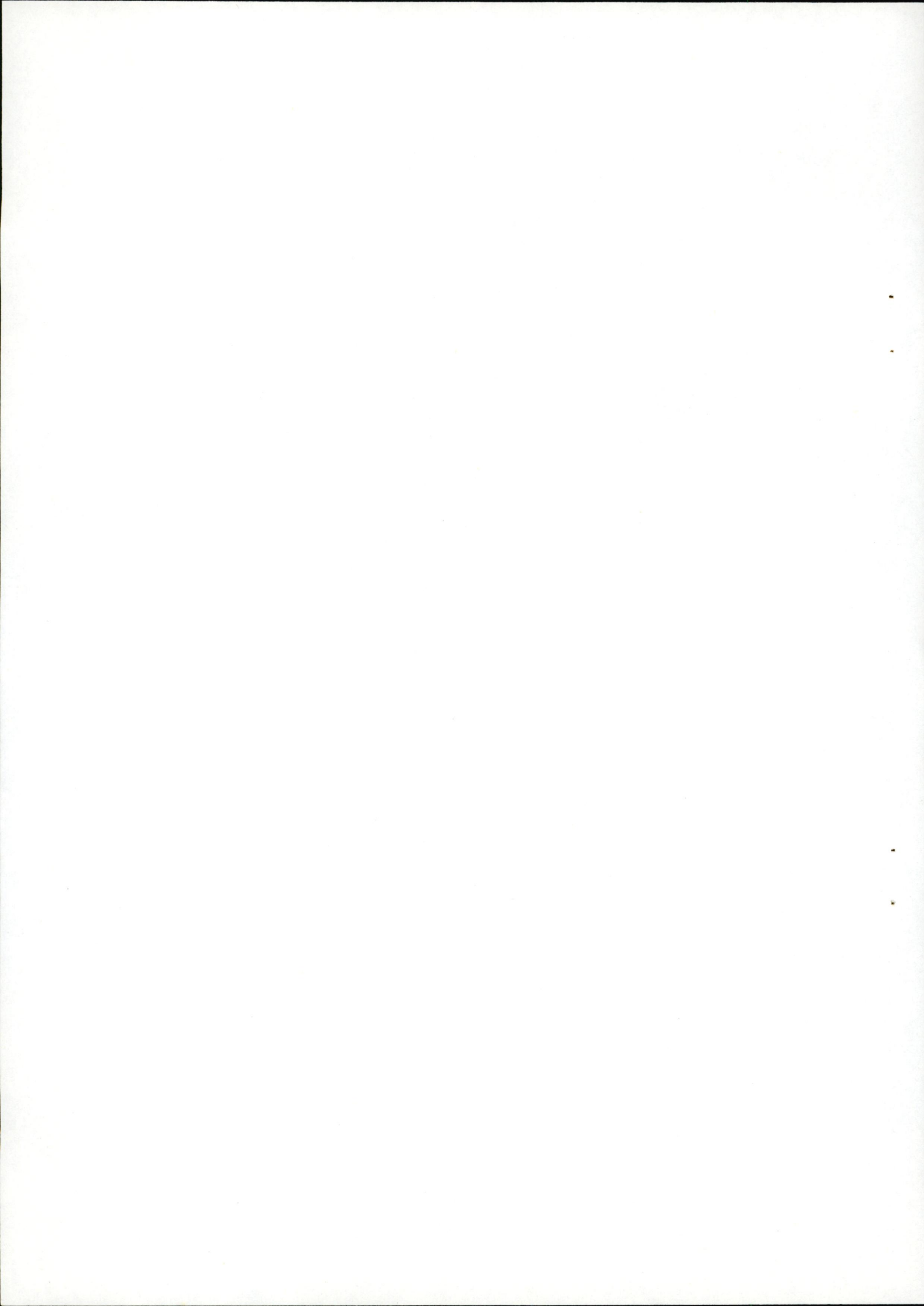
Appeal proceedings

Section 22 of the Principal Act provides an appeal to the Local Court for any person aggrieved by a decision of the RTA concerning his or her licence.

Schedule 1 (17) amends the section to enable the court, when an appellant before it is challenging or intends to challenge more than one decision of the Authority affecting the same licence, to adjourn proceedings in respect of one such challenge pending the hearing of another, or until such time as all challenges can be heard together.

Statute law revision

Schedule 1 (4) (a) and (6) make minor amendments by way of statute law revision.



