

[Act 1999 No 59]



New South Wales

Road Transport (Driver Licensing) Amendment Bill 1999

Explanatory note

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

Overview of Bill

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

* Amended in committee—see table at end of volume.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act.

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

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

Schedule 1 Amendments relating to use of photographs

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

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

Current protection of photographs provided to RTA for other purposes

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

Proposed amendments

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

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

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

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

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

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

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

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

Schedule 2 Amendments relating to cancellation or suspension of driver licences

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

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

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

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

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