

# Driving Instructors Act 1992 No 3

[1992-3]



New South Wales

## Status Information

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### Authorisation

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New South Wales

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# Driving Instructors Act 1992 No 3



New South Wales

An Act to provide for the licensing of instructors engaged for reward in teaching persons to drive motor vehicles; to repeal the *Motor Vehicle Driving Instructors Act 1961*; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act may be cited as the *Driving Instructors Act 1992*.

### 2 Commencement

This Act commences on a day or days to be appointed by proclamation.

### 2A Objects of Act

The primary objects of this Act include—

- (a) to ensure that driving instructors meet minimum standards relating to competency and performance in driving instruction, probity and character in order to protect the community and to benefit the driving instruction industry, and
- (b) to minimise the potential for corruption in the driving instruction industry and inappropriate behaviour by driving instructors, and
- (c) to promote the safety and protection of persons receiving driving instruction.

### 3 Definitions

(1) In this Act—

**application** includes an application for the renewal of a licence.

**authorised officer** means a person authorised in writing by Transport for NSW for the purposes of the provision of this Act in which the expression is used.

**driver licence** means—

- (a) an Australian driver licence under the *Road Transport Act 2013* (other than a

learner licence, a provisional licence, a probationary licence or a restricted licence within the meaning of that Act), or

- (b) a corresponding licence under the law for the time being in force in any other country,

to drive all classes of motor vehicles (or motor vehicles of the relevant class).

**driving instructor** is defined in section 4.

**driving school** is defined in section 5.

**instructions** includes advice, demonstrations and courses of training.

**licence** means a licence under this Act.

**misconduct** means any conduct of the following kind—

- (a) sexual assault, whether in connection with the provision of driving instruction or otherwise,
- (b) sexual harassment in connection with the provision of driving instruction (including making an unwelcome sexual advance, or an unwelcome request for sexual favours, to a person, or engaging in other unwelcome conduct of a sexual nature in relation to a person),
- (c) fraud or dishonesty punishable on conviction by imprisonment, whether in connection with the provision of driving instruction or otherwise,
- (d) the commission of any offence involving dangerous driving, whether in connection with the provision of driving instruction or otherwise,
- (e) the commission of any offence involving assault, whether in connection with the provision of driving instruction or otherwise.

**motor vehicle** means a motor vehicle (including any trailer towed by the vehicle) within the meaning of the [Road Transport Act 2013](#).

**Transport for NSW** or **TfNSW** means Transport for NSW constituted under the [Transport Administration Act 1988](#).

**Note—**

The [Interpretation Act 1987](#) contains definitions and other provisions that affect the interpretation and application of this Act.

- (2) In this Act, a reference to a **relevant class of motor vehicles** is a reference to a class of motor vehicles in respect of which the applicant for a licence has applied.
- (3) Notes included in this Act do not form part of this Act.

#### **4 Meaning of “driving instructor”**

- (1) For the purposes of this Act, a **driving instructor** is a person—
- (a) who—
    - (i) instructs another person for the purpose of teaching that other person to drive a motor vehicle, or
    - (ii) tests or assesses another person for the purpose of enabling that other person to obtain a driver licence or have it varied, and
  - (b) receives a monetary or other reward for so teaching, testing or assessing (whether from the person being instructed, tested or assessed or otherwise).
- (1A) Subject to the regulations, any other reference in this Act (including subsections (2) and (3)) to a driving instructor or other person giving driving instructions to another person includes a reference to testing or assessing another person for the purpose of enabling that other person to obtain a driver licence or have it varied.
- (2) It does not matter whether the driving instructor gives instructions on the instructor’s own account or in conjunction with any other person or as the agent or employee of any other person.
- (3) However, the regulations may provide that certain persons or classes of persons are not driving instructors for the purposes of this Act.

#### **5 Meaning of “driving school”**

- For the purposes of this Act, a **driving school** is a business (including any franchise or co-operative) that—
- (a) provides persons with instructions for the purpose of teaching those persons to drive motor vehicles, or
  - (b) tests or assesses persons for the purpose of enabling those persons to obtain driver licences or have them varied.

### **Part 2 Licences relating to driving instructors**

#### **6 Unlicensed driving instruction**

A person must not act as a driving instructor unless the person is the holder of a licence.  
Maximum penalty—50 penalty units.

#### **7 Unlicensed person not to be employed as driving instructor**

A person must not engage or permit another person to act, as the person’s employee or agent, as a driving instructor unless that other person is the holder of a licence.

Maximum penalty—50 penalty units.

### **8 Unauthorised promotions**

- (1) A person who is not the holder of a licence must not advertise or state that the person acts or is willing to act as a driving instructor.
- (2) A person who is not the holder of a licence authorising the person to act as a driving instructor in respect of motor vehicles of a particular class must not advertise or state that the person acts or is willing to act as a driving instructor in respect of vehicles of that class.
- (3) A person must not advertise or state that the person is willing to procure another person to act as a driving instructor, or as a driving instructor in respect of motor vehicles of a particular class, unless that other person is the holder of a licence authorising the person to act as a driving instructor or as a driving instructor in respect of the class concerned.
- (4), (5) (Repealed)

Maximum penalty—50 penalty units.

