

FIRST PRINT

TRAFFIC (PENALTY DEFAULTS) AMENDMENT BILL 1994

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 to enable the Roads and Traffic Authority (the "RTA"):

- (a) to suspend a person's licence for a specified period in certain circumstances rather than cancelling the licence if the person fails to pay the penalty imposed by a parking or traffic infringement notice or by a court for a parking or traffic offence; and
- (b) to refuse to carry out certain functions identified by the regulations in certain circumstances as a result of a failure to pay any such penalty.

A person whose licence is cancelled as a result of a penalty default and who subsequently pays the outstanding penalty is required to apply and pay for a new licence if the person wishes to drive. Suspension of the licence in the first instance will avoid this additional inconvenience and expense if the person pays the penalty within the suspension period.

Schedule 1 amends the Traffic Act 1909:

- (a) to give the RTA a discretion to suspend a person's licence in the case of a penalty default for up to 6 months instead of cancelling the licence; and
- (b) to enable the RTA to subsequently cancel a person's licence if a licence suspension notice has been issued to the person and the person has not paid the penalty within the suspension period; and
- (c) to enable regulations to be made with respect to the reinstatement of suspended licences; and
- (d) to provide that there is no right of appeal against a decision of the RTA to suspend a licence in such circumstances (as is currently the case for a decision of the RTA to cancel a licence or vehicle registration in similar circumstances); and

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- (e) to allow the RTA to refuse to carry out certain functions (e.g. licence renewal or vehicle registration) as a result of a penalty default after giving the person concerned notice of the Authority's intention to do so (proposed section 18D); and
- (f) to provide that there is no right of appeal against a decision of the RTA to refuse to carry out a function under proposed section 18D; and
- (g) to provide that the proposed powers to suspend licences and to refuse to carry out certain functions may be exercised in respect of penalty notices and convictions issued or made before as well as after the commencement of the amendments.

Schedule 2 makes consequential amendments to the Justices Act 1902 as a result of the proposed amendments to the Traffic Act 1909 enabling the RTA to suspend licences.

The Justices Act 1902 currently allows a person, whose licence or vehicle registration has been cancelled under section 18C of the Traffic Act 1909 because the person has not paid the penalty imposed by a penalty notice for a particular offence, to approach a Local Court to have the offence that gave rise to the penalty dealt with by the Court. The Justices Act 1902 also enables the Minister to refer to a Local Court any offence that resulted in a cancellation if the Minister is of the opinion that some question or doubt has arisen in relation to liability in respect of the offence.

The proposed amendments to the Justices Act 1902 extend these provisions to a person whose licence has been suspended by the RTA in similar circumstances.

Clause 1 specifies 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 Schedule of amendments to the Traffic Act 1909.

Clause 4 is a formal provision that gives effect to the Schedule of amendments to the Justices Act 1902.

Schedule 1 contains the amendments to the Traffic Act 1909 described above.

Schedule 2 contains the consequential amendments to the Justices Act 1902 described above.

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SCHEDULE 1—AMENDMENT OF TRAFFIC ACT 1909

SCHEDULE 2—CONSEQUENTIAL AMENDMENT OF JUSTICES ACT 1902

TRAFFIC (PENALTY DEFAULTS) AMENDMENT BILL 1994

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No. , 1994

A BILL FOR

An Act to amend the Traffic Act 1909 to provide for the suspension of licences following penalty defaults, to enable the Roads and Traffic Authority to refuse to process certain transactions following penalty defaults and for other purposes; and to amend the Justices Act 1902 consequentially.

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The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Traffic (Penalty Defaults) Amendment Act 1994.

5 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.

10 Consequential amendment of Justices Act 1902 No. 27

4. The Justices Act 1902 is amended as set out in Schedule 2.

SCHEDULE 1—AMENDMENT OF TRAFFIC ACT 1909

(Sec. 3)

15 (1) Section 18C (Suspension of licence, or cancellation of licence or registration, in default of payment of penalty):

(a) Omit section 18C (4), insert instead:

20 (4) If the person to whom a notice under this section is addressed is the holder of a licence, the notice may state that, if payment of the amount specified in the notice is not received within the time allowed by the notice, the licence:

(a) will be suspended without further notice (a "licence suspension notice"); or

(b) will be cancelled without further notice (a "licence cancellation notice").

25 (4A) A licence suspension notice must specify the period of the suspension. The suspension must not end later than 6 months after the expiry of the time allowed by the notice for payment.

