

[Act 2002 No 127]



New South Wales

Driving Instructors Amendment Bill 2002

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Driving Instructors Act 1992* (*the Act*) as follows:

- (a) to set out certain of the primary objects of the Act,
 - (b) to make it clear that a person who, for a monetary or other reward, instructs another person in how to drive a motor vehicle is a driving instructor for the purposes of the Act whether the monetary or other reward was received from the person under instruction or otherwise,
 - (c) to remove requirements to include certain information in advertisements or written statements promoting driving instruction services,
 - (d) to prohibit the issue of driving instructor licences to applicants while they are serving a period of good behaviour under certain provisions of the *Road Transport (Driver Licensing) Act 1998* or corresponding provisions under the law of any other State or Territory,
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- (e) to allow applicants for driving instructor licences to undertake an accredited driving instructor course (the passing of which is a prerequisite to the issue of a driving instructor licence) only if the Roads and Traffic Authority (the *Authority*) authorises them to do so on being satisfied of their good character,
- (f) to require that existing provisions prohibiting the use of unsatisfactory motor vehicles by driving instructors for driving instruction purposes apply wherever driving instruction is given (that is, whether on road or road related areas or elsewhere),
- (g) to make provision with respect to the reporting to the Authority of alleged misconduct (being conduct involving assault, including sexual assault, or sexual harassment, fraud, dishonesty or dangerous driving) engaged in by driving instructors,
- (h) to require compulsory comprehensive insurance of motor vehicles used by driving instructors for driving instruction purposes (other than of motor vehicles supplied by persons receiving the driving instruction),
- (i) to make other amendments of a consequential or ancillary nature.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Driving Instructors Act 1992* set out in Schedule 1.

Schedule 1 Amendments

Statement of primary objects of Act

Schedule 1 [1] inserts a provision that sets out certain of the primary objects of the Act.

Amendment of definitions of “driver licence”, “driving instructor” and “driving school”

Schedule 1 [3] restates more clearly the existing definition of *driver licence*.

Schedule 1 [4] amends the definition of *driving instructor* to make it clear that a person who, for monetary or other reward, instructs another person for the purpose of teaching that other person to drive a motor vehicle is a driving instructor for the purposes of the Act whether the monetary or other reward was received from the person under instruction or otherwise.

Schedule 1 [5] amends the definition of *driving school* to make it clear that a driving school includes any franchise or co-operative that provides persons with instructions for the purpose of teaching those persons to drive motor vehicles.

Removal of requirements to include certain information in advertisements

Schedule 1 [6] repeals two provisions requiring the inclusion of certain information in advertisements or written statements promoting driving instruction services (that information being the class of motor vehicles the subject of the promotion, and the instructor licence number of the instructor, or the name and place of business of the driving school, concerned).

Requirement to be authorised by Authority to undertake accredited driving instructor course

Schedule 1 [8] amends section 10 to require applicants for driving instructor licences to be authorised by the Authority before they can undertake an accredited course in driving instruction (the passing of which is a prerequisite under the Act to the issue of a driving instructor licence).

Schedule 1 [9] inserts section 10 (4) which prohibits the Authority from authorising a person to undertake such a course unless the person has made an application for a driving instructor licence under the Act and the Authority is satisfied that the person is of good character.

Schedule 1 [9] also inserts section 10 (3) which allows the Authority to exempt any person or class of persons from the requirement to be authorised to undertake, or to pass, an accredited course in driving instruction.

Schedule 1 [7] makes a consequential amendment.

Ineligibility to be issued driving instructor licence during good behaviour period

Schedule 1 [9] inserts section 10 (2) which provides that an applicant for a driving instructor licence is not eligible to be issued with a licence while serving a period of good behaviour under section 16 (8) or 16A (7) of the *Road Transport (Driver Licensing) Act 1998* or a corresponding provision under the law of any other State or Territory. Sections 16 (8) and 16A (7) of the *Road Transport (Driver Licensing)*

Act 1998 allow, in certain circumstances, a driver who has incurred excessive demerit points to elect to be of good behaviour for a period of 12 months as an alternative to having his or her licence suspended, in the case of section 16 (8), or undergoing a licence ineligibility period in the case of section 16A (7).

Reporting of alleged misconduct engaged in by driving instructors

Schedule 1 [15] inserts new sections 54A and 54B which provide for the reporting to the Authority of alleged misconduct (being conduct involving assault, including sexual assault, or sexual harassment, fraud, dishonesty or dangerous driving) engaged in by driving instructors.

Proposed section 54A requires a person who employs a driving instructor, or who conducts a driving school, or who is engaged in the control, management or administration of a driving school, to report to the Authority any complaint made to the person of alleged misconduct on the part of a driving instructor who is working as such for the person or the driving school (as the case may be) at the time the complaint is made, and any incident of alleged misconduct by any driving instructor that the person may have witnessed.

Proposed section 54B requires driving instructors to report to the Authority any incident of alleged misconduct by another driving instructor that they may have witnessed, and any complaint made to them by any person they are instructing of alleged misconduct on the part of another driving instructor.

Failure to report alleged misconduct under proposed section 54A or 54B is an offence.

Schedule 1 [10] allows the Authority to refuse an application for a driving instructor licence if the Authority is satisfied that the applicant has at any time been guilty of misconduct.

Schedule 1 [11] allows the Authority to suspend or cancel a driving instructor licence if the Authority is satisfied that the holder of the licence is guilty of misconduct.

Schedule 1 [12] allows the Authority to suspend a person's driving instructor licence while dealing with a report of alleged misconduct on the part of the person if of the opinion that the alleged misconduct is serious enough to warrant suspension.

Schedule 1 [13] allows a Local Court to prohibit (by way of prohibition order) a person from conducting a driving school or engaging in the control, management or administration of a driving school if the person has been found guilty of an offence against proposed section 54A or 54B.

Schedule 1 [16] protects persons required to report alleged misconduct under proposed section 54A or 54B from liability for defamation for doing so.

Schedule 1 [3] inserts a definition of *misconduct* for the purposes of the Act.

Compulsory comprehensive motor vehicle insurance

Schedule 1 [15] inserts new section 54C which prohibits driving instructors from using, and employers of driving instructors from allowing them to use, motor vehicles for driving instruction that are not covered by a comprehensive motor vehicle insurance policy. (The proposed requirement for comprehensive motor vehicle insurance does not apply in relation to a motor vehicle supplied by the person receiving the driving instruction.)

Schedule 1 [13] allows a Local Court to prohibit (by way of prohibition order) a person from conducting a driving school or engaging in the control, management or administration of a driving school if the person has been found guilty of an offence against proposed section 54C.

Prohibition on use anywhere of unsatisfactory vehicle for driving instruction

Schedule 1 [14] makes it clear that existing provisions that prohibit driving instructors from using, and employers of driving instructors from allowing them to use, motor vehicles for driving instruction that do not meet construction and equipment requirements under the *Road Transport (General) Act 1999* apply wherever the vehicle is being used for driving instruction (that is, whether on road or road related areas or elsewhere).

Schedule 1 [2] repeals the definitions of *road* and *road related area* as a consequence of the amendments made by Schedule 1 [14].

Schedule 1 [17] makes a consequential amendment to the general power to make regulations under the Act.

Savings and transitional provisions

Schedule 1 [18] allows regulations of a savings or transitional nature to be made as a consequence of the enactment of the proposed Act.

Schedule 1 [19] makes provision of a savings and transitional nature consequent on the amendments made by Schedule 1 [9], [10] and [15].