

**Legislative Council—No 152**

As received from the House of Assembly and read a first time, 29 October 2009

South Australia

**Motor Vehicles (Miscellaneous No 2) Amendment  
Bill 2009**

A BILL FOR

An Act to amend the *Motor Vehicles Act 1959*; and to make a related amendment to the *Road Traffic Act 1961*.

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## The Parliament of South Australia enacts as follows:

### Part 1—Preliminary

#### 1—Short title

This Act may be cited as the *Motor Vehicles (Miscellaneous No 2) Amendment Act 2009*.

#### 5 2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

#### 3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

### 10 Part 2—Amendment of *Motor Vehicles Act 1959*

#### 4—Amendment of section 5—Interpretation

- (1) Section 5(1)—after the definition of *heavy vehicle* insert:

*high powered vehicle* means a motor vehicle belonging to a class of vehicles specified by the Registrar by notice in the Gazette as a class of high powered vehicles for the purposes of this Act;

- (2) Section 5(1), definition of *interstate licence*—delete the definition and substitute:

*interstate learner's permit* means a licence or permit issued under the law of another State or Territory of the Commonwealth that corresponds to a learner's permit issued under this Act;

*interstate licence* means a licence or permit issued under the law of another State or Territory of the Commonwealth that corresponds to a driver's licence issued under this Act;

- (3) Section 5(1), definition of *learner's permit conditions*—delete the definition and substitute:

*learner's permit conditions* means the conditions referred to in section 75A(10);

- (4) Section 5(1), definition of *P1 licence*—delete "provisional licence conditions referred to in section 81A(1)" and substitute:

P1 licence conditions

- (5) Section 5(1)—after the definition of *P1 licence* insert:

*P1 licence conditions* means the conditions referred to in section 81A(3);

- (6) Section 5(1), definition of *P2 licence*—delete "provisional licence conditions referred to in section 81A(3a)" and substitute:

P2 licence conditions

- (7) Section 5(1)—after the definition of *P2 licence* insert:

*P2 licence conditions* means the conditions referred to in section 81A(6);

- (8) Section 5(1), definition of *provisional licence conditions*—delete the definition and substitute:

*provisional licence conditions* means P1 licence conditions or P2 licence conditions;

### **5—Amendment of section 53—Offences in connection with registration labels and permits**

Section 53—after subsection (1a) insert:

(1aa) It is a defence to—

- (a) a charge under subsection (1)(a); or
- (b) a charge under subsection (1a) that relates to a contravention of subsection (1)(a),

if the defendant proves that the motor vehicle was driven, or caused to stand, on a road under circumstances under which the regulations provide that a motor vehicle on which is affixed a registration label or in which is carried a permit that has ceased to be in force may be driven, or caused to stand, on a road.

### **6—Amendment of section 74—Duty to hold licence or learner's permit**

- (1) Section 74(2a)(b) and (c)—delete "the person" wherever occurring

- (2) Section 74(4)—delete "section 75A(3) to (5e)" and substitute:

section 75A(10) to (19)

- (3) Section 74(5)—delete subsection (5) and substitute:

- (5) Where a court convicts a person of an offence against this section for which the maximum penalty is \$5 000 or imprisonment for 1 year, the following provisions apply:

- (a) the court must order that the person be disqualified from holding or obtaining a driver's licence or learner's permit for such period, being not less than 3 years, as the court thinks fit;
- (b) the disqualification prescribed by paragraph (a) cannot be reduced or mitigated in any way or be substituted by any other penalty or sentence;

- (c) if the person is the holder of a driver's licence or learner's permit—the disqualification operates to cancel the licence or permit as from the commencement of the period of disqualification.

5 **7—Amendment of section 75AAA—Term of licence and surrender**

Section 75AAA(11)—delete subsection (11) and substitute:

- (11) On surrender of a licence—
  - (a) the Registrar must cancel the licence; and
  - (b) the person surrendering the licence is, subject to the regulations, entitled to a refund of a proportion of the licence fee determined in accordance with the regulations.

10 **8—Amendment of section 75AA—Only 1 licence to be held at any time**

(1) Section 75AA—before subsection (1) insert:

- (a1) The Registrar must not issue a licence to a person who already holds a licence under this Act unless the person surrenders the licence to the Registrar.

15 (2) Section 75AA(1)—delete "interstate licence" first and second occurring and substitute in each case:

interstate learner's permit, interstate licence

20 (3) Section 75AA(1)(b)—delete paragraph (b) and substitute:

- (b) in the case of a person who holds an interstate learner's permit or interstate licence—provides the Registrar with a letter addressed to the authority that issued the permit or licence requesting the authority to cancel the permit or licence.

25 (4) Section 75AA(2) and (3)—delete "interstate licence" wherever occurring and substitute in each case:

interstate learner's permit, interstate licence

(5) Section 75AA(4)—delete "interstate licences" first occurring and substitute:

interstate learner's permits or interstate licences

30 (6) Section 75AA(4)(b)—delete paragraph (b) and substitute:

- (b) to surrender the interstate learner's permits or interstate licences to the Registrar and provide the Registrar with letters addressed to the authorities that issued the permits or licences requesting those authorities to cancel the permits or licences.

35 (7) Section 75AA(5)—delete "interstate licences" and substitute:

interstate learner's permits or interstate licences

## 9—Substitution of section 75A

Section 75A—delete the section and substitute:

### 75A—Learner's permit

(1) In this section—

*prescribed concentration of alcohol* means any concentration of alcohol in the blood;

*service brake* means the brake normally used to decelerate a vehicle.