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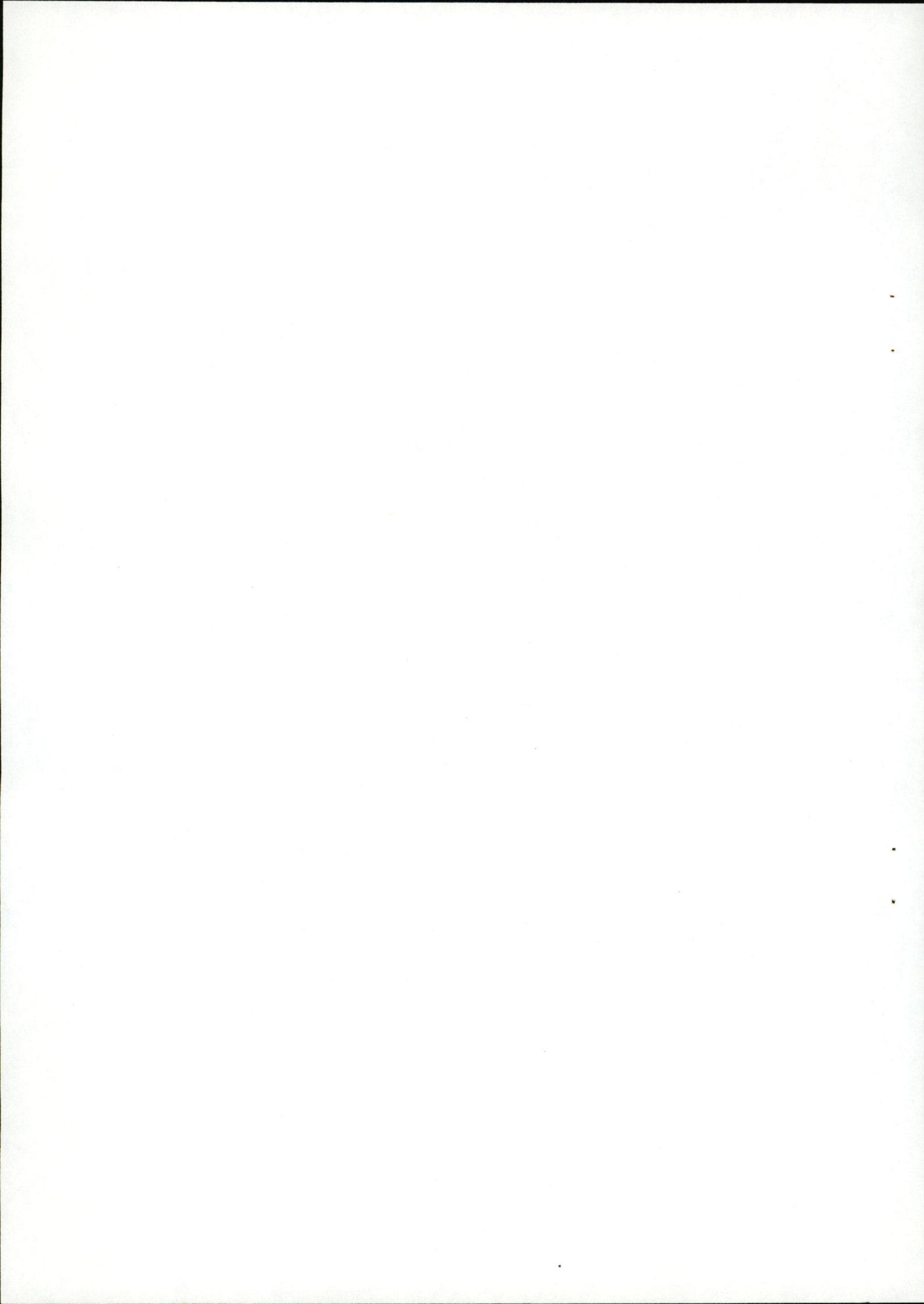
NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Traffic Act 1909 No. 5
4. Amendment of Motor Vehicles Taxation Act 1988 No. 111, sec. 17 (Exemptions granted by Minister)

SCHEDULE 1 - AMENDMENT OF TRAFFIC ACT 1909



TRAFFIC (ROAD SAFETY) AMENDMENT BILL 1989

NEW SOUTH WALES



No. , 1989

A BILL FOR

An Act to amend the Traffic Act 1909 with respect to offences and penalties; to provide for the monitoring of heavy motor vehicles and vehicles carrying dangerous goods; to amend the Motor Vehicles Taxation Act 1988; and for other purposes.

Traffic (Road Safety) Amendment 1989

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Traffic (Road Safety) Amendment Act 1989.

