

Transport  
for NSW

# Photo Card Regulation 2024

## Regulatory Impact Statement

June 2024

[transport.nsw.gov.au](https://transport.nsw.gov.au)

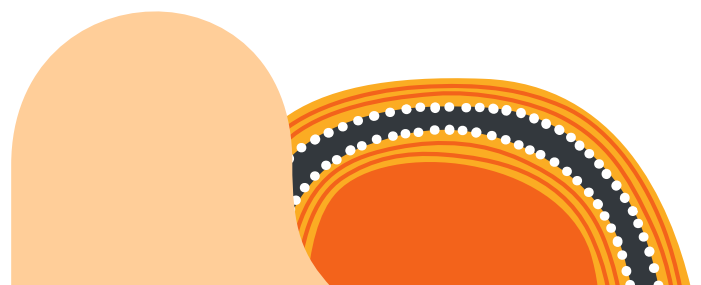


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# Table of Contents

<b>Executive summary .....</b>	<b>4</b>
<b>Public consultation on the proposed Regulation .....</b>	<b>5</b>
How to make a submission.....	5
What will happen with submissions? .....	5
<b>Background .....</b>	<b>6</b>
Management of Photo Cards in NSW.....	6
The <i>Photo Card Act 2005</i> .....	6
The Photo Card Regulation 2014 .....	6
<b>The Regulatory Impact Statement process.....</b>	<b>7</b>
The NSW Government Guide to Better Regulation .....	7
Consultation.....	7
<b>The need for government action .....</b>	<b>8</b>
<b>Assessment of options to achieve objectives .....</b>	<b>9</b>
Option 1 – Allow the existing Regulation to lapse.....	9
Costs.....	9
Benefits .....	9
Conclusion.....	9
Option 2 – Remake the existing Regulation without change.....	10
Costs.....	10
Benefits .....	10
Conclusion.....	10
Option 3 – Remake the existing Regulation with changes (the proposed Regulation) .....	10
Costs.....	10
Benefits .....	10
Conclusion.....	11

<b>Discussion of the proposed Regulation.....</b>	<b>11</b>
Section 1 Name of Regulation.....	11
Section 2 Commencement.....	11
Section 3 Definitions .....	11
Section 4 Fees for Photo Card.....	11
Section 5 Fees not payable by certain persons.....	11
Section 6 Cancellation of Photo Card.....	11
Section 7 Surrender of Photo Card .....	11
Section 8 Change of address and other particulars .....	11
Section 9 Use of digital Photo Cards .....	11
Section 10 Purposes for which photographs may be kept and used .....	12
Section 11 Release of information from the Photo Card Register .....	12
Section 12 Release of photographs .....	12
Section 13 Repeal and savings.....	12
Schedule 1 Penalty notice offences .....	12
<b>Appendix 1 - Stakeholders for consultation .....</b>	<b>13</b>
<b>Appendix 2 - Summary of historical changes .....</b>	<b>14</b>
<b>Appendix 3 - Key changes in the proposed Regulation .....</b>	<b>15</b>



## Executive summary

The Photo Card Regulation 2014 (the existing Regulation) is being remade as part of the staged repeal of statutory rules under the *Subordinate Legislation Act 1989*. The repeal of the existing Regulation is due on 1 September 2024. The existing Regulation is the only statutory instrument made under the *Photo Card Act 2005* (the Act) and provides essential administrative support in the issue and use of Photo Cards in NSW.

The Photo Card Regulation 2024 (the proposed Regulation) is a draft. It has been released with this Regulatory Impact Statement (RIS) so that interested parties can review it and provide comment and suggestions. The RIS sets out the objectives and rationale of the proposed Regulation. It considers three options for achieving those objectives as well as an assessment of the costs and benefits of each option.

Remaking the existing Regulation with changes is the best option to ensure the continued implementation of the Photo Card Scheme. The proposed Regulation improves readability and updates the writing style to align with current regulations. This RIS concludes that the benefits of remaking the existing Regulation with these changes outweighs the costs.

Submissions are invited on any of the matters raised in the RIS or any other matter contained in the proposed Regulation. All submissions will be carefully considered and may result in amendments to the proposed Regulation.

The proposed Regulation will be finalised and published on the NSW Legislation website to enable it to commence on 1 September 2024.

# Public consultation on the proposed Regulation

A public notice of the proposed Regulation is published in *The Sydney Morning Herald* and *The Daily Telegraph*. The public consultation period is at least 28 days. The RIS has also been distributed to the key stakeholders listed at **Appendix 1**.

## How to make a submission

Interested parties, including stakeholder groups, other interested organisations, and the wider community, are invited to submit written comments on the proposed Regulation to Transport.

