



New South Wales

# Road Transport Legislation Amendment Act 2008 No 61

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New South Wales

# Road Transport Legislation Amendment Act 2008 No 61

Act No 61, 2008

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An Act to amend the *Road Transport (Driver Licensing) Act 1998*, the *Road Transport (Driver Licensing) Regulation 1999* and the *Road Transport (General) Act 2005* with respect to further sanctions in relation to certain driving offences, and with respect to fatigue management and speeding compliance, and to amend the *Roads Act 1993* with respect to approved toll cameras and toll offences. [Assented to 1 July 2008]

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Road Transport Legislation Amendment Act 2008*.

**2 Commencement**

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

**3 Amendment of Acts and Regulation**

The Acts and Regulation specified in Schedules 1–5 are amended as set out in those Schedules.

**4 Repeal of Act**

- (1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.
- (2) The repeal of this Act does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by this Act.

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## Schedule 1      **Amendment of Road Transport (Driver Licensing) Act 1998 No 99**

(Section 3)

### **Section 19A**

Insert after section 19:

#### **19A    Penalty of driver licence disqualification**

- (1) In addition to a penalty referred to in section 19 (3), the regulations may provide for a person who is convicted of a relevant offence:
  - (a) to be automatically disqualified by virtue of the conviction from holding a driver licence for a period not exceeding 3 months, or
  - (b) to be disqualified by order of the court that convicts the person of the offence from holding a driver licence for such period as the court thinks fit (whether for a period that is shorter or longer than a period of automatic disqualification referred to in paragraph (a)).
- (2) In this section:

*relevant offence* means an offence under the regulations of being the holder of a learner licence driving unaccompanied by a supervising driver.

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

(Section 3)

### [1] Clause 12 Learner driver requirements

Insert after clause 12 (6):

- (7) The offence under subclause (1) (a) is, for the purposes of section 19A of the Act and sections 205 and 206 of the *Road Transport (General) Act 2005*, the offence of being the holder of a learner licence driving unaccompanied by a supervising driver.
- (8) If a person is convicted of an offence under subclause (1) (a), the person is disqualified by the conviction (and without any specific order) from holding a driver licence:
  - (a) for a period of 3 months, or
  - (b) if the court on the conviction thinks fit to order a different period of disqualification determined in accordance with subclause (9), for the period specified in the order.

**Note.** Section 189 of the *Road Transport (General) Act 2005* provides for the effect of a disqualification (whether or not by order of a court).
- (9) In determining a different period of disqualification under subclause (8), the court may specify a period that is:
  - (a) more than 3 months but no more than 12 months, or
  - (b) less than 3 months, but only if:
    - (i) the person's driver licence or authority to drive in New South Wales has been suspended for a period (*the suspension period*) under section 205 or 206 of the *Road Transport (General) Act 2005* for that offence, and
    - (ii) the specified disqualification period when added to the suspension period results in a total period of not less than 3 months.
- (10) The disqualification referred to in subclause (8) is in addition to any other penalty imposed for the offence.
- (11) A period of disqualification imposed under subclause (8) commences on the date of conviction for the offence to which it relates.
- (12) In subclauses (1), (2) and (3), a reference to a learner licence includes a reference to a foreign driver licence that has the same or similar effect as a learner licence.

**[2] Schedule 2 Additional demerit point offences**

Omit the matter relating to clause 12 (1) (a) of the *Road Transport (Driver Licensing) Regulation 1999*.

**[3] Schedule 4 Savings and transitional provisions**

Insert after clause 5:

**6 Application of amendments**

The amendments made by Schedule 2 [1] and [2] to the *Road Transport Legislation Amendment Act 2008* do not apply in relation to an offence referred to in clause 12 (1) (a) that occurred before the commencement of those amendments.

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## Schedule 3 Amendment of Road Transport (General) Act 2005 No 11

(Section 3)

### [1] Section 204A

Insert before section 204 in Division 4 of Part 5.4:

#### 204A Definitions

In this Division:

***grievous bodily harm*** has the same meaning as it has in the *Crimes Act 1900*.

***learner licence*** has the same meaning as it has in section 8 of the *Road Transport (Safety and Traffic Management) Act 1999*.

***provisional licence*** has the same meaning as it has in section 8 of the *Road Transport (Safety and Traffic Management) Act 1999*.

### [2] Section 205 Immediate suspension of licence in certain circumstances

Omit section 205 (1A). Insert instead:

- (1A) If it appears to a police officer that a person has committed an offence under the *Road Transport (Safety and Traffic Management) Act 1999* (other than a camera recorded offence within the meaning of section 179 of this Act) of:
- (a) exceeding a speed limit prescribed under that Act by more than 45 kilometres per hour, or
  - (b) exceeding a speed limit prescribed under that Act by more than 30 kilometres per hour but not more than 45 kilometres per hour, as the holder of a learner licence or provisional licence for the class of vehicle being driven, the same or another police officer may, at any time within 48 hours of:
    - (c) the person being served with a penalty notice for the offence, or
    - (d) the person being charged with the offence, give the person a suspension notice.
- (1B) If it appears to a police officer that a person has committed an offence under the regulations under the *Road Transport (Driver Licensing) Act 1998* of being the holder of a learner licence

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driving unaccompanied by a supervising driver, the same or another police officer may, at any time within 48 hours of:

- (a) the person being served with a penalty notice for the offence, or
- (b) the person being charged with the offence, give the person a suspension notice.

**[3] Section 205 (2) (a)**

Omit “or (1A)”. Insert instead “, (1A) or (1B)”.

**[4] Section 205 (2) (b)**

Insert “or (1B)” after “(1A)”.

**[5] Section 205 (2) (b) (i)**

Omit the subparagraph. Insert instead:

- (i) a period of 6 months (in the case of an offence referred to in subsection (1A) (a)) or 3 months (in the case of an offence referred to in subsection (1A) (b) or (1B)) elapses after the date on which the offence is alleged to have been committed,

**[6] Section 205 (8)**

Omit the subsection.

**[7] Section 206 Suspension of driving privileges of visiting driver**

Omit the definition of *grievous bodily harm* from section 206 (1).

**[8] Section 206 (1), definition of “suspension notice”**

Omit “or (2A)” wherever occurring. Insert instead “, (2A) or (2B)”.

**[9] Section 206 (1), definition of “suspension notice”**

Insert “or (2B)” after “subsection (2A)” wherever occurring.

**[10] Section 206 (1), definition of “suspension notice”**

Omit paragraph (b) (i). Insert instead:

- (i) a period of 6 months (in the case of an offence referred to in subsection (2A) (a)) or 3 months (in the case of an offence referred to in subsection (2A) (b) or (2B)) elapses after the date on which the offence is alleged to have been committed,

**[11] Section 206 (2A) and (2B)**

Omit section 206 (2A). Insert instead:

- (2A) If it appears to a police officer that an authorised visiting driver has committed an offence under the *Road Transport (Safety and Traffic Management) Act 1999* (other than a camera recorded offence within the meaning of section 179 of this Act) of:
- (a) exceeding a speed limit prescribed under that Act by more than 45 kilometres per hour, or
  - (b) exceeding a speed limit prescribed under that Act by more than 30 kilometres per hour but not more than 45 kilometres per hour, as the holder of a learner licence or provisional licence for the class of vehicle being driven,
- the same or another police officer may, at any time within 48 hours of:
- (c) the authorised visiting driver being served with a penalty notice for the offence, or
  - (d) the authorised visiting driver being charged with the offence,
- give the authorised visiting driver a suspension notice.
- (2B) If it appears to a police officer that an authorised visiting driver has committed an offence under the regulations under the *Road Transport (Driver Licensing) Act 1998* of being the holder of a learner licence driving unaccompanied by a supervising driver, the same or another police officer may, at any time within 48 hours of:
- (a) the authorised visiting driver being served with a penalty notice for the offence, or
  - (b) the authorised visiting driver being charged with the offence,
- give the authorised visiting driver a suspension notice.

**[12] Schedule 1 Savings, transitional and other provisions**

Insert at the end of clause 1 (1):

*Road Transport Legislation Amendment Act 2008*

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[13] **Schedule 1**

Insert (with appropriate numbering) at the end of the Schedule:

**Part Provisions consequent on enactment of  
Road Transport Legislation Amendment  
Act 2008**

**Definition**

In this Part, *Amending Act* means the *Road Transport Legislation Amendment Act 2008*.

**Application of amendments**

Sections 205 and 206, as amended by Schedule 3 to the Amending Act, do not apply in relation to an alleged offence referred to in section 205 (1A) (b) or (1B), or 206 (2A) (b) or (2B) (as so amended) that occurred before those sections were so amended.

**Existing suspensions**

A suspension given by a police officer under section 205 or 206 and in force immediately before the amendment of those sections by Schedule 3 to the Amending Act is taken to be a suspension given by the police officer under section 205 or 206, respectively, as amended by the Amending Act.

## **Schedule 4 Amendments relating to fatigue management and speeding compliance**

(Section 3)

### **4.1 Road Transport (General) Act 2005 No 11**

#### **[1] Section 3 Definitions**

Omit paragraph (d) of the definition of *applicable road law* in section 3 (1).

Insert instead:

- (d) regulations made under section 11B or 11C (except in Chapter 3, unless otherwise provided by the regulations), or
- (e) any other provision of the road transport legislation prescribed by the regulations for the purposes of this definition.

#### **[2] Sections 11B and 11C**

Insert after section 11A:

#### **11B Regulations relating to fatigue management**

- (1) Regulations may be made for or with respect to the management and prevention of driver fatigue in connection with the driving of heavy vehicles and heavy combinations.
- (2) Without limiting the generality of subsection (1), regulations may be made for or with respect to the following:
  - (a) the duties of drivers of heavy vehicles and heavy combinations,
  - (b) the duties of employers of drivers of heavy vehicles and heavy combinations, prime contractors, operators, schedulers, consignors, consignees, loading managers, loaders and unloaders,
  - (c) the duties of other persons who make use of or engage in activities involving the use or operation of heavy vehicles or heavy combinations or who may do so,
  - (d) the periods that drivers of heavy vehicles and heavy combinations spend working and resting,
  - (e) the making, keeping, possession and inspection of records in respect of heavy vehicles or heavy combinations and their drivers,

- (f) the medical examination of drivers of heavy vehicles and heavy combinations,
  - (g) risk management processes, principles and factors to be applied,
  - (h) reasonable steps defences or other defences for offences under regulations made under this section,
  - (i) the recognition of decisions in other jurisdictions in relation to the management of fatigue in drivers of heavy vehicles or heavy combinations,
  - (j) the accreditation of operator fatigue management systems and auditing of such systems.
- (3) A regulation made under this section may create an offence punishable by a penalty not exceeding 250 penalty units.
  - (4) This section is in addition to, and does not limit, any other regulation-making power contained in this Act or any other applicable road law.

**11C Regulations relating to speeding compliance**

- (1) Regulations may be made for or with respect to the management and prevention of speeding in connection with heavy vehicles or heavy combinations.
- (2) Without limiting subsection (1), regulations may be made for or with respect to the following:
  - (a) the duties of employers of drivers of heavy vehicles and heavy combinations, prime contractors, schedulers, operators, consignors and consignees,
  - (b) the duties of other persons who make use of or engage in activities involving the use or operation of heavy vehicles or heavy combinations or who may do so.
- (3) A regulation made under this section may create an offence punishable by a penalty not exceeding 250 penalty units.
- (4) This section is in addition to, and does not limit, any other regulation-making power contained in this Act or any other applicable road law.

**[3] Section 130 Application of Part**

Omit section 130 (1) (b).

**[4] Section 146 Additional vehicle search powers relating to fatigue offences**

Omit “the *Road Transport (Safety and Traffic Management) (Driver Fatigue) Regulation 1999* or a regulation replacing that regulation” from section 146 (2).

Insert instead “a regulation made under section 11B”.

**[5] Section 154A**

Insert after section 154:

**154A Directions relating to driver fatigue**

- (1) An authorised officer may exercise powers under this section if the officer believes on reasonable grounds that a driver has committed a fatigue-related offence and:
  - (a) that the driver is impaired by fatigue that may have been caused by the occurrence of the offence, or
  - (b) that the commission of the offence occurred sufficiently recently that there is a risk that the driver may be impaired by fatigue.
- (2) The authorised officer may do any of the following:
  - (a) direct the driver to take rest immediately, or to take additional rest at the driver’s next required rest break,
  - (b) direct the driver to work reduced hours in the next relevant period to compensate for excess hours worked,
  - (c) direct the driver to take the next night rest time,
  - (d) direct the driver not to work for a specified period of time,
  - (e) if the officer has observed the driver driving in a way that the officer believes, on reasonable grounds, is dangerous, direct the driver to stop driving immediately, and authorise a qualified person to move the vehicle to a suitable rest place,
  - (f) if the driver fails to produce a specified record or document required to be kept in relation to fatigue management or the officer believes on reasonable grounds that any such record or document produced cannot be relied on, direct the driver not to work for a 24-hour period.
- (3) A person is guilty of an offence if:
  - (a) the person is subject to a direction under subsection (2), and

- 
- (b) the person engages in conduct that results in a contravention of the direction.

Maximum penalty: 60 penalty units.

- (4) In this section:

*fatigue-related offence* means an offence under regulations made under section 11B, being an offence prescribed by the regulations for the purposes of this section.

**[6] Section 180 Proceedings for offences**

Insert “or under a regulation made under section 11B or 11C” after “Chapter 3” in section 180 (2) (a).

**[7] Section 244A**

Insert after section 244:

**244A Application of OH&S legislation**

- (1) The provisions of an applicable road law do not preclude, or otherwise affect, the operation of the occupational health and safety legislation.
- (2) If the effect of complying with a requirement of an applicable road law would be to cause a person to contravene a provision of the occupational health and safety legislation, the person is not required to comply with the requirement of the applicable road law.
- (3) Where an act or omission constitutes an offence under an applicable road law and:
- (a) under the occupational health and safety legislation, or
  - (b) under the *Road and Rail Transport (Dangerous Goods) Act 1997*,
- the offender is not liable to be punished twice in respect of the offence.
- (4) In this section:
- occupational health and safety legislation* means the following Acts and any regulations made under those Acts:
- (a) the *Occupational Health and Safety Act 2000*,
  - (b) the *Coal Mine Health and Safety Act 2002*,
  - (c) the *Mine Health and Safety Act 2004*.

Road Transport Legislation Amendment Act 2008 No 61

Schedule 4 Amendments relating to fatigue management and speeding compliance

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## **4.2 Road Transport (Safety and Traffic Management) Act 1999 No 20**

### **Schedule 1 Regulation-making powers**

Omit clause 3 (1) (a) and (2).

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## **Schedule 5      Amendment of Roads Act 1993 No 33**

(Section 3)

### **[1]    Section 242 Proceedings for offences**

Insert at the end of the section:

- (2) Proceedings for a toll offence (within the meaning of section 250A) may be commenced within 12 months after the time when the offence is alleged to have been committed.

### **[2]    Section 248 Evidentiary certificates**

Insert after section 248 (1) (d):

- (d1) a specified toll was or was not a relevant toll in relation to a specified toll point on a specified date for the purposes of this Act and the regulations or for the purposes of a specified provision of this Act or the regulations, or
- (d2) a specified person was or was not a toll operator in relation to a specified tollway, bridge, tunnel or road-ferry, or
- (d3) a specified point was or was not a toll point in relation to a specified tollway, bridge, tunnel or road-ferry, or
- (d4) a specified person was or was not the registered operator of a specified vehicle, or

### **[3]    Section 248 (5)**

Insert after section 248 (4):

- (5) Without limiting subsection (1), a statement in a certificate that is issued on behalf of a roads authority by a person prescribed by the regulations, or by a person belonging to a class of persons so prescribed, as to any matter that appears in or can be calculated from records:
  - (a) that relate to motor vehicles using tollways or payment of tolls (or both), and
  - (b) that are kept or accessed by the roads authority or the person,is admissible in any legal proceedings and is evidence of the fact or facts so stated.

**[4] Section 250A Approved camera recording devices—toll offences**

Omit the definition of *approved toll camera* from section 250A (1).

Insert instead:

*approved toll camera* means a digital camera of a type approved by the Governor by order published in the Gazette as being designed:

- (a) to take a photograph of a vehicle as it is driven past a toll point, and
- (b) to record on the photograph:
  - (i) the date on which the photograph is taken, and
  - (ii) the time and location at which the photograph is taken, and
  - (iii) the direction in which the vehicle activating the camera is travelling, and
  - (iv) such ancillary information in connection with the toll and the photographing of the vehicle at that time and location as may be prescribed by the regulations.

**[5] Section 250A (1A)**

Insert after section 250A (1):

- (1A) The fact that a camera takes a photograph of a vehicle only if it is driven in contravention of a requirement to pay a toll, or records the information referred to in paragraph (b) of the definition of *approved toll camera* only on such a photograph, does not prevent the camera from being an approved toll camera.

**[6] Section 250A (5A)**

Insert after section 250A (5):

- (5A) Subsection (5) applies only in respect of information acquired in relation to a vehicle driven in contravention of a requirement to pay the relevant toll.

**[7] Schedule 2 Savings, transitional and other provisions**

Insert at the end of clause 1 (1):

*Road Transport Legislation Amendment Act 2008*

**[8] Schedule 2, Part 6**

Insert at the end of the Schedule:

**Part 6 Provisions consequent on enactment of  
Road Transport Legislation Amendment  
Act 2008**

**77 Definitions**

In this Part:

*Amending Act* means the *Road Transport Legislation Amendment Act 2008*.

*toll offence* has the same meaning as it has in section 250A.

**78 Application of amendments**

- (1) Section 242, as amended by Schedule 5 [1] to the Amending Act, does not apply in respect of any alleged toll offence that occurred before that section was so amended.
- (2) The amendments made by Schedule 5 [2] and [3] to the Amending Act apply only in relation to legal proceedings commenced on or after the commencement of the amendments but extend to matters and events occurring before that commencement.
- (3) The amendments made by Schedule 5 [4] and [5] to the Amending Act have effect in relation to proceedings for a toll offence whether the proceedings were commenced before, on or after the commencement of the amendments but not proceedings determined before that commencement.

**79 Existing approved toll cameras**

An approval of a camera given by the Governor pursuant to the definition of *approved toll camera* in section 250A (1) and in force immediately before the commencement of the amendments made by Schedule 5 [4] and [5] to the Amending Act is taken to be an approval given by the Governor pursuant to that definition as amended and qualified by those items.

**[9] Dictionary**

Insert in alphabetical order:

***toll operator*** means:

- (a) the RTA, or
- (b) any other person who is declared by the Minister by order published in the Gazette to be a toll operator in respect of a tollway for the purposes of this definition.

***toll point*** means the point designated by a toll operator (by signs or otherwise) as the point at which the liability to pay a toll is incurred for driving a motor vehicle on a tollway or a particular lane of the tollway.

[Agreement in principle speech made in Legislative Assembly on 18 June 2008  
Second reading speech made in Legislative Council on 25 June 2008]

BY AUTHORITY