

1999

**THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY**

ROAD TRANSPORT (DRIVER LICENSING) BILL 1999

EXPLANATORY MEMORANDUM

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Overview of Bill

The objects of this Bill are:

- (a) to enable the establishment of a system for licensing drivers that will be part of a nationally consistent scheme for driver licensing and to provide necessary powers for the making of regulations about issuing licences, renewal of licences, cancelling, varying and suspending licences, licence classes, qualifications for licences, testing and other related matters, and
- (b) to provide for the establishment of a demerit points system for the suspension and cancellation of licences that is intended to be part of a nationally consistent demerit points system, and
- (c) to provide for learner and provisional licences in a way that is consistent with the treatment of other licences, and
- (d) to make savings and transitional provisions; and
- (e) to make consequential and other amendments to certain Acts.

The provisions of the proposed Act reflect, with some variations and additions, the Primary Principles relating to driver licensing laws prepared by the National Road Transport Commission of the Commonwealth after consultation with the States and Territories, as part of the national road transport reform process.

Financial Implications

There are no direct costs associated with this Bill.

Part 1 Preliminary

Clause 1 sets out the name of the proposed Act.

Clause 2 provides for the proposed Act to commence on 1 December 1999.

Clause 3 sets out the objects of the proposed Act. These include the establishment of a driver licensing system as part of a uniform national approach to driver licensing, the definition of responsibilities of people in relation to driver licensing, the provision of a means of identifying people as licensed drivers, the provision of a means of enforcing road safety standards and other objectives related to driver licensing. Additional matters include the testing of drivers and provision for competency based assessment schemes.

Clause 4 provides that certain expressions and words used in the proposed Act have the meanings set out in the Dictionary at the end of the proposed Act.

Clause 5 provides that notes included in the proposed Act are explanatory and do not form part of the proposed Act.

Part 2 Driver licensing system

Division 2.1 - Functions and powers of the road transport authority generally

Clause 6 sets out the principal functions of the Road Transport Authority (the Authority) under the proposed Act. They are to administer the driver licensing system, to keep a driver licence register, to keep a demerit points register, to provide information and to perform any other functions conferred by or under the proposed Act.

Clause 7 sets out the powers of the Authority under the proposed Act, which include the issuing and renewal of driver licences, the cancellation or suspension of driver licences and the collection of fees.

Clause 8 provides that the driver licence register and the demerit points register may include any information the Authority considers appropriate and any mistake, error or omission may be corrected by the Authority. It also provides that the driver licence register and the demerit points register may be kept in the form of, or as part of, one or more computer databases or in any other form the Authority considers appropriate.

Clause 9 prevents the Authority from releasing information contained in any driver licence register or the demerit points register that is of a personal nature or has commercial sensitivity, except as provided by this Act or under another law.

Division 2.2 – Issue of licences and mutual recognition

Clause 10 prohibits the Authority from issuing a driver licence unless it is satisfied that a person is a resident of the ACT, is eligible for a licence and has surrendered any licence issued anywhere in Australia or overseas.

Clause 11 provides for the recognition of driver licences issued by other States and Territories and the conditions that apply to those licences.

Clause 12 provides for the mutual recognition of demerit points issued by other States or Territories and for information about offences, incurring demerit points, that are committed by drivers licensed in other States and Territories to be given to the relevant driver licensing authority by the Authority. If the Authority receives information about offences committed in other jurisdictions by drivers licensed in this Territory, it must take the same action as it would have taken if the offences had been committed in this Territory.

Division 2.3 – Demerit points system

Clause 13 provides that the Authority must record demerit points against a person who commits a traffic offence and who pays an infringement notice penalty or is convicted or found guilty of the offence.

Clause 14 enables regulations to be made prescribing offences for which offenders will incur demerit points and also enables the Authority, by notice published in the Gazette, to recognise additional offences as offences that incur demerit points for offenders and specify the points incurred for each offence. The offences may be under a law of this Territory or another jurisdiction. The regulations are to set out the offences that are to be included in the uniform national schedule of demerit points.

Clause 15 provides that holders of full licences* will be sent a warning notice when their demerit points total reaches 7 or more points.

[***Note:** The national driver licensing scheme does not use the term ‘full licence’, so this term is not used in this Driver Licensing Bill. A ‘full licence’, as currently defined in the *Motor Traffic Act 1936*, becomes ‘a driver licence other than a learner licence, probationary licence, provisional licence or restricted licence’ in the new Bill. However, for ease of reference, the term ‘full licence’ will be used in this Explanatory Memorandum.]

Clause 16 provides that if the holder of a full licence has incurred 12 or more demerit points within the past 3 years, then the Authority will issue a notice of licence suspension.

Clause 17 provides that if a person who applies for issue or renewal of a full licence has incurred 12 or more demerit points within the past 3 years, then action will be taken to either refuse the person’s application or issue a notice of licence suspension. The effect of this clause is that if an applicant is not licensed in Australia, any demerit points on the Territory’s demerit points register that have been accrued during the past 3 years (including any demerit

points incurred whilst unlicensed) are to be taken into account if the person subsequently applies for a driver licence in this Territory.

