

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 appellable 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.