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SCHEDULE 1—AMENDMENT OF TRAFFIC ACT 1909—
continued

- (4B) The Authority may serve a licence cancellation notice on a person who has been served with a licence suspension notice if: 5
- (a) payment of the amount specified in the licence suspension notice is not received before the expiry of the suspension; and
 - (b) the licence has not expired.
- (b) In section 18C (5), after “further notice”, insert “(a **“registration cancellation notice”**)”. 10
- (c) After section 18C (5), insert:
- (5A) The Authority has a discretion as to whether to issue, in the first instance, a licence suspension notice, a licence cancellation notice or a registration cancellation notice. 15
- (d) Omit section 18C (6), insert instead:
- (6) If payment is not made in accordance with a notice served under this section then, at the expiry of the time allowed by the notice for payment:
- (a) any licence referred to in the notice is taken to be suspended for the period specified in the notice if it is a licence suspension notice or cancelled if it is a licence cancellation notice; and 20
 - (b) any registration referred to in the notice is taken to be cancelled if it is a registration cancellation notice. 25
- (e) After section 18C (8) (b) (i), insert:
- (ia) the reinstatement or restoration, on application made within the prescribed time, of suspended or cancelled licences on payment of the amount payable under a notice under this section; and 30
- (f) Omit section 18C (9) and (10), insert instead:
- (9) Sections 21 and 22 do not apply to the suspension or cancellation of a licence or the cancellation of a vehicle registration under this section.

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SCHEDULE 1—AMENDMENT OF TRAFFIC ACT 1909—
continued

(10) This section, as in force after the commencement of the Traffic (Penalty Defaults) Amendment Act 1994, applies:

- 5 (a) to notices issued under section 18B; and
 (b) to convictions made,
before or after that commencement.

(2) Section 18D:

After section 18C, insert:

10 **Authority may refuse to process transactions with penalty defaulters**

15 18D. (1) The Authority may refuse to carry out any function, or any function of a class, prescribed by the regulations for the purposes of this section if the function relates to, or is carried out for:

- (a) the holder of a licence that is taken to be suspended or cancelled under section 18C; or
 (b) the registered owner of any vehicle, the registration of which is taken to be cancelled under section 18C; or
20 (c) a person to whom a notice under section 18C may issue but who is not the holder of a licence or the registered owner of a vehicle.

25 (2) The Authority must give notice in the manner prescribed by the regulations to the person concerned before refusing to carry out any function under this section.

(3) The regulations may prescribe functions, or functions of a class, for or with respect to the following:

- 30 (a) the registration of vehicles;
 (b) the issuing of any licences under this Act;
 (c) number-plates for vehicles;
 (d) testing applicants for licences;
 (e) other matters specified by the regulations.

35 (4) The regulations may apply differently to different classes of functions and may prescribe circumstances in which a function, or a function of a class, may be refused.

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

(5) Sections 21 and 22 do not apply to a decision of the Authority under this section to refuse to carry out a function.

(6) This section applies to a person in respect of whom a notice has issued under section 18B, or a conviction was made, before or after the commencement of this section.

(7) This section applies to a function despite any other provision of an enactment which requires the Authority to carry out the function.

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**SCHEDULE 2—CONSEQUENTIAL AMENDMENT OF
JUSTICES ACT 1902**

(Sec. 4)

(1) Section 100Y (Application to have offence dealt with by court):

(a) From section 100Y (1) (a), omit "licence, or the registration of a person's vehicle, has been cancelled", insert instead "licence has been suspended or cancelled, or the registration of a person's vehicle has been cancelled,".

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(b) From section 100Y (2), omit "cancellation of the licence or registration", insert instead "suspension or cancellation of the licence, or cancellation of the registration".

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(2) Section 100Z (Reference of matter by Minister):

From section 100Z (a), omit "licence, or the registration of a person's vehicle, has been cancelled", insert instead "licence has been suspended or cancelled, or the registration of a person's vehicle has been cancelled,".

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(3) Section 100ZE (Interim restoration of licence or registration by order):

(a) From section 100ZE (1), omit "restoration of a licence or registration cancelled", insert instead "reinstatement or restoration of a licence suspended or cancelled, or registration cancelled,".

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SCHEDULE 2—CONSEQUENTIAL AMENDMENT OF JUSTICES
ACT 1902—*continued*

(b) Omit section 100ZE (2), insert instead:

5 (2) A licence so reinstated or restored, or a registration so
restored, has effect, subject to the Traffic Act 1909, until the
date on which:

(a) the licence would have expired if the licence had not
been suspended or cancelled; or

10 (b) the registration would have expired if the registration
had not been cancelled.