(2) Subject to this Act, the Registrar must issue a learner's permit to an applicant if—

(a) the applicant—

(i) is at least 16 years of age; and

(ii) is resident in the State; and

(iii) has passed the theoretical examination prescribed for the purposes of section 79; and

(iv) has complied with any requirements of the Registrar under section 77B; and

(v) has complied with any other requirements prescribed by regulation in relation to the class of motor vehicle in respect of which the permit is sought; and

(b) the application—

(i) is made in a manner and form determined by the Minister; and

(ii) is accompanied by the prescribed fee.

(3) A learner's permit issued to an applicant in respect of a class of motor vehicle remains in force until the expiration of the period specified in the permit or until a licence is issued to the applicant in respect of the same class of vehicle (whichever occurs first).

(4) Subject to this Act, the Registrar may renew a learner's permit if—

(a) the applicant has complied with any requirements of the Registrar under section 77B and any other requirements prescribed by regulation in relation to the class of motor vehicle in relation to which the permit applies; and

(b) the application—

(i) is made in a manner and form determined by the Minister; and

(ii) is accompanied by the prescribed fee.

(5) Subject to subsection (6), an application for renewal of a learner's permit must be made before the expiry of that permit.

- (6) The Registrar may renew a learner's permit despite its expiry provided that application for renewal is made within 12 months of the expiry.
- 5 (7) Despite the renewal of a learner's permit after its expiry, the holder of the permit is not, for the purposes of this Act, to be taken to have been the holder of the permit during the period between the expiry of the permit and the date of its renewal.
- 10 (8) If an application for the issue or renewal of a learner's permit is not entirely in order or the prescribed fee has not been paid, the Registrar may refuse the application and return any fee paid in respect of the application.
- (9) A learner's permit—
- 15 (a) will be in a form determined by the Minister; and
- (b) authorises the holder of the permit to drive a motor vehicle of a class specified in the permit on roads—
- (i) during the period for which the permit remains in force; and
- (ii) subject to learner's permit conditions; and
- 20 (c) while the learner's permit conditions are complied with, has effect as a licence.
- (10) A learner's permit is subject to the following conditions:
- 25 (a) a condition that the holder of the permit must not drive a motor vehicle, or attempt to put a motor vehicle in motion, on a road while the prescribed concentration of alcohol is present in his or her blood, or a prescribed drug is present in his or her oral fluid or blood;
- 30 (b) a condition that the holder of the permit must not drive a motor vehicle at a speed exceeding by 10 kilometres an hour or more a speed limit that applies under the *Road Traffic Act 1961* or this Act;
- (c) a condition that the holder of the permit must not drive a motor vehicle on a road—
- 35 (i) if the motor vehicle is not a motor bike—unless the holder of the permit is accompanied by a person acting as a qualified supervising driver for the holder of the permit; or
- (ii) if—
- 40 (A) the motor vehicle is a motor bike; and
- (B) the holder of the permit is also the holder of a P1 licence that is subject to a condition referred to in section 81A(3)(c); and
- (C) the motor bike is being driven between the hours of midnight and 5.00 am—

unless the holder of the permit carries a person acting as a qualified supervising driver for the holder of the permit as a passenger on the motor bike or in a sidecar attached to the motor bike; or

5 (iii) if the motor vehicle is a motor bike and subparagraph (ii) does not apply—unless any person who is carried by the holder of the permit as a passenger on the motor bike or in a sidecar attached to the motor bike is acting as a qualified supervising driver for the holder of the permit;

10 (d) any other condition—  
(i) limiting the kind of vehicle that may be driven pursuant to the permit; or  
15 (ii) limiting the hours during which or the locality within which a vehicle may be driven pursuant to the permit; or

(iii) imposing any other restriction,

that the Registrar thinks necessary.

20 (11) A condition imposed on a learner's permit by the Registrar under subsection (10)(d) must be endorsed on the permit.

(12) The condition referred to in subsection (10)(c) does not apply while the holder of a learner's permit is driving a motor vehicle during the course of a practical driving test conducted under this Act.

25 (13) If an applicant is not willing to accept a learner's permit subject to learner's permit conditions, the Registrar must refuse to issue a permit to, or renew the permit of, the applicant.

(14) The holder of a learner's permit must not contravene a condition of the permit.

Maximum penalty: \$1 250.

30 (15) The holder of a learner's permit must not—

(a) drive a motor bike on a road unless a plate bearing the letter "L" is affixed to the bike in accordance with the regulations; or

35 (b) drive any other motor vehicle on a road unless 2 plates bearing the letter "L" are affixed to the vehicle in accordance with the regulations.

Maximum penalty: \$1 250.

(16) The holder of a learner's permit must not drive a motor vehicle on a road in any part of the State at a speed exceeding that set out below:

40 (a) in circumstances where—



- (i) the vehicle is fitted with a braking system that allows the application of the service brake from the seat in the vehicle next to the driver; and
- (ii) the vehicle is, apart from having affixed to it 1 or more plates bearing the letter "L", otherwise readily identifiable as a vehicle used for driver instruction; and
- (iii) the holder of a motor driving instructor's licence occupies a seat in the vehicle next to the holder of the learner's permit,

100 kilometres an hour;

- (b) in any other circumstances—80 kilometres an hour.

Maximum penalty: \$1 250.

(17) Subsections (14), (15) and (16) do not apply to the holder of a learner's permit while he or she is driving a class of motor vehicle that he or she is authorised to drive under a licence.