Commencement

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

Amendment of Traffic Act 1909 No. 5

3. The Traffic Act 1909 is amended as set out in Schedule 1.

Amendment of Motor Vehicles Taxation Act 1988 No. 111, sec. 17 (Exemptions granted by Minister)

4. The Motor Vehicles Taxation Act 1988 is amended by inserting at the end of section 17 (1) (n) the following matter:

; or

- (o) any motor vehicle of a type or description approved by the Minister for the purposes of this paragraph that is fitted with a monitoring device of a type or description so approved.

SCHEDULE 1 - AMENDMENT OF TRAFFIC ACT 1909

(Sec. 3)

(1) Section 2 (**Definitions**):

In section 2 (1), insert in alphabetical order the following definitions:

"Coach" means a motor vehicle which is:

- (a) constructed principally to carry persons; and
- (b) equipped to seat more than 8 adult persons; and
- (c) used to convey passengers for hire or reward or in the course of trade or business.

SCHEDULE 1 - AMENDMENT OF TRAFFIC ACT
1909 - *continued*

"Heavy motor vehicle" means:

- (a) a motor vehicle that has a manufacturer's gross vehicle mass exceeding 13.9 tonnes (being the maximum laden mass at which the manufacturer recommends the vehicle be operated); or
- (b) a motor vehicle and trailer combination that has a manufacturer's gross combination mass exceeding 13.9 tonnes (being the maximum laden mass at which the manufacturer recommends the combination be operated).

(2) Section 3 (**Regulations**):

(a) Section 3 (1) (r):

Omit the paragraph, insert instead:

- (r) impose a penalty not exceeding 20 penalty units for a contravention of any regulation or any provision of or condition attached to any licence, exemption or permit granted under the regulations;

(b) Section 3 (1) (t1) (iv):

At the end of the subparagraph, insert "and".

(c) Section 3 (1) (t1) (v):

Omit "documents, the installation and operation of monitoring devices in motor vehicles and the inspection of those records, documents or monitoring devices by any member of the police force or any other specified person; and ", insert instead "documents."

SCHEDULE 1 - AMENDMENT OF TRAFFIC ACT
1909 - *continued*

(d) Omit section 3 (1) (t1) (vi) and (1C).

(3) Section 4A (**Speed limits**):

(a) Section 4A (1A):

After section 4A (1), insert:

(1A) A person who on any length of public street drives a motor vehicle at a speed which exceeds, by more than 45 kilometres per hour, the speed limit applicable to that length of public street is guilty of an offence under this Act and liable to a penalty not exceeding 20 penalty units and, in addition:

- (a) the person is disqualified by a conviction for the offence (and without any specific order) for 3 months from holding a driver's licence; or
- (b) where the court on the conviction thinks fit to order a longer period of disqualification, the person is disqualified for the period specified in the order.

(b) Section 4A (2), (7), (8):

Omit "subsection (1)" wherever occurring, insert instead "this section".

(c) Section 4A (2A):

After section 4A (2), insert:

(2A) If, on a prosecution of a person for an offence under subsection (1A), the court is satisfied that the person exceeded the relevant speed limit, but is not satisfied that it was exceeded by more than 45 kilometres per hour, the court may convict the person of an offence under subsection (1).

SCHEDULE 1 - AMENDMENT OF TRAFFIC ACT
1909 - *continued*

(4) Section 4E (**Prescribed concentration of alcohol in person's blood**):

(a) Section 4E (1):

Omit the definition of "driver's licence", insert instead:

"driver's licence" does not (except in subsection (1B)) include a provisional licence or a learner's licence issued under the regulations;

(b) Section 4E (1B):

After section 4E (1A), insert:

(1B) For the purposes of this section, a person is a **special category driver** in respect of a motor vehicle:

(a) if the person:

- (i) is the holder of a learner's licence; or
- (ii) is the holder of a first-year provisional licence,

for motor vehicles of a class that includes that motor vehicle; or

(b) if the person is not the holder of a licence which authorises the person to drive that motor vehicle because:

- (i) the person's driver's licence is suspended or has been cancelled; or
 - (ii) the person has been disqualified from holding or obtaining a driver's licence; or
 - (iii) the person's application for a driver's licence has been refused; or
 - (iv) the person (never having had authority to drive the vehicle in New South Wales by virtue of being the holder of a licence or permit issued in a place outside New South Wales) has never obtained a driver's licence;
- or

(c) if the person has no authority to drive that motor vehicle in New South Wales because:

SCHEDULE 1 - AMENDMENT OF TRAFFIC ACT
1909 - *continued*

- (i) the person is not the holder of a driver's licence; and
 - (ii) an authority which the person had to drive the vehicle in New South Wales by virtue of being the holder of a licence or permit issued in a place outside New South Wales is suspended or has been cancelled.
- (c) Section 4E (1D), (1JA) (a):
Omit "the holder of a learner's licence in respect of the motor vehicle or of a first-year provisional licence" wherever occurring, insert instead "a special category driver".
- (d) Section 4E (1E):
At the end of section 4E (1E) (b), insert:
; or
(b1) being the holder of a driver's licence, occupies the seat in a motor vehicle next to a holder of a learner's licence who is driving the vehicle,
- (e) Section 4E (1F):
At the end of section 4E (1F) (b), insert:
; or
(b1) being the holder of a driver's licence, occupies the seat in a motor vehicle next to a holder of a learner's licence who is driving the vehicle,
- (f) Section 4E (1G):
At the end of section 4E (1G) (b), insert:
; or
(b1) being the holder of a driver's licence, occupies the seat in a motor vehicle next to a holder of a learner's licence who is driving the vehicle,

SCHEDULE 1 - AMENDMENT OF TRAFFIC ACT
1909 - *continued*

- (g) Section 4E (1I), (1J), (1K) (a), (b):
Omit "(a) or (b)" wherever occurring, insert instead "(a), (b) or (b1)".
- (h) Omit section 4E (1L).
- (i) Section 4E (2A):
At the end of section 4E (2A) (b), insert:
; or
(c) being the holder of a driver's licence, is or was occupying the seat in a motor vehicle next to a holder of a learner's licence while the holder of the learner's licence is or was driving the vehicle upon a public street,
- (j) Omit section 4E (2AA).
- (k) Section 4E (3) (a):
Omit "a preceding subsection", insert instead "subsection (2A)".
- (l) Section 4E (3) (a) (i):
Omit "the holder of a learner's licence or of a first-year provisional licence", insert instead "a special category driver in respect of the motor vehicle concerned".
- (m) Section 4E (3) (b), (5) (c), (6):
Omit "a preceding subsection of this section" wherever occurring, insert instead "subsection (2A)".
- (n) Section 4E (7) (b), (11), (15):
Omit "(2A) (a) or (b) or (2AA)" wherever occurring, insert instead "(2A) (a), (b) or (c)".
- (o) Section 4E (11), (12) (a):
Omit ", (1G) or (1L)" wherever occurring, insert instead "or (1G)".

SCHEDULE 1 - AMENDMENT OF TRAFFIC ACT
1909 - *continued*

- (p) Section 4E (11) (a):
Omit "or (1L)".
- (q) Section 4E (13) (a):
Omit ", (1L)".
- (5) Section 4G (**Analysis of samples of blood**):
 - (a) Section 4G (8) - (11):
Omit ", (1G) or (1L)" wherever occurring, insert instead "or (1G)".
 - (b) Section 4G (8):
Omit "4E (2A) (a) or (b) or (2AA)", insert instead "4E (2A) (a), (b) or (c)".
 - (c) Section 4G (8) (a):
Omit "or (1L)".
- (6) Section 5 (**Offences**):
Section 5 (2) (c):
After "driver's licence", insert "(other than a provisional licence or a learner's licence issued under the regulations)".
- (7) Section 10 (**Court may impose penalty and disqualify driver on conviction**):
 - (a) Section 10 (1):
Omit "\$500", insert instead "20 penalty units".
 - (b) Section 10 (5):
Omit ", (1L)".

SCHEDULE 1 - AMENDMENT OF TRAFFIC ACT
1909 - *continued*

(8) Section 10A (**Disqualification for certain major offences**):

Section 10A (1) (b) (ii):

Omit the subparagraph, insert instead:

- (ii) an offence under section 4AA, section 4E (1D), (1E) (a) or (b), (1F) (a) or (b), (1G) (a) or (b) or (7), section 4F (7), section 5 (2) (a) or (b), section 5AC (2) or section 8 (2); or

(9) Section 10AA (**Effect of disqualification**):

At the end of section 10AA (1) (b), insert:

; and

- (c) no licence may be obtained by the person during the period of disqualification.

(10) Section 10B (**Suspension of licence by Commissioner of Police**):

Omit section 10B (4).

