



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,

- (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].

First print



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New South Wales

Driving Instructors Amendment Bill 2002

No. , 2002

A Bill for

An Act to amend the *Driving Instructors Act 1992* to make further provision with respect to the licensing of driving instructors, including in relation to the insurance of motor vehicles used for driving instruction and the reporting of alleged misconduct by driving instructors; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Driving Instructors Amendment Act 2002</i> .	3
2 Commencement	4
This Act commences on a day or days to be appointed by proclamation.	5 6
3 Amendment of Driving Instructors Act 1992 No 3	7
The <i>Driving Instructors Act 1992</i> is amended as set out in Schedule 1.	8

Schedule 1 Amendments	1
(Section 3)	2
[1] Section 2A	3
Insert after section 2:	4
2A Objects of Act	5
The primary objects of this Act include:	6
(a) to ensure that driving instructors meet minimum standards relating to competency in driving instruction, probity and character in order to protect the community and to benefit the driving instruction industry, and	7 8 9 10
(b) to minimise the potential for corruption in the driving instruction industry and inappropriate behaviour by driving instructors, and	11 12 13
(c) to promote the safety and protection of persons receiving driving instruction.	14 15
[2] Section 3 Definitions	16
Omit the definitions of <i>road</i> and <i>road related area</i> from section 3 (1).	17
[3] Section 3 (1), definitions of “driver licence” and “misconduct”	18
Omit the definition of <i>driver licence</i> . Insert in alphabetical order:	19
<i>driver licence</i> means:	20
(a) an Australian driver licence under the <i>Road Transport (Driver Licensing) Act 1998</i> (other than a learner licence, a provisional licence, a probationary licence or a restricted licence within the meaning of that Act), or	21 22 23 24
(b) a corresponding licence under the law for the time being in force in any other country,	25 26
to drive all classes of motor vehicles (or motor vehicles of the relevant class).	27 28

<i>misconduct</i> means any conduct of the following kind:	1
(a) sexual assault, whether in connection with the provision of driving instruction or otherwise,	2 3
(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),	4 5 6 7 8
(c) fraud or dishonesty punishable on conviction by imprisonment, whether in connection with the provision of driving instruction or otherwise,	9 10 11
(d) the commission of any offence involving dangerous driving, whether in connection with the provision of driving instruction or otherwise,	12 13 14
(e) the commission of any offence involving assault, whether in connection with the provision of driving instruction or otherwise.	15 16 17
[4] Section 4 Meaning of “driving instructor”	18
Omit section 4 (1). Insert instead:	19
(1) For the purposes of this Act, a <i>driving instructor</i> is a person:	20
(a) who instructs another person for the purpose of teaching that other person to drive a motor vehicle, and	21 22
(b) who receives a monetary or other reward for so instructing (whether from the person under instruction or otherwise).	23 24 25
[5] Section 5 Meaning of “driving school”	26
Insert “(including any franchise or co-operative)” after “is a business”.	27
[6] Section 8 Unauthorised promotions	28
Omit section 8 (4) and (5) (not including the penalty provision to section 8).	29

[7] Section 10 Prerequisites for licence	1
Omit “A person is not eligible to be issued with a licence unless the person”.	2
	3
Insert instead “An applicant for a licence is not eligible to be issued with a licence unless the applicant”.	4
	5
[8] Section 10 (d)	6
Omit “has completed” from the paragraph.	7
Insert instead “has been authorised by the Authority to undertake, and has passed,”.	8
	9
[9] Section 10 (2)–(4)	10
Insert at the end of section 10:	11
(2) An applicant for a 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 <i>Road Transport (Driver Licensing) Act 1998</i> (or a corresponding provision under the law of any other State or Territory).	12
	13
	14
	15
	16
(3) The Authority 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.	17
	18
	19
(4) The Authority must not authorise a person to undertake a course in driving instruction for the purposes of subsection (1) (d) unless:	20
	21
	22
(a) the person has made an application for a licence in accordance with section 11, and	23
	24
(b) after considering a report on the person made under section 13, the Authority is satisfied that the person is of good character.	25
	26
	27
[10] Section 18 Grounds for refusal of application	28
Insert after section 18 (2):	29
(2A) The Authority may refuse an application if, pursuant to section 26 (1) (g), the Authority is satisfied that the applicant has at any time been guilty of misconduct.	30
	31
	32

[11] Section 26 Grounds for suspension or cancellation of licence	1
Insert after section 26 (1) (f):	2
(g) the Authority is satisfied that the holder of the licence is guilty of misconduct.	3 4
[12] Section 26 (2A)	5
Insert after section 26 (2):	6
(2A) If alleged misconduct on the part of the holder of a licence is reported to the Authority under section 54A or 54B, the Authority 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.	7 8 9 10 11
[13] Section 36 Grounds on which prohibition order may be made	12
Insert at the end of section 36 (b):	13
, or	14
(c) has been found guilty of an offence against section 54A, 54B or 54C.	15 16
[14] Sections 53 and 54	17
Omit “on a road or road related area” wherever occurring.	18
[15] Sections 54A–54C	19
Insert after section 54:	20
54A Driving schools and employers to report alleged misconduct	21
(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.	22 23 24 25

(2) As soon as practicable after receiving it, a person to whom this section applies must report to the Authority 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.	1 2 3 4 5
Maximum penalty: 20 penalty units.	6
(3) As soon as practicable after witnessing it, a person to whom this section applies must report to the Authority 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.	7 8 9 10 11
Maximum penalty: 20 penalty units.	12
(4) Alleged misconduct must be reported to the Authority regardless of whether it is alleged to have occurred within the State or elsewhere.	13 14 15
(5) A report made to the Authority under subsection (2) or (3) must be in writing.	16 17
54B Driving instructors to report alleged misconduct	18
(1) As soon as practicable after witnessing it, a driving instructor must report to the Authority any conduct on the part of another driving instructor that he or she reasonably believes constitutes misconduct.	19 20 21 22
Maximum penalty: 20 penalty units.	23
(2) As soon as practicable after receiving it, a driving instructor must report to the Authority any complaint made by a person receiving instruction from the driving instructor of alleged misconduct on the part of another driving instructor.	24 25 26 27
Maximum penalty: 20 penalty units.	28
(3) Alleged misconduct must be reported to the Authority regardless of whether it is alleged to have occurred within the State or elsewhere.	29 30 31
(4) A report made to the Authority under subsection (1) or (2) must be in writing.	32 33

54C	Compulsory comprehensive motor vehicle insurance	1
(1)	Subject to the regulations:	2
(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	3 4 5
(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.	6 7 8 9
	Maximum penalty: 20 penalty units.	10
(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.	11 12 13
(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).	14 15 16 17
[16]	Section 56A	18
	Insert after section 56:	19
56A	Protection in respect of actions for defamation	20
	If a person reports alleged misconduct to the Authority 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.	21 22 23 24 25
[17]	Section 59 Regulations	26
	Omit "on any road or road related area" from section 59 (2) (f).	27

[18] Schedule 1 Savings and transitional provisions	1
Omit “of this Act and the <i>Traffic Legislation Amendment Act 1997</i> (but only in relation to the amendments made to this Act).” from clause 2 (1).	2
Insert instead:	3
of this Act and the following Acts:	4
<i>Traffic Legislation Amendment Act 1997</i> (but only in relation to the amendments made to this Act)	5
<i>Driving Instructors Amendment Act 2002</i>	6
[19] Schedule 1, Part 3	7
Insert after Part 2:	8
Part 3 Provisions consequent on Driving Instructors Amendment Act 2002	9
9 Definition	10
In this Part, <i>amending Act</i> means the <i>Driving Instructors Amendment Act 2002</i> .	11
10 Applications lodged but not determined	12
(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.	13
(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.	14

11 Reporting of misconduct	1
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.	2 3 4 5