### **9 Authority conferred by licence**

A licence authorises its holder to act, in accordance with any conditions imposed on the licence, as a driving instructor.

### **10 Prerequisites for licence**

- (1) An applicant for a licence is not eligible to be issued with a licence unless the applicant—
  - (a) has reached the age of 21 years, and
  - (b) is the holder of a driver licence, and
  - (c) has, for a period of not less than 3 years during the period of 4 years before the date of the application, held a driver licence, and
  - (d) has been authorised by Transport for NSW to undertake, and has passed, a course in driving instruction approved by Transport for NSW and conducted by an organisation approved by Transport for NSW, and
  - (e) either holds a working with children check clearance granted under the *Child Protection (Working with Children) Act 2012* that is applicable to the work to be permitted by the licence or has a current application for such clearance under that Act.
- (2) An applicant for a licence is not eligible to be issued with a licence—



- (a) while serving a period of good behaviour under section 36 of the *Road Transport Act 2013* (or a corresponding provision under the law of any other State or Territory), or
  - (b) if the applicant is subject to an interim bar under the *Child Protection (Working with Children) Act 2012*.
- (3) Transport for NSW may exempt any person or class of persons from the requirement under subsection (1) (d) to be authorised to undertake, or to pass, a course in driving instruction.
- (4) Transport for NSW must not authorise a person to undertake a course in driving instruction for the purposes of subsection (1) (d) unless—
- (a) the person has made an application for a licence in accordance with section 11, and
  - (b) Transport for NSW is satisfied that the person is of good repute and good character.
- (5) Subsection (1) (e) does not apply if the applicant would be exempt from a working with children check clearance under the *Child Protection (Working with Children) Act 2012* for the work permitted by the licence.
- (6) Transport for NSW may exempt any person or class of persons from the requirement under subsection (1) (e) to hold a clearance or to have a current application for such a clearance if the licence to be issued is limited to the instruction of persons who are 18 years old or older.

#### **11 Application for licence**

- (1) An application for a licence is to be in a form approved by Transport for NSW and is to be lodged with Transport for NSW.
- (2) The application is to be accompanied by the fee prescribed by the regulations.

#### **12, 13 (Repealed)**

#### **14 Consideration of information**

- (1) In considering an application, Transport for NSW must take into account any information received from the Commissioner of Police and any other relevant information known to it.
- (2) (Repealed)

#### **15 Testing of applicant**

Transport for NSW may require the applicant to submit to a test of any one or more of the

following—

- (a) the applicant's competence as a driver of motor vehicles (or of motor vehicles of the relevant class),
- (b) the applicant's knowledge of the provisions of the road transport legislation within the meaning of the *Road Transport Act 2013* that relate to drivers of motor vehicles and the driving of motor vehicles,
- (c) the applicant's knowledge of the provisions of this Act and of the regulations made under it,
- (d) the applicant's ability—
  - (i) to teach persons to drive motor vehicles (or motor vehicles of the relevant class),  
or
  - (ii) to test or assess persons seeking to obtain or vary driver licences for motor vehicles (or motor vehicles of the relevant class),
- (e) such other matters as may be prescribed by the regulations.

#### **16 Medical certificates**

- (1) Transport for NSW may require the applicant to obtain a certificate signed by a medical practitioner stating that the practitioner has personally examined the applicant and stating the medical practitioner's opinion as to whether, having regard to the inherent requirements of the occupation of driving instructor (including the safety of the public), the applicant is medically a fit person to act as a driving instructor.
- (2) Transport for NSW may require the applicant to obtain a certificate concerning the applicant's eyesight signed by a medical practitioner or a registered optometrist.
- (3) Transport for NSW may require that any certificate under this section be obtained from a medical practitioner or optometrist specified by Transport for NSW.

#### **17 Determination of application**

After considering an application, Transport for NSW must—

- (a) issue a licence to the applicant, or
- (b) refuse the application and serve on the applicant a notice setting out its reasons for the refusal.