(11) Sections 10C-10E:

After section 10B, insert:

Immediate suspension of licence in certain circumstances

10C. (1) If a person is charged by a member of the Police Force with an offence under section 4E (1G) or (7) or section 4F (7), the same or another member of the Police Force may, at any time within 48 hours after the person has been charged, give the person a notice, in a form approved by the Authority:

- (a) informing the person that every licence held by the person is suspended:
 - (i) on and from a date specified in the notice; or
 - (ii) if the notice so specifies - immediately on receipt of the notice,

SCHEDULE 1 - AMENDMENT OF TRAFFIC ACT
1909 - *continued*

until the charge is heard and determined by a court (or until the charge is withdrawn, if that should happen); and

- (b) informing the person of the right of appeal conferred by section 10E; and
- (c) requiring the person:
 - (i) to surrender every such licence, on or before a date specified in the notice, to a member of the Police Force; or
 - (ii) if the notice so specifies - to surrender every such licence in the person's possession immediately to the member of the Police Force who gave the person the notice.

(2) Any licences held by a person to whom a notice under this section is given are suspended, in accordance with the terms of the notice, until the charge is heard and determined by a court or withdrawn.

(3) Particulars of each notice given under this section are to be forwarded to the Authority immediately after the notice is given.

(4) A person who is given a notice under this section and who does not surrender his or her licences in compliance with the notice is guilty of an offence.

(5) If on the determination of the charge by a court the person is disqualified from holding or obtaining a licence for a specified time:

- (a) the court must take into account the period of suspension under this section when deciding whether to make any order under section 10A; and
- (b) to the extent (if any) that the court so orders, a suspension under this section may be regarded as satisfying all or part of any mandatory minimum period of disqualification required by that section to be imposed when the charge is proved.

SCHEDULE 1 - AMENDMENT OF TRAFFIC ACT
1909 - *continued*

- (6) For the purposes of this section:
- (a) a person is charged with an offence when particulars of the offence are notified in writing to the person by a member of the Police Force; and
 - (b) a charge is withdrawn when the person charged is notified in writing of that fact by a member of the Police Force or when it is withdrawn before the court; and
 - (c) a charge is determined by a court when the offence is proved or the information is dismissed.

Suspension of driving privileges of visiting driver

10D. (1) If:

- (a) a person is charged by a member of the Police Force with an offence under section 4E (1G) or (7) or section 4F (7); and
- (b) the person is not the holder of a licence but, being the holder of a licence or permit issued in a place outside New South Wales, has the benefit of any provision of the regulations conferring on the person authority to drive in New South Wales,

the same or another member of the Police Force may, at any time within 48 hours after the person has been charged, give the person a notice, in a form approved by the Authority, informing the person:

- (c) that his or her authority to drive in New South Wales is suspended:
 - (i) on and from a date specified in the notice; or
 - (ii) if the notice so specifies - immediately on receipt of the notice,until the charge is heard and determined by a court or is withdrawn (if that should happen); and
- (d) of the right of appeal conferred by section 10E.

(2) Any authority of a person to whom a notice under this section is given to drive in New South Wales is suspended, in accordance with the terms of the notice, until

SCHEDULE 1 - AMENDMENT OF TRAFFIC ACT
1909 - *continued*

the charge is heard and determined by a court or withdrawn.

(3) Particulars of each notice given under this section are to be forwarded to the Authority immediately after the notice is given.

(4) For the purposes of this section:

- (a) a person is charged with an offence when particulars of the offence are notified in writing to the person by a member of the Police Force; and
- (b) a charge is withdrawn when the person charged is notified in writing of that fact by a member of the Police Force or when it is withdrawn before the court; and
- (c) a charge is determined by a court when the offence is proved or the information is dismissed.

Appeal against suspension of licence

10E. (1) A person whose licence is suspended under section 10C, or whose authority to drive in New South Wales is suspended under section 10D, may, at any time before the charge that occasioned the suspension has been heard and determined by a court or withdrawn, appeal against the suspension to a Local Court constituted by a Magistrate.

(2) The suspension is not stayed by lodgment of an appeal under this section.

(3) The court:

- (a) is not to uphold the appeal unless it is satisfied that there are exceptional circumstances justifying a lifting of the suspension; and
- (b) is not, for the purposes of this subsection, to take into account the circumstances of the offence.