Comments and suggestions may be provided on individual matters or on the proposed Regulation as a whole. If commenting on a specific matter, please refer to the section number of the proposed Regulation.

By post:                   Remake of Photo Card Regulation 2014  
                                  Transport Policy  
                                  Strategic Policy & National Reform  
                                  Transport for NSW  
                                  PO Box K659  
                                  Haymarket NSW 1240

By email:                [policy.consultation@transport.nsw.gov.au](mailto:policy.consultation@transport.nsw.gov.au)

**The closing date for submissions is 5pm on 31 July 2024.**

## What will happen with submissions?

Transport will review and evaluate the submissions received and the proposed Regulation may be amended. Copies of submissions will be provided to the Legislation Review Committee of the NSW Parliament along with the final version of the proposed Regulation. All submissions received will be published. If you wish for all or part of your submission to be treated as confidential, please clearly state this in your submission.

# Background

## Management of Photo Cards in NSW

A Photo Card is a secure way to show proof of identity, proof of age and proof of address for any NSW resident over the age of 16. Transport administers the issue, cancellation, surrender and security of Photo Cards.

Photo Cards benefit those people in the community who need a photo identification document but do not hold a driver licence or passport.

Eligibility requirements, enrolment and proof of identity processes used by Transport to establish entitlement for a Photo Card are consistent with NSW and national strategies to prevent identity fraud. Transport applies strict proof of identity checks on each applicant and manages the photo image regime to ensure high standards of integrity and security.

More information can be found at <https://www.nsw.gov.au/driving-boating-and-transport/driver-and-rider-licences/proof-of-identity/photo-cards>

## The Photo Card Act 2005

The *Photo Card Act 2005* (the Act) authorises and enables Transport to issue a Photo Card to residents over the age of 16. The photo card can be used as evidence of the age and identity of the person.

The Act contains general regulation making powers in relation to the administration and development of Photo Card services delivered by Transport on behalf of the NSW Government, including security technology to prevent identity fraud.

## The Photo Card Regulation 2014

The Photo Card Regulation 2014 (the existing Regulation) supports the Act and was last remade on 1 September 2014. The Regulation is due to be automatically repealed on 1 September 2024.

The objectives of the Photo Card Regulation are to make provisions for:

- Fees and exemptions from fees.
- The surrender and cancellation of photo cards.
- Change of particulars such as name and address.
- Use of digital photo cards.
- Release of information on the Photo Card Register.
- Release of photographs.
- Penalty notice offences.

# The Regulatory Impact Statement process

Under the *Subordinate Legislation Act*, regulations are automatically repealed after five years unless a postponement has been granted. When the regulation is due for repeal, the responsible agency must review the regulation and determine whether it is still needed, or if any amendments to the regulation are required. The agency must then decide whether to remake the regulation.

The resulting draft regulation is required to be published with a Regulatory Impact Statement (RIS) and submissions are invited from the public.

The existing Regulation is due for repeal on 1 September 2024.

## The NSW Government Guide to Better Regulation

The *NSW Government Guide to Better Regulation* expresses the opposing forces at work in government regulation.

Regulation is an important tool available to government and helps deliver the community's economic social and environmental goals. However, regulation can also impose administrative and compliance burdens on business, not for profits, consumers, government, and the wider community. These burdens must be balanced against the benefits that the regulation generates.

The Guide articulates what characterises good regulation and the minimisation of red tape through seven Better Regulation principles. These principles guide the development of regulatory impact statements and emphasise:

- The need for government action only in the public interest;
- The need for clear regulatory objectives;
- Weighing up the costs and benefits of a range of options;
- The importance of public consultation; and
- The need for simplification and review.

## Consultation

Transport has consulted with stakeholders on proposed changes to the existing Regulation. The release of the RIS and the proposed Regulation for public consultation provide interested stakeholders, and members of the wider community, with an opportunity to co-design the proposed Regulation with Transport by providing comment more broadly on all the proposed changes.

## The need for government action

Good regulation is characterised by the demonstrated need for government action in the public interest. Without limitation, the regulation of Photo Cards in NSW ensures that:

- The provisions of the *Photo Card Act 2005* can be implemented and administered.
- Customers' details and photographs are securely stored and managed.
- Penalty notices may be issued for the misuse of Photo Cards.

The key driver for the remake of the existing Regulation is to maintain the issue and management of Photo Cards for NSW residents and the integrity and security of information held on their behalf.



## Assessment of options to achieve objectives

This section deals with options for providing the necessary regulatory support required to achieve the purpose and objects of the *Photo Card Act 2005*. Three options have been examined and are discussed. The costs and benefits of each option are assessed according to:

- The extent to which each option supports the purpose and objects of the *Photo Card Act 2005*;
- The cost effectiveness of each option in terms of costs, benefits and impacts on the community and government;
- The extent to which the option contributes to the efficiency of the regulatory system.