#### **18 Grounds for refusal of application**

- (1) Transport for NSW must refuse an application if—

- (a) the applicant is not eligible to be issued with a licence as referred to in section 10, or
  - (b) Transport for NSW is not satisfied that the applicant is a person of good repute and good character, or
  - (c) Transport for NSW is not satisfied that the applicant is a fit and proper person to act as a driving instructor, or
  - (d) the applicant refused to submit to, or did not pass, any test to which the applicant was required to submit under section 15, or
  - (e) the applicant, if required to do so, did not obtain the medical or other certificate referred to in section 16, or
  - (f) Transport for NSW has reason to believe that the applicant has engaged in bribery or fraud relating to the testing of applicants for driver licences under the *Road Transport Act 2013* or former *Road Transport (Driver Licensing) Act 1998* (or corresponding licences under the law in any other State, or in any Territory or country) or the issue of those licences, or
  - (g) Transport for NSW is of the opinion that it would not be in the public interest for the applicant to hold a licence having regard to the applicant's record of offences (within the State or elsewhere) involving motor vehicles.
- (2) Transport for NSW may refuse an application if—
- (a) the applicant has been found guilty of an offence (within the State or elsewhere) or is charged with an offence (within the State or elsewhere), and
  - (b) Transport for NSW is satisfied that granting the application would be inconsistent with any of the primary objects of this Act.
- (2A) Transport for NSW may refuse an application if, pursuant to section 26 (1) (g), Transport for NSW is satisfied that the applicant has at any time engaged in misconduct.
- (3) If an applicant is a person with a disability (within the meaning of the *Disability Discrimination Act 1992* of the Commonwealth), Transport for NSW must not refuse an application on the ground that the person is, because of that disability, not a fit and proper person to act as a driving instructor, unless the applicant because of that disability would be unable to carry out the inherent requirements of the occupation of driving instructor.
- (4) The following are to be taken into account in determining whether an applicant would be unable to carry out the inherent requirements of the occupation of driving instructor (as referred to in subsection (3))—

- (a) the applicant's past training, qualifications and experience relevant to the occupation of driving instructor,
- (b) if the applicant is already acting as a driving instructor, the applicant's performance in that occupation,
- (c) all other relevant factors that it is reasonable to take into account.

## **19 Conditional licences**

- (1) A licence may be issued subject to such conditions as Transport for NSW may determine.
- (2) The conditions must be set out in writing in a document served on the licensee.
- (3) If a licence is issued subject to conditions, Transport for NSW must, on the applicant's request, serve on the applicant a notice setting out the reasons for TfNSW's decision to impose the conditions.
- (4) During the currency of a licence Transport for NSW may, by notice served on the holder of the licence, do either or both of the following—
  - (a) revoke or vary any conditions imposed on the licence,
  - (b) impose new conditions on the licence.
- (5) On the licensee's request, Transport for NSW must serve on the licensee a notice setting out the reasons for TfNSW's decision to vary the conditions imposed on the licence or to impose new conditions.

## **20 Contravention of conditions of licence**

A licensee must not contravene any condition to which the licence is subject.

Maximum penalty—50 penalty units.

## **21 Employer to require compliance with conditions of licence**

A person must not permit a licensee who is the person's employee or agent to contravene any condition to which the licence is subject.

Maximum penalty—50 penalty units.

## **22 Form of licence**

A licence issued to a person may consist, wholly or in part, of—

- (a) an endorsement on the person's driver licence, or
- (b) a separate document.

### **23 Renewal of licence**

- (1) The holder of a licence may, at any time during the currency of the licence or within 90 days after its expiry, apply to Transport for NSW for a renewal of the licence.
- (2) The licence is renewed by the issue of a further licence—
  - (a) that takes effect from the expiry of the holder's current licence, if the application for renewal was made before that expiry, or
  - (b) that is taken to be effective from the date of application, if that application was made after the expiry.
- (3) Nothing in this section gives any force to a licence that has expired, or otherwise affects the operation of section 24.

### **24 When licence is in force**

- (1) A licence is in force for the period specified in the licence unless it is suspended or cancelled.
- (2) Apart from any suspension or cancellation that may be effected under this Act, a licence is suspended or cancelled (as the case may be) while the holder's driver licence is suspended or cancelled.
- (3) A licence is also suspended during any other period while the licensee is not the holder of a driver licence.

### **25 Tests or certificates during currency of licence**

- (1) Transport for NSW may at any time during the currency of a licence require its holder to submit to any tests of the kind referred to in section 15 or to obtain any medical or other certificate referred to in section 16.
- (2) Requirements under this section are to be made only as often as Transport for NSW considers necessary in the public interest.

### **26 Grounds for suspension or cancellation of licence**

- (1) Transport for NSW may suspend or cancel a licence on any of the following grounds—
  - (a) the licence was issued erroneously or granted in consequence of any false or fraudulent document, statement or representation,
  - (b) any prescribed fee for the licence is due and unpaid,
  - (c) the holder of the licence—
    - (i) has been found guilty of an offence against this Act or the regulations, or

- (ii) has been found guilty of, or has charges pending before a court for, any other offence (within the State or elsewhere) and Transport for NSW is satisfied that suspending or cancelling the licence will promote one or more of the primary objects of this Act,
  - (d) the holder of the licence has contravened a condition to which the licence is subject,
  - (e) the holder of the licence refuses to submit to, or does not pass, any of the tests Transport for NSW requires the holder to submit to under section 25 or does not obtain a medical or other certificate referred to in that section,
  - (f) (Repealed)
  - (g) Transport for NSW is satisfied that the holder of the licence engaged in misconduct,
  - (h) the holder of the licence does not hold a working with children check clearance under the *Child Protection (Working with Children) Act 2012* or does not have a current application for such clearance under that Act,
  - (i) Transport for NSW is satisfied that the holder of the licence is not a person of good repute or good character,
  - (j) Transport for NSW is satisfied that the holder of the licence is not a fit and proper person to act as a driving instructor,
  - (k) Transport for NSW has reason to believe that the holder of the licence has engaged in bribery or fraud relating to the testing of applicants for driver licences under the *Road Transport Act 2013* or former *Road Transport (Driver Licensing) Act 1998* (or corresponding licences under the law in any other State, or in any Territory or country) or the issue of those licences,
  - (l) having regard to the objects of the Act, Transport for NSW is of the opinion that the holder of the licence is a person who no longer displays the competencies, or is no longer suitable, to act as a driving instructor,
  - (m) Transport for NSW is of the opinion that it would not be in the public interest for the holder of the licence to continue to hold a licence having regard to his or her record of offences (within the State or elsewhere) involving motor vehicles.
- (1A) Transport for NSW may issue a caution to the holder of a licence instead of suspending or cancelling the licence under subsection (1).
- (2) (Repealed)
- (2A) If alleged misconduct on the part of the holder of a licence is reported to Transport for NSW under section 54A or 54B, Transport for NSW may suspend the person's

licence until the matter has been dealt with if of the opinion that such action is necessary due to the serious nature of the alleged misconduct.

- (3) If the holder of a licence is a person with a disability (within the meaning of the *Disability Discrimination Act 1992* of the Commonwealth), Transport for NSW must not cancel a licence on the ground that the holder is, because of that disability, not a fit and proper person to act as a driving instructor, unless the holder because of that disability would be unable to carry out the inherent requirements of the occupation of driving instructor.
- (4) The following are to be taken into account in determining whether a holder of a licence would be unable to carry out the inherent requirements of the occupation of driving instructor (as referred to in subsection (3))—
  - (a) the holder's past training, qualifications and experience relevant to that occupation,
  - (b) if the holder is already acting as a driving instructor, the holder's performance in that occupation,
  - (c) all other relevant factors that it is reasonable to take into account.

## **27 Notification of suspension or cancellation of licence**

- (1) Transport for NSW must serve on a driving instructor whose licence it has suspended or cancelled a notice—
  - (a) informing the instructor of the suspension or cancellation, and
  - (b) setting out the reasons for TfNSW's decision to suspend or cancel the licence, and
  - (c) specifying the period within which the instructor must return the licence to Transport for NSW.
- (2) The suspension or cancellation takes effect when the notice is served on the driving instructor concerned or on such later date as is specified in the notice.

## **28 Return of licence**

- (1) A driving instructor served with a notice informing the instructor of the suspension or cancellation of the instructor's licence must, within the time specified in the notice, return the licence to Transport for NSW.

Maximum penalty—20 penalty units.

- (2) A person need not comply with subsection (1) if the suspension or cancellation is stayed by order of the Local Court under section 31.
- (3) A driving instructor whose licence expires must return the licence to Transport for

NSW not later than 3 days after the expiry.

Maximum penalty—20 penalty units.

- (4) A driving instructor whose driver licence is suspended or cancelled must return the licence issued under this Act to Transport for NSW not later than 3 days after the suspension or cancellation.

Maximum penalty—20 penalty units.

- (5) A requirement in this section (and in section 29) that a licence be returned is a requirement that the licence itself, together with any document or notice setting out or varying conditions imposed on the licence and any photograph or other means of identifying the holder, be delivered to a place nominated by Transport for NSW in writing to the holder so that Transport for NSW may record the suspension, cancellation or change of address concerned.

## **29 Change of address**

The holder of a licence whose address (as shown on the licence) changes must, within 7 days after the change, notify Transport for NSW in writing of the change and return the licence to Transport for NSW for amendment.

Maximum penalty—20 penalty units.

## **30 Duplicate licence**

- (1) Transport for NSW may issue a duplicate licence to replace a licence that has been destroyed, lost, stolen or mutilated.

- (2) Before issuing a duplicate licence, Transport for NSW may require—

(a) proof to its satisfaction that the licence has been destroyed, lost, stolen or mutilated, and

(b) payment of the prescribed fee, and

(c) lodgment with it of copies of a photograph of the licensee.

## **Part 3 Appeals relating to licences**

### **31 Appeal against decision of TfNSW**

- (1) A person may appeal to the Local Court against the refusal of the person's application for a licence, except if the application was refused on the ground that the applicant was not eligible to hold a licence as referred to in section 10.
- (2) A person may appeal to the Local Court against the imposition or variation of any condition on the person's licence.



- (3) A person may appeal to the Local Court against the suspension or cancellation of the person's licence.
- (4) Notice of an appeal is to be lodged with the Local Court and with Transport for NSW within 28 days after the date on which the person was notified of the relevant decision of Transport for NSW.
- (5) The notice of appeal must specify the grounds of appeal.
- (6) An appeal does not operate to stay the effect of TfNSW's decision unless the Local Court otherwise orders.
- (7) If the effect of a decision is stayed under this section, it is stayed only for so long as any conditions imposed by the Local Court when ordering the stay are complied with.

### **32 Procedure on notice of appeal**

- (1) The relevant registrar of the Local Court must give notice of the time and place of the hearing of the appeal to Transport for NSW and to the appellant.
- (2) The hearing of an appeal may proceed regardless of any omission from or error in a notice given under this section or the failure to give the notice if the Local Court is satisfied that the appellant and Transport for NSW knew of the time and place of the hearing and were not prejudiced by the omission, error or failure to give notice.

### **33 Procedure on appeal**

- (1) An appeal under this Part is to be heard before the Local Court.
- (2) The Local Court is to hear and determine the appeal and may confirm (with or without variation) or disallow the decision appealed against, or make any other order, as seems just to the Local Court.
- (3) The Local Court is not bound to observe the rules of law governing the admission of evidence but may inform itself of any matter in such manner as it sees fit.
- (4) The civil standard of proof applies in proceedings on an appeal.
- (5) Any material considered by Transport for NSW in reaching the decision the subject of the appeal and copies of any notices, documents or letters served on the appellant by Transport for NSW together with details of their service are admissible in the proceedings.
- (6) The authenticity of any such material, notices, documents, letters and service must be certified by an authorised officer.
- (7) The decision of the Local Court given in any appeal under this Part is final, is taken to be the decision of Transport for NSW and is to be carried into effect accordingly.

## **Part 4 Certain persons prohibited from conducting etc driving schools**

### **34 Definition**

In this Part, **prohibition order** means an order made by the Local Court under this Part and for the time being in force which prohibits a person from conducting a driving school or engaging in the control, management or administration of a driving school.

### **35 Application for prohibition order**

Transport for NSW may apply to the Local Court for a prohibition order.

### **36 Grounds on which prohibition order may be made**

- (1) A prohibition order may be made against a person only if the Local Court is satisfied that the person is conducting a driving school or engaging in the control, management or administration of a driving school and that the person—
  - (a) has (whether in connection with the driving school or otherwise) engaged in bribery or fraud relating to the testing of applicants for driver licences under the [Road Transport Act 2013](#) or former [Road Transport \(Driver Licensing\) Act 1998](#) (or corresponding licences under the law in any other State, or in any Territory or country) or the issue of those licences, or
  - (b) has been found guilty of an offence (within the State or elsewhere) involving fraud or dishonesty and punishable on conviction by imprisonment for 3 months or more, or
  - (c) has been found guilty of an offence against section 54A, 54B or 54C.
- (2) Without limiting subsection (1) (b), a prohibition order may also be made against a person if—
  - (a) the Local Court is satisfied that the person is conducting a driving school or engaging in the control, management or administration of a driving school, and
  - (b) the person has been found guilty of an offence (within the State or elsewhere), and
  - (c) the Local Court is satisfied that the making of the order will promote one or more of the primary objects of this Act.

### **37 Making of prohibition order**

- (1) The Local Court may, on application by Transport for NSW and on being satisfied that the order is warranted, order a person not to conduct a driving school or engage in the control, management or administration of a driving school—
  - (a) in any way, or

(b) in a way stated in the order, or

(c) otherwise than in a way stated in the order.

(2) Transport for NSW must serve a copy of the prohibition order on the person the subject of the order.

### **38 Application for variation or revocation of prohibition order**

(1) Application for variation or revocation of a prohibition order may be made to the Local Court by the person the subject of the order or by Transport for NSW.

(2) The Local Court may, on that application, vary or revoke the prohibition order or refuse to vary or revoke it.

(3) If the Local Court varies the prohibition order, Transport for NSW must serve a copy of the order varying the original order on the person the subject of the order.

### **39 Appeal against making or variation of prohibition order**

(1) An appeal lies to the Supreme Court against a decision of the Local Court to make or vary a prohibition order.

(2) No appeal against such a decision may be made later than 28 days after the date of service of the copy of the order or of the order varying the order (as the case may be) on the person the subject of the order.

### **40 Determination of appeal**

(1) The Supreme Court is to hear and determine the appeal and may confirm (with or without variation) or disallow the decision appealed against, or make any other order, as seems just to the Court.

(2) The decision of the Supreme Court given in any appeal under this Part is final, is taken to be the decision of the Local Court and is to be carried into effect accordingly.

### **41 Court procedure**

(1) The Local Court determining an application, and the Supreme Court hearing an appeal, under this Part are not bound to observe the rules of law governing the admission of evidence but may inform themselves of any matter in such manner as they see fit.

(2) The civil standard of proof applies in any such proceeding.

### **42 Costs**

The Local Court determining an application, and the Supreme Court hearing an appeal, under this Part may make such orders as to costs as seem just to the Court concerned.

#### **43 When order takes effect**

- (1) A prohibition order or an order varying a prohibition order takes effect 28 days after the date of service of the copy of the order on the person the subject of the order, unless an appeal against the decision is lodged with the Supreme Court within that time.
- (2) If an appeal against a decision of the Local Court is lodged within 28 days after the date of service of the order, the relevant order does not take effect until the Supreme Court upholds the decision or the appeal is withdrawn.
- (3) An order revoking a prohibition order takes effect as soon as it is made.

#### **44 Contravention of terms of order**

- (1) A person the subject of a prohibition order must not contravene any of its terms.
- (2) A person must not permit another person to conduct a driving school or to engage in the control, management or administration of a driving school in contravention of a prohibition order if the person knows, or could reasonably be expected to know, that the other person is subject to the order.

Maximum penalty—50 penalty units.

### **Part 5 Records relating to driving instructors and driving schools**

#### **45 TfNSW to keep records**

Transport for NSW must keep records of—

- (a) licences and matters relating to licences, including particulars of the issue, refusal, suspension and cancellation of licences, conditions imposed on licences and the variation of such conditions, and
- (b) prohibition orders under Part 4 and matters relating to such orders, including particulars of their making, variation and revocation, and
- (c) particulars of the service of notices or documents under this Act.

#### **46 Evidence as to TfNSW's records**

- (1) A certificate purporting to be signed by an authorised officer and to certify that on any date or during any period specified in the certificate the particulars set out in the certificate as to any of the matters referred to in section 45 did or did not appear on or from TfNSW's records is, in all courts and on all occasions, evidence of the particulars certified by the certificate.
- (2) In particular, a certificate purporting to be signed by an authorised officer and to certify that on any date or during any period specified in the certificate—

- (a) a specified person was or was not the holder of a licence, or
  - (b) a licence held by a specified person was or was not subject to a specified condition, or
  - (c) a specified person was or was not subject to a specified prohibition order, or
  - (d) a specified notice or document was served under this Act on a specified person,
- is admissible in evidence in any legal proceedings and is evidence of the particulars certified by the certificate.

- (3) This section applies without the necessity for proof of the signature or of the official character of the person purporting to have signed the certificate and without the necessity for the production of any record or document on which the certificate is founded.

#### **47 Driving schools to keep records**

- (1) The proprietor of a driving school must keep or cause to be kept such records relating to the operation of the driving school as may be prescribed by the regulations.

Maximum penalty—50 penalty units.

- (2) Transport for NSW may, by notice in writing to the proprietor of a driving school, exempt that proprietor from the requirement to keep records, and may in the same way withdraw that exemption.

#### **48 Driving instructors to keep records**

The holder of a licence must keep such records relating to the giving of driving instruction as may be prescribed by the regulations.

Maximum penalty—50 penalty units.

#### **49 Production of records**

- (1) A police officer or an authorised officer may, at any reasonable time, require the proprietor of a driving school or a driving instructor—
- (a) to produce for inspection by the officer any record required by this Act to be kept by the proprietor or by the instructor, as the case may be, and
  - (b) to allow the officer to make copies of or take extracts from the record, and
  - (c) to permit the officer to make an endorsement or notation on the record, and
  - (d) to provide such information as may reasonably be required by the officer in connection with the record.

- (2) A proprietor of a driving school or a driving instructor must not, without reasonable excuse, fail to comply with a requirement under this section.

Maximum penalty—50 penalty units.

- (3) Any person who wilfully obstructs or hinders a police officer or an authorised officer in the exercise of any power conferred by this section is guilty of an offence.

Maximum penalty—50 penalty units.

## **Part 6 Miscellaneous**

### **50 Act binds the Crown**

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.

### **51 Identification of persons offering driving instruction**

- (1) A police officer or an authorised officer who suspects on reasonable grounds that a motor vehicle is a vehicle used, or sometimes used, for the purpose of teaching any person to drive or for the purpose of advertising a driving school or advertising the fact that any person is willing to act as a driving instructor, may require—
- (a) the owner of the vehicle, or
  - (b) the person who has custody of the vehicle, or
  - (c) if the vehicle is registered in Australia (within the meaning of the [Road Transport Act 2013](#)) or registered under the law of another country that corresponds to the requirements of that Act relating to the registration of motor vehicles—the person in whose name the vehicle is registered,

to give to the officer such information relevant to the provision of driving instruction in connection with the vehicle and the activities of the driving school and the identity of persons connected with it as it is within the power of the person to give.

- (2) A person must not, without reasonable excuse, fail to comply with a requirement under this section.

Maximum penalty—50 penalty units.

### **52 Production of licence**

- (1) The holder of a licence must produce the licence for inspection when required to do so by—
- (a) a police officer or an authorised officer, or
  - (b) any person who wishes to receive or is receiving driving instruction from the

licensee.

Maximum penalty—20 penalty units.

- (2) For the purposes of this section, **licence** includes any document setting out conditions imposed on the licence and any notice varying any such conditions or imposing new conditions.

### **53 Use of unsatisfactory vehicle**

A person must not, while acting as a driving instructor, use any motor vehicle which does not comply with the provisions of the road transport legislation within the meaning of the [Road Transport Act 2013](#) relating to the construction and equipment of motor vehicles generally or of motor vehicles used for driving instruction purposes.