SCHEDULE 1 - AMENDMENT OF TRAFFIC ACT
1909 - *continued*

(12) Part 3A:

Before Part 4, insert:

**PART 3A - MONITORING OF HEAVY VEHICLES
AND VEHICLES CARRYING DANGEROUS LOADS**

Definitions

10F. (1) In this Part:

"**approved**" means approved by the Authority;

"**automatic data**", in relation to a journey made by a motor vehicle, means recordings (made by mechanical or electronic means, or by both of those means, in an approved form, and to an approved degree of accuracy) of:

- (a) the lengths of time for which the vehicle is driven, and for which it is standing, during the journey; and
- (b) the speeds at which the vehicle is driven (measured continuously or at approved intervals) during the journey; and
- (c) the distance travelled during each period when the vehicle is driven during the journey,

being recordings made by a monitoring device;

"**manual data**", in relation to a journey made by a motor vehicle, means recordings made by hand of:

- (a) the date, time and place of commencement, and of completion, of the journey; and
- (b) the times at which the vehicle is driven, and at which it is standing, during the journey; and
- (c) the name of each driver, and the times at which each driver was in charge of the vehicle, during the journey; and
- (d) the registration number of the vehicle; and
- (e) the name of each person making each of the abovementioned recordings;

SCHEDULE 1 - AMENDMENT OF TRAFFIC ACT
1909 - *continued*

"**monitoring device**" means a device which, when fitted to a motor vehicle, is capable of producing automatic data for a journey made by the vehicle;

"**owner**", in relation to a motor vehicle, includes:

- (a) every person who is the owner or a joint owner or part owner of the vehicle and any person who has the use of the vehicle under a lease or hire-purchase agreement (but not the lessor while the vehicle is being leased under any such agreement); and
- (b) the person in whose name the vehicle is registered (except as provided by paragraph (c)); and
- (c) if the vehicle has been sold or otherwise disposed of by a previous registered owner who has complied with the provisions of the regulations applicable to him or her regarding the sale or disposal - the person to whom it was sold or otherwise disposed of;

"**prescribed officer**" means a person:

- (a) who is employed:
 - (i) by the Authority; or
 - (ii) as an inspector under the Dangerous Goods Act 1975; or
 - (iii) in some other capacity prescribed by the regulations; and
- (b) who is authorised for the purposes of this Part by the regulations;

"**vehicle movement record**", in relation to a journey made by a vehicle, means a record, in durable and graphic form, consisting of:

- (a) manual data for the journey; and
- (b) either:
 - (i) corresponding automatic data for the journey produced by a monitoring

SCHEDULE 1 - AMENDMENT OF TRAFFIC ACT
1909 - *continued*

- device, except where subparagraph (ii) applies; or
- (ii) where the automatic data is stored electronically in a monitoring device - a graphic representation, produced by an approved method, of that data.

(2) The regulations may prescribe the manner in which the Authority may signify any approval for the purposes of this Part.

Application of this Part

10G. (1) This Part applies to:

- (a) any motor vehicle (being a coach or heavy motor vehicle) of a class or description prescribed by the regulations, except in such circumstances as may be so prescribed; and
- (b) any motor vehicle which, because it carries dangerous goods within the meaning of the Dangerous Goods Act 1975, is required by the regulations under that Act, or under any code prescribed by regulations under this Act, to have a sign exhibited on it.

(2) This Part applies to vehicles, drivers and owners whether or not:

- (a) the vehicles are registered in New South Wales; or
- (b) the drivers hold licences issued in New South Wales; or
- (c) the owners ordinarily reside (or, being corporations, are incorporated or have their principal places of business) in New South Wales.

Vehicles to be fitted with monitoring devices in working order

10H. (1) A motor vehicle to which this Part applies is not to be used on any journey made wholly or partly on a public street or public streets in New South Wales, unless:

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- (a) a monitoring device is fitted to the vehicle; and
- (b) the device is producing automatic data for the journey.

(2) If a vehicle is used in contravention of this section, the owner of the vehicle is guilty of an offence.

Maximum penalty: 50 penalty units.

Vehicle movement record to be preserved

10I. (1) A vehicle movement record relating to each journey commenced, on or after the commencement of this section, by a vehicle to which this Part applies is to be preserved for a period of at least 12 months after the date of commencement of the journey.

(2) If this section is not complied with, the owner of the vehicle is guilty of an offence.

Maximum penalty: 50 penalty units.

Vehicle movement record to be carried by driver

10J. (1) A motor vehicle to which this Part applies must not be used for any journey made wholly or partly on a public street or public streets unless a duly completed vehicle movement record is carried, in accordance with this section, by the driver of the vehicle at all times while the vehicle is in the State during the journey.

(2) The record that must be carried on any day is to relate to any journey or part of a journey made by the vehicle, whether in or outside New South Wales, during the period of 14 days immediately preceding that day.

(3) If a vehicle is used in contravention of this section, the owner and the driver of the vehicle are each guilty of an offence and are each liable to a penalty not exceeding 50 penalty units.

