



**ROADS AND TRAFFIC AUTHORITY**

**REVIEW  
OF THE  
DRIVING  
INSTRUCTORS ACT 1992**

**FINAL REPORT**

**July 2001**

**ROAD SAFETY AND  
ROAD USER MANAGEMENT DIRECTORATE**

**ROADS AND TRAFFIC AUTHORITY**

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## SUMMARY OF RECOMMENDATIONS

1. That any revised regulatory system implemented in New South Wales be compatible with systems operating in other States, particularly those adjacent to New South Wales, in that the system be recognisable under the Mutual Recognition Act and incorporate at least equivalent probity and competence standards.
2. The Steering Committee recommends that the Act be amended to clearly state its objectives. In doing so, the following should be taken into account:  
*The objective of the Driving Instructors Act is to ensure that driving instructors demonstrate minimum standards of character and competency in order to benefit the community and the industry.*
3. That the requirement for an instructor licence applicant to hold a driver licence for a period of not less than 3 years out of the last 4 years be retained.

That the Act be amended to allow the RTA some administrative flexibility to consider a shorter tenure period provided proof of adequate driving experience in the class of vehicle can be demonstrated.

That the minimum age of 21 for an instructor licence be retained.

That the definition of 'driver licence' in the act be amended to exclude a Provisional (P1) licence, a Provisional (P2) licence, and a driver licence with a good behaviour period associated with that licence.

4. That the requirements in the Act relating to 'good character', 'fit and proper person' and criminal record checks be maintained.
5. That the requirements in the Act relating to medical fitness be maintained.
6. That the requirements in the Act relating to instructor training be maintained.
7. That the fitting of duplicate controls no longer be mandated by legislation.  
That the fitting of duplicate controls be considered as a component of any industry Code of Practice.
8. That if mandatory duplicate controls are retained, the Act or Regulation be amended so that the requirement for duplicate controls on motorcycles used for instruction be deleted.
9. That the current provisions of the act regarding the use of unsatisfactory vehicle be maintained to reinforce road safety requirements thereby ensuring instructors do not provide driving tuition in unroadworthy vehicles.
10. That the Driving Instructors Act be clarified so that the unsatisfactory vehicle provisions (Sections 53 and 54) apply wherever licensed instruction is given.

11. That s.8 'Unauthorised promotions' clarify that only licensed driving instructors, or persons who are able to procure licensed instructors, are able to advertise their services.

That the requirements to display the class of motor vehicle which the instructor is licensed to teach and the driving instructor's licence number be removed from the legislation.

That consideration be given to including advertising guidelines in any industry Code of Practice.

That the requirement for a driving instructor to display their licence "in a conspicuous position on the exterior or interior of the motor vehicle" remain.

Clarify that it will be sufficient for instructors to identify themselves by showing the client their licence when providing motorcycle instruction or providing instruction using a vehicle not owned by the instructor.

12. That s.4(1) of the driving instructor regulation 1993 not regard as a driving instructor a person who provides instruction using a simulator.
13. That instructors giving post-licence instruction, i.e. instruction to drivers who already hold the class of licence for the vehicle in which they are receiving instruction, not be required to hold a driving instructor's licence.
14. That, if both recommendations 8 and 13 are not adopted, the Act or regulation be amended to ensure that post-licence instructors are not required to fit duplicate controls.
15. That the definition of a 'driving instructor' in the Act be amended to include instruction "in the course of any trade or business" to more clearly explain the current scope of the definition.

Deliverers of 'in-house' driving instruction (instruction given by company personnel to other company personnel) be licensed driving instructors when instruction is given to learner drivers or those seeking to upgrade their licence, but not when instruction is given in a vehicle for which the trainee is already licensed to drive.

16. That the current exemption of some government instrumentalities from having to comply with the Act be withdrawn, with affected instrumentalities being allowed a reasonable time in which to arrange compliance.

That the Defence Forces be encouraged to comply with NSW driving instructor licensing requirements.

17. That the RTA continue to no longer allow the Conditional Licence provisions in the Act to be used to issue driving instructor licenses to applicants who have yet to meet the training and competence standards for issue of a full licence.

18. That the following regime be adopted for future management of the NSW driving instruction industry:
- retention of a core regulatory framework for licensing of driving instructors;
  - deregulation of a number of current requirements of the Act;
  - endorsement and encouragement of a system of self regulation within the driving instruction industry.

19. That the driver training industry continue to develop competencies and training curricula for use within the industry with the assistance of the RTA.

That the RTA make greater use of Section 25 of the current Act to retest driving instructors where this is appropriate as a result of complaints or performance monitoring programs.

20. That the Act be amended to require licensed instructors:
- to inform prospective students of the insurance status of the vehicle they will be driving prior to the first lesson; and
  - to display prominently in the vehicle in which instruction is given advice as to whether or not the vehicle is comprehensively insured.

That consideration be given to an industry Code of Practice advocating instructors hold additional forms of insurance, and the display of insurance status in advertising material.

21. The Fair Trading Act provides an adequate basis for customer protection and is complementary to the Driving Instructors Act, therefore the RTA, the Department of Fair Trading and the driving instruction industry should investigate implementing strategies to ensure that driving instruction clients are better informed when making a service purchase decision and on how and where to address any complaints they have concerning instruction services.
22. That the Act be amended to require a driving school or any organisation employing a driving instructor to report to the RTA any allegations of improper behaviour committed by a driving instructor engaged by the school.

That the Act be amended to allow for temporary suspension, pending the outcome of investigations, on receipt of any allegation of serious improper behaviour made against a driving instructor subject to there being reasonable grounds for belief that the allegations will prove to be valid.

23. That the Driving Instructors Act be amended to clarify that the requirement for an instructor's licence applies to tuition given on public or private property.
24. That the Act or Regulation be amended to allow the RTA to formally administer a system under which eligibility criteria (character checks, tests, etc) must be met by instructor licence applicants before issue of an Eligibility Advice allowing enrolment in an accredited driving instructor training course.

## 1. Introduction

### 1.1 The Purpose of This Report

The current regime for regulation of the New South Wales driving instruction industry is contained in the *Driving Instructors Act 1992* and the *Driving Instructors Regulation 1993*. These have been examined as part of National Competition Policy, and this report makes recommendations concerning future regulation of the industry for consideration by the NSW Government.

### 1.2 The Need for Review

National Competition Policy (NCP) was endorsed by the Council of Australian Governments (COAG) in 1995. One of the major components of NCP is the Competition Principles Agreement, which commits the NSW Government to review all of its legislation which restricts competition by the end of year 2000.

The Agreement requires that legislation should not restrict competition unless it can be demonstrated that the benefits to the community as a whole outweigh the costs, and that the objectives of the legislation can only be achieved by restricting competition.

In accordance with the Agreement, all NSW legislation was examined for evidence of market entry barriers or conduct which has the potential to restrict competitive behaviour in the marketplace. The NSW Government's legislation review process examines legislation which:

- restricts market entry/exit through professional regulatory regimes or other licensing regimes; and
- reduces market contestability (for example, by the imposition of significant costs) or inhibits business innovation.

The *Driving Instructors Act 1992* (the Act) was identified as potentially restricting competition, and was therefore scheduled for NCP review.

The Act was introduced to replace the *Motor Vehicle Driving Instructors Act 1961*. The Act was enacted largely as a result of the Independent Commission Against Corruption (ICAC) *Investigation into Driver Licensing* which identified instances of corruption within the driver licensing system (of the Roads and Traffic Authority) and the driving instruction industry.

The objects of the Act are directed at providing integrity, professionalism and competence in the driving instruction industry. A review of the Act will assess whether the objects of the Act remain appropriate.

The *Driving Instructors Act 1992* has not been reviewed since it was enacted.

### 1.3 Principles and Stages of the Review

There have been two guiding principles for this review. They are:

1. Legislation should not restrict competition unless it can be demonstrated that:
  - a) the benefits of the restriction to the community as a whole outweigh the costs; and
  - b) the objectives of the legislation can only be achieved by restricting competition.
2. If they are to continue, the *Driving Instructors Act 1992* and the *Driving Instructors Regulation 1993* must be effective in ensuring professionalism, competence and integrity in the driving instruction industry.

In considering these principles, the review should:

- a) clarify the objectives of the legislation and their continuing appropriateness;
- b) clarify the restrictions on competition imposed by the legislation;
- c) assess the effectiveness of the legislation in achieving its objectives; and
- d) consider alternative means of achieving the same results, including non-legislative approaches.

The full terms of reference for the review are attached at Appendix 1. The terms of reference were approved by the Premier prior to the commencement of the review.

### 1.4 Review Process

#### The Steering Committee

The review was coordinated by a Steering Committee comprising representatives from the Roads and Traffic Authority, the New South Wales Cabinet Office, the driving instruction industry and the road freight industry. Members of the Committee are listed in Appendix 2.

#### The Consultation Process

The Steering Committee examined public and stakeholder views in accordance with the NSW Government consultation guidelines: *Consulting on Reform – A consultation framework for the review of anti-competitive legislation*.

An Issues Paper was released for public discussion by the Minister for Roads in September 1998.

An invitation to comment on the Issues Paper was forwarded to industry and government groups as well as consumer organisations. In addition, advertisements were placed in metropolitan newspapers inviting comment. A similar invitation was placed on the RTA Website during the consultation period.



Nine seminars were held for specific stakeholder groups ranging from motor cycle riders and trainers to instrumentalities concerned with integrity issues (including ICAC). The consultation period closed on 30 November 1998.

### **Development of the Final Report**

The RTA Traffic Technology Branch was engaged to study the economic effects of changes to the Act. This involved costs to the industry as well as the RTA. An abridged version of the RTA Traffic Technology Analysis of Submissions is included in Appendix 3.

The Final Report has been prepared by the Steering Committee following consideration of submissions responding to the Issues Paper and further consultation with some stakeholders on future regulatory options.

## 2. Background to the Industry and the Act

This Chapter provides background information on the NSW driving instructor industry and its regulation. It also highlights some key industry issues not covered by legislation.

### 2.1 Profile of the Industry

Currently in NSW there are 2,223 licensed car instructors and 580 licensed heavy vehicle instructors (of which 42 are also car instructors). NSW also has 270 licensed motorcycle instructors of which 22 are also licensed car instructors.

The industry is characterised by several large franchises and a considerable number of sole traders and small independent driving schools. For example, a survey of the Sydney Yellow Pages listed 271 entries for car driving instruction. 7 of these entries were for franchises representing 63 outlets. While many of the 264 non-franchised entries represent individual instructors, a considerable number are for medium to large operations.

Outside of Sydney, local Yellow Pages contained, for example, 5 entries for driving schools serving Lismore, 7 for schools serving Nowra and 5 serving Dubbo. A considerable number of schools serve specific ethnic communities and driving instruction is available in numerous languages including Arabic, Portuguese and Vietnamese.

Prices and pricing structures vary considerably, from \$ 20 to \$ 50 per hourly lesson for cars, with some schools offering single charges of \$300-500 for instruction until the test is passed.

In 1992 the industry changed significantly. With the introduction of the *Driving Instructors Act 1992*, it became mandatory for an applicant for a driving instructor's licence to complete a course of training as an instructor.

The industry has participated in the development of national competencies for driving instructors. A national Curriculum and Assessment Package in Road Transport Motor Vehicle Driving Instruction has been published by the Australian National Training Authority (ANTA) for the training of driving instructors. Set at Certificate III standard to align with Australian Standard Framework Level 3 skill requirements, the package was developed after wide industry and licensing authority consultation.

Quality systems such as ISO9002 are being adopted by some driving schools and the industry is becoming more rigorous about adopting and adhering to internally developed codes of practice. For example, the Australian Driver Trainers Association (ADTA) is developing an industry Code of Practice for driving schools which covers industry standards, service delivery, complaints handling and other matters.

The industry is concerned to present a professional profile to the community. It is also tending to focus itself on training for road safety rather than simply training to pass a driving test. Thus it seeks a wider involvement in the road safety debate and in effective solutions.

## 2.2 Driving Instructor Training Providers

With the introduction of the *Driving Instructors Act 1992* it became a requirement for an applicant for a driving instructor's licence to undertake a mandatory course of training.

For general vehicle instructors, this training course was initially delivered by a limited number of TAFE Colleges and the TAFE Open Training and Education Network (OTEN). Provision of the course was discontinued by TAFE in 1999, and it is now offered by private RTA accredited training providers. Presently, the Australian Driver Education and Trent Driving School Pty Ltd are the only providers of the car instruction course. The course involves 160-180 hours of theory and practical work, which takes between three weeks and three months to complete. TAFE is understood to have plans to re-enter the market as a provider.

For motor cycle instructors, there are only two providers of instructor training with the RTA being the major provider. There are currently 270 riding instructors licensed in NSW. There are currently 3 providers of training for heavy vehicle instructors, and 580 licensed heavy vehicle instructors in NSW.

There is no restriction on the number of organisations which may be involved in driver or rider instructor training, provided they meet the basic requirement of delivering training (the National Certificate III standard in the case of car instruction). Entry of any new training providers depends on demand.

## 2.3 Background to the Current Legislation

The *Driving Instructors Act 1992* and the *Driving Instructors Regulation 1993* were enacted following the findings of the 1990 inquiry into driver licensing by the Independent Commission Against Corruption (ICAC). The inquiry found there was significant corruption in the Roads and Traffic Authority (RTA) and the driving instruction industry.

The previous legislation, the *Motor Vehicle Driving Instructors Act 1961*, had been in place for thirty years, and was seen as an inadequate model for effective regulation of the industry. Penalties were minor and certain provisions, such as compulsory training, had never been proclaimed.

The current legislation incorporates some features of the previous Act that were considered as still appropriate in the regulation of the instruction industry. These include prerequisites for licensing such as 'fit and proper person' and 'good character' requirements. Importantly the current Act contains provisions for dealing

with corrupt conduct and preventing people reasonably suspected of being corrupt from any association with the industry, as well as providing for compulsory training of driving instructors.

### 2.3.1 Scope of the Act

The *Driving Instructors Act 1992* established a mechanism for the licensing and regulation of driving instructors, and covers the following activities:

1. The licensing process
2. Appeals
3. Business Compliance and Monitoring

#### Scope of the Act and Regulations

The Licensing process	Appeals and Prohibitions	Business compliance and monitoring
<p>Includes:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Unlicensed prohibitions</li> <li><input type="checkbox"/> License prerequisites</li> <li><input type="checkbox"/> Application process</li> <li><input type="checkbox"/> Training and training fees</li> <li><input type="checkbox"/> Testing</li> <li><input type="checkbox"/> Approval process</li> <li><input type="checkbox"/> Conditional Licence</li> <li><input type="checkbox"/> Renewals</li> <li><input type="checkbox"/> Suspension and cancellation</li> </ul>	<p>Includes:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Appeals against refusal of application</li> <li><input type="checkbox"/> Prohibition orders against certain persons for bribery or fraud</li> <li><input type="checkbox"/> Appeals against prohibition orders</li> </ul>	<p>Includes:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Record keeping for driving instructors and driving schools</li> <li><input type="checkbox"/> Licence fees</li> <li><input type="checkbox"/> Active licence</li> <li><input type="checkbox"/> Mandatory dual controls</li> </ul>

## 2.4 Major Provisions of the *Driving Instructor's Act 1992*

The *Driving Instructors Act 1992* "is an Act to provide for the licensing of instructors engaged for reward in teaching persons to drive motor vehicles".

### 2.4.1 Meaning of Driving Instructor

The Act requires that anyone who gives driving instruction in a vehicle for a fee or payment must have an instructor licence (s.4). This includes instructors who operate as sole traders, or who are contracted under a franchise arrangement, or anyone who gives driving instruction in a vehicle as part of their employment. Friends or relatives who provide free driving instruction do not require an instructor licence.

At present the definition of driving instructor is taken to include those who provide:

- tuition to first time (learner) drivers;
- post-licence instruction to those who already hold the class of licence for the vehicle in which instruction is given (eg advanced / defensive courses, in house or refresher courses for heavy vehicle operators); and
- training when a person is upgrading from one class of licence to another.

This means that, in certain cases, a person who is providing instruction to an experienced and currently licensed driver must hold an instructor's licence (in the same way as a person who provides instruction to a novice driver).

There are several areas of exemption from holding an instructor's licence. The exemptions are contained in the Regulation and allow employees of certain NSW Government public authorities to instruct other employees as part of their employment. Classroom tuition, use of a simulator, and production of a book or manual is not considered to be driving instruction.

#### **2.4.2 Becoming a Driving Instructor and the Licensing Procedure**

In order to qualify for an instructor licence, an applicant must:

- be 21 years of age;
- have held a driving licence continuously for at least three years;
- complete an RTA-approved course in driving instruction;
- be judged a 'fit and proper person' and pass a criminal record check;
- complete a driving or riding test, knowledge test and test of ability to teach people; and
- present a medical certificate stating they are medically fit to act as an instructor.

Once an applicant has been granted a licence they must:

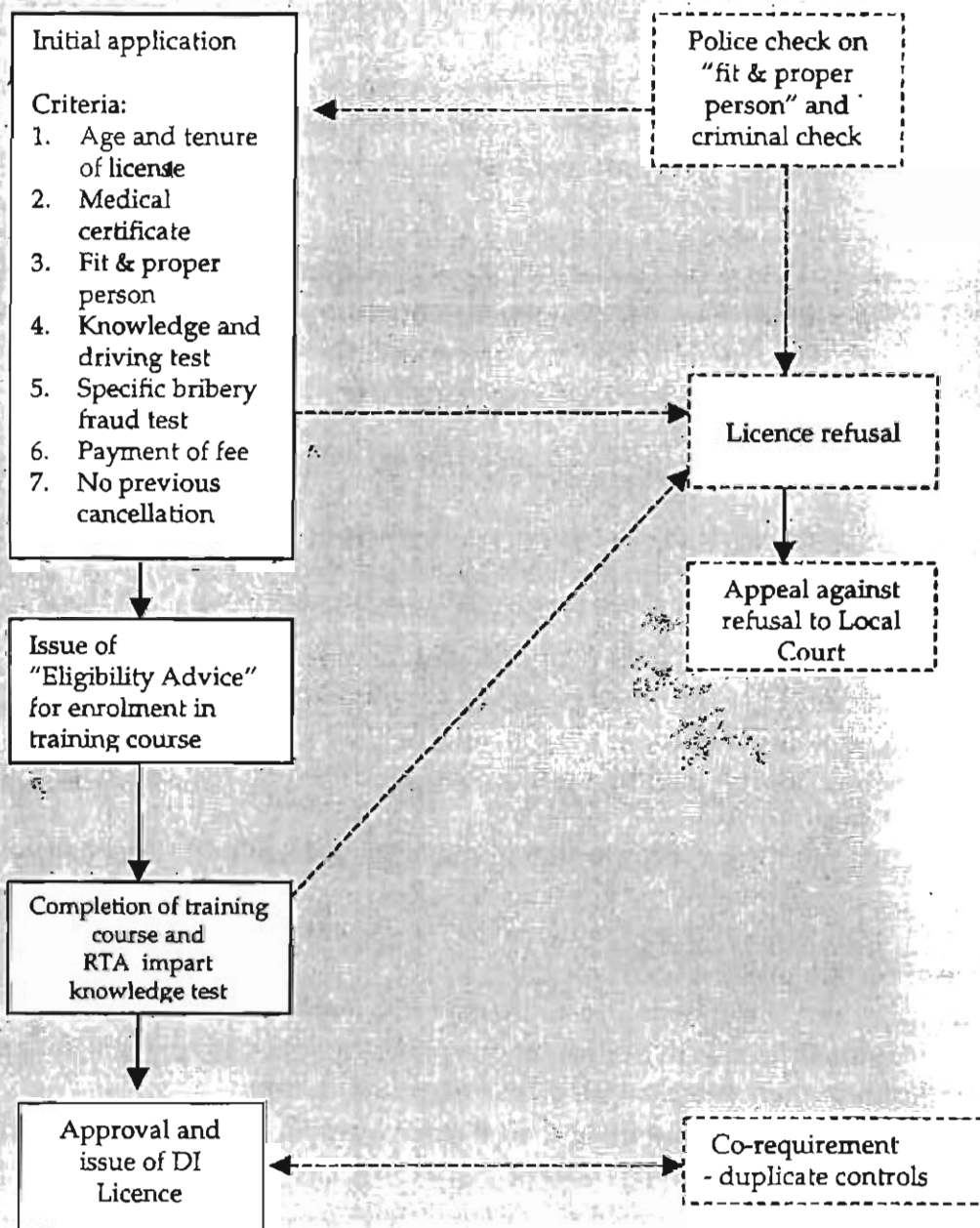
- keep certain prescribed records;
- not provide instruction in an unroadworthy vehicle;
- display their licence in a conspicuous position whilst giving instruction;
- equip their own vehicle with duplicate controls; and
- include in any advertisement their licence number and details of the class of vehicle in which they are licensed to instruct.

The time taken to complete the RTA-approved course in driving instruction is variable, as it involves 160-180 hours of theory and practical work which takes between one and three months to complete.

Heavy vehicle instructor courses, also offered by accredited private providers, run for one week including practical instruction. Motorcycle instructor courses are similar.

A full instructor licence is issued for 5 years. There is no ongoing training or retesting on renewal of a licence.

### The Licensing Process



### 2.4.3 Penalty Systems and Prohibitions

Offences have allocated penalty points with each point currently set at \$110. This results, for example, in a maximum penalty of \$2,200 for failure to have dual controls, or failing to produce a licence, but \$5,500 maximum for instructing when unlicensed, failing to keep records, or contravening a prohibition order.

The Act also includes grounds for suspension or cancellation of the instructor's licence. These are significant provisions because loss of licence results in loss of the legal right to practice as an instructor, and therefore loss of income.

#### 2.4.4 Regulation of Driving Schools

The Driving Instructors Act regulates driving instructors, not driving schools as such. Compliance responsibility is placed principally on individuals delivering driving instruction, rather than on organisations which manage or coordinate driving instructors. However two areas of the Act do relate to driving schools. Both are probity provisions resulting from the ICAC inquiry into driver licensing.

- The RTA may apply to a Local Court to prohibit a person from conducting a driving school or engaging in the control, management or administration of a driving school where the person has a conviction for fraud or dishonesty, or has engaged in bribery or fraud relating to driver licence testing.
- Part 5 of the Act requires driving schools (and driving instructors) to keep records relating to their delivery of driving instruction.

#### 2.5 Issues not covered by the Act

There are a number of matters not addressed by the legislation which were identified in the Issues Paper as requiring possible attention. These are discussed in chapter 8, and include:

##### Quality of Tuition

There are no provisions in the Act which prescribe a course of training which instructors deliver to their clients, nor is there any compulsion to deliver driving instruction according to the training principles included in the instructor training course.

Where concerns are expressed about the quality of tuition provided by an instructor, the only recourse available to the RTA is to retest the instructor's ability to teach people (the impart knowledge test). Even if a more rigorous test were introduced, this still would not exercise any control over how an instructor teaches their clients.

##### Insurance

The *Driving Instructors Act 1992* does not mandate any insurance requirements which could be considered appropriate, such as:

- third party property vehicle insurance;
- public liability insurance (for events occurring with clients not covered by compulsory third party injury insurance);
- professional indemnity insurance.

### 3. Systems in other jurisdictions

The driving instruction profession is mobile by definition, by the nature of the industry and, in some circumstances, by business necessity. Some driving instructors move from State to State to live and work, some offer their services interstate or on a national basis, while others live close to the NSW border and have a client base from NSW and another jurisdiction.

It is reasonable for a driving instructor to expect that, if licensed to practice in one Australian State, then there should be no restraint on being able to practice in another State. Regulation of driving instructors is a State and not a Federal matter. Each State has its own particular system. Although there are now national agreements for recognition of driving licences throughout Australia, for both driving as a visitor and for transfer of a licence between States, no such system exists for driving instructors.

While driving licence legislation allows only one driving licence to be held based on the holder's State and place of residence, a separate instructor's licence must be held for each State in which an instructor operates.

#### 3.1 Mutual Recognition Act 1993

The *Mutual Recognition Act 1993* was introduced to make it easier for people in registered occupations to move from one State to another.

Under the Act, the RTA will issue a NSW instructor's licence solely on the basis of the applicant holding an instructor's licence in another State or in New Zealand.

Additionally, NSW will allow a non-resident of NSW to take out an instructor's licence in NSW even though the person does not hold a NSW driver's licence. This is to avoid what would otherwise be a restriction on trade for instructors operating close to NSW borders. Thus a number of Queensland, ACT and Victorian instructors hold NSW licences.

Potentially, the *Mutual Recognition Act 1993* impacts on the community by allowing instructors who may not have received as high a level of training as NSW instructors to be issued with a licence and commence instruction. The Act creates the opportunity for some persons to deliberately gain accreditation in another State that has lower entry qualifications and then obtain a NSW instructor's licence, effectively avoiding NSW training and quality requirements.

In practice the number of applications under the Mutual Recognition Act has been very low. There have only been 19 such applications from instructors since the introduction of the NSW training requirements. Additionally, some of these applications have quite legitimately been to allow instructors with businesses close to the NSW border to operate within NSW.



## 3.2 Other Jurisdictions

Driving instructors are currently licensed in NSW, South Australia, Western Australia and Tasmania. Similar regulatory regimes apply in Queensland, the Northern Territory and the Australian Capital Territory. From 1 March 1999, Victoria re-introduced a regulatory regime after the experience of deregulating in 1993. Queensland introduced a system of regulated accreditation in lieu of licensing from 1 January 1998.

### 3.2.1 Victoria

Victoria introduced the licensing of driving instructors in 1962 and this continued until 1993 when the industry was deregulated. With deregulation a person was no longer required to hold an instructor's licence to be a driver trainer. During the early part of 1997 the Victorian Government established the Driving Instructor Consultative Committee to consider if the industry should be regulated in the future.

The Consultative Committee was established because of dissatisfaction with the deregulated industry in relation to standards of instruction, the probity and skills of instructors, and the lack of readily accessible complaint mechanisms. The established driving industry considered that deregulation resulted in an excessively competitive environment with unsustainable fees and a resulting drop in tuition standards. This was reflected in the submission to the Consultative Committee by the Australian Driver Trainers Association (Vic).

Following extensive community and industry consultation, the *Standards for Driving Instructors* report was presented to the Victorian Government. The *Road Safety (Driving Instructors) Bill* was passed by the Victorian Parliament in October 1998. It requires that a Driving Instructor Authority must be held by any person who, for hire or reward or in the course of trade or business, teaches an unlicensed person to drive a motor car on a highway. The scheme is administered by the Victorian Taxi Directorate. Notable features of the scheme include:

- the entry requirements are very similar to those of NSW, including equivalent instructor training requirements and medical, probity and traffic record checks;
- it is only applicable to novice car driver instruction. Heavy vehicle, rider and post-licence instruction remain deregulated.

The report also recommended that an Industry Code of Practice be developed to cover a range of issues including customer service, complaints from clients, vehicle cleanliness and roadworthiness, advertising standards, etc. Industry has been charged with implementing means of encouraging compliance.

### **3.2.2 Queensland**

Queensland Transport has introduced a Government regulated accreditation scheme to replace the previous instructor licensing system:

Any person who trains novice drivers for fee or reward is required to comply with the requirements of the new legislation. Under previous legislation, driving instructors were required to be licensed by Queensland Transport and had to be employed by a driving school. The new accreditation scheme only requires that individual trainers are accredited by Queensland Transport. This enables sole operators to act as instructors without having to establish a school.

To obtain accreditation applicants are required to either complete a training course or undergo competency assessment by independent assessors approved by Queensland Transport. The training course is accredited at Certificate Level III by the Qld Vocational Education, Training and Accreditation Board (VETEC).

Instructor applicants are required to have a clear criminal and traffic record and to produce a medical certificate. Dual controls are required. A Code of Conduct is being incorporated into the regulatory process and complaints and audit processes implemented.

### **3.2.3 South Australia**

South Australia has a competency based training and assessment (CBT&A) system for its learner drivers whereby learners are assessed by their driving instructor and are not required to take a driving test. The South Australian CBT&A scheme also requires instructors to follow a standard training program.

However, the option of a conventional driving test is still available for learners, and about 30% of applicants choose the conventional test as the method of obtaining their licence. Driving instructors can deliver both CBT&A and driving tests.

Where driving instruction is provided for a fee, the instructor must be licensed. In addition, an instructor who delivers CBT&A must be accredited by the Department of Transport (DOT). Similarly an instructor who delivers conventional driving tests must hold authorisation by DOT. DOT testing officers now conduct very few driving tests. Business opportunities are very limited for instructors who are not authorised and/or accredited.

In a similar manner to other States, instructor licence applicants must meet probity, traffic record and medical requirements. Applicants must also complete a Certificate III in driving instruction costing about \$3000. Duplicate controls are not required.

Transport SA is currently undertaking a competition policy review of its driving instructor legislation. A Discussion Paper has been published for public consultation. The issues raised in the paper are similar to those being addressed in this review. As at this date, the final report has not yet been completed.

### 3.2.4 Other Jurisdictions

Driving instructor licences are required in Western Australia. In addition to meeting probity and traffic record requirements, applicants must pass a written test of 150 questions and a test of instruction and driving skill.

The ACT does not currently have an instructor licensing scheme, as such. The ACT Government recently passed legislation to adopt a cumulative assessment test for driver licensing. Individual instructors are being accredited to assess competencies in a manner similar to South Australia. The accreditation scheme includes a 12 day training course costing \$2320. Accredited assessors must comply with a code of practice.

Instructors in Tasmania must pass a two-hour written test and a driving test to be licensed. Changes have been made to the current regulations to strengthen the fitness requirements and to include the power to cancel an instructor's licence.

Northern Territory instructors must be of good character and pass a theory test, medical check and criminal check to be licensed. While no training course is mandated, applicants holding a Certificate Level III in driving instruction are exempt from all tests.

#### **Recommendation 1**

**That any revised regulatory system implemented in New South Wales be compatible with systems operating in other States, particularly those adjacent to New South Wales, in that the system be recognisable under the Mutual Recognition Act and incorporate at least equivalent probity and competence standards.**

## 4. Clarification of Objectives and Identification of Market Failure

The Steering Committee is required to clarify the objectives of the *Driving Instructors Act 1992* and identify market failures associated with the industry.

### 4.1 Objectives

The Act does not have any explicit objects other than “to provide for the licensing of instructors engaged for reward in teaching persons to drive motor vehicles”.

The Second Reading Speech (delivered on 25 February 1992) indicated the Act was intended to:

- improve the standards of driving tuition, and thereby enhance the skills of vulnerable, young, novice drivers;
- keep persons considered unfit to hold an instructor’s licence out of the industry;
- combat corruption and malpractice; and
- ensure that applicants successfully complete an approved training course.

The Second Reading Speech also indicated that the legislation would:

- benefit learner drivers by enhancing the professionalism of instructors;
- benefit the community by eliminating fraud and corruption;
- benefit road users by providing a safer motoring environment; and
- restore public confidence in the driver licensing system.

The Regulatory Impact Statement for the *Driving Instructors Regulation 1993* stated that the objects of the legislation were to:

- provide tighter controls over the driving instruction industry through entrance requirements, provision for record keeping and vehicle standards.
- provide for improved standards of tuition for the public by commercial driving instructors through compulsory training.
- improve the integrity of the industry by preventing undesirable persons from involvement with driving schools.
- allow the public to scrutinise driving instructor’s licences to determine credentials and facilitate complaints.
- deter corrupt and improper behaviour by providing substantial penalties for misconduct.

From the above, and from the general provisions of the Act and Regulation, it can be inferred that the legislation is aimed at those who provide instruction in motor vehicles.

## Submissions

In response to the question raised in the Issues Paper as to whether the matters addressed by the current legislation are still relevant, the response was universal confirmation that they are. Comments included:

- “The issues of integrity, professionalism and competence which the original legislation was meant to improve are still relevant. The legislation has fostered improvements in the industry and these improvements will best be continued by maintaining regulation through legislation.”
- “We feel that it is not only possible but imperative that there be continued address of these issues through legislation.”
- “The industry needs the Driving Instructors Act in place to set a minimum standard of education, training, ability and delivery.”
- “Yes, they are still relevant and should be kept going.”

As to whether the issues could be addressed through other measures, there was less comment and less agreement. One respondent commented that “alternatives such as self-regulation or deregulation are not viable at this time”, whilst another commented they “would like to see appropriate instruments in place to ensure that the industry is ultimately able to take responsibility for itself and be able to self-regulate with minimum government involvement.” ICAC stated that it “would be opposed to total deregulation of the driving instruction industry”.

## 4.2 National Competition Policy and Market Failure

The goal of National Competition Policy is to remove restrictions on competition to enable Australian businesses to compete efficiently while maintaining appropriate levels of community protection. An underlying principle of National Competition Policy is that legislation should not restrict competition unless the benefits to the community as a whole outweigh the costs of the restriction, and the objective of the legislation can only be achieved by restricting competition.<sup>1</sup>

Legislation is often developed as a response to problems experienced by consumers when purchasing goods or services. Such problems may be the result of what economists term *market failure*. A market may fail or become distorted where businesses do not operate in the best interest of economic efficiency or where environmental or social detriment occurs.

When evidence of market failure comes to light, it is necessary to consider whether government action is required as a remedy. A case for government intervention may be made provided that it is efficient and effective, in that it protects the interests of consumers without unnecessarily restricting business innovation and competitiveness. The full range of possible government action needs to be considered and the one which has the greatest net public benefit should be selected.

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<sup>1</sup> New South Wales Government Policy Statement on Legislation Review, June 1996.

In attempting to identify possible market failures, it is useful to think of what might occur if restrictions were not in place, i.e a totally free market existed.

In relation to driving instructors, there are two market failures that the current legislation attempts to address – information asymmetry and externalities in the form of misconduct.

Information asymmetry occurs where one party to a transaction has inadequate information, and thus is restricted from making an optimal purchasing decision. In an unregulated market, the consumer has no easy method of determining whether a particular instructor will be any good. The Act addresses this market failure by putting in place a series of measures that allows the consumer to have a degree of confidence that the instructor they choose is a competent professional who will provide an acceptable standard of tuition.

The ICAC inquiry into driver licensing revealed that in an unregulated or poorly regulated market, misconduct by driving instructors is able to occur. Misconduct is an example of a market failure that is commonly termed an externality.

Misconduct results in unacceptable costs being borne by consumers, the general public and the driving instruction industry. The legislation endeavours to minimise the potential for misconduct by requiring instructors to pass a 'good character' test, and imposing a deterrent to improper behaviour via a range of penalties. These measures assist in reducing the potential costs that can result from misconduct.

### 4.3 Conclusions

The Steering Committee is satisfied that the implied objectives associated with the Act are legitimate. These can be summarised as:

- establishing minimum standards of character, probity and competency in the driving instructor industry through a licensing regime; and
- minimising the potential for corruption and inappropriate behaviour by driving instructors.

The Steering Committee also noted that there are legitimate market failures which the legislation in its current form seeks to address.

#### **Recommendation 2**

**The Steering Committee recommends that the Act be amended to clearly state its objectives. In doing so, the following should be taken into account:**

*The objective of the Driving Instructors Act is to ensure that those who give driving instruction in motor vehicles for reward demonstrate minimum standards of character and competency in order to benefit the community and the industry.*

## 5. Competition restrictions

### 5.1 Restrictions on Competition

This Chapter identifies the restrictions on competition which support the objectives and address the market failures identified in chapter 4, and assesses whether they are warranted.

Legislation may limit competition if it:

- governs the entry into or exit of firms or individuals out of the market;
- controls the prices or production levels;
- restricts the quality, level or location of goods and services available;
- restricts advertising and promotional activities;
- restricts price or type of input used in the production process;
- is likely to confer significant costs on business; or
- provides advantages to some firms over others by, for example, shielding some activities from pressure of competition.

It is emphasised that the Steering Committee did not approach the review with a preconception that legislative provisions which restrict competition are inherently “bad” and in some way flawed. Rather, the Steering Committee recognised that such arrangements may be entirely appropriate and justified to meet public policy objectives.

Costs imposed by legislation are usually passed down the line to the consumer in the form of higher prices or lower quality. The question that needs to be considered in this review is whether the costs borne by business and the community are reasonable given the benefits provided.

In considering the restrictions of the *Driving Instructors Act*, the Steering Committee reflected on what would be the situation if there were less or no regulation, as well as whether any market failure could be addressed by an alternative to regulation.

### 5.2 Entry Restrictions

The number of potential entrants into the field of driving instruction is restricted by the need to satisfy certain prerequisites before a licence is issued (s.10-18).

These entry requirements are intended to ensure that appropriately mature, trained and relatively experienced drivers/riders of good character are employed in the instruction industry. An applicant must:

- have reached the age of 21 years.
- have held an unrestricted driver’s or rider’s licence for a period of not less than 3 years during the 4 year period before the date of application.

- satisfactorily complete a driving or riding test, knowledge test and a test of the applicant's ability to teach people (impart knowledge test).
- be of good character.
- be a fit and proper person to act as a driving instructor.
- present a medical certificate stating that the applicant is medically fit to act as a driving instructor.
- not have engaged in bribery or fraud relating to the testing of driver licence applicants.
- complete an approved course in driving or riding instruction with an approved organisation.
- have a satisfactory traffic record.
- not have been found guilty in the last ten years of an offence involving fraud or dishonesty punishable by a gaol term of three months or more.

### 5.2.1 Age and Licence Tenure

The age and licence tenure requirements are designed to allow only those people who are relatively experienced drivers with mature attitudes into the industry. The tenure requirement also has the effect of excluding those drivers who have had a recent licence cancellation or disqualification.

Nevertheless, a tenure requirement is no guarantee of driving ability. A person with an unrestricted licence who has not driven a vehicle for three years is still eligible to apply for an instructor licence.

The appropriateness of the age and tenure requirements can also be queried in the case of some heavy vehicle instructors. For example, a Heavy Rigid (HR) driving instructor who passes their Heavy Combination (HC) licence test is required to wait three years before being eligible to apply for a Heavy Combination instructor's licence.

This has the effect of delaying a person's entry or expansion within the industry, particularly instructors wishing to enter the Multi Combination (MC) driver training market (which is a potential growth area in NSW following national road transport reforms). The requirement also appears to conflict with the current competency based assessment principles that apply to Rigid and Combination licences.

In responses to the Issues Paper, there was strong support for the tenure rule to be more flexible and for driving experience to be taken into consideration. The flexibility was seen as being particularly appropriate for heavy vehicle instructor applicants, whereas a number of correspondents called for car driving experience to be extended to at least five years.

The Steering Committee recognises that the age and tenure requirements fulfil an important role in ensuring that driving instructor applicants have a degree of experience with the class of vehicle they intend to use for instruction, and these requirements should be retained.



However, it is also recognised that tenure does not necessarily equate with experience. Therefore the Steering Committee believes that there is justification for an instructor licence to be granted to an applicant without the necessary tenure requirements provided proof of adequate driving experience in the relevant class of vehicle can be demonstrated. This would be particularly useful for those seeking to instruct in the heavy vehicle market.

Two other issues with regard to age and tenure have also arisen as a result of changes to the demerit point scheme (1 March 1999) and the introduction of the new licensing scheme for new drivers (1 July 2000).

Under the new licensing scheme for new drivers the earliest a licence applicant can obtain a provisional P2 licence is 18 years or older. The P2 licence must be held for a minimum of 24 months before the applicant can progress to an unrestricted licence, i.e. 20 years of age. Should the requirement to hold an unrestricted driver's licence for 3 out of the last 4 years be maintained, it would mean that the instructor licence applicant will be at least 23 years of age before he/she could apply for an instructor's licence.

After careful consideration the Steering Committee agreed that the minimum age of 21 years old be maintained provided that an unrestricted licence has been held for at least one year after progressing from a provisional P2 licence.

A second issue is that currently the Act excludes probationary licences from the definition of a driver's licence. However, as a result of changes to the demerit point scheme, the previous probationary licence has been replaced by a good behaviour licence condition. To maintain existing standards, the entry requirements for an instructor licence should exclude licence applicants who hold or have held during the required tenure period a driver's licence with a good behaviour period associated with the licence.

Section 10 of the act – Prerequisite for licence – should therefore be amended to read:

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 three years out of the last four years before the date of the application, held a driver licence with no demerit points scheme good behaviour period associated with the licence in that time;  
**or**  
has held a driver licence for a minimum of one year, after progressing from a provisional P2 licence, with no break in tenure.

**Recommendation 3**

**That the requirement for an instructor licence applicant to hold a driver licence for a period of not less than 3 years out of the last 4 years be retained.**

**That the Act be amended to allow the RTA some administrative flexibility to consider a shorter tenure period provided proof of adequate driving experience in the class of vehicle can be demonstrated.**

**That the minimum age of 21 for an instructor licence be retained.**

**That the definition of 'driver licence' in the act be amended to exclude a Provisional (P1) licence, a Provisional (P2) licence, and a driver licence with a good behaviour period associated with that licence.**

### 5.2.2 Character and Criminal Record Check

Every application the Roads and Traffic Authority receives for the issue of a driving instructor's licence is referred to the Police Service for a criminal record check. The RTA must take into account any information contained in the Police report when considering the application.

The Act provides that the RTA must refuse an application if:

- The applicant does not meet prerequisites (s.10);
- The RTA is not satisfied the applicant is of **good character**;
- The RTA is not satisfied the applicant is a **fit and proper person** to be an instructor;
- The applicant refused to submit to, or did not pass, any **test**;
- The applicant did not obtain a **medical certificate**;
- The applicant has engaged in **bribery or fraud relating to testing for driver licences**;
- It not be in the public interest for the applicant to hold a licence having regard to the applicant's record of convictions for **offences involving motor vehicles**;
- During the previous 10 years the applicant has been found **guilty of an offence involving fraud or dishonesty** punishable by a prison term of 3 months or more.

Provisions in the Act for a compulsory criminal records check and grounds for rejection of application based on a criminal record<sup>2</sup> are specific safeguards against lack of probity in applicants. These provisions were added as a result of the recommendations of the ICAC inquiry into corruption in the RTA licensing system.

Applicants who have a relevant criminal record may be excluded from obtaining a driving instructor's licence. The Steering Committee's view is that excluding people

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<sup>2</sup> Relevant offences are bribery or fraud relating to testing, motor vehicle offences and fraud or dishonesty punishable by prison terms exceeding three months.

with such offences assists in keeping the potential for corruption out of the industry, and provides a level of assurance for the many young people who sometimes spend considerable time alone in a vehicle with a driving instructor.

The Act also sets out the grounds upon which the RTA can reject an applicant on the basis of "good character" and not being a "fit and proper person to act as a driving instructor". These requirements are carried over from the previous Act and are consistent with legislative provisions in other states.

There is clear concern from the industry and other respondents to the review that there be no possibility of return to the pre-ICAC inquiry days when the industry was not held in particularly high repute. This view is supported by the Steering Committee.

#### **Recommendation 4**

**That the requirements in the Act relating to 'good character', 'fit and proper person' and criminal record checks be maintained.**

#### **5.2.3 Medical Fitness**

The first stages of the licence procedure require applicants who meet the age and driving licence requirements to apply for a driving instructor's licence at a motor registry. They then obtain a medical certificate from their doctor and present the certificate and four passport photographs to the RTA.

The Act provides that the RTA may require a medical certificate signed by a medical practitioner stating that the applicant is a medically fit person to be a driving instructor "having regard to the inherent requirements of the occupation of driving instructor (including safety of the public)". The RTA can also require a certificate concerning the applicant's eyesight signed by a medical practitioner or registered optometrist.

Driving instruction demands at a minimum good eyesight and the physical ability to competently operate a car. The Act (s.18, ss.3 & 4) provides that an application from a person with a disability cannot be refused on the grounds of not being a 'fit and proper person' unless that person cannot carry out the inherent requirements of the occupation. Ability to carry out these requirements is to be assessed on past training, qualifications and relevant experience.

The Steering Committee regards the public safety rationale of this requirement as justifying its retention. Many other industries and professions require their members to pass medical fitness tests, and this requirement is not regarded as being unduly onerous.

**Recommendation 5**

**That the requirements in the Act relating to medical fitness be maintained.**

**5.2.4 Instructor Training Requirements**

The Act requires applicants to undertake a compulsory driving instruction course. Currently there are two RTA-accredited providers of this course, and the average cost is approximately \$2,000 for car driving instructors. This represents an entry barrier which may be a deterrent for potential instructors.

Anecdotal evidence suggests the development of the national Curriculum and Assessment Package at Certificate III level has improved the teaching skills of instructors and the standard of learner driver tuition.

This training requirement is designed to ensure that instructors are able to demonstrate a level of competency suited to the profession, and that they have the requisite knowledge and skills to instruct and train others. Community expectation is that a driving instructor has the particular skills required to effectively train someone to drive. A client has a higher expectation of an instructor's teaching ability and knowledge of the topic than if they learn to drive with a family member or friend.

**Recommendation 6**

**That the requirements in the Act relating to instructor training be maintained.**

**5.3 Conduct Restrictions****5.3.1 Duplicate Controls**

The *Driving Instructors Regulation 1993* (s.10) requires licensed driving instructors to use a motor vehicle equipped with duplicate driving controls when giving driving instruction. This requirement applies to vehicles supplied by an instructor for pre or post-licence tuition. Duplicate controls are not required when the vehicle is provided by the learner. There is no clear definition in the Regulation of what is meant by duplicate controls.

The requirement represents a restriction, as it necessitates alterations to be made to vehicles before they can be used for paid driving instruction. Basic duplicate controls (brake for an automatic car, and brake and clutch for a manual car) cost about \$600 to install.

Duplicate controls are installed principally as a teaching aid, and are considered to improve the safety of the instruction and testing processes. Removal of the

requirement may have some impact on industry competitiveness, as it would allow new entrants to use vehicles without making alterations. This could be beneficial for people who may only be seeking to work part-time in the industry, and who regard the cost of fitting duplicate controls as a major expense.

While private applicants present for a driving test without duplicate controls, RTA testing officers perceive a benefit in their availability and have indicated they would prefer the requirement be maintained.

There is a valid argument for removing this restriction and leaving it up to individual instructors to decide whether they believe fitting duplicate controls would assist in providing driving tuition. It is likely that, if fitting of duplicate controls was not mandatory, a majority of driving schools would still fit them as a training aid, based on the perception that their availability would be valued by clients and the cost of fitting being marginal in the long term.

If the requirement were removed, duplicate controls could be used as a positive feature in advertising by instructors. An industry Code of Practice could also advocate the fitting of duplicate controls to indicate 'best practice', and as an example of industry professionalism.

Arguments for retaining the requirement to fit duplicate controls are primarily based around safety concerns. As well as enhancing safety on the road, compulsory duplicate controls could assist in fulfilling an instructor's Occupational Health and Safety obligations in terms of duty of care for the health and safety of students in the instructor's working environment.

When assessed against the objectives of the Legislation outlined in Section 4.2 above, the Steering Committee came to the conclusion that it is not necessary to mandate the fitting of duplicate controls in the Act or Regulation. The Committee believes that the fitting of duplicate controls should be a choice taken by individual instructors or schools. The Committee agreed that fitting duplicate controls would represent best practice operations, and therefore an industry Codes of Practice should consider advocating the fitting of duplicate controls.

**Recommendation 7**

**That the fitting of duplicate controls no longer be mandated by legislation.**

**That the fitting of duplicate controls be considered as a component of any industry Code of Practice.**

**5.3.2 Duplicate Controls on Motorcycles**

Under the *Traffic Act 1909* a motorcycle is a motor vehicle and is therefore required by the *Driving Instructors Regulation 1993* to be fitted with duplicate controls. This is

an erroneous requirement as it is not possible, or in any way necessary or appropriate, for motorcycles to be modified with duplicate controls.

If the Committee's above recommendation regarding the fitting of duplicate controls is not adopted, the current anomaly regarding motorcycle duplicate controls should be amended.

#### **Recommendation 8**

**That if mandatory duplicate controls are retained, the Act or Regulation be amended so that the requirement for duplicate controls on motorcycles used for instruction be deleted.**

#### 5.3.3 Use of Unsatisfactory Vehicle

Sections 53 and 54 of the Act provide that a person must not (or an employer must not permit a person to), while acting as a driving instructor, use any motor vehicle which does not comply with the various requirements of NSW Road Transport Legislation relating to the construction and equipment of motor vehicles generally or of motor vehicles used for driving instruction purposes. The maximum penalty for breach of these provisions is currently set at \$2,200.

This means that a driving instructor, whether in their own car or a car supplied by the pupil, must ensure the vehicle is roadworthy. The provision can be regarded as reinforcing the minimum standards for roadworthiness and safe use of vehicles, and therefore are justifiable restrictions on the grounds of public safety.

However, there is a view that the Act is effectively imposing a 'double jeopardy' provision on driving instructors because they are open to additional punishment if they provide tuition in an unroadworthy vehicle. It can be argued that this is appropriate because there is an expectation of increased responsibility on a driving instructor to ensure tuition occurs in a roadworthy vehicle. Alternatively, the penalty could be regarded as unnecessary because the person responsible for the vehicle (i.e instructor or student) is obliged to ensure the vehicle complies with NSW Road Transport Legislation.

Furthermore, the Driving Instructors Act only requires compliance with the construction and equipment of motor vehicle provisions of Road Transport Legislation. It is not clear why other provisions, such as registration provisions, are not also duplicated. It is suggested that if there is to be duplication, then it should be comprehensive.

Respondents to the Issues Paper generally supported retention of the 'double jeopardy' penalty. Some argued that it released them from having to be familiar with the provisions of Road Transport Legislation, but this argument is untenable because the Road Transport Legislation applies whether or not it is duplicated in the Driving Instructors Act.

After consideration, the Steering Committee came to the view that there is merit in maintaining the provisions on the use of unsatisfactory vehicle in the act and recommends that these provisions be maintained.

#### **Recommendation 9**

**That the current provisions of the act regarding the use of unsatisfactory vehicle be maintained to reinforce road safety requirements thereby ensuring instructors do not provide driving tuition in unroadworthy vehicles.**

#### **Use of Unsatisfactory Vehicle on Private Property**

The unsatisfactory vehicle provisions of the Act apply only to using a vehicle, while acting as a driving instructor, on a road or road related area. This invokes a technical inconsistency with the requirement to be licensed, which is interpreted as applying to tuition on public or private land. It is suggested that if the licensing requirements of the Act apply to tuition on private property, then the unsatisfactory vehicle requirements should also apply to private property.

Clearly a person who is paying a licensed instructor for professional tuition is entitled to expect that a vehicle is safe and roadworthy even if the instruction is being given on private property. Issues Paper respondents who addressed this matter clearly hold this view.

#### **Recommendation 10**

**That the Driving Instructors Act be clarified so that the unsatisfactory vehicle provisions (Sections 53 and 54) apply wherever licensed instruction is given.**

#### **5.3.4 Advertising**

Advertising by licensed driving instructors is regulated by s.8 of the *Driving Instructor Act 1992*. The main points to note are that the Act:

- prohibits persons who are unlicensed (or not licensed for a particular class of vehicle) to falsely advertise their services as an instructor; and
- provides that an advertisement by an instructor must specify (a) the class of motor vehicle and (b) the driving instructor licence number. (max. penalty 50 units).

Section 8 of the Act 'Unauthorised promotions' is a source of some difficulty both for the RTA and for driving instructors. Sub-sections 3 and 5 are difficult to interpret, particularly when read together, and the placing of sub-section 4 between sub-sections 3 and 5 is also not helpful. The need for the sub-sections 3 and 5, which in

effect regulate the procurement of driving instructors by driving schools, is questionable.

Sub-section 4 introduces a problem as to what are reasonable limits (if any) on the extent to which this sub-section applies. There is no dispute that it applies to car roof display boards. The difficulty arises when it comes to stickers, beer mats, complimentary pens, etc, where there is difficulty in including the amount of required information. Problems also arise when instructors change schools or schools change ownership. If some flexibility or limit is appropriate then this should be allowed for in the Act and/or Regulation.

It is questionable whether the number of an instructor's licence need be included in any advertisement. Presumably the requirement is intended to discourage advertising by unlicensed instructors.

It is noted that in this context the principal client safeguard against unlicensed instruction appears to be the requirement that a driving instructor display their licence "in a conspicuous position on the exterior or interior of the motor vehicle..." (clause 6(1) of the Regulation). The licence includes a photograph, currency date and the class of vehicle in which the holder is licensed to instruct.

Respondents to the Issues Paper generally support rewriting this section of the Act to include some flexibility of interpretation if it is to be retained, and for there to be a Code of Practice for advertising.

A Code of Practice would allow the industry to make recommendations on what is appropriate and inappropriate advertising, and could recommend that instructors include their licence number wherever possible as an example of 'best practice' behaviour.

The requirement to display the instructor's licence "in a conspicuous location on the exterior or interior of the motor vehicle" also applies to motorcycle riding instructors. Motorcycle instructors generally instruct applicants in groups and do not ride the same motorcycle as their applicants. Thus it is not practical to display the licence on the motorcycle ridden by the instructor or the students. A more practical solution is for the instructor to be required to show the licence to trainees at the commencement of each training session.



**Recommendation 11**

**That Section 8 'Unauthorised promotions' clarify that only licensed driving instructors, or persons who are able to procure licensed instructors, are able to advertise their services.**

**That the requirements to display the class of motor vehicle which the instructor is licensed to teach and the driving instructor's licence number be removed from the legislation.**

**That consideration be given to including advertising guidelines in any industry Code of Practice.**

**That the requirement for a driving instructor to display their licence "in a conspicuous position on the exterior or interior of the motor vehicle" remain.**

**Clarify that it will be sufficient for the instructor to identify themselves by showing the client their licence when providing motorcycle instruction or providing instruction using a vehicle not owned by the instructor.**

## 5.4 Other Issues in the Act

### 5.4.1 Use of Simulators

It is not proposed to amend the current position that theoretical or classroom instruction is exempt from the requirement to obtain a licence. For example, instruction given to assist in passing the RTA Driver Knowledge, provided it is not given in-vehicle, does not require a licence.

S4.1(1) of the Driving Instructor Regulation 1993 does not regard as a driving instructor a person who provides instruction using a simulator.

Although there may be an increasing use of simulators in driving instruction and there is every possibility that simulators may, in future, come to substantially replace on-road tuition, the Steering Committee is of the view that presently there is no justification for restricting use to licensed instructors. However, the RTA should continue to monitor their use in driving instruction and driver training.

**Recommendation 12**

**That s.4(1) of the *driving instructor regulation 1993* not regard as a driving instructor a person who provides instruction using a simulator.**

**5.4.2 Post-licence Instruction**

The Act requires that all persons '*who, for any monetary or other reward, gives another person instructions for the purpose of teaching that person to drive a motor vehicle*' be licensed.

This is understood to include not only instruction given to learner drivers, but instruction given to people who already hold a licence for the class of vehicle in which they are being taught e.g:

- advanced and defensive driving instruction to Provisional and full licence holders;
- instruction in special vehicle types or for specialist employment (four wheel drives, ambulances, bush fire vehicles, etc);
- instruction prior to re-test, e.g. aged drivers;
- in-house refresher training (road freight companies).

Post-licence instruction is designed to improve a driver's car handling ability, rather than provide fundamental instruction on how to drive a car. Clients who elect to undertake post-licence instruction have already demonstrated that they are able to control a car and are knowledgeable of the road rules, unlike learner drivers.

It is noted that Queensland and Victoria do not require licensed driving instructors for post-licence instruction.

The following factors emerged when consideration was given to limiting the scope of the Act to instruction being given to learner drivers:

- post-licence instruction is not associated with driver licensing;
- this area of instruction is not subject to significant complaint or community concern;
- the types of post-licence instruction are so diverse that effective management is not practicable;
- clients are usually mature and better informed than learner drivers;
- specialist providers tend to be mobile and State instructor licensing laws are restrictive.

In essence, licensing of post-licence instructors is seen to be unnecessarily restrictive, serving no major purpose and represents an inappropriate restraint on open market competitive supply.

Strongly divergent views were expressed on this issue in responses to the Issues Paper. Advanced/defensive driving school proprietors and instructors clearly do not support post-licence instructor licensing, whilst novice driver instructors generally do.

After full consideration of the range of issues in this topic the Steering Committee concluded that, from a competition policy viewpoint, there was not an adequately substantiated case to continue to require the licensing of post-licence instructors.

#### **Recommendation 13**

**That instructors giving post-licence instruction, i.e. instruction to drivers who already hold the class of licence for the vehicle in which they are receiving instruction, not be required to hold a driving instructor's licence.**

As discussed in section 5.3.2 above, duplicate controls are required to be installed on vehicles used for post-licence instruction. It has already been argued that the requirement for licensed instructors to fit duplicate controls should be removed from the legislation, and that post-licence instructors should not be required to hold a driving instructor's licence. Acceptance of either of these recommendations would remove the requirement for post-licence instructors to fit duplicate controls.

The Steering Committee reiterates its view that the fitting of duplicate controls is a matter of choice for the instructor.

If neither of the recommendations discussed above impacting post-licence instruction are adopted, the Steering Committee believes post-licence instructors should not be required to install duplicate controls. Post-licence instruction is fundamentally different from tuition of learner drivers, and it should be up to the discretion of the instructor (or school) whether they fit duplicate controls to their vehicles.

#### **Recommendation 14**

**That, if both recommendations 8 and 13 are not adopted, the Act or regulation be amended to ensure that post-licence instructors are not required to fit duplicate controls.**

### 5.4.3 In-House Driving Instruction

Situations often arise where a person gives driving instruction as one component of their employment duties. For example, a number of organisations (eg major road freight companies) employ company trainers to provide driving assessment and refresher and/or specialist driver training to employees, or regular company drivers may at times be used as accompanying drivers for licence upgrade driving experience.

It has been questioned whether the definition of 'driving instructor' applies in these in-house situations, and therefore whether an instructor's licence is required. Legal advice indicates that under the current Act an instructor's licence is required. This confusion indicates there is scope to improve the definition of 'driving instructor' to deal with the above situations.

Victorian legislation defines driving instructor as a person who "for hire or reward or in the course of any trade or business, gives another person instructions ...". It would appear useful to adopt a similar definition in the NSW Act in order to provide greater certainty about when an instructor's licence is required.

In many cases the in-house instruction takes the form of post-licence instruction, i.e. further tuition once a licence has been obtained. Therefore, consistent with recommendation 15, the Act should ensure that in-house trainers who give instruction to learner drivers or for licence upgrades are required to hold an instructor's licence, but if in-house training is for the purpose of post-licence instruction then no licence should be required.

#### **Recommendation 15**

**That the definition of a 'driving instructor' in the Act be amended to include instruction "in the course of any trade or business" to more clearly explain the current scope of the definition.**

**Deliverers of 'in-house' driving instruction (instruction given by company personnel to other company personnel) be licensed driving instructors when instruction is given to learner drivers or those seeking to upgrade their licence, but not when instruction is given in a vehicle for which the trainee is already licensed to drive.**

#### **5.4.4 Organisations exempt from the Driving Instructors Act**

A number of government instrumentalities are currently exempt from the Act. Specifically, under s.4(2) of the *Driving Instructor Regulation 1993*, a person "who is employed or otherwise engaged to provide driving instruction to employees of the Police Service, the New South Wales Fire Brigades, the Ambulance Service, the State Rail Authority or the State Transit Authority for the purposes of their employment is not a driving instructor for the purposes of the Act when providing that instruction." s.4(3) of the Regulation exempts persons instructing bush fire brigade members and staff.

These organisations were exempt under the 1961 Act and for expediency were also exempted again in 1992, the intention being to remove the exemptions in a timeframe mutually acceptable to the RTA and the organisations.

It is noted that the Act contains no statement as to whether it is binding with respect to Commonwealth law, and the Defences Forces have so far presumed that they are exempt from the Act.

From both social and competition equity viewpoints it is inappropriate that concessions are allowed to government instrumentalities simply because they are government instrumentalities. If there is a requirement for licensing driving instructors, as such, then the provisions should apply equally to both the public and the private sectors.

The Regulation exempts any person who instructs an employee of one of the listed organisations. While initially intended to exempt instrumentality employees, this is not how the Regulation is worded. In an environment where government is increasingly using outsourced services, this regulation allows instrumentalities to hire unlicensed and potentially unprofessional instructors to instruct their staff.

There is growing acceptance by government instrumentalities that it is inappropriate for them to be operating on a concessionary basis. Both the State Transit Authority and Railway Services Australia have now licensed their driving instructors, and they are conducting licence assessments to full RTA Competency Based Assessment requirements. In case of, for example, a coronial inquiry, they can claim their drivers have complied with RTA standards and procedures. The Police Service has also decided to licence their instructors. Respondents to the Issues Paper very strongly support that the exemption be withdrawn.

Driving instructor organisations and driving instructors generally do not support the exemptions. Typical comment included "No government instrumentalities should be exempt from the Driving Instructors Act. If the Act is there for the common good of the public why is some part of it exempted?", and "It should be withdrawn as it could be regarded as unethical".

Reaction from government instrumentalities was mixed. One government authority stated "to maintain ethical and codes of best practice, together with establishing greater credibility in the eyes of the driving instruction industry and general public, the exemption for all government instrumentalities should be withdrawn". Another authority advised that it would continue to seek exemption from the Act.

However, most driving instruction given to government employees is post-licence instruction. It is specialist training given to staff who already hold a licence for the class of vehicle in which they are to receive instruction. Should recommendation 15, exempting post-licence tuition from the need to hold an instructor's licence be adopted, the impact on government instrumentalities is likely to be minimal. Even if licensing of post-licence tuition continues, the exemption for government instrumentalities should be withdrawn.

In conclusion, it is proposed that the exemptions of public instrumentalities be withdrawn.

**Recommendation 16**

**That the current exemption of some government instrumentalities from having to comply with the Act be withdrawn, with affected instrumentalities being allowed a reasonable time in which to arrange compliance.**

**That the Defence Forces be encouraged to comply with NSW driving instructor licensing requirements.**

**5.4.5 Conditional Licence**

The Driving Instructors Act (s.19) currently provides that a licence may be issued to an instructor subject to such conditions as the Authority may determine. As outlined earlier, one form of condition placed on a licence was to allow an instructor to teach applicants before the instructor completed the second stage of practical training and assessment conducted by TAFE. In these circumstances the instructor was providing tuition to clients who were generally unaware that the instructor had only completed the first stage of their training.

Should novice drivers be paying for a service where the instructor has not been fully trained or assessed? Is it appropriate that the RTA issue an instructor's licence to person who is not yet fully qualified? Issues Paper respondents generally believe that this concession should not be allowed. For example "It is unprofessional to allow partially trained instructors to provide lessons for reward on the commercial arena."

With the establishment of accredited commercial driving instructor training providers and the discontinuation of the previous TAFE course, this concession is no longer being granted by the RTA and all trainees must fully complete all training and assessments before being issued with an instructor's licence.

**Recommendation 17**

**That the RTA continue to no longer allow the Conditional Licence provisions in the Act to be used to issue driving-instructor licenses to applicants who have yet to meet the training and competence standards for issue of a full licence.**

**5.4.6 Private Instruction**

The Act only requires all persons "who, for any monetary or other reward, gives another person instructions for the purpose of teaching that person to drive a motor vehicle" to be licensed. Any person who holds an unrestricted driver's licence may supervise and instruct a learner without holding a driving instructor's licence, provided this is not done for reward in any form.

It is often suggested, principally by driving instructors, that all learner drivers should undertake some form of compulsory instruction from a driving instructor, and even that only licensed driving instructors be allowed to instruct learner drivers. The arguments used in these instances centre on safety, and whether a driver taught by an instructor is a better driver than one taught privately.

The issue of compulsory instruction by a licensed instructor is a matter of Government policy regarding novice drivers and road safety generally. The recent introduction of the 50 hour logbook requirement could result in learner drivers undertaking some form instruction with a licensed instructor, rather than relying on friends or family.

## 6 Costs and Benefits of the Current Regulatory Regime

National Competition Policy reviews are required to examine the costs and benefits of the existing regulatory regime, and any alternative arrangements. This process recognises that legislative restrictions create both costs and benefits, and both need to be considered when restrictions are examined. The *Competition Principles Agreement* requires that restrictions be retained only when it can be established that the benefits outweigh the costs.

### 6.1 Benefits

Many of the benefits of the current regulatory regime (and possible alternatives) have been raised in the preceding chapters. The benefits generally accrue to those who use driving instructors and the community in general, and as such can be classed under the broad heading of consumer protection. There are also elements of road safety associated with the licensing of driving instructors.

#### 6.1.1 Consumer Protection

This is an important consideration, since most driving tuition involves young applicants and is undertaken in the privacy of a motor vehicle. These factors combine to produce a high level of **vulnerability** of the applicant to corrupt/unethical behaviour, harassment or sub-standard tuition (either in quality or quantity). In the closed environment of a private vehicle, it is difficult for the applicant to obtain proof that an instructor was sub-standard in order to seek redress. This situation is unlike most other areas of consumer-supplier relations, where the evidence of poor workmanship and the like are more obvious. Patronage of driving instructors is likely to drop if people are not confident overall that driving instructors are competent and honest.

While the current legislation imposes costs on driving instructors (and also on those instructors who may lose their job by having their licence cancelled for any one of a variety of reasons), there is a corresponding benefit in greater public confidence in the system, and hence a greater inclination to use professional driving instructors in preference to private tuition.

It might be argued that appropriate regulation can be pro-competitive through enhancing the opportunity for the industry to provide choice and for customers to make informed choices whilst being assured through the protection of the regulation that inappropriate operators are excluded from the marketplace. Without regulation, disreputable driving instructors are likely to offer poor quality instruction to young, impressionable customers, many of whom are not in a position to make informed judgement on the service.

If the customer is not able to differentiate between good and poor products before buying, the market becomes economically inefficient and the overall level of demand may be suppressed by lack of buyer confidence. The driving instruction market is



particularly vulnerable to this effect, since a "free" alternative (i.e private tuition by a friend or relative) is available to many people.

### **6.1.2 Road Safety**

The effect of the Driving Instructors Act on accident rates is difficult to establish. There has been a downward trend evident in both accident numbers and fatalities since the late 1970s. This has been the result of a combination of many factors, including:

- improved roads;
- compulsory seat belts;
- improved driver licence testing;
- road safety education in schools;
- safer vehicles; and
- greater enforcement, particularly of speeding and drink-driving laws.

It is not possible to determine the exact extent to which driver training in the broadest sense, or the provisions of the Driving Instructors Act in particular, have contributed to this reduction.

There is international literature which questions the value (in accident reduction terms) of post-licence defensive driving courses, however the value of commercially-provided versus private learner driver training is difficult to establish. In 1999, a slight majority of car licence applicants who presented for testing, after going through driving schools, had a marginally higher pass rate (NSW Vehicle & Driver Statistics 1999). The reasons for the higher pass rate are unclear, but may be related to some commercial tuition being aimed at coaching the student to pass the test.

This does not necessarily imply that commercial trainers are producing better drivers with more appropriate attitudes to the driving task. There is a counter view that private tuition with family members or friends may make up for any lack of technical content by additional on-road hours, since there are no direct costs to the learner. On-road experience is generally acknowledged as a valuable contributor to road safety.

Nevertheless, learner drivers are not able to gain a provisional licence until they pass the Driving Ability Road Test (DART). The DART requires drivers to demonstrate they have adequate skills and knowledge of driving a car safely, decision making and awareness of other road users. Driving instructors are one method of gaining these skills and knowledge, and therefore could be regarded as contributing to road safety by ensuring learner drivers are adequately equipped to pass the DART.

In addition instructors, as part of the tuition process, may also pass on 'better' driving techniques that will stay with the learner driver over a long period of time. This can be regarded as a positive contribution to road safety that may not occur for a person who uses family/friends rather than a licensed instructor.

Given the difficulty in linking tuition with a licensed instructor and any definite general road safety benefit, it may be that the only road safety benefit accrues to the learner class. That is, there may be a road safety benefit for the student in learning to drive with a licensed instructor who has received specialised training and may have duplicate controls, compared to private instruction with a parent, friend, etc.

## 6.2 Costs

There is a range of costs associated with the regulation of the driving instruction industry by the Driving Instructors Act. Some impact directly on the members of the driving instruction industry and others on consumers, the RTA and Government. These costs are detailed in Appendix 5.

### 6.2.1 Costs to Industry

In the process of qualifying for a car instructor's licence, an applicant incurs the following costs:

- RTA test fees \$70
- Medical examination \$36
- Training course fees \$2000
- Photographs \$10
- Licence fees \$117

Thus it costs of the order of \$2,230 to obtain a car driving instructor's licence.

Car driving instructors are also required to have duplicate controls fitted to their vehicle. Installation cost is about \$600.

For a heavy vehicle instructor's licence the costs are of the order of \$1,100 and \$950 for a motorcycle instructor's licence.

It is noted that the major costs are associated with training and assessment to ensure that the applicant has the requisite knowledge and skills to enter the driving instruction industry. Community expectation is that a driving instructor has the particular skills required to effectively train someone to drive safely. A client has a higher expectation of an instructor's teaching ability and knowledge of the topic than if they learnt to drive with a family member or friend.

After becoming licensed, ongoing costs to meet Act requirements are the licence fee, renewable every five years, which averages \$23.40 per annum and the cost of record keeping. The marginal cost of additional record keeping required by the Act is assessed at \$0.50 per applicant or about \$60,000 per annum for the industry.

Thus, based on 200 new car instructors, 80 heavy vehicle instructors, and 40 motorcycle instructors entering the industry each year, and a continuing average of 3,000 instructors within the industry the total annual cost of regulation for the industry is \$ 820,000. This comprises \$ 690,880 (84%) for new entrants and \$ 129,000 (16%) for continuing costs.

Thus the major component of industry costs associated with regulation relate to initial training, testing and the fitting of dual controls. The continuing costs, once an instructor is licensed, are minimal. Clearly the continuing costs of regulation for the industry are not having a significant impact on the cost of instruction. However the costs of entry may be limiting the number entering and within the industry. This may impact on fee levels which the market is thus unable to sustain. This issue is dealt with in more detail in Section 4.2.

### **6.2.2 Costs to Government**

As indicated in Appendix 5, RTA costs to administer the licensing process are estimated at \$227,000 annually. The RTA also incurs costs of approximately \$ 25,000 annually in investigating unlicensed instruction and about \$30,000 in court costs related to the Act. The Police Service is estimated to spend about \$84,000 per annum on investigation of driving instructor's licence applicants. RTA annual income from ongoing licence fees is approximately \$ 69,000. Fines average \$10,000 per annum. The net cost to Government is thus assessed to be approximately \$287,000. Whilst, clearly, the Government does not achieve full cost recovery, the outlays for continuing management of the driving instructor licensing system appear, in comparative terms, reasonable and not inappropriate.

### **6.2.3 Total Direct Cost**

By combining costs to the driving instruction industry with the Government costs, as indicated in Appendix 4 the total direct cost of compliance with the Driving Instructors Act is estimated to be about \$1,200,000 per annum. It is noted that about 58% is associated with licence applicants meeting the entry costs of training, testing and fitting of dual controls to their vehicles.

### **6.2.4 Costs to Consumers**

The current regulatory regime does impose direct costs on consumers, or the students of driving instructors. The main cost is the fee charged by licensed driving instructors. The key issue that needs to be assessed is whether regulation excessively influences fee levels and the availability of instruction to a point where regulation is no longer in the public interest, i.e tuition fees are too high and there are not enough instructors to meet demand.

The experience of Victoria allows a comparison of the impact of regulation/deregulation on fee levels and the number of driving instructors. As discussed in section 3.2.1, the Committee established in Victoria to review the deregulated instruction market found that:

- the market for driving instructors was excessively competitive (i.e too many instructors) resulting in unsustainable fee levels (i.e too low); and
- tuition standards had dropped under deregulation.

Regulation of driving instructors means that the number of potential instructors is restricted as a result of entry barriers to the market. This means that consumers will experience potential inconvenience (cost) in some areas because there is a reduced choice in the instructor market.

With a reduced number of instructors there is a corresponding reduction in competition, so instructors are able to charge higher tuition fees (compared to a deregulated market).

In section 2.1 it was noted that there is a variety of prices and pricing structures charged by driving instructors. Instructors can charge per lesson (between \$20 and \$50 per hour for cars and up to \$120 per hour for heavy vehicles), or offer a single charge of between \$300 and \$500 for instruction until the Driving Ability Road Test (DART) is passed.

### **6.3 Conclusion**

Due to the uncertainty regarding any definite road safety benefits, and the inability to quantify consumer protection benefits, the Steering Committee is required to take a qualitative approach and make informed judgements when comparing the costs and benefits of the current regulatory regime.

Although the costs to industry and Government of the current licensing regime amounts to approximately \$1.2 million, and the regime adds to consumer costs when compared to a deregulated market, the Steering Committee concludes that, on balance, the costs identified are not an excessive cost when compared to the benefits received by the community from licensing driving instructors.

Although regulation may result in higher tuition fees and less consumer choice in terms of the absolute number of instructors available, this needs to be balanced against the benefits that have been identified as resulting from regulation:

- improved customer protection through
  - reduced exposure to inappropriate operators;
  - reduced potential for corrupt practices; and
  - improved competence of instruction.
- possible road safety benefits.

The Steering Committee believes that, although regulation does impose additional costs on consumers when compared to a deregulated market, the benefits of regulation more than make up for those additional costs.

It should also be noted that, in Chapter 5, the Steering Committee identified a number of reforms that have the potential to further reduce the costs of the licensing regime without compromising these benefits, such as removal of the requirement to install duplicate controls.

## 7. Regulatory Options

The terms of reference of this review require consideration of not only specific issues relating to the driving instruction industry, but also whether an alternative regime for management of the industry might be more appropriate for the future. A number of options have been considered and have been the subject of extensive discussion during the consultation process. They vary in the degree of control which would be exercised by Government and in the level of self-regulation that may be expected of, or provided by, the industry itself.

Alternative regulatory options need to be assessed against the objectives of the Act to ensure all objectives can be met. The option that provides the greatest net public benefit should then be selected.

### 7.1 Alternative Models

Respondents to the Issues Paper were asked to comment on the following issue:

*Which, of the following alternatives, would be the most appropriate future regime for:*

- *complying with the Competition Principles Agreement (which requires that legislation should not restrict competition unless it can be demonstrated that the benefits to the community as a whole outweigh the costs and the objectives of the legislation can only be achieved by restricting competition), and*
- *ensuring the professionalism, competence, and probity, coupled with a road safety and customer focus, of the driving instruction industry:*

1. *Retention of the existing legislation framework - the status quo with possible amendments?*
2. *No regulation?*
3. *Self or Co-regulation?*
4. *Other industry management systems e.g:*
  - *regulation of businesses?*
  - *negative licensing?*

*Are there other models that warrant consideration?*

In summary the response was:

- There was full support for retention of the existing legislative framework. There were no responses arguing against retaining the existing framework.
- There were no responses in support of de-regulation. All respondents addressing this issue rejected the concept.
- There was about equal support for and against self or co-regulation.
- Few commented on other possible industry systems and most were against any other models.

### **Option 1 - Negative Licensing**

Negative licensing is a regulatory system designed to ensure that individuals who, by their behaviour, have shown themselves to be incompetent, irresponsible or lacking in probity, are precluded from operating in a particular industry.

Basically there are a set of regulated requirements for entry and continuation in the industry, but there is no review process prior to entry or a licensing process as such. Checking is through audit processes or when, for some reason, a person comes to notice.

Under this model more emphasis is placed on continuing compliance and actual performance. Instructors who come to notice for not meeting set standards would be removed from the industry. Supporting reporting, investigative and audit systems would be required to effectively identify non-performers. It is possible that this model could include a significant degree of self-regulation with industry establishing the control, audit and performance review processes supported by a regulatory regime which allows action to be taken based on industry verified evidence.

### **Steering Committee Assessment - Not Recommended**

The benefits of negative licensing models centre around reduced administration costs for industry and Government, in that the application and approval process would not be needed. The requirements of the Act regarding who can operate in the industry would still apply.

The regulatory focus would be on compliance via an audit process and monitoring of complaints. Given the nature of the consumers in this market, the objectives of the legislation and the market failures identified earlier, the Steering Committee felt that negative licensing would not provide the same level of benefits that exist under the current regulatory model.

### **Option 2 - No Regulation**

If no particular legislation was in place concerning driving instructors or driving schools, then the total initiative for any setting and maintaining of standards would be with the industry itself.

From a regulatory viewpoint, an instructor would be an individual in society who complied with the Traffic Act and other related legislation regarding their vehicle, their fitness to drive as an accompanying driver with a learner, vehicle insurance, etc. As business persons, they would have to continue to comply with legislation such as the Fair Trading Act regarding the conduct of their businesses and in their dealing with clients, with Federal laws regarding keeping records for taxation, etc. There would be no specific requirements to be met to enter the driving instruction business.

The comparative model for this alternative is the recent Victorian experience, where the industry was deregulated in 1993 but has since been re-regulated (see Section 5.2.1).

### **Steering Committee Assessment - Not Recommended.**

This concept is strongly rejected by respondents. The Steering Committee supports this position, particularly as deregulation has the potential to reopen some of the practices which resulted in the establishment of the ICAC inquiry into the industry. The Steering Committee does not accept that deregulation offers any guarantees that the objectives of improving integrity and deterring corrupt and improper behaviour will be able to be met in an adequate manner.

As previously discussed, deregulation in Victoria was a failure because excessive competition led to loss of quality of instruction, and no control over the integrity of persons giving instruction.

### **Option 3 - Self-regulation or Co-regulation**

Rather than move directly to an unregulated environment, as Victoria did in 1993, one option is to move progressively towards self-regulation of the driving instruction industry through a process of decreasing regulatory support while encouraging the industry to establish its own regimes for ensuring professionalism, competence and probity.

#### **The Queensland and Victorian models**

The recently introduced system in Queensland and the reintroduced system in Victoria, where entry requirements are regulated through legislation but Codes of Practice are set by the industry, are recent examples of co-regulation. These are more fully described in Chapter 3.

As an opportunity has arisen for all three States to adopt very similar systems, the Queensland and Victorian models merit close consideration.

#### **The Professional Standards Council**

Another possibility, available in NSW, is for co-regulation through the Professional Standards Council. The Professional Standards Council was established in 1995 to:

- approve and monitor professional standards schemes which limit civil liability of members of professional and other groups;
- improve standards;
- protect customers.

The Council is constituted under the *Professional Standards Act 1994*, and the scheme comes under the auspices of the NSW Attorney General.



The Scheme works through industry associations rather than through individuals and has been adopted, for example, by the Institution of Engineers Australia and the Law Society of NSW.

There is potential for the driving instruction industry to come under the program either in lieu of the Driving Instructors Act or as a complementary strategy to an amended Act.

### **Steering Committee Assessment – Not Recommended**

The Steering Committee supports the fairly frequently expressed view that, while co-regulation may be an objective for the future, the industry is not yet ready to take on this responsibility without a regulatory support base. The Committee does agree that there are areas of industry management where self or co-regulation could be introduced. Indeed some of these issues are more appropriately addressed by industry rather than by Government even though, to date, the perception has been that Government is responsible for all industry matters.

There are two levels at which industry self or co-regulation could work: via driving schools or driving instruction industry associations. There is potential for the result to be a combination of both.

However, because of the disparate nature of the industry, as it currently stands, it would be difficult for the industry to take on the role of ensuring that adequate levels of professionalism, competency and probity exist and to move directly to a self-regulation or co-regulation framework.

### **Option 4 - Regulation of Driving Schools, not individual instructors**

This concept is that provisions similar to those currently in place for professionalism, competence and probity would apply but it would be the responsibility of businesses, i.e. driving schools, to ensure that the standards are met. For this, schools would have their own quality management and performance monitoring systems which could well be subject to audit. Non-compliance would be an issue between Government and the driving school in question, rather than with an individual instructor (although any matter might pertain to an individual instructor).

### **Steering Committee Assessment – Not Recommended**

Although one respondent tabled a thoroughly considered and cogent argument for regulation of driving schools rather than of instructors, this concept has received little support from industry which still sees itself as based more on individuals rather than on organisations. As argued above, the fact that driving schools do not encompass the majority of instructors means there are potential difficulties in adequately fulfilling the objectives of the current legislation.

What does seem more viable and acceptable is a system which regulates, on an individual basis, who may enter and operate within the industry and to use driving schools in a co-regulatory role to ensure consistency of quality, customer service, etc.

### **Option 5 - Retention of the Existing System, with possible amendment**

At the very minimum, some fine tuning of the legislation appears inevitable as a result of this review process. This option would retain the existing framework, a positive licensing system with stringent entry requirements, as a basis for any change. Amendments could be made to the existing regime to steer the industry in a direction the industry and Government regard as appropriate for the future. The core issue to be addressed with retention of the current legislation is whether the legislation provides an appropriate basis for the future direction of the driving instruction industry, or whether it should be amended accordingly.

Areas where changes might be made within the context of the existing regulatory framework, include:

- regulation only of instruction relating to driver licensing;
- deletion or amendment of the advertising requirements;
- requirements relating to performance and quality of instruction;
- customer complaint mechanisms;
- deletion of current exemptions;
- insurance requirements, etc.

### **Steering Committee Assessment – Conditionally Supported**

This option has almost universal support and is, of course, the simplest, most comfortable and least challenging solution. However, the Steering Committee does not necessarily see this model as being in the long-term best interests of the industry, or consumers. Nor does this option necessarily reconcile with the NCP requirement that legislation should not restrict competition unless the benefits outweigh the costs, and the objectives of the legislation can only be achieved by restricting competition.

While the existing regulatory framework may represent the best alternative in terms of meeting the objectives of the Act, the Steering Committee believes that there are elements of the current regime that do impose too great a cost on the industry, consumers and government.

## 7.2 The Preferred Option

To a large degree the basis for a preferred option has been developed in the preceding chapters. In summary, the previous discussion and recommendations have established that:

- significant market failure can be expected if the industry were to be deregulated;
- the current industry is sufficiently competitive and consumers have adequate choice as to price, availability and level of service;
- the current entry provisions to becoming a driving instructor are not unnecessarily restrictive;
- the provisions of the current Driving Instructors Act and Regulation continue, with some minor exceptions, to be relevant;
- the retention of integrity and probity should be an important objective of any regulatory model;
- any revised regulatory system should be compatible with systems operating in other States, in that the system be recognisable under the Mutual Recognition Act;
- the Driving Instructors Act and Regulation, or any alternative regulatory regime continue to be administered by the Roads and Traffic Authority;
- an industry Code of Practice, developed in conjunction with the NSW Government and managed by the industry, would assist the standing of the industry;
- the current level of direct costs for ensuring compliance with the Driving Instructors Act are acceptable; and
- any unnecessarily restrictive provisions in the current Act and Regulation should be abolished or amended, provided that integrity and quality of service are not significantly compromised as a result.

### Core components of the Proposed Regime

#### Core Regulatory Framework

It is proposed that a core regulatory framework for licensing driving instructors be retained containing the following components of the current Driving Instructors Act and Regulation:

- entry conditions, including age, licence status, probity, traffic and criminal record, licence tenure, not being previously engaged in fraud and corruption, character (fit and proper) medical fitness and testing requirements
- compulsory training requirements
- cancellation, suspension and renewal of a licence
- advertising requirements (amended)
- appeals provisions
- prohibition of certain persons from conducting a driving school

- keeping of records relating to driving instructors and driving schools
- identification requirements
- unsatisfactory vehicle provisions (amended)
- display of driving instructor's licence

### Issues For Deregulation

In the interests of supporting competition and an open market where restrictions are not essential the following requirements of the current Driving Instructors Act are proposed for deletion or diminution:

- fitting of duplicate controls
- licensing for post-licence instruction
- some advertising requirements
- deletion of Government instrumentality exemptions from the Act
- minimum driving licence tenure for instructor licence applicants.

Putting in place the above revised regulatory approach would allow the industry to investigate moving towards greater self regulation under a scheme administered by the Professional Standards Council. Such a scheme is the core proposal in a major submission to the Committee by one of the largest driving instruction industry associations in NSW and the only one with a national base.

Briefly described in Section 6.3 the scheme will now be discussed in more detail.

### Application of the Professional Standards Council Scheme to the Driving Instruction Industry

The scheme operates through industry associations. This appeared to be a stumbling block as it would be inappropriate, given the terms of reference of the Review, to be recommending further regulation through requiring that driving instructors be a member of an industry association. However, the scheme could be voluntary for instructors, who would still need to be a member of an association, and participation could be encouraged by both Government (particularly the RTA) and industry promotion of the benefits to clients of engaging participating instructors.

While the RTA has steered clear of promoting driving schools, driving instructors and driving instructor associations in the past, and this policy would remain, the Professional Standards Council scheme, being a Government program administered by the Attorney General's Department and focused on professional service delivery, can quite legitimately be promoted. Thus Government would be able, in a very practical way, to encourage industry self-regulation.

Concerns that the scheme would promote a monopoly situation for driving instructor associations have also been allayed. The Professional Standards Council is prepared to work with more than one organisation representing a particular industry and already works with some quite small industry associations. Thus those

individual instructors and/or driving schools which are currently not associated with a particular industry association could form further associations, should they wish, so as to participate.

The areas which it is envisaged the scheme would cover include:

- a charter, concerned with broad objectives, such as road safety, working with stakeholders, etc;
- an industry code of ethics and business practice;
- quality of service, and quality management and accreditation;
- monitoring provisions; management, administration, quality, pass rate. etc;
- consumer protection and advice;
- receipt and resolution of complaints;
- disciplinary proceedings;
- content of advertising (correctness and road safety positive);
- standard curricula for instructing learner drivers;
- standard progress assessment procedures;
- age and condition of vehicles;
- responsibilities and roles of driving schools;
- delivery and curricula for post-licence instruction;
- insurance requirements;
- eligibility;
- disciplinary procedures and measures.

Clearly, such a scheme has the potential to assist people in making purchasing decisions, substantially increase the professionalism of the industry, and increase the industry's standing in the community; with minimal involvement by Government.

The proposed scope of the scheme in some areas is somewhat beyond the present scope of PSC schemes but the Council appears keen to take the issues on board. One particular element which is missing at the moment is a strategy, in terms of a logo and motto, which supports presenting a clear message to the community of the advantages of engaging the services of a scheme participant.

#### **Recommendation 18**

**That the following regime be adopted for future management of the NSW driving instruction industry:**

- retention of a core regulatory framework for licensing of driving instructors;
- deregulation of a number current requirements of the Act;
- endorsement and encouragement of a system of self regulation within the driving instruction industry.

## 8 Other Issues for Examination

### 8.1 Quality of Instruction

The Act and Regulation principally cover the requirements for issue of a driving instructor licence. The licence can be cancelled for not being a person of good character, not being a fit and proper person, for engaging in fraud and corruption, or having a poor driving record. These issues do not directly relate to the instructor's professionalism in the actual delivery of instruction. Under s.25 of the Act, the only recourse open to the RTA is to retest any of the following, but only as often as necessary in the public interest:

- driving competence;
- knowledge of legislation relating to the driving of motor vehicles;
- knowledge of the Act and Regulation;
- ability to teach persons to drive motor vehicles; or
- medical certificates.

It has been suggested that:

- instructors be required to instruct to a standard curriculum;
- instructor's client pass rates be monitored and used as a criteria for assessing instructor competence;
- where inadequate instructor performance is confirmed, say, through investigation of consistent complaints, that action be able to be taken with respect to the instructor;
- instructors be retested on instructor licence renewal.

There is currently no standard agreed curriculum for instructing novice drivers. At present clients come to driving instructors at all stages of the learning process and with vastly varying levels of ability, and therefore require an individual program of tuition.

It is noted that South Australia has implemented a standard training curriculum for novice drivers under its car driver competency based training and assessment system.

As discussed earlier in this report, an instructor cannot force a client to continue taking instruction until the instructor is satisfied the client will pass the driving test. Some instructors succumb to client wishes for an early test. Others refuse to present a client who is not ready. At the other end of the spectrum, some instructors virtually hire out their cars to allow a learner drive to attempt the Provisional Licence driving test.

Monitoring of pass rates, with the power to take action on poor performance, would have a major impact on business practices but it might also significantly improve the performance and professionalism of the industry and place it in higher regard with

the community. Is it appropriate that Government interfere in what is currently freedom of choice? Is this a matter for the industry to resolve? After all, from an RTA viewpoint, the client does not get a licence till they have passed the test.

Following review of responses to the Issues Paper, it is clear there is some degree of support for standard training curricula. It is proposed that the RTA continue to support the driver training industry in development of standard competencies and curricula for training novice drivers but, as these are subject to continuing review and development and flexibility of delivery is important in meeting client needs, there be no mandated requirements to teach specifically to the standards.

The issue of quality of instruction can be principally regarded as an industry self regulation matter. The market is providing adequate choice of service providers (instructors), and clients are free to change instructors where they are not satisfied with the service given.

However there is seen to be a point at which the RTA should take action where there are clear and consistent concerns with the quality of instruction given by an instructor. It is considered that the provisions of s.25 of the Driving Instructors Act are adequate to allow reassessment of an instructor's ability where 'the Authority considers necessary in the public interest' and the RTA should perhaps be more closely monitoring instructors and exercising the rights given under this provision of the Act.

#### **Recommendation 19**

**That the driver training industry continue to develop competencies and training curricula for use within the industry with the assistance of the RTA.**

**That the RTA make greater use of Section 25 of the current Act to retest driving instructors where this is appropriate as a result of complaints or performance monitoring programs.**

## **8.2 Insurance**

As highlighted earlier in this report, the Act does not mandate any insurance requirements which might be considered appropriate to the business of driving instruction e.g:

- third party property vehicle insurance;
- public liability insurance (for events occurring with clients not covered by compulsory third party injury insurance); or
- professional indemnity insurance.

The potential arises for a student who is driving an instructor's vehicle under instruction to be involved in a traffic accident in which the student is found to be at

fault. If the vehicle is not insured for third party property damage the question of fault and responsibility for payment of damages may become difficult. Similar problems, leaving the client and/or the instructor exposed, can arise in the absence of public liability and professional indemnity insurance.

There was very strong support, from the consultation process, for compulsory insurance. The Department of Fair Trading also considered that if such insurances are not to become mandatory, there would be a need for extensive consumer education to alert novice drivers to the risks and potential liabilities involved.

However the Steering Committee had mixed views on the matter, with some members considering that having such insurances might well be prudent to protect driving instructors while other saw the insurances as essential for providing adequate consumer protection. The issue of compulsory insurance can also be seen as a matter requiring a government policy decision, or one that should be addressed in an industry Code of Practice.

The process of driving instruction has the potential to become a fertile ground for litigation. It is appropriate that some consideration be given to the situation of the trainee. The trainee could, in the event of an accident, find himself or herself at risk of legal action at the suit of:

- the instructor; or
- an injured bystander; or
- the owner of property damaged in a collision.

If the instructor or driving school carries adequate insurance, the trainee will be well protected. Indeed, in the event of injury to a bystander, the normal situation would be that compulsory third party injury insurance under the *Motor Accidents Compensation Act 1999* would be available regardless of any action by the driving instructor. If the vehicle is comprehensively insured, neither the instructor nor any other person who suffers property damage is likely, at the practical level, to pursue any claim against the trainee.

Unless the vehicle is comprehensively insured, it is conceivable that a trainee could sustain liability at the suit of the instructor in respect of damage to the instructor's vehicle. It is thought that the instructor would bear a heavy onus to establish that the duty of care which could reasonably be expected of a student of the experience of the trainee had been breached but it is also thought that many trainees would not contemplate the prospect of such liability.

The Steering Committee considered three options for dealing with this issue:

- a) legislate so as to prevent the instructor suing the trainee; or
- b) place the trainee on adequate notice of the risks; or
- c) legislation to mandate comprehensive insurance.



The Committee concluded that the first course was undesirable. If a trainee wilfully or persistently disregards instructions clearly communicated by the instructor, it is thought to be unreasonable to preclude action by the instructor.

The Committee considers that the availability of comprehensive vehicle insurance is a factor which prospective trainees should consider in making the choice as to the source of instruction. The Committee believes that the prominent display of advice as to whether or not the vehicle is comprehensively insured would be a cheap, effective solution. This advice could be displayed in advertisements, and in the instructor's vehicle. This could be achieved either through Government legislation, or inclusion in an industry Code of Practice.

Compulsory comprehensive insurance was rejected by the Committee. It would be unreasonable to compel comprehensive insurance for all tuition (including voluntary tuition extended by friends or relatives of the trainee). Licensed instructors are aware of the risks involved in driving tuition, and can make their own decision on what forms of insurance they deem appropriate.

The Committee concluded that, taking into account the possibility of the student being exposed to a significant financial risk, the key issue is to ensure the trainee is provided with sufficient information regarding insurance to allow them to make an informed choice. The challenge is to determine the least cost/most efficient means of achieving this.

The Steering Committee believes that it is not an unreasonable burden for licensed instructors to be required to inform prospective students of the insurance status of their vehicle. This can be as simple as informing the student over the telephone prior to making the first booking. This would ensure the student is given information which can help them select an appropriate instructor.

As a complementary measure, an industry Code of Practice could advocate other methods of informing prospective students. This could include providing insurance information in advertisements (eg Yellow Pages), or placing a sticker on or in the instructor's vehicle.

#### **Recommendation 20**

**That the act be amended to require licensed instructors:**

- **To inform prospective students of the insurance status of the vehicle they will be driving prior to the first lesson; and**
- **To display prominently in the vehicle in which instruction is given advice as to whether or not the vehicle is comprehensively insured.**

**That consideration be given to an industry code of practice advocating instructors hold additional forms of insurance, and the display of insurance status in advertising material.**

### 8.3 Consumer Complaint Mechanisms and Informed Choice

Because the RTA administers the Act and Regulation, there is a general community expectation that the RTA will mediate in, or take action against, an instructor on issues relating to customer dissatisfaction with a driving instructor. The RTA rigorously investigates and takes legal action, where appropriate, in instances of alleged inappropriate behaviour such as sexual harassment. As discussed above, the current provisions of the Act are considered adequate for this purpose.

Where the responsibilities are not clear is when, for example:

- an instructor takes a prior bulk fee and fails to deliver the agreed amount of instruction;
- the instructor consistently arrives late for appointments;
- appointments are frequently changed, or the driving school substitutes alternative instructors;
- the client is given 'short' lessons;
- charges are not clearly or fully explained prior to receiving instruction or signing a contract.

These issues relate to receipt of service and breaches of financial arrangements. There are no clear provisions for dealing with these situations in the Act, and the roles of consumer legislation and the Department of Fair Trading are not fully understood within the RTA or the industry.

It is noted that s.59 of the Act authorises the making of regulations for 'the provision of, and manner of providing, to persons seeking instruction in the driving of motor vehicles information concerning fees and charges for such instruction'. No regulations have been made under this paragraph.

In its response to the Issues Paper, the Department of Fair Trading advised that the complaints record of the driving instruction industry does not demonstrate that there are any greater complaints against driving instructors than are received regarding goods and services providers in other industries. The Department of Fair Trading is of view that the current provisions of the Fair Trading Act provide adequate consumer protection.

The Department of Fair Trading does recognise that lack of information upon which to base purchasing decisions can be a source of market failure, particularly where information deficiency may place traders in a much stronger bargaining position than consumers.

It is proposed that the RTA and the Department of Fair Trading retain their respective roles in relation to the consumer complaints regarding the driving instruction industry. However, there would appear to be ample scope for an

industry Code of Practice to establish and publicise customer complaint or dispute resolution procedures.

Consumers would still need to be made aware of their right to take issues to the RTA and/or the Department of Fair Trading. Thus the RTA, the Department of Fair Trading and the industry could implement strategies to ensure that clients are aware of their consumer rights, and where to most appropriately address their concerns.

#### **Recommendation 21**

**The Fair Trading Act provides an adequate basis for customer protection and is complementary to the Driving Instructors Act, therefore the RTA, the Department of Fair Trading and the driving instruction industry should investigate implementing strategies to ensure that driving instruction clients are better informed when making a service purchase decision and on how and where to address any complaints they have concerning instruction services.**

#### **8.4 Reporting of Inappropriate Behaviour**

The Act requires an instructor to be a 'fit and proper person' and 'a person of good character'. Failure to meet these requirements is ground for refusal of the application under s.18(b) and (c) of the Act, and additionally is ground for suspension or cancellation of a licence under s.26(2)(a) and (b) of the Act.

Where an instructor is licensed and is operating in the industry, occasions can arise where an instructor engages in inappropriate behaviour e.g. sexual harassment that may lead to the cancellation or suspension of his or her licence. However, the Act does not impose an obligation on driving schools to report such behaviour, when known, to the RTA. Conversely there is no obligation on the RTA to advise a driving school if an instructor engaged by the school has been reported for such behaviour.

From responses to the Issues Paper the driving instruction industry is clearly concerned that inappropriate behaviour is curbed as soon as it is identified. There is strong support for provisions which require driving schools to report allegations of inappropriate behaviour to the RTA, and vice versa.

There should be no problem with implementing a requirement that driving schools report to the RTA. However there is a privacy and natural justice issue with the RTA reporting alleged improper behaviour to any driving school with which an instructor is associated. A possible solution is to amend the Act to allow suspension of the instructor's licence pending investigation of alleged improper behaviour, and there are reasonable grounds for belief that the allegation is valid. The Act, at present, allows suspension or cancellation only when "the Authority is satisfied the holder of the licence is not a fit and proper person ...".

In the vast majority of cases, it would be inappropriate to suspend or cancel a licence to be a driving instructor without first having afforded to the instructor the

opportunity to show cause why the suspension or cancellation should not proceed. This would be so even in the cases (such as those for which s.26(2) of the present act makes provision) where the authority is not to have a discretion but is to be under a duty to suspend or cancel. There are, however, some important exceptions which, although rare, are thought to justify immediate suspension. In these cases, the authority should be bound to provide prompt notification of the instructor's right of appeal and the court or tribunal hearing the appeal should have the power to stay the authority's decision where it thinks it to be just to do so.

Accordingly, the Steering Committee proposes that the act be amended to allow for the following cases as warranting this summary power to suspend:

- a) Cases where the authority has reason to believe that the instructor has repeatedly engaged in bribery or fraud relating to the testing of applicants for driver licences or the issue of those licences;
- b) Cases where the authority has reason to believe that the instructor has seriously assaulted a person who was, at the time of the assault, in the presence of the instructor for the purpose of receiving instruction;
- c) Cases where the instructor has shown a persistent disregard for road safety by the manner or form of instruction.

#### **Recommendation 22**

**That the Act be amended to require a driving school to report to the RTA any allegations of improper behaviour committed by a driving instructor engaged by the school.**

**That the Act be amended to allow for temporary suspension, pending the outcome of investigations, on receipt of any allegation of serious improper behaviour made against a driving instructor subject to there being reasonable grounds for belief that the allegations will prove to be valid.**

### **8.5 Location of Giving Driving Instruction**

This is not defined in the Act or Regulation. It is interpreted as meaning that the Act applies wherever driving instruction is given i.e. on both the public street and on private property, e.g. four wheel drive training or training at an off-street circuit.

It is suggested that the Act should be amended to clarify that the requirement to hold a driving instructor's licence applies to instruction given on either public or private property. If limited to the public street, difficulties will arise over interpretation of 'public' and both safety and consumer protection may be compromised if unlicensed instruction is given on private property.

While it can be argued to be a restrictive provision, Issue Paper respondents support the Act being universally applied. In view of an emergence of novice driving instruction being given on dedicated training areas complete with road circuits and

manoeuvring areas, the importance of the Act applying wherever instruction is given is further enhanced.

**Recommendation 23**

**That the Driving Instructors Act be amended to clarify that the requirement for an instructor's licence applies to tuition given on public or private property.**

**8.6 Application for a Driving Instructor's Licence**

An administrative process has been developed whereby a potential driving instructor applies for a licence and the RTA undertakes a number of checks and tests before issuing an 'Eligibility Advice'.

This process is designed to protect the applicants (and the RTA) from investing time and funds in doing a course and subsequently discovering that they cannot gain a licence because a licence prerequisite cannot be met. However, this administrative process is seen by some applicants as causing unreasonable delay.

The Act and Regulation do not mandate this protection, it is an administrative procedure introduced by the RTA. Perhaps the Act or Regulation should be amended to allow the RTA to require 'good character' checks prior to the issuing of an 'Eligibility Advice' to an instructor applicant.

There was strong support for this proposal in responses to the Issues Paper, although the concept is not supported by one accredited instructor training provider.

**Recommendation 24**

**That the Act or Regulation be amended to allow the RTA to formally administer a system under which eligibility criteria (character checks, tests, etc) must be met by instructor licence applicants before issue of an Eligibility Advice allowing enrolment in an accredited driving instructor training course.**

**8.7 Driver Training Requirements for Instructors**

The RTA is empowered under the Act to require an applicant for a driving instructor's licence to pass driving and instructional ability tests and to undergo training in driving instruction.

Since 15 June 1999 applicants for a licence to drive Road Trains and B-Doubles (MC – Multi Combination licence) are required to undertake and satisfactorily complete an RTA-approved MC driver training and assessment course before they can receive their licence. This requirement has been introduced to ensure newly licensed drivers

of MC vehicles have the skills necessary to competently and safely drive these vehicles.

This compulsory training requirement does not apply to applicants for an MC driving instructor's licence. Thus MC licence holders who obtained their licence before 15 June 1999 and who apply to become instructors may not have completed an approved MC driver training course.

The Issues Paper proposed that the RTA have the option, where appropriate, of requiring driving instructor licence applicants to satisfactorily complete a driver training course. Feedback from the Issues Paper indicated support for the inclusion of such a provision in the Act. For example "Yes - this seems essential if we are to have competent and trained professional instructors..."

However, adopting a risk management approach, some time has now passed since the introduction of the course and it is now doubtful that many pre-June 1999 MC licence holders who have not had significant experience driving these vehicles will apply to become MC instructors. In any case, such applicants must successfully complete a Heavy Vehicle Driving Instructors Course before their licence is issued.

Given that the MC licence is currently the only class of driver licence which requires completion of a compulsory driver training and assessment course, it does not appear necessary to impose an additional entry barrier by requiring a driving instructor licence applicant to complete a driver training course.

## Appendix 1 – Terms of Reference

### Review of the Driving Instructors Act 1992

#### Terms of Reference

1. The steering committee reviewing the Driving Instructors Act is to conduct the review in accordance with the terms of reference for legislation reviews set out in the National Competition Principles Agreement. The guiding principle of the review is that legislation should not restrict competition unless it can be demonstrated that:
  - a) the benefits of the restriction to the community as a whole outweigh the costs; and
  - b) the objectives of the legislation can only be achieved by restricting competition.
2. The steering committee is to assess the efficacy of the Driving Instructors Act 1992 and Regulation in ensuring professionalism, competence and integrity in the driving instruction industry.
3. Without limiting the scope of the review of the Driving Instructors Act 1992, the steering committee is to:
  - a) clarify the objectives of the legislation;
  - b)
    - i) clarify the nature of the restrictive effects on competition;
    - ii) analyse the likely effect of any identified restriction on competition on the economy generally;
    - iii) assess and balance the costs and benefits of the restriction identified; and
  - c) assess the effectiveness of the existing legislation in achieving its objectives;
  - d) consider alternative means of achieving the same results, including non-legislative approaches.
4. In the course of the review the steering committee should:
  - a) identify any issues of market failure which need to be, or are being addressed by the legislation; and
  - b) consider whether the effects of the legislation contravene the competitive conduct rules in Part IV of the Trade Practices Act 1974 (Commonwealth) and the New South Wales Competition Code.
5. The steering committee is to consult with and take submissions from driving instruction clients, driving instructors and other interested parties.
6. The steering committee must deliver a final report on the review within six months of its establishment.

## Appendix 2 – Members of the Steering Committee

- Greg Booth  
Chair, Steering Committee  
General Manager  
Driver and Vehicle Strategy  
Roads and Traffic Authority
- Carolynne James  
Policy Officer  
Inter-Governmental and Regulatory Reform Branch  
The Cabinet Office
- Allan Porter  
Executive Director  
Australian Driver Trainers Association (ADTA) representing the  
ADTA and the Independent Driving Instructors Guild (IDIG)
- Eugene Brancourt  
Principal  
Unique Training Technologies International Pty Ltd representing the  
Road Freight Advisory Council
- Jim Castles  
Manager  
Asset Support Services  
Roads and Traffic Authority
- Paul Rees  
Manager  
Driver Development and Education  
Roads and Traffic Authority



## Appendix 3 – Analysis of Submissions



# **Review of the Driving Instructors Act 1992**

## ***Analysis of Submissions***

(Abridged Version)

**Traffic Technology Branch  
Roads and Traffic Authority  
March 1999**

### **1. Purpose of Report**

The purpose of this report is to summarise the key points raised in written submissions to the Review of the Driving Instructors Act 1992.

### **2. Background**

An Issues Paper was produced by the Review Steering Committee in September 1998, outlining the main areas covered by the Act and highlighting several anomalies and ambiguities in the Act and Regulation. All licensed Driving Instructors in NSW, various industry groups and interstate Government agencies received a copy of the Issues Paper.

Advertisements inviting public comment were run in several daily newspapers.

A series of ten information sessions was held with key stakeholder groups during early November, to discuss areas of interest to the particular group. These groups included:

- Driving Instructor Organisations
- Advanced/Defensive Driving Schools
- Associations / Consumer Groups
- Driving Instructor Course Providers
- Audit Groups
- Motorcycle Groups
- Internal RTA Stakeholders
- