

Passed by both Houses



New South Wales

Driving Instructors Amendment Bill 2002

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I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2002*



New South Wales

Driving Instructors Amendment Bill 2002

Act No , 2002

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.

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

Chairman of Committees of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Driving Instructors Amendment Act 2002*.

2 Commencement

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

3 Amendment of Driving Instructors Act 1992 No 3

The *Driving Instructors Act 1992* is amended as set out in Schedule 1.

Schedule 1 Amendments

(Section 3)

[1] Section 2A

Insert after section 2:

2A Objects of Act

The primary objects of this Act include:

- (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
- (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.

[2] Section 3 Definitions

Omit the definitions of *road* and *road related area* from section 3 (1).

[3] Section 3 (1), definitions of “driver licence” and “misconduct”

Omit the definition of *driver licence*. Insert in alphabetical order:

driver licence means:

- (a) an Australian driver licence under the *Road Transport (Driver Licensing) Act 1998* (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).

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.

[4] Section 4 Meaning of “driving instructor”

Omit section 4 (1). Insert instead:

- (1) For the purposes of this Act, a ***driving instructor*** is a person:
 - (a) who instructs another person for the purpose of teaching that other person to drive a motor vehicle, and
 - (b) who receives a monetary or other reward for so instructing (whether from the person under instruction or otherwise).

[5] Section 5 Meaning of “driving school”

Insert “(including any franchise or co-operative)” after “is a business”.

[6] Section 8 Unauthorised promotions

Omit section 8 (4) and (5) (not including the penalty provision to section 8).

[7] Section 10 Prerequisites for licence

Omit “A person is not eligible to be issued with a licence unless the person”.

Insert instead “An applicant for a licence is not eligible to be issued with a licence unless the applicant”.

[8] Section 10 (d)

Omit “has completed” from the paragraph.

Insert instead “has been authorised by the Authority to undertake, and has passed,”.

[9] Section 10 (2)–(4)

Insert at the end of section 10:

- (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 *Road Transport (Driver Licensing) Act 1998* (or a corresponding provision under the law of any other State or Territory).
- (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.
- (4) The Authority 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) after considering a report on the person made under section 13, the Authority is satisfied that the person is of good character.

[10] Section 18 Grounds for refusal of application

Insert after section 18 (2):

- (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.

[11] Section 26 Grounds for suspension or cancellation of licence

Insert after section 26 (1) (f):

- (g) the Authority is satisfied that the holder of the licence is guilty of misconduct.

[12] Section 26 (2A)

Insert after section 26 (2):

- (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.

[13] Section 36 Grounds on which prohibition order may be made

Insert at the end of section 36 (b):

- , or
- (c) has been found guilty of an offence against section 54A, 54B or 54C.

[14] Sections 53 and 54

Omit "on a road or road related area" wherever occurring.

[15] Sections 54A–54C

Insert after section 54:

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 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.

Maximum penalty: 20 penalty units.

- (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.

Maximum penalty: 20 penalty units.

- (4) Alleged misconduct must be reported to the Authority regardless of whether it is alleged to have occurred within the State or elsewhere.
- (5) A report made to the Authority 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 the Authority 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 the Authority 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 the Authority regardless of whether it is alleged to have occurred within the State or elsewhere.
- (4) A report made to the Authority 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).

[16] Section 56A

Insert after section 56:

56A Protection in respect of actions for defamation

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.

[17] Section 59 Regulations

Omit "on any road or road related area" from section 59 (2) (f).

[18] Schedule 1 Savings and transitional provisions

Omit “of this Act and the *Traffic Legislation Amendment Act 1997* (but only in relation to the amendments made to this Act).” from clause 2 (1).

Insert instead:

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

[19] Schedule 1, Part 3

Insert after Part 2:

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.