(4) It is a defence to a prosecution for an offence under this section if the defendant satisfies the court:

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- (a) that the monitoring device fitted to the vehicle was of a type that stores automatic data electronically; and
- (b) that the compilation of the vehicle movement record required to be carried by the driver on the date of the alleged offence would have required the production of a graphic representation of data which, on that date, were stored in the monitoring device; and
- (c) that, in the circumstances of the case, the required record could not reasonably be expected to have been compiled by that date.

(5) Nothing in this section requires the carriage of a vehicle movement record relating to the use, before the commencement of this section, of any vehicle.

Inspection of monitoring devices and records carried on vehicles

10K. (1) A member of the Police Force may inspect any motor vehicle to which this Part applies in order to ascertain:

- (a) whether a monitoring device is fitted to the vehicle; and
- (b) whether any device so fitted appears to be operating correctly.

(2) For the purposes of an inspection under subsection (1), a member of the Police Force may require the driver to operate the vehicle and to co-operate in any other manner reasonably necessary to facilitate the inspection.

(3) A prescribed officer may:

- (a) require the driver of a motor vehicle to which this Part applies to produce for inspection:
 - (i) his or her licence to drive the vehicle (whether issued in New South Wales or elsewhere); and

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- (ii) any record required by this Part or the regulations to be carried by the driver of the vehicle during the journey; and
 - (iii) any record carried by the driver in connection with the business to which the journey relates; and
- (b) make copies of, or take extracts from, any such record; and
- (c) make reasonable inquiries of the driver concerning any entries in any such record that are made by the driver.
- (4) For the purposes of this section:
- (a) a member of the Police Force wearing the uniform of the Force; or
 - (b) a prescribed officer identifying himself or herself in the manner required by the regulations,
- may by any reasonably clear signal require the driver of any vehicle to which this Part applies to stop and park the vehicle.
- (5) A member of the Police Force or a prescribed officer may require a vehicle and its driver to stay for such time as is reasonably necessary for the exercise of a power conferred on the member or officer by this section.
- (6) A person must not:
- (a) obstruct or hinder a member of the Police Force or a prescribed officer in the exercise of a power conferred by this section; or
 - (b) fail to comply with a requirement made under this section.

Maximum penalty: 50 penalty units.

Seizure of monitoring devices and records

10L. (1) A member of the Police Force may disconnect and take and retain possession of a monitoring device that

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is fitted to a motor vehicle to which this Part applies, together with any automatic data stored in the device:

- (a) if the vehicle has been involved in an accident in which any person was killed; or
- (b) if the member of the Police Force reasonably believes that the monitoring device or any part of its mechanism has been improperly interfered with; or
- (c) if the member of the Police Force reasonably believes that the driver has committed a major offence involving the vehicle during the journey then being undertaken by the vehicle.

(2) A member of the Police Force or a prescribed officer may take and retain possession of any record carried, pursuant to a requirement of this Part or the regulations, by the driver of a motor vehicle to which this Part applies if the member or officer reasonably believes:

- (a) that false entries have been made in the record; or
- (b) that the record is unlawfully in the possession of the driver; or
- (c) that the record does not relate to the vehicle concerned.

(3) A member of the Police Force or a prescribed officer may take and retain possession of any document which the driver of a motor vehicle to which this Part applies represents to be a record required by this Part or the regulations to be carried by the driver but which the member or officer reasonably believes is not such a record.

(4) A person must not obstruct or hinder a member of the Police Force or a prescribed officer in the exercise of a power conferred by this section.

Maximum penalty: 50 penalty units.

Production of records by vehicle owners

10M. (1) The Authority, by notice in writing served on any owner of a vehicle to which this Part applies, may

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require the owner to produce vehicle movement records to the Authority.

(2) The notice may require the production of:

- (a) all vehicle movement records relating to journeys undertaken in the vehicle during the 12 months preceding the date of service of the notice; or
- (b) such of those records as the notice specifies.

(3) The notice is not complied with if the records are not produced at a place, and within a time, specified by the notice.

(4) The owner of a vehicle must comply with a notice under this section.

Maximum penalty: 50 penalty units.

(5) Vehicle movement records produced to the Authority, whether in compliance with a notice under this section or otherwise, may be retained by the Authority for analysis, and while they are so retained, the owner of the vehicle is exempted from the requirements of any further notice under this section in relation to them.

(6) A notice under this section does not require the production of a vehicle movement record being carried by the driver of a vehicle in accordance with a requirement of this Part.

