

FIRST PRINT

DRIVING INSTRUCTORS BILL 1992

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to provide for the licensing and regulation of driving instructors. The Bill does not apply to persons who provide driving instruction without fee or other reward.

The Bill also seeks to prevent persons who have engaged in bribery or fraud in relation to the issue of drivers' licences from being associated with driving schools. It allows appeals from certain decisions of a Local Court and decisions of the Roads and Traffic Authority ("the Authority") that would have the effect of prohibiting particular people from acting as driving instructors or being associated with driving schools.

PART 1—PRELIMINARY

Clause 1 specifies the short title of the proposed Act.

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

Clause 3 defines some of the terms used in the proposed Act.

Clause 4 defines the term "driving instructor" as used in the proposed Act. An essential component of the definition is that the instruction is provided for reward.

Clause 5 defines the term "driving school" as used in the proposed Act.

PART 2—LICENCES RELATING TO DRIVING INSTRUCTORS

Clause 6 prohibits a person from acting as a driving instructor unless the person holds a licence. The maximum penalty for an offence against the proposed section is expressed in terms of penalty units (as are penalties for all offences against the proposed Act). One penalty unit is currently equivalent to \$100.

Clause 7 prohibits anyone from engaging or permitting another person to act, as the person's employee or agent, as a driving instructor unless the other person holds a licence.

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Clause 8 prohibits advertisements or statements to the effect that a person acts, or is willing to act or to procure another person to act, as a driving instructor unless the person to provide the instruction is a licensee. A similar prohibition attaches to advertisements or statements regarding the provision of driving instruction in respect of motor vehicles of a particular class unless the person to provide the instruction holds a licence in respect of vehicles of that class. Details, such as the instructor's licence number or the name and address of the driving school concerned, must be provided.

Clause 9 provides that a licence under the proposed Act authorises its holder to act as a driving instructor in accordance with any conditions imposed on it.

Clause 10 specifies the basic prerequisites for the issue of a licence. To obtain a licence, a person must:

- be 21 years of age or older;
- be the holder of a driver's licence (which is defined as a licence—other than a learner's licence, a provisional licence, a restricted licence or a probationary licence—under the Traffic Act 1909, or corresponding licence issued in another State, or in any Territory or country, to drive all classes of vehicles in respect of which the licence is sought);
- have held such a licence for 3 of the immediately preceding 4 years; and
- have completed an approved course in driving instruction.

Clause 11 specifies the way in which an application for a licence is to be made.

Clause 12 provides that the Authority must notify the Commissioner of Police of an application for a licence. It is not obliged to notify the Commissioner of an application for renewal of a licence.

Clause 13 obliges the Commissioner of Police to have inquiries made as to the character of the applicant and to give the Authority a written report of the result of those inquiries.

Clause 14 requires the Authority to take the report of the Commissioner of Police (and any other relevant information) into account when considering an application.

Clause 15 empowers the Authority to require an applicant to undergo certain tests, such as tests of the applicant's driving ability and ability to teach other people to drive and of his or her knowledge of the relevant provisions of the Traffic Act 1909 and the proposed Act and of the regulations made under those Acts.

Clause 16 permits the Authority to require an applicant to obtain medical certificates attesting to the applicant's medical fitness to be a driving instructor.

Clause 17 obliges the Authority, after considering an application, either to issue a licence to the applicant or to refuse the application and serve a notice on the applicant advising of the refusal and setting out the Authority's reasons for refusal. Under proposed section 31 the applicant has a right of appeal against the refusal.

Clause 18 sets out the grounds on which the Authority must refuse to issue a licence. These include the Authority's not being satisfied that the applicant is of good character or is a fit and proper person to be a driving instructor and the applicant's failure to undergo, or to pass, any required test or to obtain medical certificates when required to do so. The Authority may, in certain circumstances, refuse to grant an

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application if the applicant has been found guilty of an offence involving fraud or dishonesty.

Clause 19 allows the Authority to impose conditions on a licence, either on its initial grant or during its currency. Those conditions may include a condition restricting the licensee to acting as a driving instructor in respect of motor vehicles of a specified class. At any time, the conditions (which must be set out in writing in a document served on the licensee) may be varied or revoked and new conditions may be imposed. Proposed section 31 confers a right of appeal against the imposition or variation of conditions.

Clause 20 prohibits a licensee from contravening any condition attached to his or her licence.

Clause 21 prohibits a person from allowing a licensee who is the person's employee or agent to contravene any condition attached to his or her licence.

Clause 22 provides that a licence may consist, wholly or partly, of either an endorsement on the holder's driver's licence or a separate document.

Clause 23 allows a licensee to apply for a renewal of the licence during its currency or up to 90 days after its expiry. The renewal is effected by the issue of a further licence, which takes effect from the date of the expiry of the earlier licence (if the application for renewal was made before that expiry) or from the date of application (in other cases).

Clause 24 provides that a licence is in force for the period specified in it except for any period during which it is suspended or after it has been cancelled. A licence is also suspended or cancelled, as appropriate, while the holder's driver's licence is suspended or cancelled, and it is suspended during any other period while the licensee is not the holder of a driver's licence.

Clause 25 empowers the Authority to make the same requirements of a licensee, in relation to tests and to medical certificates, as it may make of an applicant for a licence. The requirements are to be made only as often as the Authority considers necessary in the public interest.

Clause 26 sets out the grounds for suspension or cancellation of a licence. The grounds for suspension or cancellation (at the Authority's discretion) include the holder's failure to submit to, or to pass, any tests the Authority might require the holder to take, non-payment of the prescribed fee for a licence and the holder's being convicted of an offence against the proposed Act or regulations. Those for mandatory cancellation include the Authority's having reason to believe that the holder has engaged in bribery or fraud in relation to the testing for (or issue of) licences to drive and the Authority's being satisfied that the holder is not a person of good character or a fit and proper person to hold such a licence.

Clause 27 requires the Authority to inform a licensee in writing of any suspension or cancellation of the holder's licence and to set out the reasons for it. The suspension or cancellation takes effect on service of the notice (or on a later date specified in it), and is appealable under proposed section 31.

Clause 28 requires a licensee to return to the Authority any licence which has been suspended or cancelled or which has expired. A licence must also be returned if the holder's driver's licence is suspended or cancelled.

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Clause 29 obliges a licensee whose address changes to notify the Authority of that fact and to return the licence for amendment.

Clause 30 permits the Authority to issue a duplicate licence if it is satisfied that a licence has been destroyed, lost, stolen or mutilated.

PART 3—APPEALS RELATING TO LICENCES

Clause 31 allows a person to appeal to a Local Court against the Authority's decision to refuse the person's application for a licence, to impose or vary conditions on the person's licence or to suspend or cancel the licence. The appeal does not stay the effect of the decision appealed against unless the Court orders otherwise.

Clause 32 requires the Clerk of the Local Court concerned to give notice of the time and place of the hearing to the Authority and the appellant.

Clause 33 provides that the appeal is to be heard by a Magistrate sitting alone. The Court is not bound by the rules of evidence and the civil standard of proof applies. Any material considered by the Authority in reaching the decision appealed against is admissible in the proceedings, as are copies of any notices or letters sent to the appellant by the Authority together with details of their service.

**PART 4—CERTAIN PERSONS PROHIBITED FROM CONDUCTING ETC.
DRIVING SCHOOLS**

Clause 34 defines "prohibition order" for the purposes of the proposed Part as being an order prohibiting a person from conducting a driving school or being engaged in the control, management or administration of such a school.

Clause 35 empowers the Authority to apply to a Local Court for a prohibition order.

Clause 36 provides that the court may make the order only if it is satisfied that the person in respect of whom it is sought is conducting a driving school or engaging in the control, management or administration of one and has engaged in bribery or fraud relating to the testing of applicants for licences to drive motor vehicles or the issue of those licences or has been convicted of certain offences involving fraud or dishonesty.

Clause 37 allows the court to make the order if the court is satisfied that the order is warranted. The order may consist of either a total or a limited prohibition.

Clause 38 empowers the court, on the application of the Authority or a person the subject of the order, to vary or revoke the order.

Clause 39 provides that an appeal may be made to the Supreme Court against a decision of a Local Court to make or vary a prohibition order.

Clause 40 permits the Supreme Court to confirm, vary or disallow the decision appealed against.

Clause 41 provides that neither a Local Court determining an application for a prohibition order nor the Supreme Court hearing an appeal in relation to such an order is bound by the rules of evidence and that the civil standard of proof applies in the proceedings.

Clause 42 allows either court to make an order as to costs.

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Clause 43 provides that if an appeal is lodged, the prohibition order (or variation of an order) concerned does not take effect until the Supreme Court upholds the decision to make it or the appeal is withdrawn. Otherwise, the order takes effect 21 days after service of a copy of the order on the person the subject of it.

Clause 44 prohibits a person from contravening the terms of such an order and prohibits other persons from allowing such persons to conduct etc. a driving school in contravention of the order.

PART 5—RECORDS RELATING TO DRIVING INSTRUCTORS AND DRIVING SCHOOLS

Clause 45 obliges the Authority to keep records of licences, prohibition orders and related matters together with particulars of the service of notices and documents under the proposed Act.

Clause 46 provides that the certificate of an authorised officer of the Authority as to the matters contained in its records and, in particular, a certificate as to whether, at a particular time, a specified person held, or did not hold, a licence, or a licence subject to specified conditions, or was or was not subject to a specified prohibition order, or was served with a specified document is to be accepted in all proceedings as evidence of the particulars specified.

Clause 47 requires the proprietors of driving schools to keep or cause to be kept such records as the regulations may prescribe. The Authority may exempt a proprietor from this requirement.

Clause 48 imposes a similar obligation on driving instructors.

Clause 49 requires proprietors of driving schools and driving instructors to produce their records for inspection by a police officer or an authorised officer of the Authority and to give the officers such other information relating to the records as may reasonably be required.

PART 6—MISCELLANEOUS

Clause 50 provides that the proposed Act is to bind the Crown.

Clause 51 obliges the owner, registered owner or person who has custody of a vehicle to give to a police officer or an authorised officer of the Authority on request such information as the person possesses regarding the connection of the vehicle with the giving of driving instruction. The officer concerned may make the request only if the officer suspects on reasonable grounds that the vehicle is sometimes used for the provision of driving instruction or for advertising its availability.

Clause 52 obliges a licensee to produce the licence for inspection if required to do so by a police officer, an authorised officer of the Authority or a person who wishes to receive (or is receiving or has received) driving instruction from the licensee.

Clause 53 prohibits a person, while acting as a driving instructor, from using on a public street a motor vehicle which does not comply with the provisions of the Traffic Act 1909 and the regulations made under that Act relating to the construction and equipment of motor vehicles generally or motor vehicles used for the provision of driving instruction.

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Clause 54 prohibits a person from allowing another person, while acting as a driving instructor as the person's employee or agent, to use such a vehicle.

Clause 55 prohibits a person from making or keeping a record, providing information or making a statement or representation that the person knows to be false or misleading.

Clause 56 specifies that proceedings for offences against the proposed Act or the regulations are to be dealt with summarily by a Local Court constituted by a Magistrate sitting alone. It also obliges any court before which a person is convicted of such an offence to have particulars of the conviction forwarded to the Authority.

Clause 57 permits the Authority to determine the form of any document required under the proposed Act.

Clause 58 specifies the manner in which a document may be served on a person under the proposed Act.

Clause 59 confers power on the Governor to make regulations prescribing certain matters under the proposed Act.

Clause 60 repeals the Motor Vehicle Driving Instructors Act 1961 and the regulations made under that Act.

Clause 61 gives effect to the Schedule of savings and transitional provisions.

Clause 62 gives effect to the Schedule of amendments of other Acts.

Schedule 1 contains provisions of a savings and transitional nature.

Schedule 2 proposes to amend the Justices Act 1902 and the Traffic Act 1909.

It is proposed to amend the Justices Act 1902 to empower the Governor to make regulations under that Act with respect to the manner of and the procedure and practice to be observed in relation to appeals under Part 3 of the proposed Act and applications in respect of prohibition orders under Part 4. Those regulations must not be inconsistent with the proposed Act.

It is proposed to amend the Traffic Act 1909 to empower authorised officers of the Authority to require the person occupying the seat next to a learner-driver to produce his or her driver's licence on request. At present, only a police officer has that power. It is also proposed that persons accompanying persons who are attending district registries for the purpose of undergoing any test be obliged to produce their drivers' licences and state their names and addresses on request.

There is also a minor amendment to the Traffic Act 1909 consequential on the proposed repeal of the Motor Vehicle Driving Instructors Act 1961.

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DRIVING INSTRUCTORS BILL 1992

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No. , 1992

A BILL FOR

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.

The Legislature of New South Wales enacts:

PART 1—PRELIMINARY

Short title

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

Commencement

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

Definitions

3. (1) In this Act:

“**application**” includes an application for the renewal of a licence;

“**authorised officer**” means a person authorised in writing by the Authority for the purposes of the provision of this Act in which the expression is used;

“**Authority**” means the Roads and Traffic Authority constituted under the Transport Administration Act 1988;

“**driver’s licence**” means a licence (other than a learner’s licence, a provisional licence, a restricted licence or a probationary licence) under the Traffic Act 1909, or a corresponding licence under the law for the time being in force in any other State, or in any Territory or 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;

“**motor vehicle**” has the same meaning as in the Traffic Act 1909;

“**public street**” has the same meaning as in the Traffic Act 1909.

- (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.

Meaning of "driving instructor"

4. (1) For the purposes of this Act, a **driving instructor** is a person who, for any monetary or other reward, gives another person instructions for the purpose of teaching that other person to drive a motor vehicle.

(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.

Meaning of "driving school"

5. For the purposes of this Act, a **driving school** is a business which provides persons with instructions for the purpose of teaching those persons to drive motor vehicles.

PART 2—LICENCES RELATING TO DRIVING INSTRUCTORS**Unlicensed driving instruction**

6. A person must not act as a driving instructor unless the person is the holder of a licence.

Maximum penalty: 50 penalty units.

Unlicensed person not to be employed as driving instructor

7. 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.

Unauthorised promotions

8. (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.

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(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) A person who advertises, or makes a statement in writing, to the effect that the person acts or is willing to act as a driving instructor or as a driving instructor in respect of motor vehicles of a particular class must specify in the advertisement or statement:

- (a) the class of motor vehicles in respect of which the person acts or is willing to act as a driving instructor; and
- (b) the number of the person's licence.

(5) A person who advertises, or makes a statement in writing, to the effect 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 must specify in the advertisement or statement:

- (a) the class of motor vehicles in respect of which the person is willing to procure another person to act as a driving instructor; and
- (b) the name and place of business of the driving school that will procure the person.

Maximum penalty: 50 penalty units.

Authority conferred by licence

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

Prerequisites for licence

10. A person is not eligible to be issued with a licence unless the person:

- (a) has reached the age of 21 years; and
- (b) is the holder of a driver's 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's licence; and
- (d) has completed a course in driving instruction approved by the Authority and conducted by an organisation approved by the Authority.

Application for licence

11. (1) An application for a licence is to be in a form approved by the Authority and is to be lodged with the Authority.

(2) The application is to be accompanied by the fee prescribed by the regulations.

Referral of application to Commissioner of Police

12. (1) The Authority must, as soon as practicable after receiving an application for a licence, notify the Commissioner of Police of the application.

(2) The Authority is not obliged to notify the Commissioner of Police of an application for the renewal of a licence.

Investigation of applicant

13. As soon as practicable after being notified of an application, the Commissioner of Police must cause inquiries to be made as to the character of the applicant and must give a written report of the result of the inquiries to the Authority.

Consideration of information

14. (1) In considering an application, the Authority must take into account any report of the Commissioner of Police and any other relevant information known to it.

(2) It does not matter whether the other information (if any) was known or received before or after the report was made.

Testing of applicant

15. The Authority 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 Traffic Act 1909, and of the regulations made under that Act, 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;

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- (d) the applicant's ability to teach persons to drive motor vehicles (or motor vehicles of the relevant class);
- (e) such other matters as may be prescribed by the regulations.

Medical certificates

16. (1) The Authority may require the applicant to obtain a certificate signed by a medical practitioner stating that the practitioner has personally examined the applicant and is of the opinion, having regard to the safety of the public, that the applicant is medically a fit person to act as a driving instructor.

(2) The Authority may require the applicant to obtain a certificate concerning the applicant's eyesight signed by a medical practitioner or a registered optometrist.

(3) The Authority may require that any certificate under this section be obtained from a medical practitioner or optometrist specified by the Authority.

Determination of application

17. After considering an application, the Authority 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.

Grounds for refusal of application

18. (1) The Authority 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) the Authority is not satisfied that the applicant is a person of good character; or
- (c) the Authority 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) the Authority has reason to believe that the applicant has engaged in bribery or fraud relating to the testing of applicants for licences to drive motor vehicles under the Traffic Act 1909 (or corresponding licences under the law in any other State, or in any Territory or country) or the issue of those licences; or

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(g) the Authority 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 convictions (within the State or elsewhere) for offences involving motor vehicles.

(2) The Authority may refuse an application if the applicant has, during the period of 10 years before the application, been found guilty of an offence in the State or elsewhere involving fraud or dishonesty and punishable on conviction by penal servitude or imprisonment for 3 months or more.

Conditional licence

19. (1) A licence may be issued subject to such conditions as the Authority may determine. The conditions may include, for example, a condition restricting the licensee to acting as a driving instructor in respect of motor vehicles of a specified class.

(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, the Authority must, on the applicant's request, serve on the applicant a notice setting out the reasons for the Authority's decision to impose the conditions.

(4) During the currency of a licence the Authority 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, the Authority must serve on the licensee a notice setting out the reasons for the Authority's decision to vary the conditions imposed on the licence or to impose new conditions.

Contravention of conditions of licence

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

Maximum penalty: 50 penalty units.

Employer to require compliance with conditions of licence

21. 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.

Form of licence

22. A licence issued to a person may consist, wholly or in part, of:

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

Renewal of licence

23. (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 the Authority 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.

When licence is in force

24. (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's 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's licence.

Tests or certificates during currency of licence

25. (1) The Authority 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 the Authority considers necessary in the public interest.

Grounds for suspension or cancellation of licence

26. (1) The Authority may suspend or cancel a licence on any of the following grounds:

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- (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 is convicted of an offence against this Act or the regulations;
 - (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 the Authority requires the holder to submit to under section 25 or does not obtain a medical or other certificate referred to in that section;
 - (f) the holder of the licence has been found guilty of an offence (within the State or elsewhere) involving fraud or dishonesty and punishable on conviction by penal servitude or imprisonment for 3 months or more.
- (2) The Authority must cancel a licence if:
- (a) the Authority is satisfied that the holder of the licence is not a person of good character; or
 - (b) the Authority is satisfied that the holder of the licence is not a fit and proper person to act as a driving instructor; or
 - (c) the Authority has reason to believe that the holder of the licence has engaged in bribery or fraud relating to the testing of applicants for licences to drive motor vehicles under the Traffic Act 1909 (or corresponding licences under the law in any other State, or in any Territory or country) or the issue of those licences; or
 - (d) the Authority 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 convictions (within the State or elsewhere) for offences involving motor vehicles.

Notification of suspension or cancellation of licence

27. (1) The Authority 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 the Authority's decision to suspend or cancel the licence; and
- (c) specifying the period within which the instructor must return the licence to the Authority.

(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.

Return of licence

28. (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 the Authority.

Maximum penalty: 20 penalty units.

(2) A person need not comply with subsection (1) if the suspension or cancellation is stayed by order of a Local Court under section 31.

(3) A driving instructor whose licence expires must return the licence to the Authority not later than 3 days after the expiry.

Maximum penalty: 20 penalty units.

(4) A driving instructor whose driver's licence is suspended or cancelled must return the licence issued under this Act to the Authority 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 up to the officer in charge of a district registry within the meaning of the Traffic Act 1909 or to any other place nominated by the Authority in writing to the holder so that the Authority may record the suspension, cancellation or change of address concerned.

Change of address

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

Maximum penalty: 20 penalty units.

Duplicate licence

30. (1) The Authority may issue a duplicate licence to replace a licence that has been destroyed, lost, stolen or mutilated.

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- (2) Before issuing a duplicate licence, the Authority 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**Appeal against decision of Authority**

31. (1) A person may appeal to a 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 a Local Court against the imposition or variation of any condition on the person's licence.

(3) A person may appeal to a Local Court against the suspension or cancellation of the person's licence.

(4) Notice of an appeal is to be lodged:

- (a) with the Clerk of the Local Court to which the appeal is being made; and
- (b) with the Authority,

within 21 days after the date on which the person was notified of the relevant decision of the Authority.

(5) The notice of appeal must specify the grounds of appeal.

(6) An appeal does not operate to stay the effect of the Authority'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.

Procedure on notice of appeal

32. (1) The Clerk of the Local Court to which an appeal under this Part is made must give notice of the time and place of the hearing of the appeal to the Authority 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 the Authority knew of the time and place of the hearing and were not prejudiced by the omission, error or failure to give notice.

Procedure on appeal

33. (1) An appeal under this Part is to be heard before a Local Court constituted by a Magistrate sitting alone.

(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 the Authority in reaching the decision the subject of the appeal and copies of any notices, documents or letters served on the appellant by the Authority 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 the Authority and is to be carried into effect accordingly.

**PART 4—CERTAIN PERSONS PROHIBITED FROM
CONDUCTING ETC. DRIVING SCHOOLS****Definition**

34. In this Part, “**prohibition order**” means an order made by a 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.

Application for prohibition order

35. The Authority may apply to a Local Court constituted by a Magistrate sitting alone for a prohibition order.

Grounds on which prohibition order may be made

36. 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:

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- (a) has (whether in connection with the driving school or otherwise) engaged in bribery or fraud relating to the testing of applicants for licences to drive motor vehicles under the Traffic Act 1909 (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 penal servitude or imprisonment for 3 months or more.

Making of prohibition order

37. (1) The Local Court may, on application by the Authority 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) The Authority must serve a copy of the prohibition order on the person the subject of the order.

Application for variation or revocation of prohibition order

38. (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 the Authority.

(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, the Authority must serve a copy of the order varying the original order on the person the subject of the order.

Appeal against making or variation of prohibition order

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

(2) No appeal against such a decision may be made later than 21 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.

Determination of appeal

40. (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.

Court procedure

41. (1) A 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.

Costs

42. A 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.

When order takes effect

43. (1) A prohibition order or an order varying a prohibition order takes effect 21 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 21 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.

Contravention of terms of order

44. (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

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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**

Authority to keep records

45. The Authority 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.

Evidence as to Authority's records

46. (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 the Authority'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.

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(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.

Driving schools to keep records

47. (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) The Authority 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.

Driving instructors to keep records

48. 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.

Production of records

49. (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

Act binds the Crown

50. 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.

Identification of persons offering driving instruction

51. (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 accordance with the regulations made under the Traffic Act 1909 (or registered or licensed under the law of any other State, or of any Territory or country that corresponds to the requirements of those regulations 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.

Production of licence

52. (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

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- (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.

Use of unsatisfactory vehicle

53. A person must not, while acting as a driving instructor, use on a public street any motor vehicle which does not comply with the provisions of the Traffic Act 1909 and the regulations made under that Act relating to the construction and equipment of motor vehicles generally or of motor vehicles used for driving instruction purposes.

Maximum penalty: 20 penalty units.

Employer not to allow use of unsatisfactory vehicle

54. A person must not permit another person, while acting as a driving instructor as that person's employee or agent, to use on a public street any motor vehicle which does not comply with the provisions of the Traffic Act 1909 and the regulations made under that Act relating to the construction and equipment of motor vehicles generally or of motor vehicles used for driving instruction purposes.

Maximum penalty: 20 penalty units.

False or misleading information

55. 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.

Proceedings for offences

56. (1) Proceedings for offences against this Act or the regulations are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

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(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 the Authority.

Forms

57. (1) The Authority 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 the Authority.

(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.

Service of documents

58. Any notice or document to be served on a person for the purposes of this Act:

- (a) may be served personally; or
- (b) may be left at or sent by post to the last-known residence or place of business of the person; or
- (c) may be left at or sent by post to the registered office of the person (if the person is a corporation); or
- (d) may be left at or sent by post to the address, if any, last notified by the person to the Authority.

Regulations

59. (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;

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- (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 on any public street for the purpose of giving instruction in the driving of the motor vehicle;
 - (g) the production to the Authority 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.
- (3) A regulation may create an offence punishable by a penalty not exceeding 20 penalty units.

Repeals

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

Savings and transitional provisions

61. Schedule 1 has effect.

Amendment of Acts

62. The Acts specified in Schedule 2 are amended as set out in that Schedule.
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SCHEDULE 1—SAVINGS AND TRANSITIONAL PROVISIONS

(Sec. 61)

PART 1—GENERAL**Definitions**

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

Savings and transitional regulations

2. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act.

(2) A provision referred to in subclause (1) may, if the regulations so provide, take effect on the date of assent to this Act 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 in the Gazette, 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**Licences**

3. 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.

Applications

4. 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.

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SCHEDULE 1—SAVINGS AND TRANSITIONAL PROVISIONS—*continued***Renewals**

5. 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.

Appeals

6. 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.

Legal proceedings

7. 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.

Training

8. 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.

SCHEDULE 2—AMENDMENT OF ACTS

(Sec. 62)

Justices Act 1902 No. 27**Section 154 (Regulations):**

After section 154 (1C), insert:

(1CA) The Governor may make regulations not inconsistent with the Driving Instructors Act 1992 or this Act for or with respect to prescribing the manner of and the procedure and practice to be observed in relation to:

- (a) appeals to a Local Court under Part 3 of the Driving Instructors Act 1992; and
- (b) applications to a Local Court in respect of prohibition orders under Part 4 of that Act.

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SCHEDULE 2—AMENDMENT OF ACTS—*continued***Traffic Act 1909 No. 5****(1) Section 5 (Offences):**

After section 5 (1A), insert:

(1B) Where the driver of a motor vehicle (other than a motor cycle) is the holder of a learner's licence, any person occupying the seat in or on the motor vehicle next to the driver must, when required to do so by a police officer or a person authorised in writing by the Authority for the purposes of this section, produce the person's driver's licence and state the person's true name and place of abode. A person who does not comply with this requirement is guilty of an offence under this Act.

(1C) A person accompanying another person who is attending a district registry for the purpose of undergoing any test or examination required by the regulations must, on request, produce his or her driver's licence and state his or her true name and place of abode if:

- (a) the request is made by a police officer or a person authorised in writing by the Authority for the purposes of this section; and
- (b) the person making the request believes on reasonable grounds that the person accompanying the person who is to undergo the test or examination has been giving driving instruction to that person.

A person who does not comply with such a request is guilty of an offence under this Act.

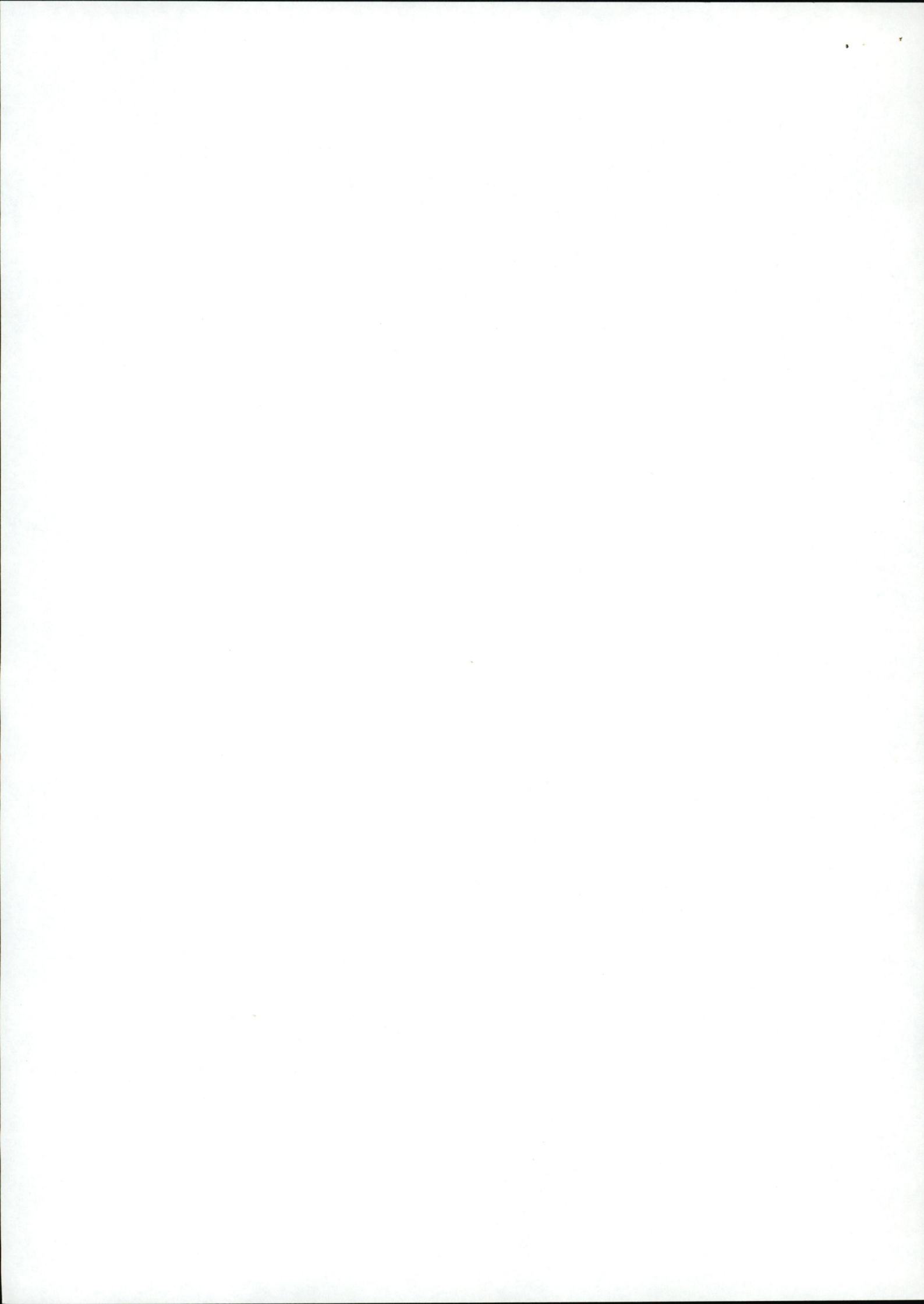
(2) Section 18B (Penalty notices for certain offences):

From section 18B (1) (ca), omit "Motor Vehicle Driving Instructors Act 1961", insert instead "Driving Instructors Act 1992".

LEGISLATIVE COUNCIL

DRIVING INSTRUCTORS BILL 1992

THE HON R J WEBSTER MLC



MR PRESIDENT,

I MOVE THAT THIS BILL BE NOW READ A SECOND TIME.

HONOURABLE MEMBERS, THE BILL BEFORE THE HOUSE WILL REPEAL LEGISLATION WHICH IS 30 YEARS OLD AND REPLACE IT WITH AN ACT WHICH IS MORE RELEVANT TO THE DEMANDS OF THE PRESENT MOTORING ENVIRONMENT.

IT ADDRESSES THE SERIOUS ISSUES RAISED BY THE INDEPENDENT COMMISSION AGAINST CORRUPTION'S INVESTIGATION INTO DRIVER LICENSING, AND INTRODUCES OTHER MEASURES WHICH WILL PROVIDE FOR GREATER CONTROL OF THE DRIVING INSTRUCTION INDUSTRY.

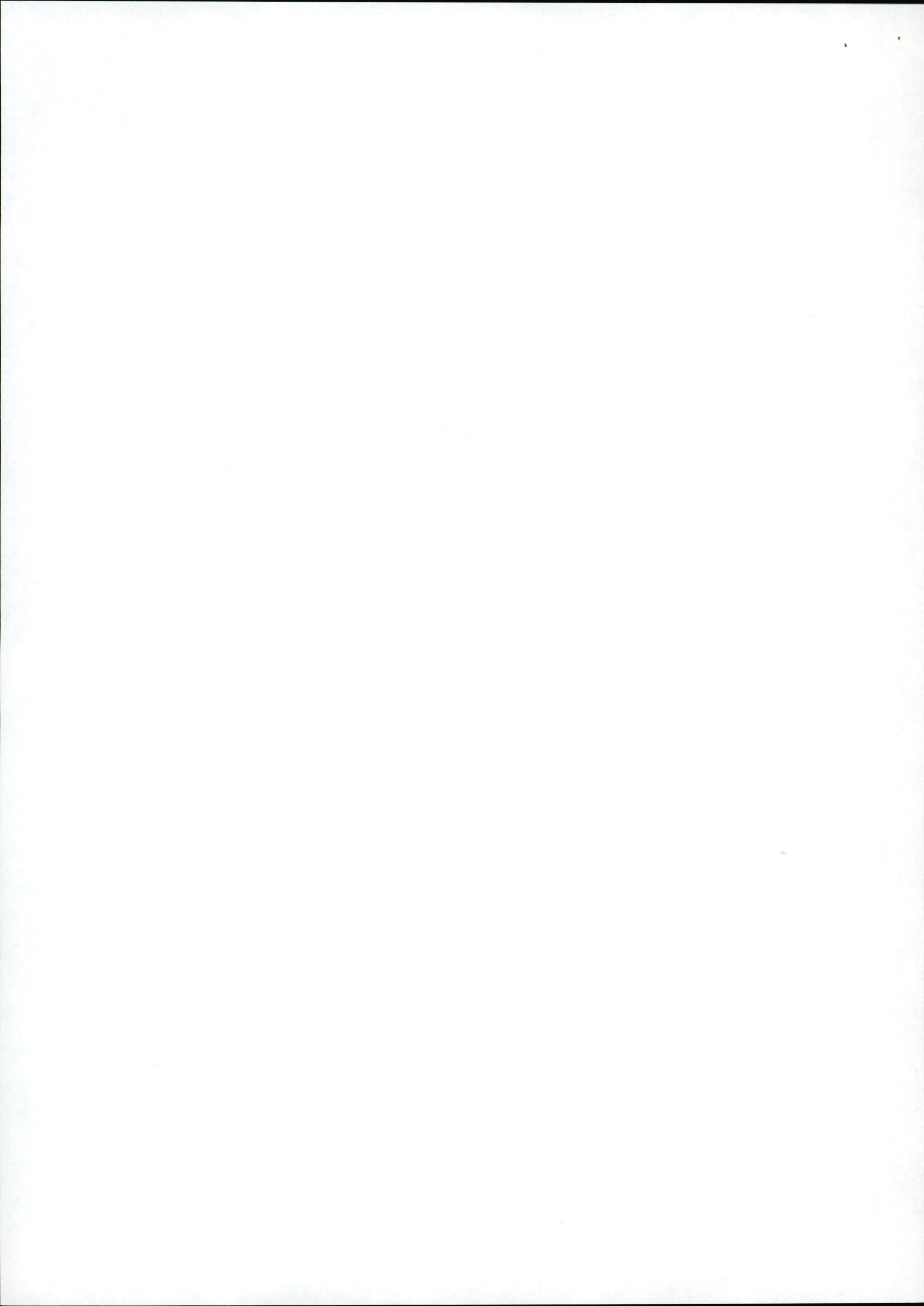
IN SO DOING, THE BILL, ONCE ENACTED, WILL SIGNIFICANTLY IMPROVE THE PRESENT STANDARDS OF DRIVER TUITION, THEREBY ENHANCING THE SKILLS OF OUR MOST VULNERABLE ROAD USERS, THE YOUNG, NOVICE DRIVERS.

THE PRIMARY OBJECTS OF THE BILL ARE:

- TO COMBAT CORRUPTION AND MALPRACTICE WITHIN THE INDUSTRY, TO KEEP PERSONS WHO ARE CONSIDERED UNFIT TO HOLD A DRIVING INSTRUCTOR'S LICENCE OUT OF THE INDUSTRY,
- AND TO ENSURE THAT BOTH CURRENT LICENSEES AND FUTURE APPLICANTS HAVE SUCCESSFULLY COMPLETED AN APPROVED TRAINING COURSE.

THE NEW PROVISIONS ARE DIRECTED AT DRIVING SCHOOLS, DRIVING INSTRUCTORS, THEIR LICENSING AND THE REGULATION OF THEIR OPERATIONS.

CLEARLY, IF PEOPLE WISH TO ESTABLISH THEMSELVES AS PROFESSIONAL DRIVING TUTORS, THEIR BEHAVIOUR, INTEGRITY AND COMPETENCY MUST BE OF A PROFESSIONAL STANDARD.



THE OVERWHELMING MAJORITY OF CURRENT INSTRUCTORS HAVE NEVER UNDERTAKEN A FORMAL COURSE OF INSTRUCTION.

CONSEQUENTLY, THE SKILL LEVELS WITHIN THE INDUSTRY VARY FROM THE INCOMPETENT TO THE HIGHLY EXPERT.

GIVEN THE ROAD SAFETY IMPLICATIONS, THIS SIMPLY ISN'T GOOD ENOUGH.

TO OVERCOME THIS UNSATISFACTORY SITUATION, THE PROPOSED LEGISLATION WILL REQUIRE ALL INSTRUCTORS WHO ARE PRESENTLY LICENSED TO COMPLETE AN APPROVED TRAINING COURSE WITHIN 3 YEARS OF THE ACT'S COMMENCEMENT.

THIS TIME FRAME WILL GIVE AMPLE OPPORTUNITY FOR THE TRAINING REQUIREMENT TO BE SATISFIED WITHOUT CAUSING UNDUE HARDSHIP TO EXISTING LICENSEES.

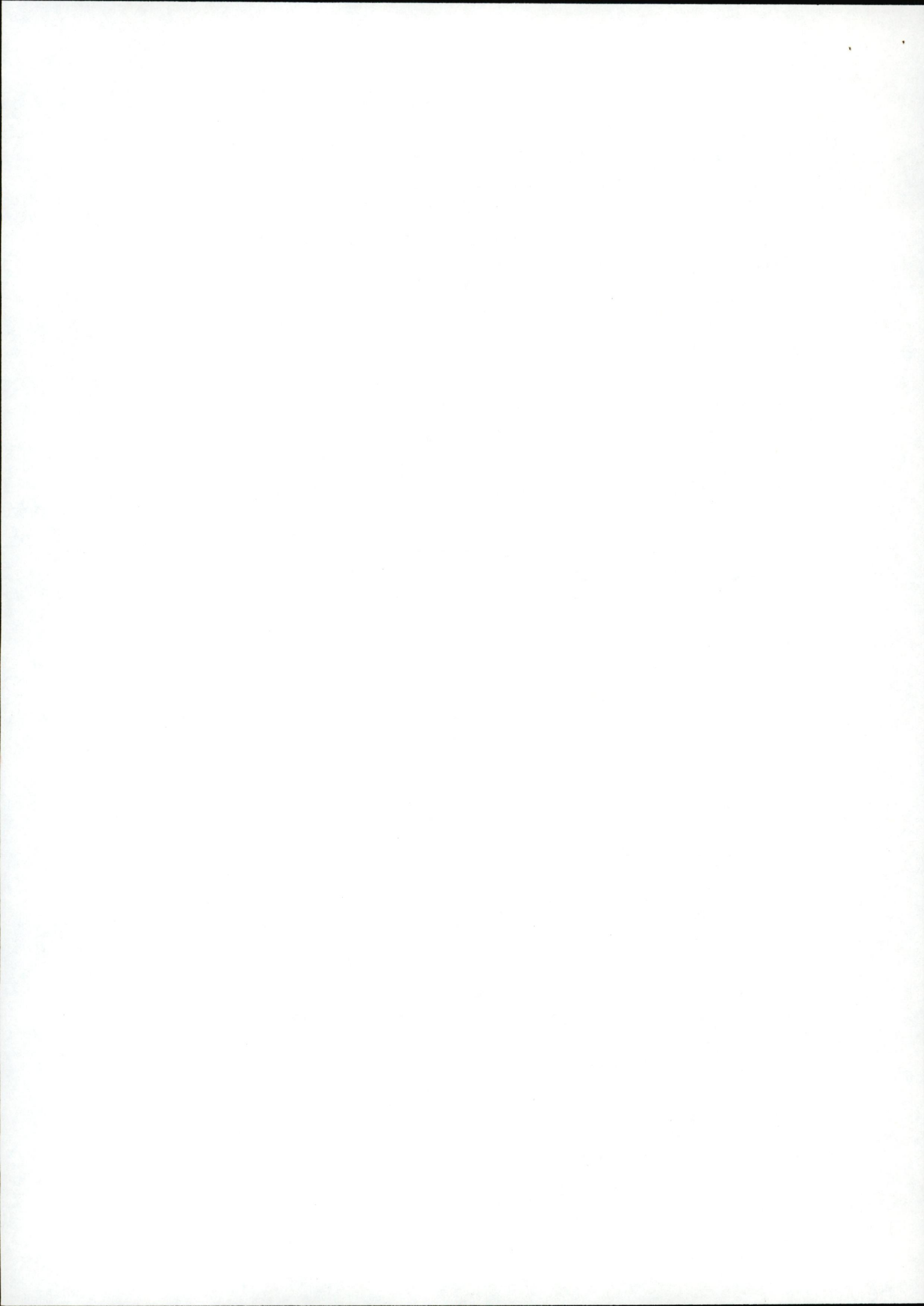
NEWCOMERS TO THE INDUSTRY WILL ALSO BE REQUIRED TO COMPLETE A SIMILAR COURSE, AS A PREREQUISITE TO THE GRANTING OF AN INSTRUCTOR'S LICENCE. THE COURSE WILL BE AVAILABLE INITIALLY THROUGH TAFE COLLEGES.

WITH THESE PROVISIONS IN PLACE, WITHIN 3 YEARS EVERY LICENSED DRIVING INSTRUCTOR WILL POSSESS QUALIFICATIONS WHICH ARE APPROPRIATE TO THE PROFESSION.

THIS WILL BE A CONSIDERABLE IMPROVEMENT ON THE PRESENT HAPHAZARD ARRANGEMENTS.

THERE IS ALSO A DEGREE OF QUALITY CONTROL IN THE PROVISION WHICH RENDERS THE HOLDERS OF PROBATIONARY DRIVERS LICENCES, INELIGIBLE TO HOLD A DRIVING INSTRUCTOR'S LICENCE.

A PROBATIONARY LICENCE IS A SANCTION IMPOSED AS A CONSEQUENCE OF UNSATISFACTORY DRIVING BEHAVIOUR.



THEREFORE THE HOLDER IS SETTING A POOR EXAMPLE TO GENERALLY YOUNG, INEXPERIENCED PEOPLE BEGINNING THEIR DRIVING CAREER.

ACCORDINGLY, PROBATIONARY LICENSEES WILL BE EXCLUDED FROM THE DRIVING INSTRUCTION INDUSTRY UNTIL SUCH TIME AS THE PROBATIONARY LICENCE IS REPLACED BY AN UNRESTRICTED DRIVER'S LICENCE.

UNDER THE PROPOSED LEGISLATION, IT WILL BE AN OFFENCE FOR A PERSON TO BE ASSOCIATED IN ANY WAY WITH THE OPERATION OF A DRIVING SCHOOL:

- IF THEIR DRIVING INSTRUCTOR'S LICENCE HAS BEEN SUSPENDED OR CANCELLED
- IF THEIR APPLICATION FOR A LICENCE HAS BEEN REFUSED
- OR IF THEY ARE CONSIDERED UNFIT TO HOLD SUCH A LICENCE.

SIMILARLY, IT WILL BE AN OFFENCE FOR THE PRINCIPAL OF A DRIVING SCHOOL TO EMPLOY A PERSON SUCH AS I HAVE JUST DESCRIBED.

ADVERTISING BY DRIVING SCHOOLS WILL ALSO BE CONTROLLED AND IT WILL BE AN OFFENCE TO ADVERTISE UNLESS THE PERSON WHO WILL BE PROVIDING THE INSTRUCTION IS A LICENSED DRIVING INSTRUCTOR.

PENALTIES UNDER THE PRESENT ACT HAVE NOT BEEN REVIEWED IN OVER 25 YEARS.

THE INDEPENDENT COMMISSION AGAINST CORRUPTION FOUND THAT SUBSTANTIAL AMOUNTS WERE RECEIVED AND PROFFERED BY UNSCRUPULOUS MEMBERS OF THE INDUSTRY, WHO WERE INVOLVED IN IMPROPRIETIES ASSOCIATED WITH THE TESTING OF DRIVERS AND THE ISSUE OF LICENCES.

IT IS THEREFORE IMPERATIVE THAT THERE BE A SUBSTANTIAL
DETERRENT FACTOR IN THE PENALTIES PRESCRIBED.

TO THAT END, MAXIMUM PENALTIES UNDER THE ACT HAVE BEEN
INCREASED FROM \$200 TO \$5000 AND FROM \$100 TO \$2000 UNDER
THE REGULATIONS.

THE ROADS AND TRAFFIC AUTHORITY WILL CONTINUE TO BE THE
DRIVER TESTING AND LICENCE ISSUING AUTHORITY.

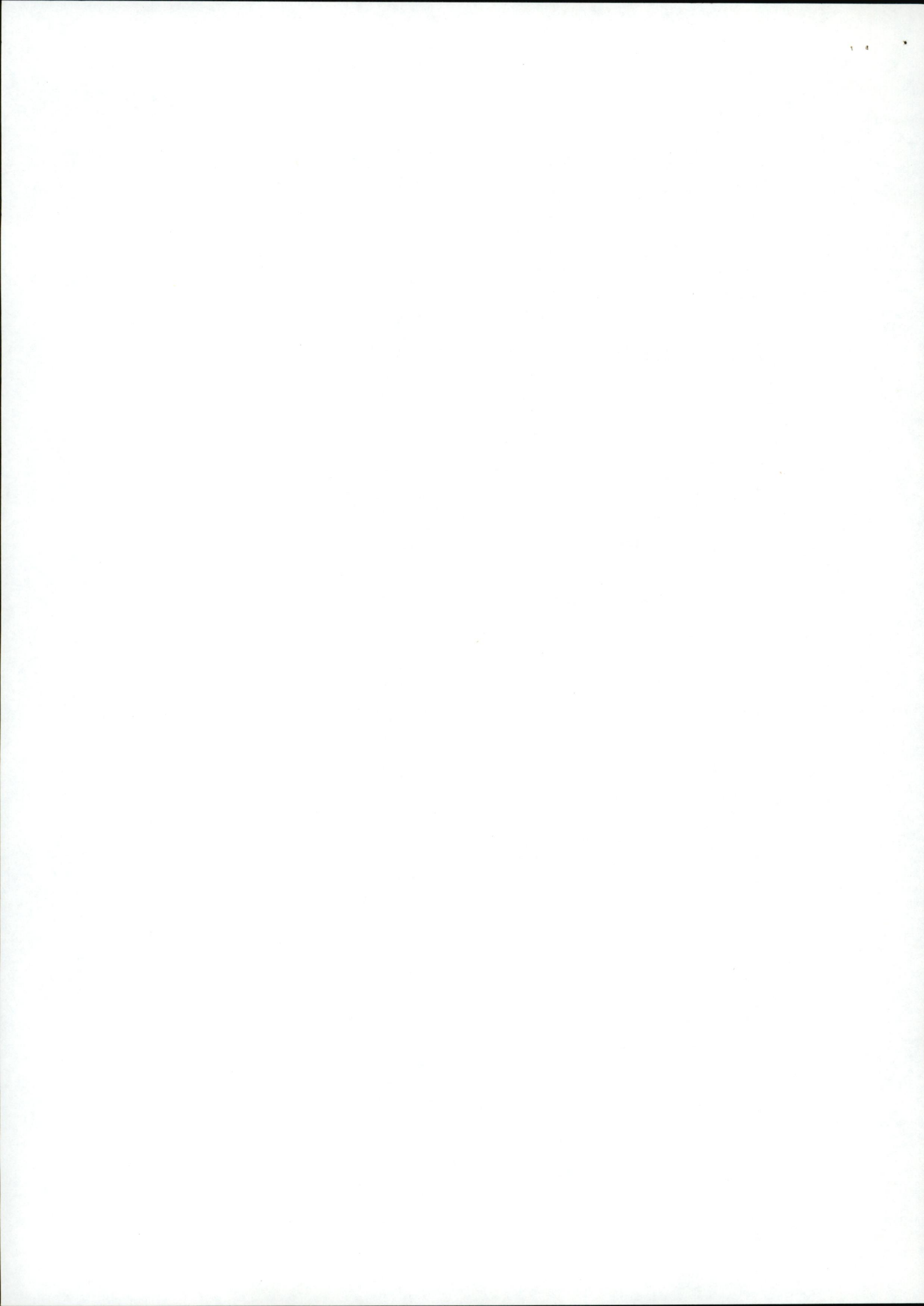
RIGHTS OF APPEAL HAVE BEEN MAINTAINED FOR PERSONS WISHING
TO CONTEST SANCTIONS IMPOSED OR DECISIONS MADE BY THE
AUTHORITY.

BUT THE LODGEMENT OF AN APPEAL WILL NOT OPERATE AS A STAY
OF THE ORIGINAL DECISION UNLESS THE COURT MAKES A
SPECIFIC ORDER TO THIS EFFECT.

TO MAKE THE INDUSTRY MORE ACCOUNTABLE, AND TO FACILITATE
THE EFFECTIVE MONITORING OF THEIR OPERATIONS, DRIVING
SCHOOLS AND LICENSED DRIVING INSTRUCTORS WILL BE REQUIRED
TO ESTABLISH AND MAINTAIN A PROPER SYSTEM OF RECORDS, AND
TO PRODUCE THOSE RECORDS FOR INSPECTION BY POLICE OR
AUTHORISED OFFICERS.

PERSONS ACCOMPANYING LEARNER DRIVERS DURING A DRIVING
LESSON OR WHEN THEY ATTEND A MOTOR REGISTRY TO UNDERGO A
DRIVING TEST WILL BE REQUIRED TO PRODUCE THEIR DRIVING
INSTRUCTOR'S LICENCE OR, IN THE CASE OF A PRIVATE, UNPAID
TUTOR SUCH AS A PARENT OR FRIEND, THEIR DRIVER'S LICENCE.

IN THIS WAY, POLICE AND RTA PERSONNEL WILL BE ABLE TO
VERIFY THE CREDENTIALS OF ALL DRIVING INSTRUCTORS, BOTH
PROFESSIONAL AND PRIVATE, AND MINIMISE THE INCIDENCE OF
UNLICENSED COMMERCIAL INSTRUCTION.



HONOURABLE MEMBERS, THE PROPOSED LEGISLATION WILL HAVE A PROFOUND EFFECT ON THAT SEGMENT OF THE DRIVING INSTRUCTION INDUSTRY THAT ENGAGES IN CORRUPT, IMPROPER PRACTICES.

THE GOVERNMENT MAKES NO APOLOGY FOR THAT.

FOR THE REST OF THE COMMUNITY, THE LEGISLATION WILL BE LIKE A BREATH OF FRESH AIR.

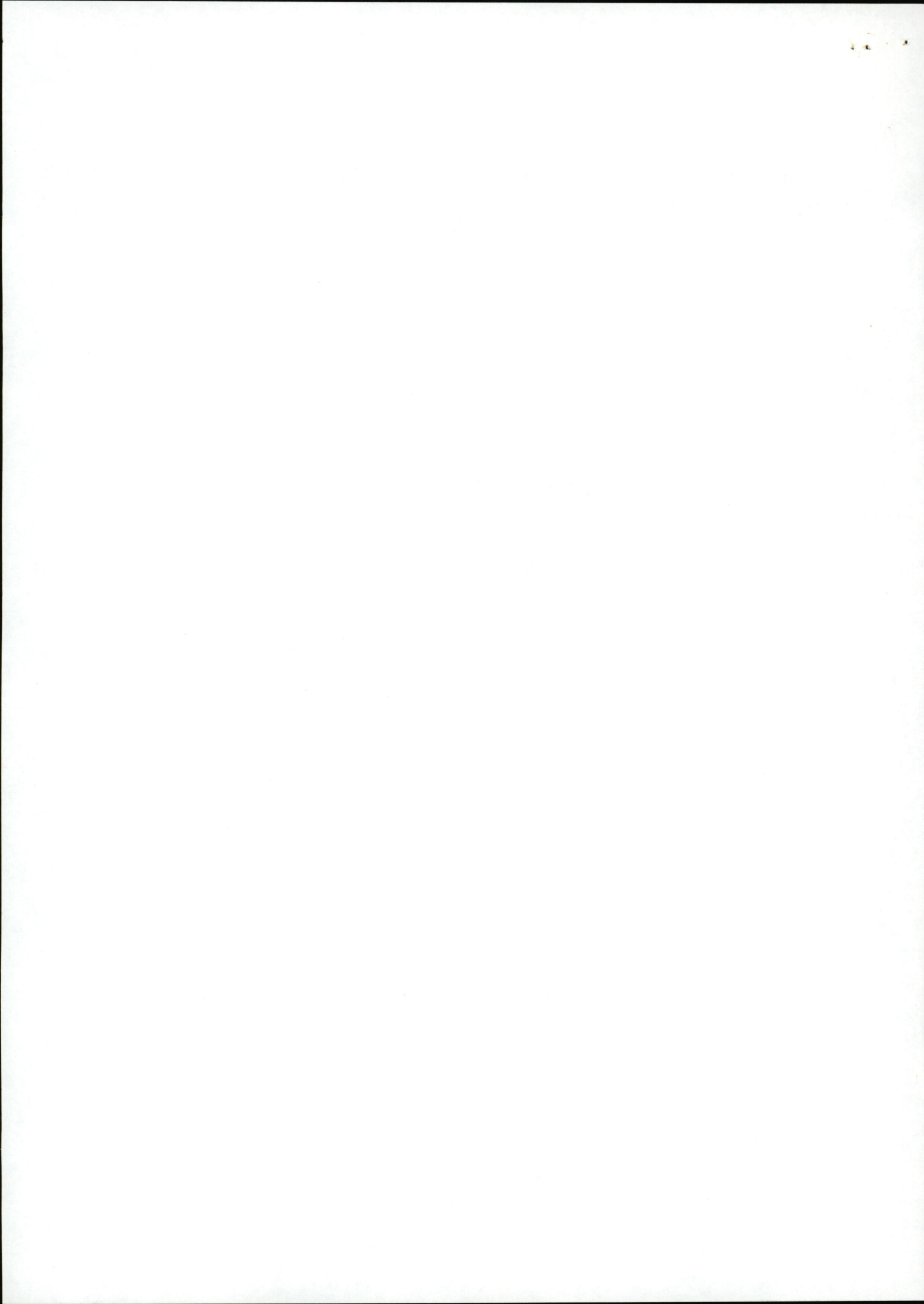
LEARNER DRIVERS WILL BENEFIT FROM THE ENHANCED PROFESSIONALISM OF THEIR INSTRUCTORS; THE GENERAL COMMUNITY WILL APPRECIATE THE GOVERNMENT'S COMMITMENT TO ELIMINATE FRAUD AND CORRUPTION; AND ALL ROAD USERS WILL ENJOY A SAFER MOTORING ENVIRONMENT.

PUBLIC CONFIDENCE IN THE DRIVER LICENSING SYSTEM WILL BE RESTORED AND THE FORMAL TRAINING, STRINGENT LICENSING REQUIREMENTS AND INCREASED ACCOUNTABILITY WILL IMPROVE THE IMAGE OF AN INDUSTRY WHICH HAS BEEN SEVERELY DAMAGED BY THE IMPROPER ACTIONS OF A CORRUPT MINORITY ELEMENT.

THROUGHOUT THE DEVELOPMENT OF THIS VITAL PROPOSAL, CONSULTATION HAS TAKEN PLACE WITH THE DRIVING SCHOOLS ASSOCIATION, WHICH HAS INDICATED ITS UNQUALIFIED SUPPORT.

I AM CONFIDENT THAT THE MEMBERS OF THIS HOUSE WILL OFFER SIMILAR SUPPORT.

I COMMEND THE BILL TO THE HOUSE.

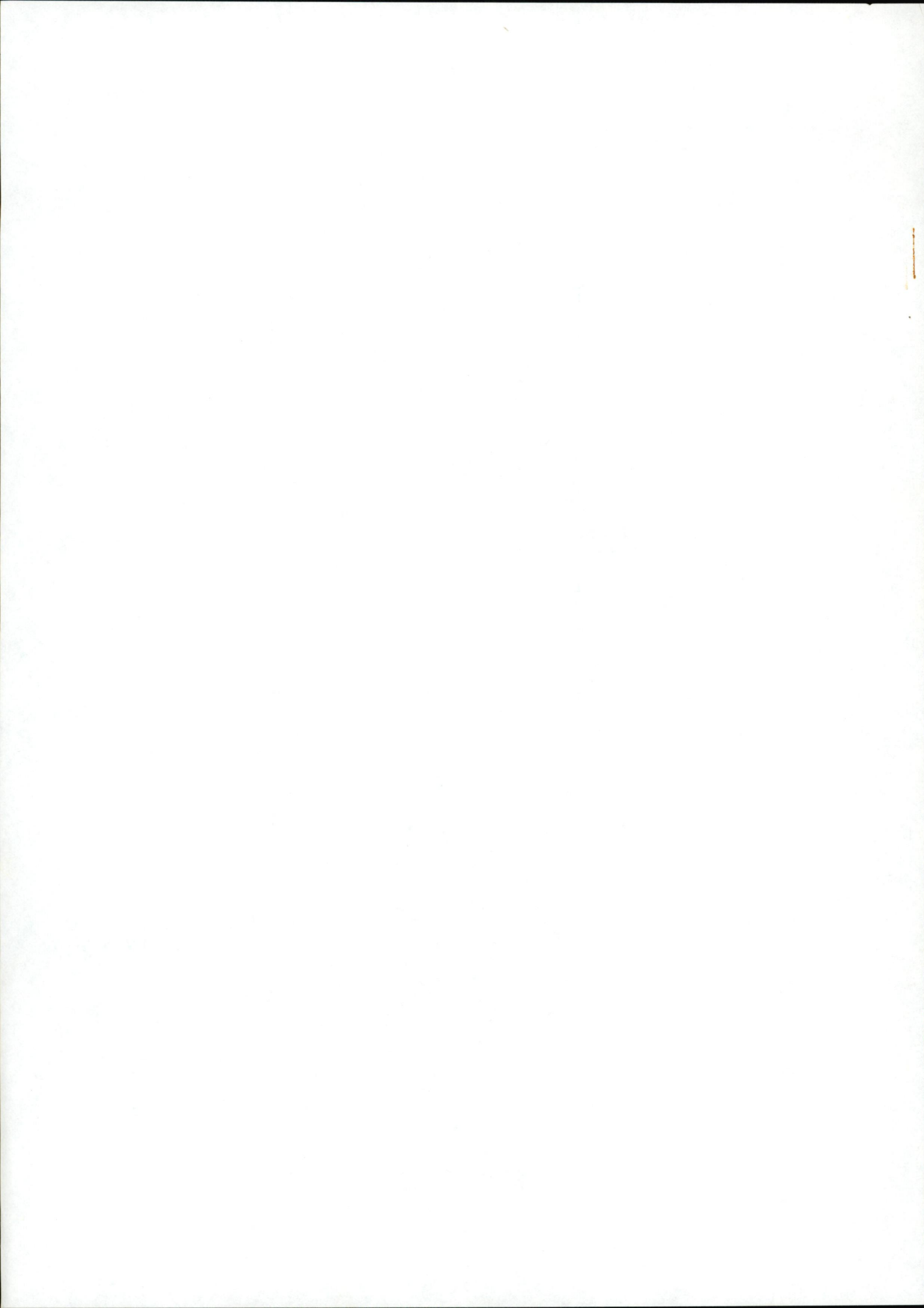


LEGISLATIVE COUNCIL

Driving Instructors Bill 1992

Amendments to be moved in Committee

- No. 1 Page 4, clause 8. Omit clause 8 (3).
- No. 2 Page 4, clause 8. Omit clause 8 (4), insert instead:
(4) A person who advertises, or makes a statement in writing, to the effect that the person acts or is willing to act as a driving instructor or as a driving instructor in respect of motor vehicles of a particular class must specify in the advertisement or statement the class of motor vehicles in respect of which the person acts or is willing to act as a driving instructor.
- No. 3 Page 15, clause 46. Omit clause 46 (3).
- No. 4 Page 18, clause 53. Omit the clause.
- No. 5 Page 18, clause 54. Omit the clause.
- No. 6 Page 23, Schedule 2. From item (1) of the amendments to the Traffic Act 1909, omit proposed section 5 (1C).
- No. 7 Page 23, Schedule 2. After item (1) of the amendments to the Traffic Act 1909, insert:
(2) Section 11AA (Grant and renewal of drivers' licences):
After section 11AA (2), insert:
(2A) The Authority may refuse to grant a driver's licence if:
(a) the person attending at a district registry for the purpose of undergoing any test or examination required by the regulations is not accompanied by the holder of a driver's licence; or
(b) that holder does not, at the district registry concerned, produce his or her licence and state his or her true name and address to a police officer or a person authorised in writing by the Authority for the purposes of this subsection.
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DRIVING INSTRUCTORS ACT 1992 No. 3

NEW SOUTH WALES



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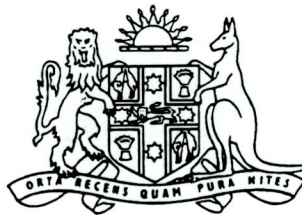
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DRIVING INSTRUCTORS ACT 1992 No. 3

NEW SOUTH WALES



Act No. 3, 1992

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. [Assented to 17 March 1992]

The Legislature of New South Wales enacts:

PART 1—PRELIMINARY

Short title

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

Commencement

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

Definitions

3. (1) In this Act:
 - “**application**” includes an application for the renewal of a licence;
 - “**authorised officer**” means a person authorised in writing by the Authority for the purposes of the provision of this Act in which the expression is used;
 - “**Authority**” means the Roads and Traffic Authority constituted under the Transport Administration Act 1988;
 - “**driver’s licence**” means a licence (other than a learner’s licence, a provisional licence, a restricted licence or a probationary licence) under the Traffic Act 1909, or a corresponding licence under the law for the time being in force in any other State, or in any Territory or 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;
 - “**motor vehicle**” has the same meaning as in the Traffic Act 1909;
 - “**public street**” has the same meaning as in the Traffic Act 1909.
- (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.

Meaning of “driving instructor”

4. (1) For the purposes of this Act, a **driving instructor** is a person who, for any monetary or other reward, gives another person instructions for the purpose of teaching that other person to drive a motor vehicle.

(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.

Meaning of “driving school”

5. For the purposes of this Act, a **driving school** is a business which provides persons with instructions for the purpose of teaching those persons to drive motor vehicles.

PART 2—LICENCES RELATING TO DRIVING INSTRUCTORS**Unlicensed driving instruction**

6. A person must not act as a driving instructor unless the person is the holder of a licence.

Maximum penalty: 50 penalty units.

Unlicensed person not to be employed as driving instructor

7. 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.

Unauthorised promotions

8. (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.

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(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) A person who advertises, or makes a statement in writing, to the effect that the person acts or is willing to act as a driving instructor or as a driving instructor in respect of motor vehicles of a particular class must specify in the advertisement or statement:

- (a) the class of motor vehicles in respect of which the person acts or is willing to act as a driving instructor; and
- (b) the number of the person's licence.

(5) A person who advertises, or makes a statement in writing, to the effect 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 must specify in the advertisement or statement:

- (a) the class of motor vehicles in respect of which the person is willing to procure another person to act as a driving instructor; and
- (b) the name and place of business of the driving school that will procure the person.

Maximum penalty: 50 penalty units.

Authority conferred by licence

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

Prerequisites for licence

10. A person is not eligible to be issued with a licence unless the person:

- (a) has reached the age of 21 years; and
- (b) is the holder of a driver's 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's licence; and
- (d) has completed a course in driving instruction approved by the Authority and conducted by an organisation approved by the Authority.

Application for licence

11. (1) An application for a licence is to be in a form approved by the Authority and is to be lodged with the Authority.

(2) The application is to be accompanied by the fee prescribed by the regulations.

Referral of application to Commissioner of Police

12. (1) The Authority must, as soon as practicable after receiving an application for a licence, notify the Commissioner of Police of the application.

(2) The Authority is not obliged to notify the Commissioner of Police of an application for the renewal of a licence.

Investigation of applicant

13. As soon as practicable after being notified of an application, the Commissioner of Police must cause inquiries to be made as to the character of the applicant and must give a written report of the result of the inquiries to the Authority.

Consideration of information

14. (1) In considering an application, the Authority must take into account any report of the Commissioner of Police and any other relevant information known to it.

(2) It does not matter whether the other information (if any) was known or received before or after the report was made.

Testing of applicant

15. The Authority 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 Traffic Act 1909, and of the regulations made under that Act, 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;

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- (d) the applicant's ability to teach persons to drive motor vehicles (or motor vehicles of the relevant class);
- (e) such other matters as may be prescribed by the regulations.

Medical certificates

16. (1) The Authority may require the applicant to obtain a certificate signed by a medical practitioner stating that the practitioner has personally examined the applicant and is of the opinion, having regard to the safety of the public, that the applicant is medically a fit person to act as a driving instructor.

(2) The Authority may require the applicant to obtain a certificate concerning the applicant's eyesight signed by a medical practitioner or a registered optometrist.

(3) The Authority may require that any certificate under this section be obtained from a medical practitioner or optometrist specified by the Authority.

Determination of application

17. After considering an application, the Authority 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.

Grounds for refusal of application

18. (1) The Authority 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) the Authority is not satisfied that the applicant is a person of good character; or
- (c) the Authority 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) the Authority has reason to believe that the applicant has engaged in bribery or fraud relating to the testing of applicants for licences to drive motor vehicles under the Traffic Act 1909 (or corresponding licences under the law in any other State, or in any Territory or country) or the issue of those licences; or

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(g) the Authority 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 convictions (within the State or elsewhere) for offences involving motor vehicles.

(2) The Authority may refuse an application if the applicant has, during the period of 10 years before the application, been found guilty of an offence in the State or elsewhere involving fraud or dishonesty and punishable on conviction by penal servitude or imprisonment for 3 months or more.

Conditional licence

19. (1) A licence may be issued subject to such conditions as the Authority may determine. The conditions may include, for example, a condition restricting the licensee to acting as a driving instructor in respect of motor vehicles of a specified class.

(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, the Authority must, on the applicant's request, serve on the applicant a notice setting out the reasons for the Authority's decision to impose the conditions.

(4) During the currency of a licence the Authority 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, the Authority must serve on the licensee a notice setting out the reasons for the Authority's decision to vary the conditions imposed on the licence or to impose new conditions.

Contravention of conditions of licence

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

Maximum penalty: 50 penalty units.

Employer to require compliance with conditions of licence

21. 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.

Form of licence

22. A licence issued to a person may consist, wholly or in part, of:
- (a) an endorsement on the person's driver's licence; or
 - (b) a separate document.

Renewal of licence

23. (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 the Authority 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.

When licence is in force

24. (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's 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's licence.

Tests or certificates during currency of licence

25. (1) The Authority 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 the Authority considers necessary in the public interest.

Grounds for suspension or cancellation of licence

26. (1) The Authority may suspend or cancel a licence on any of the following grounds:

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- (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 is convicted of an offence against this Act or the regulations;
 - (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 the Authority requires the holder to submit to under section 25 or does not obtain a medical or other certificate referred to in that section;
 - (f) the holder of the licence has been found guilty of an offence (within the State or elsewhere) involving fraud or dishonesty and punishable on conviction by penal servitude or imprisonment for 3 months or more.
- (2) The Authority must cancel a licence if:
- (a) the Authority is satisfied that the holder of the licence is not a person of good character; or
 - (b) the Authority is satisfied that the holder of the licence is not a fit and proper person to act as a driving instructor; or
 - (c) the Authority has reason to believe that the holder of the licence has engaged in bribery or fraud relating to the testing of applicants for licences to drive motor vehicles under the Traffic Act 1909 (or corresponding licences under the law in any other State, or in any Territory or country) or the issue of those licences; or
 - (d) the Authority 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 convictions (within the State or elsewhere) for offences involving motor vehicles.

Notification of suspension or cancellation of licence

27. (1) The Authority 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 the Authority's decision to suspend or cancel the licence; and
- (c) specifying the period within which the instructor must return the licence to the Authority.

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(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.

Return of licence

28. (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 the Authority.

Maximum penalty: 20 penalty units.

(2) A person need not comply with subsection (1) if the suspension or cancellation is stayed by order of a Local Court under section 31.

(3) A driving instructor whose licence expires must return the licence to the Authority not later than 3 days after the expiry.

Maximum penalty: 20 penalty units.

(4) A driving instructor whose driver's licence is suspended or cancelled must return the licence issued under this Act to the Authority 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 up to the officer in charge of a district registry within the meaning of the Traffic Act 1909 or to any other place nominated by the Authority in writing to the holder so that the Authority may record the suspension, cancellation or change of address concerned.

Change of address

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

Maximum penalty: 20 penalty units.

Duplicate licence

30. (1) The Authority may issue a duplicate licence to replace a licence that has been destroyed, lost, stolen or mutilated.

- (2) Before issuing a duplicate licence, the Authority 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

Appeal against decision of Authority

31. (1) A person may appeal to a 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 a Local Court against the imposition or variation of any condition on the person's licence.

(3) A person may appeal to a Local Court against the suspension or cancellation of the person's licence.

(4) Notice of an appeal is to be lodged:

- (a) with the Clerk of the Local Court to which the appeal is being made; and
- (b) with the Authority,

within 21 days after the date on which the person was notified of the relevant decision of the Authority.

(5) The notice of appeal must specify the grounds of appeal.

(6) An appeal does not operate to stay the effect of the Authority'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.

Procedure on notice of appeal

32. (1) The Clerk of the Local Court to which an appeal under this Part is made must give notice of the time and place of the hearing of the appeal to the Authority 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 the Authority knew of the time and place of the hearing and were not prejudiced by the omission, error or failure to give notice.

Procedure on appeal

33. (1) An appeal under this Part is to be heard before a Local Court constituted by a Magistrate sitting alone.

(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 the Authority in reaching the decision the subject of the appeal and copies of any notices, documents or letters served on the appellant by the Authority 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 the Authority and is to be carried into effect accordingly.

PART 4—CERTAIN PERSONS PROHIBITED FROM CONDUCTING ETC. DRIVING SCHOOLS**Definition**

34. In this Part, “prohibition order” means an order made by a 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.

Application for prohibition order

35. The Authority may apply to a Local Court constituted by a Magistrate sitting alone for a prohibition order.

Grounds on which prohibition order may be made

36. 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:

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- (a) has (whether in connection with the driving school or otherwise) engaged in bribery or fraud relating to the testing of applicants for licences to drive motor vehicles under the Traffic Act 1909 (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 penal servitude or imprisonment for 3 months or more.

Making of prohibition order

37. (1) The Local Court may, on application by the Authority 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) The Authority must serve a copy of the prohibition order on the person the subject of the order.

Application for variation or revocation of prohibition order

38. (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 the Authority.

(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, the Authority must serve a copy of the order varying the original order on the person the subject of the order.

Appeal against making or variation of prohibition order

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

(2) No appeal against such a decision may be made later than 21 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.

Determination of appeal

40. (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.

Court procedure

41. (1) A 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.

Costs

42. A 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.

When order takes effect

43. (1) A prohibition order or an order varying a prohibition order takes effect 21 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 21 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.

Contravention of terms of order

44. (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

Authority to keep records

45. The Authority 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.

Evidence as to Authority's records

46. (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 the Authority'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.

Driving schools to keep records

47. (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) The Authority 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.

Driving instructors to keep records

48. 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.

Production of records

49. (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.

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(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

Act binds the Crown

50. 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.

Identification of persons offering driving instruction

51. (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 accordance with the regulations made under the Traffic Act 1909 (or registered or licensed under the law of any other State, or of any Territory or country that corresponds to the requirements of those regulations 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.

Production of licence

52. (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

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- (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.

Use of unsatisfactory vehicle

53. A person must not, while acting as a driving instructor, use on a public street any motor vehicle which does not comply with the provisions of the Traffic Act 1909 and the regulations made under that Act relating to the construction and equipment of motor vehicles generally or of motor vehicles used for driving instruction purposes.

Maximum penalty: 20 penalty units.

Employer not to allow use of unsatisfactory vehicle

54. A person must not permit another person, while acting as a driving instructor as that person's employee or agent, to use on a public street any motor vehicle which does not comply with the provisions of the Traffic Act 1909 and the regulations made under that Act relating to the construction and equipment of motor vehicles generally or of motor vehicles used for driving instruction purposes.

Maximum penalty: 20 penalty units.

False or misleading information

55. 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.

Proceedings for offences

56. (1) Proceedings for offences against this Act or the regulations are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

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(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 the Authority.

Forms

57. (1) The Authority 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 the Authority.

(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.

Service of documents

58. Any notice or document to be served on a person for the purposes of this Act:

- (a) may be served personally; or
- (b) may be left at or sent by post to the last-known residence or place of business of the person; or
- (c) may be left at or sent by post to the registered office of the person (if the person is a corporation); or
- (d) may be left at or sent by post to the address, if any, last notified by the person to the Authority.

Regulations

59. (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;

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- (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 on any public street for the purpose of giving instruction in the driving of the motor vehicle;
- (g) the production to the Authority 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.

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

Repeals

60. (1) The Motor Vehicle Driving Instructors Act 1961 is repealed.

(2) The Motor Vehicle Driving Instructors Regulations 1962 are repealed.

Savings and transitional provisions

61. Schedule 1 has effect.

Amendment of Acts

62. The Acts specified in Schedule 2 are amended as set out in that Schedule.

SCHEDULE 1—SAVINGS AND TRANSITIONAL PROVISIONS

(Sec. 61)

PART 1—GENERAL**Definitions**

1. In this Schedule, “the 1961 Act” means the Motor Vehicle Driving Instructors Act 1961.

Savings and transitional regulations

2. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act.

(2) A provision referred to in subclause (1) may, if the regulations so provide, take effect on the date of assent to this Act 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 in the Gazette, 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**Licences**

3. 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.

Applications

4. 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.

*Driving Instructors Act 1992 No. 3*SCHEDULE 1—SAVINGS AND TRANSITIONAL PROVISIONS—*continued***Renewals**

5. 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.

Appeals

6. 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.

Legal proceedings

7. 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.

Training

8. 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.

SCHEDULE 2—AMENDMENT OF ACTS

(Sec. 62)

Justices Act 1902 No. 27**Section 154 (Regulations):**

After section 154 (1C), insert:

(1CA) The Governor may make regulations not inconsistent with the Driving Instructors Act 1992 or this Act for or with respect to prescribing the manner of and the procedure and practice to be observed in relation to:

- (a) appeals to a Local Court under Part 3 of the Driving Instructors Act 1992; and
- (b) applications to a Local Court in respect of prohibition orders under Part 4 of that Act.

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SCHEDULE 2—AMENDMENT OF ACTS—*continued***Traffic Act 1909 No. 5****(1) Section 5 (Offences):**

After section 5 (1A), insert:

(1B) Where the driver of a motor vehicle (other than a motor cycle) is the holder of a learner's licence, any person occupying the seat in or on the motor vehicle next to the driver must, when required to do so by a police officer or a person authorised in writing by the Authority for the purposes of this section, produce the person's driver's licence and state the person's true name and place of abode. A person who does not comply with this requirement is guilty of an offence under this Act.

(1C) A person accompanying another person who is attending a district registry for the purpose of undergoing any test or examination required by the regulations must, on request, produce his or her driver's licence and state his or her true name and place of abode if:

- (a) the request is made by a police officer or a person authorised in writing by the Authority for the purposes of this section; and
- (b) the person making the request believes on reasonable grounds that the person accompanying the person who is to undergo the test or examination has been giving driving instruction to that person.

A person who does not comply with such a request is guilty of an offence under this Act.

(2) Section 18B (Penalty notices for certain offences):

From section 18B (1) (ca), omit "Motor Vehicle Driving Instructors Act 1961", insert instead "Driving Instructors Act 1992".

*[Minister's second reading speech made in—
Legislative Assembly on 25 February 1992
Legislative Council on 6 March 1992]*