### Option 1 – Allow the existing Regulation to lapse

The existing Regulation could be allowed to lapse on 1 September 2024 without a replacement Regulation in place.

#### Costs

The cost of allowing the existing regulation to lapse would be significant:

- Transport would be effectively unable to administer and enforce the Act or apply penalties to offences.
- Transport would be unable to collect fees for the issue of Photo Cards. This revenue helps to fund the administration of the scheme and would be lost if fees were not collected.
- The security arrangements for photographs and other personal information could not be assured.
- The release of information to Service NSW would not be permitted.
- Members of the community who rely on Photo Cards as identity documents may be unable to access them.

The cost of taking no action and allowing the existing Regulation to lapse would be very high and unacceptable to the community.

The overall costs associated with Option 1—Allow the existing Regulation to lapse – have been assessed as **very high**.

#### Benefits

There is little, if any, benefit arising from the option of allowing the existing Regulation to lapse. Under the provisions of the Act, Transport would still be required to administer the Act but would not have the detailed powers to regulate it, issue Photo Cards, or to apply penalties to offences.

The overall benefits associated with Option 1—Allow the existing Regulation to lapse—have been assessed as **very low**.

#### Conclusion

The Act cannot operate as intended without a regulation that enables it to achieve its purpose. Allowing the existing Regulation to lapse on 1 September 2024 would potentially impact on members of the community who depend on Photo Cards as identity documents.

Option 1— Allow the existing Regulation to lapse — is **not** the preferred option.

## Option 2 — Remake the existing Regulation without change

To remake the existing Regulation without change would continue the operation of all current provisions into the proposed Regulation.

### Costs

Costs to the community and to government would remain largely the same, should the existing Regulation be remade without change.

The overall costs associated with Option 2 — Remake the existing Regulation without change — have been assessed as **medium**.

### Benefits

The benefit to the community and NSW Government would be the same if the existing Regulation was remade without change.

The overall benefits associated with Option 2 — Remake the existing Regulation without change — have been assessed as **medium**.

### Conclusion

The Act could operate by remaking the existing Regulation without change. However, the opportunity to clarify and update the Regulation would be lost.

Option 2 — Remake the existing Regulation without change — is **not** the preferred option.

## Option 3 — Remake the existing Regulation with changes (the proposed Regulation)

This option would allow the Regulation to be remade, updating its style and section numbering. It would also allow any repetitive provisions to be consolidated for ease of use.

### Costs

There is little cost associated with this amendment which will clarify the requirements around the issue, use and cancellation of Photo Cards.

The overall costs associated with Option 3 — Remake the existing Regulation with changes — have been assessed as **low**.

### Benefits

This option would update and consolidate the requirements relating to the management and security of the Photo Card Register and release of information from the Register.

The overall benefits associated with Option 3 — Remake the existing Regulation with changes — have been assessed as **high**.

## **Conclusion**

After careful appraisal, it is considered that making the proposed Regulation (Option 3) is the best option to achieve the purpose and objects of the *Photo Card Act 2005* and provide broad benefits to the community and government.

For these reasons, Option 3 – Remake the Regulation with changes – is the **preferred** option.

# **Discussion of the proposed Regulation**

This Section outlines the structure and contents of the proposed Regulation. Appendix 3 summarises the key changes in the proposed Regulation.

## **Section 1 Name of Regulation**

The name of the proposed Regulation is the 'Photo Card Regulation 2024'.

## **Section 2 Commencement**

The proposed Regulation will commence on 1 September 2024.

## **Section 3 Definitions**

Provides for the definitions of 'driver licence' and 'the Act'.

## **Section 4 Fees for Photo Card**

Provides for the setting of fees for 5-year and 10-year Photo Cards.

## **Section 5 Fees not payable by certain persons**

Provides that fees are not payable for certain persons who hold a Seniors Card issued by the NSW Government, eligible pensioners, and recipients of carer allowance under the *Social Security Act 1991* of the Commonwealth.

## **Section 6 Cancellation of Photo Card**

Provides for Transport to cancel a person's Photo Card and certain circumstances under which this can be done.

## **Section 7 Surrender of Photo Card**

Provides for a person to surrender a Photo Card by returning it to Transport.

## **Section 8 Change of address and other particulars**

Provides for a person who holds a Photo Card to advise Transport of change of their name, residential address or address for the service of notices within 14 days.

## **Section 9 Use of digital Photo Cards**

Refers to the definition of 'relevant purpose' given in Section 13A of the Act.

