



New South Wales

Road Transport Legislation Amendment (Miscellaneous Provisions) Act 2009 No 104

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New South Wales

Road Transport Legislation Amendment (Miscellaneous Provisions) Act 2009 No 104

Act No 104, 2009

An Act to make miscellaneous amendments to the road transport legislation and related amendments to the *Fines Act 1996*. [Assented to 14 December 2009]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Road Transport Legislation Amendment (Miscellaneous Provisions) Act 2009*.

2 Commencement

- (1) This Act commences on the date of assent to this Act, except as provided by subsection (2).
- (2) Schedules 1.2 [4]–[11], 1.3 and 2 commence on a day or days to be appointed by proclamation.

Schedule 1 Amendment of road transport legislation

1.1 Road Transport (Driver Licensing) Act 1998 No 99

[1] Section 25 Driver must be licensed

Omit “not been” and “being convicted of the offence” from section 25 (4).
Insert instead “never been” and “the commission of the offence”, respectively.

[2] Section 25A Offences committed by disqualified drivers or drivers whose licences are suspended or cancelled

Omit section 25A (6).

[3] Section 25A (10)

Omit the subsection. Insert instead:

- (10) For the purposes of subsection (7), the *relevant disqualification period* is:
- (a) in the case of a first offence under subsection (1), (2) or (3) (a)—12 months, or
 - (b) in the case of a first offence under subsection (3A)—3 months, or
 - (c) in the case of a second or subsequent offence—2 years.
- (11) For the purposes of determining both the maximum penalty and the disqualification period for any offence under this section, an offence is a *second or subsequent offence* if:
- (a) in relation to an offence under subsection (1), (2) or (3):
 - (i) it is the second or subsequent occasion on which the person is convicted of any offence under subsection (1), (2) or (3) within the period of 5 years immediately before the person is convicted of the offence, or
 - (ii) within the period of 5 years immediately before the person is convicted of the offence, the person was convicted of a major offence within the meaning of the *Road Transport (General) Act 2005*, or
 - (iii) within the period of 5 years immediately before the person is convicted of the offence, the person was convicted of an offence under section 6 (1C) or 7A of the *Traffic Act 1909* (as in force before its repeal), or

(iv) within the period of 5 years immediately before the person is convicted of the offence, the person was convicted of an offence under section 25 (2), or

(b) in relation to an offence under subsection (3A)—it is the second or subsequent occasion on which the person is convicted of an offence under subsection (3A) within the period of 5 years immediately before the person is convicted of the offence.

[4] Schedule 3 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Road Transport Legislation Amendment (Miscellaneous Provisions) Act 2009 (to the extent that it amends this Act)

[5] Schedule 3

Insert at the end of the Schedule (with appropriate Part and clause numbers):

**Part Provisions consequent on enactment of
Road Transport Legislation Amendment
(Miscellaneous Provisions) Act 2009**

Application of amendments to sections 25 and 25A

- (1) The amendments made to section 25 of this Act by the amending Act extend to any proceedings for an offence against section 25 (2) that were not finally determined when the amendments commenced.
- (2) The amendments made to section 25A of this Act by the amending Act extend (and are taken always to have extended) to offences under that section for which persons were convicted before the commencement of the amendments.
- (3) Subject to the regulations, subclause (2) applies to offences under section 25A (3A) as if:
 - (a) any reference in section 25A (11) (a), as inserted by the amending Act, to an offence under section 25A (1), (2) or (3) included a reference to an offence under section 25A (3A) for which a person was convicted before the commencement of the amendments to section 25A, and

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- (b) section 25A (11) (b), as inserted by the amending Act, were limited to the determination of whether an offence under section 25A (3A) for which a person is convicted after that commencement is a second or subsequent offence.
- (4) Nothing in subclause (2) or (3) affects any judgment or order of a court that was given or made before the introduction day in its application to the parties to the proceedings in which the judgment or order was given or made.
- (5) In particular, nothing in subclause (2) or (3) affects the judgment of the Court of Criminal Appeal in *Director of Public Prosecutions v Partridge* [2009] NSWCCA 75 in its application to the parties to that case.
- (6) For the purposes of this clause, proceedings are not finally determined if:
- (a) any period for bringing an appeal as of right in respect of the proceedings has not expired (ignoring any period that may be available by way of extension of time to appeal), or
- (b) any appeal in respect of the proceedings is pending (whether or not it is an appeal brought as of right).
- (7) In this clause:
- amending Act** means the *Road Transport Legislation Amendment (Miscellaneous Provisions) Act 2009*.
- introduction day** means the day on which the Bill for the amending Act was first introduced into Parliament.

1.2 Road Transport (General) Act 2005 No 11

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

Australian registrable vehicles register means:

- (a) the Register within the meaning of the *Road Transport (Vehicle Registration) Act 1997*, or
- (b) a register maintained under the law of another jurisdiction that corresponds, or substantially corresponds, to the Register within the meaning of the *Road Transport (Vehicle Registration) Act 1997*.

[2] Section 3 (1), definition of “registered operator”

Insert “, or a person recorded in an Australian registrable vehicles register,” after “Australian applicable road law” wherever occurring.

[3] Section 3 (1), definition of “registration”

Insert “or in an Australian registrable vehicles register” after “law”.

[4] Section 179 Liability of responsible person for vehicle for designated offences

Omit “statutory declaration” wherever occurring in section 179 (3) (a) (i), (4) and (7).

Insert instead “relevant nomination document”.

[5] Section 179 (6)

Omit “20 penalty units” and “5 penalty units”.

Insert instead “100 penalty units” and “50 penalty units”, respectively.

[6] Section 179 (7)

Omit “10 penalty units” and “5 penalty units”.

Insert instead “100 penalty units” and “50 penalty units”, respectively.

[7] Section 179 (8A)–(8D)

Insert after section 179 (8):

(8A) Nominations by corporations

The Authority may approve one or more documents (*approved nomination documents*) for use by corporations when nominating other persons under this section as persons in charge of vehicles for which the corporations are the responsible persons.

(8B) Without limiting subsection (8A), the Authority may approve documents under that subsection:

- (a) to be provided in printed or electronic form (or both), and
- (b) to be used in relation to more than one designated offence involving one or more vehicles for which a corporation is the responsible person.

(8C) If a corporation that is the responsible person for a vehicle supplies an approved nomination document to an authorised officer for the purpose of subsection (3) or (4) instead of a statutory declaration, an authorised officer may, by written notice served on the corporation (a *verification notice*), require it to supply a statutory declaration for use in court proceedings that verifies such of the nominations contained in the approved nomination document as are specified in the verification notice.

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- (8D) A corporation served with a verification notice must supply the required statutory declaration within the period specified in the notice (being a period of not less than 7 days after the date of service).

Maximum penalty: 100 penalty units.

[8] Section 179 (9)

Omit “under subsection (3), (4) or (7A)”.

Insert instead “supplied for the purposes of subsection (3), (4), (7A) or (8C)”.

[9] Section 179 (10)

Omit “or (4)”. Insert instead “, (4) or (8C)”.

[10] Section 179 (10)

Insert at the end of the subsection:

Note. The Authority may approve a nomination document under subsection (8A) for use by a corporation instead of a statutory declaration that relates to more than one designated offence involving one or more vehicles for which the corporation is the responsible person. See subsection (8B).

[11] Section 179 (12)

Insert in alphabetical order:

relevant nomination document means:

- (a) in the case of a responsible person that is a corporation served with a penalty notice in relation to a designated offence:
 - (i) an approved nomination document under subsection (8A), or
 - (ii) a statutory declaration, or
- (b) in the case of a responsible person that is a corporation served with a court attendance notice in relation to a designated offence—a statutory declaration, or
- (c) in the case of a responsible person for a vehicle who is a natural person—a statutory declaration.

[12] Section 181 Period within which proceedings for operator onus offences may be commenced

Insert “or an offence under section 179 (7)” after “section 179” in the definition of ***operator onus offence*** in section 181 (2).

[13] Section 202 Quashing of declaration and bar against appeals

Insert after section 202 (3):

- (4) For the avoidance of doubt, the quashing of a declaration under this section:
 - (a) operates to set aside the disqualification imposed by the declaration on and from the day on which the court makes the order that quashes the declaration, and
 - (b) if the disqualification period has already commenced when the declaration is quashed—does not operate to invalidate or otherwise affect the operation of the disqualification in its application to the habitual traffic offender at any time before the day on which the declaration is quashed.

[14] Schedule 1 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Road Transport Legislation Amendment (Miscellaneous Provisions) Act 2009, to the extent that it amends this Act

[15] Schedule 1

Insert at the end of the Schedule (with appropriate Part and clause numbers):

**Part Provisions consequent on enactment of
Road Transport Legislation Amendment
(Miscellaneous Provisions) Act 2009**

Definition

In this Part:

amending Act means the *Road Transport Legislation Amendment (Miscellaneous Provisions) Act 2009*.

**Confirmation of meaning of “registered operator” and
“registration”**

- (1) It is declared that:
 - (a) any reference in this Act to a registered operator of a vehicle has, on and from 30 September 2005, included a reference to a person recorded in an Australian registrable vehicles register as the person responsible for the vehicle, and
 - (b) any reference in this Act to the registration of a vehicle has, on and from 30 September 2005, included a reference to

the registration of a vehicle in an Australian registrable vehicles register.

Note. This Act (other than Schedule 3.33 [1]–[3] and [15]–[19] as originally enacted) commenced on 30 September 2005.

(2) Accordingly, any enforcement action taken under this Act or any related legislation on and from 30 September 2005 that would have been validly taken had subclause (1) been in force when it was taken is (to the extent of any invalidity) taken to be, and always to have been, valid.

(3) In this clause:

enforcement action means:

- (a) any action taken in relation to a person by reason of the person being a registered operator of, or responsible person for, a vehicle within the meaning of this Act (including the issuing of a penalty notice or the commencement of proceedings for a contravention of a provision of an Act or statutory rule), and
- (b) any action taken in relation to a person or vehicle by reason of the registration of a vehicle within the meaning of this Act (including the issuing of a penalty notice or the commencement of proceedings for a contravention of a provision of an Act or statutory rule).

related legislation means:

- (a) the *Fines Act 1996*, and
- (b) any other Act or statutory rule (or a provision of any other Act or statutory rule) that imposes any obligation or liability, or that confers or imposes a function, on a person by reference to:
 - (i) the person or another person being a registered operator of, or responsible person for, a vehicle within the meaning of this Act, or
 - (ii) the registration of a vehicle (being registration of a vehicle within the meaning of this Act).

Effect of quashing of habitual traffic offender declaration

Section 202 (4) (as inserted by the amending Act) extends to any declaration of a habitual traffic offender that is in force under Division 3 of Part 5.4 immediately before the commencement of that subsection.

1.3 Road Transport (Safety and Traffic Management) Act 1999 No 20

[1] Section 8 General definitions

Insert in alphabetical order in section 8 (1):

learner driver, in relation to a motor vehicle, means:

- (a) a person who holds a learner licence of a class of motor vehicles that includes the motor vehicle, or
- (b) a person who is learning to drive the motor vehicle in circumstances where:
 - (i) the person holds a driver licence of a class of motor vehicles that does not include the motor vehicle, and
 - (ii) the person is permitted under the regulations to learn to drive the motor vehicle despite not having a driver licence for motor vehicles of that class.

novice driver, in relation to a motor vehicle, means:

- (a) a person who is the holder of a learner licence or a provisional licence of a class that includes the motor vehicle, or
- (b) a person who is not authorised to drive the motor vehicle in New South Wales because the person (in New South Wales or elsewhere) has had his or her application for a learner licence or provisional licence of a class that includes the motor vehicle refused, or
- (c) a person who is not authorised to drive the motor vehicle in New South Wales because the person (in New South Wales or elsewhere) has ceased to hold a learner licence or provisional licence of a class that includes the motor vehicle as a result of:
 - (i) the cancellation or suspension of the licence, or
 - (ii) the disqualification of the person from holding a driver licence, or
 - (iii) the expiry of the licence, or
- (d) a person who is not authorised to drive the motor vehicle in New South Wales because the person (in New South Wales or elsewhere) has never obtained a driver licence for any class of motor vehicle.

[2] Section 9 Presence of prescribed concentration of alcohol in person's breath or blood

Omit "If a person is the holder of a learner licence or a provisional licence in respect of a motor vehicle, the person" from section 9 (1A).

Insert instead "A novice driver".

[3] Section 9 (1) (c), (2) (c), (3) (c) and (4) (c)

Omit "a holder of a learner licence" wherever occurring.

Insert instead "a learner driver".

[4] Schedule 2 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Road Transport Legislation Amendment (Miscellaneous Provisions) Act 2009, but only to the extent that it amends this Act

Schedule 2 Amendment of Fines Act 1996 No 99

[1] Section 38 Circumstances in which person issued with penalty reminder notice for vehicle or vessel offence is not liable to pay penalty

Omit section 38 (1A) (a). Insert instead:

- (a) in the case of a penalty reminder notice served on a person other than a corporation—be verified by a statutory declaration, and
- (a1) in the case of a penalty reminder notice served on a corporation:
 - (i) be verified by a statutory declaration, or
 - (ii) be a notice of a kind approved for the purposes of subsection (1B), and

[2] Section 38 (1B)–(1E)

Insert after section 38 (1A):

- (1B) The State Debt Recovery Office may approve one or more kinds of notices (*approved notices*) for use by corporations when giving notice for the purposes of subsection (1) (a).
 - (1C) Without limiting subsection (1B), the State Debt Recovery Office may approve notices under that subsection:
 - (a) to be provided in printed or electronic form (or both), and
 - (b) to be used in relation to more than one offence involving one or more vehicles or vessels.
 - (1D) If a corporation gives an approved notice for the purposes of subsection (1) (a) instead of a notice verified by statutory declaration, an appropriate officer for the penalty notice to which the penalty reminder notice relates may, by written notice served on the corporation (a *verification notice*), require the corporation to supply a statutory declaration for use in court proceedings verifying such of the information contained in the approved notice as is specified in the verification notice.
 - (1E) A corporation served with a verification notice must supply the required statutory declaration within the period specified in the notice (being a period of not less than 7 days after the date of service).
- Maximum penalty: 100 penalty units.

[3] Section 38 (3)

Omit the subsection. Insert instead:

- (3) A statutory declaration that relates to more than one vehicle or vessel offence is not a statutory declaration under, or for the purposes of, subsection (1A) or (1D).

[4] Schedule 3 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Road Transport Legislation Amendment (Miscellaneous Provisions) Act 2009 (to the extent that it amends this Act)

[Second reading speech made in Legislative Council on 12 November 2009
Agreement in principle speech made in Legislative Assembly on 2 December 2009]

BY AUTHORITY