(18) Sections 47C, 47D, 47E, 47EAA, 47GA, 47GB and 47K and Schedule 1 of the *Road Traffic Act 1961* apply in relation to an offence against subsection (14) of contravening the condition referred to in subsection (10)(a) as if—

- (a) a reference in any of those sections to an offence against that Act was a reference to an offence against subsection (14); and
- (b) a reference in any of those sections to the prescribed concentration of alcohol as defined in section 47A of that Act was a reference to the prescribed concentration of alcohol as defined in this section.

(19) Section 175 of the *Road Traffic Act 1961*, applies in relation to—

- (a) an offence against subsection (14) of contravening the condition referred in subsection (10)(b); or
- (b) an offence against subsection (16),

as if a reference in that section to an offence against that Act was a reference to an offence against subsection (14) or (16).

## 10—Amendment of section 79—Examination of applicant for licence or learner's permit

(1) Section 79(1)(b)—delete paragraph (b) and substitute:

- (b) the applicant satisfies the Registrar, by such evidence as the Registrar may require, that—

- (i) at some time during the period of 12 months immediately preceding the date of the application the applicant held an interstate learner's permit; or

(ii) at some time during the period of 5 years immediately preceding the date of the application the applicant held an interstate licence; or

(iii) at some time during the period of 5 years immediately preceding the date of the application the applicant held a foreign licence of a type approved by the Registrar by notice in the Gazette.

(2) Section 79(1a)—delete subsection (1a) and substitute:

(1a) If—

(a) an applicant for a licence or learner's permit has been disqualified from holding or obtaining a licence or learner's permit in this State, or in another State or Territory of the Commonwealth, as a consequence of an offence committed or allegedly committed (whether in this State or elsewhere)—

(i) while the person held a learner's permit or interstate learner's permit (provided the person did not also hold a licence or interstate licence in respect of another class of motor vehicle); or

(ii) after the expiry of such a permit but before obtaining any licence or interstate licence; and

(b) the applicant has not held a learner's permit, licence, interstate learner's permit or interstate licence since the end of the period of disqualification,

the Registrar must not issue a licence or learner's permit to the applicant unless the applicant produces to the Registrar a certificate signed by an examiner certifying that the applicant has, since the end of the period of disqualification, passed the prescribed theoretical examination conducted by that examiner in the prescribed manner.

## **11—Amendment of section 79A—Driving experience**

(1) Section 79A(1)(a)(i)—delete subparagraph (i) and substitute:

(i) has held a learner's permit—

(A) in a case where the applicant is under the age of 25—

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- if the applicant has been disqualified from holding or obtaining a licence or learner's permit in this State, or in another State or Territory of the Commonwealth, as a consequence of an offence committed or allegedly committed (whether in this State or elsewhere) while he or she held a learner's permit or interstate learner's permit (provided he or she did not also hold a licence or interstate licence in respect of another class of motor vehicle) or after the expiry of such a permit but before obtaining any licence or interstate licence, and the applicant has not held a licence or interstate licence since the end of the period of disqualification—for a period of at least 15 months or for periods totalling at least 15 months; or
  - in any other case—for a continuous period of at least 12 months; or
- (B) in a case where the applicant is aged 25 or over—
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- if the applicant has been disqualified from holding or obtaining a licence or learner's permit in this State, or in another State or Territory of the Commonwealth, as a consequence of an offence committed or allegedly committed (whether in this State or elsewhere) while he or she held a learner's permit or interstate learner's permit (provided he or she did not also hold a licence or interstate licence in respect of another class of motor vehicle) or after the expiry of such a permit but before obtaining any licence or interstate licence, and the applicant has not held a licence or interstate licence since the end of the period of disqualification—for a period of at least 9 months or for periods totalling at least 9 months; or
  - in any other case—for a continuous period of at least 6 months;
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- (2) Section 79A(1)(b)(i)(A)—delete subparagraph (A) and substitute:
- (A) an interstate licence; or
- (3) Section 79A(1)(b)(ii)(A)—delete "or under the law of a" and substitute:
- , an interstate learner's permit, an interstate licence or a licence issued under the law of some other
- 40
- (4) Section 79A(3)(a) and (b)—delete paragraphs (a) and (b) and substitute:
- (a) an applicant for a licence has been disqualified from holding or obtaining a licence or learner's permit in this State, or in another State or Territory of the Commonwealth, as a consequence of an offence committed or allegedly committed (whether in this State or elsewhere)—
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(i) while the person held a learner's permit or interstate learner's permit (provided the person did not also hold a licence or interstate licence in respect of another class of motor vehicle); or

(ii) after the expiry of such a permit but before obtaining any licence or interstate licence; and

(b) the applicant has held a licence or interstate licence at some time during the period of 5 years immediately preceding the date of the application but has not held a licence or interstate licence since the end of the period of disqualification,

(5) Section 79A(4)(a) and (b)—delete paragraphs (a) and (b) and substitute:

(a) an applicant for a licence has been disqualified from holding or obtaining a licence or learner's permit in this State, or in another State or Territory of the Commonwealth, as a consequence of an offence committed or allegedly committed (whether in this State or elsewhere)—

(i) while the person held a P1 licence or an interstate provisional licence; or

(ii) after the expiry of such a licence but before obtaining a non-provisional licence or interstate non-provisional licence; and

(b) the applicant has not held a licence or interstate licence since the end of the period of disqualification,

## 12—Substitution of section 81A

Section 81A—delete the section and substitute:

### 81A—Provisional licences

(1) In this section—

*driver awareness course* means a course that is approved by the Registrar as a driver awareness course for the purposes of this Act;

*examiner* means—

(a) a police officer; or

(b) a person appointed by the Registrar as an examiner for the purposes of conducting a hazard perception test;

*hazard perception test* means a test approved by the Registrar as a hazard perception test for the purposes of this Act;

*P2 qualifying period*, in relation to a person who holds a P2 licence, means the period or total period for which the person held a relevant licence before the date of the application for the P2 licence (excluding, if the person had been disqualified from holding or obtaining a licence in this State or in another State or Territory of the Commonwealth, any period preceding the period of disqualification);

***prescribed concentration of alcohol*** means any concentration of alcohol in the blood;

***prescribed period***, in relation to a P2 licence held by a person, means—

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- (a) a period equal to 2 years less the person's P2 qualifying period; or
  - (b) a period of 6 months,

whichever is the greater;

10 ***red light offence*** has the same meaning as in section 79B of the *Road Traffic Act 1961*;

***relevant licence*** means a P1 licence or an interstate provisional licence;

***serious disqualification offence*** means—

- 15
- (a) an offence against the *Criminal Law Consolidation Act 1935*; or
  - (b) an offence that attracts 4 or more demerit points; or
  - (c) a speeding offence that attracts 3 or more demerit points, if committed by the holder of a licence who has, while holding that licence, previously been convicted of, or expiated,  
20 another speeding offence that attracted 3 or more demerit points; or
  - (d) a combination of a red light offence and a speeding offence arising out of the same incident; or
  - (e) any offence committed by the holder of a licence who has  
25 previously been disqualified from holding or obtaining a licence or learner's permit in this State;

***speeding offence*** has the same meaning as in section 79B of the *Road Traffic Act 1961*.

30 (2) Without derogating from any other provision of this Act, if an applicant for the issue of a licence—

- (a) has not held a non-provisional licence or interstate non-provisional licence at some time during the period of 5 years immediately preceding the application; or
  - (b) holds an interstate provisional licence; or
  - (c) holds an interstate non-provisional licence but is under the age of 19 years; or
  - (d) —
    - (i) has been disqualified from holding or obtaining a licence or learner's permit in this State, or in another State or Territory of the Commonwealth, as a consequence of an offence committed or allegedly committed (whether in this State or elsewhere)—
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(A) while the holder of a provisional licence or interstate provisional licence; or

(B) after the expiry of such a licence but before obtaining a non-provisional licence or interstate non-provisional licence; and

(ii) has not held a non-provisional licence or interstate non-provisional licence since the end of the period of disqualification,

a licence issued to the applicant is a P1 licence.

(3) A P1 licence is subject to the following conditions:

(a) a condition that the holder of the licence must not drive a motor vehicle or attempt to put a motor vehicle in motion on a road while the prescribed concentration of alcohol is present in his or her blood, or a prescribed drug is present in his or her oral fluid or blood;

(b) a condition that the holder of the licence must not drive a motor vehicle at a speed exceeding by 10 kilometres an hour or more a speed limit that applies under the *Road Traffic Act 1961* or this Act;

(c) in the case of a licence issued to an applicant referred to in subsection (2)(d) where the offence was a serious disqualification offence—a condition that the holder of the licence must not, until the end of 12 months from the date on which the licence is issued, drive a motor vehicle on a road between the hours of midnight and 5.00 am unless—

(i) the driver is accompanied by a person acting as a qualified supervising driver for the holder of a licence; and

(ii) no other passenger is present in the vehicle.

(4) Subject to this Act, the conditions imposed on a P1 licence by subsection (3) are effective until—

(a) a P2 licence is issued to the holder of the licence; or

(b) the period specified in the licence has elapsed,

whichever occurs first.

(5) Despite subsection (2), the Registrar may issue a P2 licence to an applicant referred to in that subsection but only if—

(a) the applicant—

(i) is not an applicant referred to in subsection (2)(d); and

(ii) has, during the period of 5 years immediately preceding the application, held a relevant licence for 12 months or periods totalling 12 months; and

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- (iii) produces to the Registrar a certificate signed by an examiner certifying that the applicant has, in the manner required by the Registrar, passed a hazard perception test conducted by the examiner; and
- (iv) either—
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- (A) has not incurred any demerit points before the application in respect of offences committed or allegedly committed during the 12 months or periods totalling 12 months for which the applicant held a relevant licence last occurring before the application; or
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- (B) produces to the Registrar a certificate signed by the provider of a driver awareness course certifying that the applicant has satisfactorily completed a driver awareness course; or
- (b) the applicant—
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- (i) has, during the period of 5 years immediately preceding the application, held a relevant licence for 2 years or periods totalling 2 years (excluding, if the applicant is an applicant referred to in subsection (2)(d), any period preceding the period of disqualification); and
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- (ii) produces to the Registrar a certificate signed by an examiner certifying that the applicant has, in the manner required by the Registrar, passed a hazard perception test conducted by the examiner (which test must, if the applicant is an applicant referred to in subsection (2)(d), have been conducted since the end of the period of disqualification).
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- (6) A P2 licence is subject to the following conditions:
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- (a) a condition that the holder of the licence must not drive a motor vehicle or attempt to put a motor vehicle in motion on a road while the prescribed concentration of alcohol is present in his or her blood, or a prescribed drug is present in his or her oral fluid or blood;
- 40
- (b) a condition that the holder of the licence must not drive a motor vehicle at a speed exceeding by 10 kilometres an hour or more a speed limit that applies under the *Road Traffic Act 1961* or this Act.
- (7) Subject to this Act, the holder of a P2 licence cannot apply for the issue of a licence that is not subject to P2 licence conditions unless the person has held the P2 licence for the prescribed period.