### **Section 10 Purposes for which photographs may be kept and used**

Provides for the purposes for which a photograph on the Photo Card Register may be kept and used by Transport and refers to the provisions of Section 111 of the Road Transport (General) Regulation 2021.

### **Section 11 Release of information from the Photo Card Register**

Provides for circumstances under which information may be released from the Photo Card Register.

### **Section 12 Release of photographs**

Provides for the release of photographs to use or verify the authenticity of a digital Photo Card.

### **Section 13 Repeal and savings**

Provides for the repeal of the Photo Card Regulation 2014 and that an act, matter or thing that had effect under the existing Regulation continues to have effect under the proposed Regulation.

### **Schedule 1 Penalty notice offences**

Sets out the provisions of the Act and the Regulation where penalty notice offences may apply and the relevant penalty notice fine amount for the offence (**note:** the amounts listed in the proposed Regulation reflect the amounts that will apply on and from 1 July 2024 following annual Consumer Price Indexation).

## Appendix 1 - Stakeholders for consultation

The following stakeholders will be notified that the proposed Regulation and this RIS are available for public consultation:

NSW Department of Communities and Justice

NSW Department of Enterprise, Investment and Trade

NSW Department of Fair Trading

NSW Electoral Commission

NSW Treasury

NSW Health

NSW Police Force

The Cabinet Office

The Premier's Department

Information and Privacy Commissioner NSW

Service NSW

Australian Banking Association

Australian Hotels Association

Australian Retailers Association

Carers NSW

Clubs NSW

Community Transport Organisation

Council for Intellectual Disability

The Council of the Ageing

Disability Council NSW

Forward Ability Support

Local Government NSW

Motor Traders' Association of NSW

NSW Council of Social Service

People with Disability Australia

Physical Disability Council of NSW

Spinal Cord Injuries Australia

Vision Australia

Youth Action

## Appendix 2 - Summary of historical changes

The 2005 Regulation prescribed matters necessary for the implementation and operation of the *Photo Card Act 2005* and dealt with:

- The setting of a fee for a Photo Card, with exemptions from fees for pensioners, seniors and carers.
- Grounds for the cancellation and surrender of a Photo Card.
- The requirement to provide Transport with any changes of name or address details.
- The circumstances under which a photograph of the Photo Card Register may be kept and used.
- Offences and penalty notices.

The Regulation was remade in 2014 as well as several separate amendments:

- References to the Proof of Age Card were removed.
- Offences relating to altering or tampering with a Photo Card were removed.
- Confidentiality provisions were harmonised with the *Privacy and Personal Information Act 1998*.
- The provision to allow Transport to waive the fee for a new or replacement Photo Card was introduced. However, legal opinion given during the current remaking of the Regulation is that there currently no power in the Photo Card Act 2005 to allow Transport the discretionary power to waive fees. Transport will seek further legislative amendments to ensure the power to waive fees is reinstated at the earliest available opportunity.

The Regulation was further amended in 2023:

- Legally authorising Transport to release information and photographs to Service NSW in certain circumstances and with the consent of the customer.
- Enabling biometric matching, to allow a customer to verify their identity online, and to support the Digital Identity and Verifiable Credentials (DIVC) System.

## Appendix 3 - Key changes in the proposed Regulation

Existing Regulation	Provision	Proposed Regulation	Provision
1	Name of Regulation This Regulation is the Photo Card Regulation 2014	1	Name of Regulation This Regulation is the Photo Card Regulation 2024
2	Commencement The Regulation commenced on 1 September 2014	2	Commencement The Regulation is to commence on 1 September 2024
3	Definitions Provides definitions of <i>driver licence</i> and <i>the Act</i>	3	Definitions Provides definitions of <i>driver licence</i> and <i>the Act</i>
4	Fees for Photo Card	4	Fees for Photo Card
5	Exemption from fee	5	Fees not payable by certain persons
6	Fee waiver by TfNSW	N/A	Removed.
7	Cancellation of Photo Card	6	Grounds for cancellation of Photo Card
8	Surrender of Photo Card	7	Surrender of Photo Card
9	Change of address or other particulars	8	Change of address or other particulars
9A	Use of digital Photo Cards	9	Use of digital Photo Cards
10	Purposes for which photographs may be kept and used	10	Purposes for which photographs may be kept and used
10A	Release of information and photographs – digital Photo Cards	11	Release of information from the Photo Card Register
10B	Release of information to Service NSW	N/A	Service NSW included in section 11
11	Release of information of a personal nature	N/A	Release of information of a personal nature included in section 11

Existing Regulation	Provision	Proposed Regulation	Provision
12	Release of information to Austroads	N/A	Austroads included in section 11
13	Repealed in 2019	N/A	
14	Saving	13	Repeal and Savings





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