Tampering with monitoring devices or vehicle movement records

10N. (1) A person must not adjust any part of the mechanism of a monitoring device, fitted to a vehicle to which this Part applies, in such a manner that the accuracy of a vehicle movement record for the vehicle will be reduced.

Maximum penalty: 50 penalty units.

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(2) A person must not make any false entry in, or otherwise falsify, a vehicle movement record.

Maximum penalty: 50 penalty units.

(3) Without limiting any power conferred on the Authority by or under this Act, the Authority may cancel the licence or licences of a person who commits an offence under this section.

Exemptions

10O. (1) The Authority may, in accordance with the regulations, exempt any person or vehicle or any class of persons or vehicles from the operation of all or any of the provisions of this Part.

(2) An exemption:

(a) may be absolute or subject to conditions; and

(b) if subject to conditions, has effect only while the conditions are observed.

Evidence of vehicle movement record

10P. (1) A vehicle movement record is not admissible in evidence in any criminal proceedings unless:

(a) the proceedings are proceedings for:

(i) an offence under section 10N; or

(ii) aiding, abetting, counselling or procuring the commission of an offence under that section;
or

(iii) a major offence; or

(b) the record is adduced by the defendant.

(2) Nothing in this section affects the admissibility in any civil proceedings of a vehicle movement record.

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(13) Section 11AB (**Suspension or cancellation of drivers' licences by the Authority**):

Omit section 11AB (3), insert instead:

(3) Without limiting any power of the Authority under subsection (1), a licence may be cancelled or suspended by the Authority because of an alleged speeding offence if, in respect of the alleged offence:

- (a) the licensee has paid a penalty prescribed for the purposes of section 18B; or
- (b) an order has been made under section 100L of the Justices Act 1902 against the licensee.

(4) In subsection (3), "**speeding offence**" means an offence:

- (a) that involves exceeding a speed limit (within the meaning of section 4A); and
- (b) that is prescribed for the purposes of that subsection.

(5) If a person's licence is cancelled by the Authority under this section, the Authority may refuse to issue the person with any further licence for a period determined by the Authority and specified in a notice served on the person under section 21 in respect of the cancellation.

(6) Nothing in this section limits any discretion of the Authority to decline to issue a licence to a person.

(14) Section 11AC:

Omit the section, insert instead:

Effect of suspension of licence

11AC. (1) A licence that is suspended has no legal effect during the period of suspension.

(2) During the period of suspension:

- (a) a person whose licence is suspended is to be taken, for the purposes of any Act or any instrument made

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under an Act, to be a person who does not hold a licence; and

(b) the person is precluded from obtaining any further licence (otherwise than by renewal of the suspended licence at the end of its term).

(3) The Authority may renew a driver's licence:

(a) which the Authority has decided to suspend, whether or not the period of suspension has commenced; or

(b) which has been otherwise suspended, but renewal of the licence does not affect the period of suspension.

(15) Section 11AE:

After section 11AD, insert:

Downgrading of licences

11AE. (1) If a licence is cancelled:

(a) by the operation of this Act as a result of the imposition on the licensee of a period of disqualification from holding a licence; or

(b) by the Authority under section 11AB:

(i) because of the licensee's driving record of offences or alleged offences; or

(ii) because of an alleged speeding offence referred to in section 11AB (3),

the Authority may, if the offence or offences (or alleged offence or offences) that gave rise to the cancellation arose wholly or mainly out of the use of a motor vehicle of a class prescribed for the purposes of this section, issue the former licensee with another licence (being one that does not authorise the driving of motor vehicles of that class) in substitution for the cancelled licence.

(2) The regulations may make provision with respect to the exercise by the Authority of its power under this

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section, and that power is to be exercised in conformity with any such provision.

(3) Nothing in this section:

- (a) limits any discretion of the Authority to decline to issue a licence to a person; or
- (b) permits the issue of any licence to a person who for the time being is disqualified from holding one.

(16) Section 18B (**Penalty notices for certain offences**):

After section 18B (4), insert:

(4A) Subsection (4) does not affect any power of the Authority under section 11AB or 11AE.

(17) Section 22 (**Appeals**):

After section 22 (6), insert:

(6A) If in any proceedings concerning a decision of the Authority about a licence it appears to the Court that:

- (a) the licence is affected by another decision of the Authority as well as the one under review in those proceedings; and
- (b) the appellant has commenced or intends to commence appeal proceedings under this section in respect of that other decision,

the Court may adjourn the proceedings pending hearing of that other appeal or so that both appeals may be heard together.