Maximum penalty—20 penalty units.

### **54 Employer not to allow use of unsatisfactory vehicle**

A person must not permit another person, while acting as a driving instructor as that person's employee or agent, to use any motor vehicle which does not comply with the provisions of the road transport legislation within the meaning of the [Road Transport Act 2013](#) relating to the construction and equipment of motor vehicles generally or of motor vehicles used for driving instruction purposes.

Maximum penalty—20 penalty units.

### **54A Driving schools and employers to report alleged misconduct**

- (1) This section applies to 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.
- (2) As soon as practicable after receiving it, a person to whom this section applies must report to Transport for NSW any complaint of alleged misconduct on the part of a driving instructor who is working as such for the person or driving school (as the case may be) at the time the complaint is made.

Maximum penalty—20 penalty units.

- (3) As soon as practicable after witnessing it, a person to whom this section applies must report to Transport for NSW any conduct on the part of a driving instructor (whether or not the driving instructor is working as such for the person or driving school) that the person reasonably believes constitutes misconduct.

Maximum penalty—20 penalty units.

- (4) Alleged misconduct must be reported to Transport for NSW regardless of whether it is alleged to have occurred within the State or elsewhere.

- (5) A report made to Transport for NSW under subsection (2) or (3) must be in writing.

**54B Driving instructors to report alleged misconduct**

- (1) As soon as practicable after witnessing it, a driving instructor must report to Transport for NSW any conduct on the part of another driving instructor that he or she reasonably believes constitutes misconduct.

Maximum penalty—20 penalty units.

- (2) As soon as practicable after receiving it, a driving instructor must report to Transport for NSW any complaint made by a person receiving instruction from the driving instructor of alleged misconduct on the part of another driving instructor.

Maximum penalty—20 penalty units.

- (3) Alleged misconduct must be reported to Transport for NSW regardless of whether it is alleged to have occurred within the State or elsewhere.

- (4) A report made to Transport for NSW under subsection (1) or (2) must be in writing.

**54C Compulsory comprehensive motor vehicle insurance**

- (1) Subject to the regulations—

- (a) a person must not, while acting as a driving instructor, use any motor vehicle that is not covered by a comprehensive motor vehicle insurance policy, and
- (b) a person must not permit another person, while acting as a driving instructor as that person's employee or agent, to use any motor vehicle that is not covered by a comprehensive motor vehicle insurance policy.

Maximum penalty—20 penalty units.

- (2) Subsection (1) does not apply in relation to a motor vehicle used for driving instruction purposes that is supplied by the person receiving the driving instruction.
- (3) The regulations may make provision for or with respect to the nature and extent of the cover to be provided by a comprehensive motor vehicle insurance policy referred to in subsection (1).

**55 False or misleading information**

In complying with the provisions of this Act, a person must not—

- (a) make or keep a record, or
- (b) provide information, or
- (c) make a statement or representation,



that the person knows to be false or misleading.

Maximum penalty—50 penalty units.

## **56 Proceedings for offences**

- (1) Proceedings for offences against this Act or the regulations are to be dealt with summarily before the Local Court.
- (2) Any court before which a person is convicted of an offence against this Act or the regulations must cause particulars of the conviction to be forwarded to Transport for NSW.

## **56A Protection in respect of actions for defamation**

If a person reports alleged misconduct to Transport for NSW for the purpose of complying with section 54A or 54B, no liability for defamation is incurred by the person or, if the person is the employee or agent of another person, by that other person, for so reporting.

## **57 Forms**

- (1) Transport for NSW may determine that any application, notice, certificate or other thing under this Act is to be made, lodged or served in a form approved by Transport for NSW.
- (2) This Act is not complied with unless the application, notice, certificate or other thing is made, lodged or served in accordance with the approved form.

## **58 Service of documents**

- (1) A document that is authorised or required by this Act or the regulations to be served on any person may be served by any of the following methods—
  - (a) in the case of an individual—by personal delivery to the person,
  - (b) by post to the address specified by the person for the service of documents of that kind,
  - (c) in the case of an individual who has not specified such an address—by post to the residential or business address of the person last known to the person serving the document,
  - (d) in the case of a corporation—by post to the registered office or any other office of the corporation or by leaving it at any such office with a person apparently over the age of 16 years,
  - (e) by email to an email address specified by the person for the service of documents of that kind,

(f) by any other method authorised by the regulations for the service of documents of that kind.

(2) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on a person by any other method.

(3) In this section, **serve** includes give or send.

## 59 Regulations

(1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) In particular, the regulations may make provision for or with respect to the following—

(a) the payment of fees under this Act,

(b) the display, on or within any motor vehicle being used by a driving instructor for the purpose of giving instruction in the driving of the motor vehicle, of the licence held by the driving instructor and of any photograph of, or other means of identifying, the driving instructor,

(c) the provision of, and the manner of providing, to persons seeking instruction in the driving of motor vehicles information concerning fees and charges for such instruction,

(d) regulating advertisements, notices or claims relating to the driving of any motor vehicles or the giving of instruction in the driving of any motor vehicles by driving instructors and driving schools,

(e) the use of and the carriage of persons in any motor vehicles used for the purpose of giving instruction in the driving of motor vehicles,

(f) the provision and use of special equipment on any motor vehicle used by a driving instructor for the purpose of giving instruction in the driving of the motor vehicle,

(g) the production to Transport for NSW by any applicant for a licence or by any holder of a licence of copies of a photograph of, or of other means of identifying, the applicant or holder,

(h) the period for which records required by this Act to be kept are to be retained,

(i) the granting of an exemption or conditional exemption from compliance with all or any of the provisions of this Act or the regulations,

(j) the types or classes of licences relating to driving instructors and the conditions for each type or class.

- (3) A regulation may create an offence punishable by a penalty not exceeding 20 penalty units.

## 60 Repeals

- (1) The *Motor Vehicle Driving Instructors Act 1961* is repealed.
- (2) The *Motor Vehicle Driving Instructors Regulations 1962* are repealed.

## 61 Savings and transitional provisions

Schedule 1 has effect.

## 62 (Repealed)

# Schedule 1 Savings and transitional provisions

(Section 61)

## Part 1 General

### 1 Definitions

In this Schedule, **the 1961 Act** means the *Motor Vehicle Driving Instructors Act 1961*.

### 2 Savings and transitional regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act and the following Acts—

*Traffic Legislation Amendment Act 1997* (but only in relation to the amendments made to this Act)

*Driving Instructors Amendment Act 2002*

any other Act that amends this Act.

- (2) A provision referred to in subclause (1) may, if the regulations so provide, take effect on the date of assent to the Act concerned or on a later date.
- (3) To the extent to which a provision referred to in subclause (1) takes effect on a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as—
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

## Part 2 Provisions consequent on the [Driving Instructors Act 1992](#)

### 3 Licences

A licence issued under the 1961 Act and in force immediately before the repeal of that Act is, on the commencement of section 17 of this Act, taken to be a licence issued under that section. Such a licence continues in force (subject to this Act) for the remainder of the term for which it was issued.

### 4 Applications

An application for a licence made under the 1961 Act which had not been determined before the repeal of that Act is, on the commencement of section 11 of this Act, taken to be an application made under that section.

### 5 Renewals

An application for the renewal of a licence issued under the 1961 Act which had not been determined before the repeal of that Act is, on the commencement of section 23 of this Act, taken to be an application made under that section.

### 6 Appeals

An appeal made under section 7 of the 1961 Act in respect of which a decision had not been given before the repeal of that Act is to be dealt with as if the 1961 Act were still in force.

### 7 Legal proceedings

A person convicted of an offence against the 1961 Act is (for the purposes of this Act) taken to have been convicted of an offence against this Act.

### 8 Training

Section 10 (d) of this Act does not preclude the issue or renewal of a licence to a person—

- (a) who is the holder of a licence to which clause 3 applies, or
  - (b) who is the maker of an application to which clause 4 or 5 applies,
- until the third anniversary of the commencement of this clause.

## Part 3 Provisions consequent on [Driving Instructors Amendment Act 2002](#)

### 9 Definition

In this Part, **amending Act** means the [Driving Instructors Amendment Act 2002](#).

## 10 Applications lodged but not determined

- (1) Section 10 (2), as inserted by the amending Act, does not apply to the issue of a licence under this Act that was applied for, but which application was not determined, before the commencement of that provision.
- (2) Section 18 (2A), as inserted by the amending Act, extends to an application for a licence under this Act that was lodged but not determined before the commencement of that provision.

## 11 Reporting of misconduct

A requirement under section 54A or 54B to report alleged misconduct applies only in relation to misconduct alleged to have occurred on or after the commencement of the section concerned.

## Part 4 Provisions consequent on [Road Transport and Related Legislation Amendment Act 2017](#)

### 12 Definition

In this Part—

**amending Act** means the [Road Transport and Related Legislation Amendment Act 2017](#).

### 13 Licence for testing or assessment not required for 12 months

Despite the amendments made by the amending Act, a person who tests or assesses other persons for the purpose of enabling those persons to obtain driver licences or have them varied is not required to hold a licence under this Act authorising the person to do so for the period of 12 months after the day on which Schedule 2 [2] to the amending Act commences.

### 14 Time for appeals against existing decisions

- (1) Section 31 (4), as amended by the amending Act, extends to an appeal against a decision made before the commencement of the amendment, but only if the period within which to make the appeal specified by the subsection before its amendment had not already expired.
- (2) Section 39 (2), as amended by the amending Act, extends to an appeal against a decision to make or vary a prohibition order made before the commencement of the amendment, but only if the period within which to make the appeal specified by the subsection before its amendment had not already expired.
- (3) Section 43, as amended by the amending Act, extends to a prohibition order or variation of a prohibition order made before the commencement of the amendments if subclause (2) operates to extend the time for making an appeal.

## **Schedule 2 (Repealed)**