(8) However—

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- (a) subject to paragraph (b), if the person would be under the age of 19 years when the prescribed period elapses, the person cannot apply for the issue of a licence that is not subject to P2 licence conditions until he or she turns 19;
- (b) if the person incurs any demerit points in respect of offences committed or allegedly committed while under the age of 19 years and the person would be under the age of 20 years when the prescribed period elapses, the person cannot apply for the issue of a licence that is not subject to P2 licence conditions until he or she turns 20.
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(9) A court that disqualifies a person from holding or obtaining a licence or learner's permit may order that a P1 licence issued to the person after the end of the period of disqualification will be subject to provisional licence conditions for an extended period and if a court makes such an order in relation to a P1 licence, subsection (5)(b) applies as if each reference in that provision to 2 years was a reference to 2 years plus the period of the extension.

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(10) If—

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- (a) a P1 licence is issued to an applicant referred to in subsection (2)(d) subject to the alcohol interlock scheme conditions in addition to the conditions imposed by subsection (3); and
- (b) the period for which the licence is required to be subject to the alcohol interlock scheme conditions is greater than 2 years,
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subsection (5)(b) applies as if each reference in that provision to 2 years was a reference to the period referred to in paragraph (b).

(11) Despite any other provision of this section, if an applicant for the issue of a driver's licence—

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- (a) holds or has previously held a foreign licence; or
- (b) is of a class of applicants prescribed by regulation,

the Registrar may, if of the opinion that there is proper cause to do so, do 1 or more of the following:

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- (c) issue a licence not subject to the conditions that would otherwise be imposed under this section;
- (d) issue a P2 licence despite the fact that the applicant is an applicant referred to in subsection (2);
- (e) reduce the period for which conditions would otherwise apply to the person under this section.
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(12) If an applicant is not willing to accept a provisional licence, the Registrar must refuse to issue a licence to the applicant.



(13) The holder of a provisional licence must not contravene a condition of the licence.

Maximum penalty: \$1 250.

5 (14) The holder of a provisional licence must not drive a motor vehicle on a road in any part of the State at a speed exceeding 100 kilometres an hour.

Maximum penalty: \$1 250.

(15) The holder of a P1 licence must not—

10 (a) drive a motor bike on a road unless a plate bearing the letter "P" is affixed to the bike in accordance with the regulations; or

(b) drive any other motor vehicle on a road unless 2 plates bearing the letter "P" are affixed to the vehicle in accordance with the regulations.

15 Maximum penalty: \$1 250.

(16) The holder of a P1 or P2 licence must not, if he or she is under the age of 25, drive a high powered motor vehicle.

Maximum penalty: \$1 250.

20 (17) The Registrar may, on application by the holder of a P1 or P2 licence and payment of the fee (if any) prescribed by regulation, grant the holder an exemption from subsection (16) for such a term and subject to such conditions as the Registrar thinks fit.

(18) The Registrar must, on granting an exemption to the holder of a licence under subsection (17), issue the holder of the licence with a certificate of exemption.

25 (19) Sections 47C, 47D, 47E, 47EAA, 47GA, 47GB and 47K and Schedule 1 of the *Road Traffic Act 1961* apply in relation to an offence against subsection (13) of contravening the condition referred to in subsection (3)(a) or subsection (6)(a) as if—

30 (a) a reference in any of those sections to an offence against that Act was a reference to an offence against subsection (13); and

35 (b) a reference in any of those sections to the prescribed concentration of alcohol as defined in section 47A of that Act was a reference to the prescribed concentration of alcohol as defined in this section.

(20) Section 175 of the *Road Traffic Act 1961* applies in relation to—

40 (a) an offence against subsection (13) of contravening the condition referred to in subsection (3)(b) or subsection (6)(b); or

(b) an offence against subsection (14),

as if a reference in that section to an offence against that Act was a reference to an offence against subsection (13) or (14).

### 13—Amendment of section 81AB—Probationary licences

- (1) Section 81AB(1)—delete "pursuant to section 81B or 81C or by order of a court in this State or any other State or Territory of the Commonwealth" and substitute:

imposed in prescribed circumstances

- (2) Section 81AB(7)—before the definition of *prescribed concentration of alcohol* insert:

*prescribed circumstances*—a period of disqualification from holding or obtaining a licence is imposed in prescribed circumstances if the disqualification is imposed—

- (a) pursuant to section 81B, 81C or 81D; or
- (b) by order of a court in this State or any other State or Territory of the Commonwealth; or
- (c) in respect of an offence committed whilst the person was not authorised to drive a motor vehicle on a road under this Act;

### 14—Substitution of section 81B

Section 81B—delete the section and substitute:

#### **81B—Consequences of holder of learner's permit, provisional licence or probationary licence contravening conditions etc**

- (1) Subject to this section, if—

- (a) a person who holds a learner's permit, provisional licence or probationary licence commits an offence of contravening a prescribed condition; or
- (b) a person expiates an offence of contravening a prescribed condition allegedly committed while the holder of a learner's permit, provisional licence or probationary licence; or
- (c) demerit points are incurred by a person and, in consequence, the total number of demerit points recorded against the person in respect of offences committed or allegedly committed while the holder of a learner's permit or a provisional licence equals or exceeds 4,

the Registrar must, on becoming aware of that fact, give the person written notice—

- (d) that, commencing on the day on which the notice takes effect in accordance with section 139BD, the person is disqualified from holding or obtaining a permit or licence for a period of 6 months; and
- (e) that, if the person holds any permit or licence when the notice takes effect, the permit or licence is cancelled.