Clauses 18 and 19 provide for a demerit points scheme for full licence holders. They set out the consequences of incurring 12 or more demerit points within the past 3 years. If that number of points is incurred, a notice of licence suspension for the period specified in the proposed section is issued by the Authority. A person who receives a notice may elect in writing (within 21 days) to be of good behaviour for 12 months as an alternative to a period of licence suspension. If such an election is made, the suspension does not commence, but will commence for twice the original period if the person incurs 2 or more demerit points during the good behaviour period.

Clauses 20 and 21 provide that if an applicant for issue or renewal of a full licence has incurred 12 or more demerit points within the past 3 years, he or she will be given a notice of licence ineligibility for the period specified in the proposed section. A person who receives a notice may elect in writing (within 21 days) to be of good behaviour for 12 months as an alternative to a period of licence ineligibility. If such an election is made, the period of licence ineligibility does not commence, but will commence for twice the original period if the person incurs 2 or more demerit points during the good behaviour period.

Clause 22 provides for demerit points schemes for learner, probationary, provisional and restricted licence holders. These demerit points schemes will be described in the Driver Licensing Regulations.

Clause 23 provides that demerit points incurred after a notice of licence suspension has been issued, and before the suspension or the period of ineligibility or the good behaviour period begins, will be taken into account from the end of the suspension period or the period of ineligibility or the good behaviour period. Similarly, demerit points not taken into account for the issue of the notice of licence suspension will also be considered at a later stage.

Clause 24 provides that periods of suspension under the proposed Act will be in addition to periods of suspension imposed under other laws of this Territory and that any such other periods of suspension or of disqualification will not affect demerit points incurred under the proposed Act.

Clause 25 provides that persons cannot appeal against the issuing of a notice of licence suspension or licence ineligibility (unless the person can demonstrate that there is an error in the demerit points register).

Division 2.4 – Regulations

Clause 26 sets out the general regulation-making power under the proposed Act.

Clause 27 provides that the regulations may include publications of the National Road Transport Commission.

Clause 28 sets out particular regulation-making powers relating to the proposed driver licensing system and the identification of unlicensed drivers. The powers relate to matters including the issue of driver licences, the renewal of driver licences, the periods driver licences are to be in force, the classes of driver licences, the keeping of the driver licence register and the demerit points register, the form of driver licences and other matters.

Part 3 Offences

Clause 29 makes it an offence to obtain a driver licence by false statement or misrepresentation or other dishonest means or to possess, without lawful excuse, a driver licence obtained by such means.

Clause 30 makes it an offence to possess a driver licence, or an article resembling a driver licence, without lawful authority or excuse. It also makes it an offence to alter a driver licence, or to possess a driver licence that is altered in a way that is calculated to deceive, or to forge, or fraudulently use, alter or lend a driver licence.

Clause 31 makes it an offence for a person to drive a motor vehicle unless the person holds a driver licence issued anywhere in Australia or unless the person is exempted from holding an Australian driver licence. It provides penalties for first offenders and for repeat offenders.

Clause 32 makes it an offence for a person who is disqualified by a court in Australia from holding or obtaining an Australian driver licence to drive a motor vehicle whilst disqualified. Also, a person who is disqualified must not apply for a driver licence. This clause provides penalties for first offenders and for repeat offenders.

This clause also makes it an offence for a person whose Australian driver licence is suspended by a court in Australia to drive a motor vehicle whilst suspended. Further, a person whose licence is suspended must not apply for a driver licence. This clause provides penalties for first offenders and for repeat offenders.

This clause also makes it an offence for a person whose application for an Australian driver licence is refused, or whose Australian driver licence is cancelled by a court in Australia to drive a motor vehicle whilst the licence is cancelled or whilst the licence refusal is in force. Further, a person whose licence is cancelled or whose application for a licence is refused, must not apply for a driver licence. This clause provides penalties for first offenders and for repeat offenders.

Clause 33 provides that a person who holds a restricted licence (previously known as a 'special licence') must not contravene a condition imposed on that licence. If a person does contravene a condition, the restricted licence is automatically cancelled unless the court makes a different order. The person is not allowed to apply for another restricted licence for the remainder of the disqualification period.

Part 4 Miscellaneous

Clause 34 provides for matters relating to requirements to be photographed for the purposes of a driver licence. It enables the Authority to refuse to issue or renew a driver licence if an applicant fails to attend to have a photograph taken or, in a case where it is impracticable to attend, fails to provide a photograph or sufficient evidence as to identity and residential address. The proposed section also contains restrictions on the use of photographs by the Authority and requires negatives to be destroyed following the issue of the relevant driver licence. It makes it an offence to reproduce the photographic likeness of a person depicted, or to be depicted, in a licence.

Clause 35 explains that if a person's driver licence expires during a period of licence suspension the person cannot apply for another licence during the remainder of the suspension period, and the person's licence remains suspended until the suspension period is complete.

Clause 36 makes reference to the *Motor Traffic Act 1936* and the *Motor Traffic Regulations 1934*.

Part 5 Transitional

This part contains savings, transitional and other provisions consequent on the enactment of the proposed Act.

Dictionary The Dictionary contains definitions of words and expressions used in the proposed Act.