(2) If the Registrar is required to give a person a notice under subsection (1), the Registrar may, in that notice or by subsequent written notice given to the person, require the person—

(a) to attend, within a period specified in the notice, a lecture conducted pursuant to the regulations; and

(b) to pay to the Registrar, in accordance with the notice, the attendance fee prescribed by the regulations.

(3) A person must not, without reasonable excuse, fail to comply with a requirement made under subsection (2).

Maximum penalty: \$125.

(4) Notwithstanding the provisions of subsection (1), any notice given to a person under that subsection does not apply in relation to any unconditional licence held or sought by the person if the person held an unconditional licence when the offence giving rise to the notice was committed or allegedly committed.

(5) Nothing in this section derogates from any provision of this Act, or any other Act, dealing with disqualification from holding or obtaining permits or licences, or suspension of permits or licences.

### **81BA—Safer Driver Agreements**

(1) If a person who holds a provisional licence is given a notice of disqualification under section 81B, the person is entitled to enter into a Safer Driver Agreement in lieu of suffering the disqualification if—

(a) the notice of disqualification related to an offence other than a serious disqualification offence; and

(b) the person has not, within the preceding period of 5 years, entered into a Safer Driver Agreement in lieu of suffering a disqualification; and

(c) the Magistrates Court has not, within the preceding period of 5 years, allowed an appeal by the person against a disqualification under section 81B.

(2) A Safer Driver Agreement may be entered into by notice given to the Registrar, in accordance with the regulations, within 21 days of the day specified in the notice of disqualification.

(3) If a Safer Driver Agreement is entered into by a person, the following provisions apply:

(a) any licence that the person holds is cancelled and the person is, on application to the Registrar, entitled to a refund as if the person were surrendering the licence;

(b) the disqualification is removed and the person is entitled to apply for a licence;

- 5
- (c) subject to paragraph (e), section 81A applies in relation to the person when applying for the licence as if, despite the removal of the disqualification, the person had been disqualified from holding or obtaining a licence as a consequence of the offence and were making the application at the end of the period of disqualification;
- (d) section 79A(4) does not apply to the person when applying for the licence;
- 10 (e) if the person, having been issued a P1 licence on the application referred to in paragraph (c), is subsequently making an application in order to progress to a P2 licence, section 81A applies in relation to the person as if the references in section 81A(5)(b) to 2 years were references to 2 years and 6 months.
- 15 (4) If—
- (a) a person who holds a provisional licence issued on an application referred to in subsection (3)(b) or (e) commits an offence of contravening a prescribed condition; or
- 20 (b) a person expiates an offence allegedly committed while the holder of a provisional licence issued on an application referred to in subsection (3)(b) or (e), being an offence of contravening a prescribed condition; or
- 25 (c) a person incurs demerit points in respect of an offence committed or allegedly committed while the holder of a provisional licence issued on an application referred to in subsection (3)(b) or (e), and, in consequence, the total number of demerit points recorded against the person in respect of offences committed or allegedly committed while the holder of that licence equals or exceeds 4,
- 30 the Registrar must, on becoming aware of that fact, give the person written notice—
- (d) that, commencing on the day on which the notice takes effect in accordance with section 139BD, the person is disqualified from holding or obtaining a permit or licence for a period of 12 months; and
- 35 (e) that, if the person holds any licence when the notice takes effect, the licence is cancelled.
- (5) Nothing in this section derogates from any provision of this Act, or any other Act, dealing with disqualification from holding or obtaining permits or licences, or suspension of permits or licences.
- 40 (6) In this section—
- serious disqualification offence* has the same meaning as in section 81A.

### **81BB—Appeals to Magistrates Court**

- 5
- (1) Subject to subsection (2), if a person has been or is liable to be given a notice of disqualification under section 81B as a consequence of an offence committed or allegedly committed while the holder of a provisional licence or probationary licence, the person may appeal to the Magistrates Court against the disqualification.
- (2) A person is not entitled to appeal against a disqualification under this section if—
- 10
- (a) the person is entitled to elect to enter into a Safer Driver Agreement in accordance with subsection 81BA; or
- (b) the Magistrates Court has, within the preceding period of 5 years, allowed an appeal by the person against a disqualification under section 81B.
- (3) The appellant and the Crown are entitled to be heard upon an appeal against a disqualification under section 81B.
- 15
- (4) The Magistrates Court may allow an appeal if the Court is satisfied—
- 20
- (a) that, on the basis of evidence given on oath by or on behalf of the appellant, the disqualification would result in severe and unusual hardship to the appellant or a dependant of the appellant; and
- (b) if the Crown submits evidence (whether orally or in writing) as to previous offences relating to the appellant's use of a motor vehicle for which the appellant has been found guilty or that the appellant has expiated—that such evidence does not indicate that the appellant is a substantial risk to himself or herself or to other members of the public.
- 25
- (5) The appellant's evidence must include evidence relating to the forms of transport that would be available to the appellant if the appeal were not allowed and why those forms of transport do not adequately meet the needs of the appellant or a dependant of the appellant.
- 30
- (6) Where an appeal against disqualification has been instituted under this section, the disqualification and any related cancellation are suspended until the determination or withdrawal of the appeal.
- 35
- (7) If the Magistrates Court allows an appeal by a person against a disqualification, the following provisions apply:
- 40
- (a) any licence that the person holds is cancelled and the person is, on application to the Registrar, entitled to a refund as if the person were surrendering the licence;
- (b) the disqualification is removed and the person is entitled to apply for a licence;

- 5
- (c) subject to paragraph (e), sections 81A and 81AB apply in relation to the person when applying for the licence as if, despite the removal of the disqualification, the person had been disqualified from holding or obtaining a licence as a consequence of the offence and were making the application at the end of the period of disqualification;
- (d) section 79A(4) does not apply to the person when applying for the licence;
- 10
- (e) if the licence is one that would be subject to the condition referred to in section 81A(3)(c) and the Court is satisfied that the application of that condition to the licence would frustrate the purpose for which the appeal has been allowed, the Court may exempt the licence from the application of that condition;
- 15
- (f) if the person, having been issued a P1 licence on the application referred to in paragraph (c), is subsequently making an application in order to progress to a P2 licence, section 81A applies in relation to the person as if the references in section 81A(5)(b) to 2 years were references to 2 years and 6 months;
- 20
- (g) if the licence issued to the person on the application referred to in paragraph (c) is a probationary licence, section 81AB(3) applies in relation to the person as if the reference in section 81AB(3) to 1 year was a reference to 18 months.
- 25

(8) If—

- 30
- (a) a person who holds a provisional licence or probationary licence issued on an application referred to in subsection (7)(c) or (f) commits an offence of contravening a prescribed condition; or
- 35
- (b) a person expiates an offence allegedly committed while the holder of a provisional licence or probationary licence issued on an application referred to in subsection (7)(c) or (f), being an offence of contravening a prescribed condition; or
- 40
- (c) a person incurs demerit points in respect of an offence committed or allegedly committed while the holder of a provisional licence or probationary licence issued on an application referred to in subsection (7)(c) or (f), and, in consequence, the total number of demerit points recorded against the person in respect of offences committed or allegedly committed while the holder of that licence equals or exceeds 4,

45 the Registrar must, on becoming aware of that fact, give the person written notice—

(d) that, commencing on the day on which the notice takes effect in accordance with section 139BD, the person is disqualified from holding or obtaining a permit or licence for a period of 12 months; and

5 (e) that, if the person holds any licence when the notice takes effect, the licence is cancelled.

**15—Redesignation of section 81BA—Consequences of holder of unconditional licence incurring demerit points in respect of offences committed while holder of provisional licence**

10 Section 81BA—re designate the section as section 81BC

**16—Amendment of section 91—Effect of suspension and disqualification**

(1) Section 91(3)—delete "While" and substitute:

Subject to section 81B(4), while

(2) Section 91—after subsection (5) insert:

15 (6) Subsection (5) does not apply to a person driving a motor vehicle on a road in accordance with an unconditional licence to which the disqualification does not apply in accordance with section 81B(4).

**17—Amendment of section 97A—Visiting motorists**

20 (1) Section 97A(1)(a)(i), (b)(i) and (c)(i)—after "interstate licence" wherever occurring insert:

or interstate learner's permit

(2) Section 97(1)(a)(ii)—delete "and an exemption under a law of the place where the licence" and substitute:

25 or interstate learner's permit and an exemption under a law of the place where the licence or permit

(3) Section 97A(3)—after "licence" insert:

or permit

(4) Section 97A(4) and (5)—delete the subsections and substitute:

30 (4) If a person drives a vehicle in this State pursuant to subsection (1)—

(a) the person's licence or permit will, for the purposes of section 74 and any other prescribed law, be taken to be a licence or permit (as the case may be) under this Act; and

35 (b) the licence or permit is subject to any conditions that apply to the licence or permit in the jurisdiction in which it was issued (other than conditions that apply only in circumstances that are unique to that other jurisdiction or that are prescribed by the regulations) and such conditions are enforceable as if they were imposed under this Act; and

(c) the licence or permit will, for the purposes of a contract or policy of insurance relating to the vehicle, be taken to be a licence or permit under this Act.

(5) A reference in subsection (3) or (4) to a person's licence or permit includes a reference to any exemption, international driving permit or Driver Identification Document that the person is required to hold under subsection (1) in addition to an interstate licence, interstate permit or foreign licence.

(5) Section 97A(6), definition of *interstate licence*—delete the definition and substitute:

*interstate learner's permit* includes a licence issued under the law of New Zealand that corresponds to a learner's permit under this Act;

### **18—Repeal of section 98**

Section 98—delete the section

### **19—Amendment of section 98AAE—Licence or learner's permit unlawfully altered or damaged is void**

(1) Section 98AAE(a)—delete "\$750" and substitute:

\$2 500

(2) Section 98AAE—after its present contents (now to be designated as subsection (1)) insert:

(2) A person who, without lawful authority, possesses a licence or learner's permit that has been wilfully altered, defaced or damaged is guilty of an offence.

Maximum penalty: \$2 500.

### **20—Amendment of section 98BC—Liability to disqualification**

(1) Section 98BC(1)—delete subsection (1) and substitute:

(1) If a person (other than the holder of an interstate learner's permit or interstate licence) has incurred an aggregate of 12 or more demerit points in respect of offences committed within a period of 3 years up to and including the most recent date on which the person committed an offence in respect of which the person incurred demerit points, the person is liable to be disqualified under this Part from holding or obtaining a licence or learner's permit for the prescribed period.

(2) Section 98BC(2)—after "holds an" insert:

interstate learner's permit or

(3) Section 98BC(2)—after "a licence" insert:

or learner's permit

### **21—Amendment of section 98BD—Notices to be sent by Registrar**

(1) Section 98BD(2)(a)—after "a licence" insert:

or learner's permit



- (2) Section 98BD(2)(b)—after "licence" wherever occurring insert:  
or learner's permit

**22—Amendment of section 98BE—Disqualification and discounting of demerit points**

- 5 (1) Section 98BE(3)—delete subsection (3)  
(2) Section 98BE(5)—delete "or condition referred to in subsection (1a) has taken effect under this section" and substitute:  
under section 98BC or a condition under subsection (2) has taken effect

**23—Insertion of section 98BF**

10 After section 98BE insert:

**98BF—Effect of appeal or rehearing on disqualification and discounting**

- (1) Where a disqualified person—  
15 (a) institutes an appeal against a conviction for an offence in respect of which demerit points were incurred that are included in the points resulting in the disqualification; or  
(b) applies for a rehearing of the proceedings that led to the conviction,  
the disqualification is inoperative until the appeal or application for  
20 rehearing is determined or withdrawn.  
(2) If, following an appeal against conviction for an offence or a rehearing of proceedings that lead to a conviction for an offence, the person is no longer disqualified, any demerit points for other  
25 offences discounted under section 98BE(5) in respect of that disqualification must be reinstated.

**24—Amendment of section 98BI—Notification of demerit points to interstate licensing authorities**

- (1) Section 98BI(1)—delete "interstate licence" wherever occurring and substitute in each  
30 case:  
interstate learner's permit or interstate licence  
(2) Section 98BI(2), definition of *licensing authority*—delete "interstate licences" and substitute:  
interstate learner's permits and interstate licences

**25—Amendment of section 135—False statements**

- 35 (1) Section 135(1), penalty provision—delete "\$2 500" and substitute:  
\$5 000

(2) Section 135—after subsection (4) insert:

(5) A prosecution for an offence against subsection (1) may be commenced at any time within 2 years after the date of the alleged commission of the offence or, with the authorisation of the Attorney-General, at a later time within 5 years after the date of the alleged commission of the offence.

(6) An apparently genuine document purporting to be signed by the Attorney-General and to authorise the commencement of proceedings for an offence against subsection (1) will be accepted in any legal proceedings, in the absence of proof to the contrary, as proof of the authorisation.

## **26—Amendment of section 139D—Confidentiality**

Section 139D(4)(b)—delete paragraph (b) and substitute:

(b) an approved alcohol interlock provider, and a person engaged in the activities of an approved alcohol interlock provider for the purposes of this Act, are to be taken to be engaged in the administration of this Act.

## **27—Amendment of section 141—Evidence by certificate etc**

Section 141(1)—after paragraph (a) insert:

(aa) that, on a specified day, a specified person was or was not the holder of an exemption under section 81A(16);

## **28—Repeal of section 144**

Section 144—delete the section

# **Schedule 1—Related amendments and transitional provisions**

## **Part 1—Related amendment to *Road Traffic Act 1961***

### **1—Amendment of section 47EA—Exercise of random testing powers**

Section 47EA—after its present contents (now to be designated as subsection (1)) insert:

(2) Despite any other provision of this Act, if a motor vehicle has stopped in response to a direction given by a police officer in the exercise of random testing powers, a police officer may delay the driver of the vehicle for as long as may be necessary to enable the police officer to ascertain whether the driver holds a current driver's licence or other authority to drive the vehicle.

## Part 2—Transitional provisions

### 2—Interpretation

In this Schedule—

*principal Act* means the *Motor Vehicles Act 1959*.

### 5 3—Learner's permits in force immediately before commencement

Subject to clause 4 of this Schedule, sections 75A and 79A of the principal Act, as in force immediately before the commencement of sections 9 and 11 of this Act, continue to apply in relation to a learner's permit in force immediately before that commencement.

### 10 4—Requirement to display L plate

The following provisions apply in relation to a learner's permit in force immediately before the commencement of section 9 of this Act:

- 15 (a) on the commencement of section 9 of this Act, the condition specified in section 75A(3)(c) of the principal Act (as in force immediately before that commencement) ceases to apply to the permit;
- (b) section 75A(15) of the principal Act (as in force after that commencement) applies to the holder of such a permit as if the permit had been issued after that commencement.

### 5—Provisional licences in force immediately before commencement

20 Subject to clause 6 of this Schedule, section 81A of the principal Act, as in force immediately before commencement of section 12 of this Act, continues to apply in relation to a provisional licence in force immediately before that commencement.

### 6—Requirement to display P plate

25 The following provisions apply in relation to a P1 licence in force immediately before the commencement of section 12 of this Act:

- (a) on the commencement of section 12 of this Act, the condition specified in section 81A(1)(e) of the principal Act (as in force immediately before that commencement) ceases to apply to the licence;
- 30 (b) section 81A(15) of the principal Act (as in force after that commencement) applies to the holder of such a licence as if the licence had been issued after that commencement.

### 7—High powered vehicle restrictions inapplicable to some provisional licences issued after commencement

- 35 (1) Section 81A(16) of the principal Act (as in force immediately after the commencement of section 12 of this Act) does not apply to a person who is the holder of a P2 licence issued after the commencement of that subsection if, immediately before the issue of that licence, the person was the holder of a P1 licence that was issued before the commencement of that subsection.
- (2) This clause is in addition to and does not derogate from clause 5 of this Schedule.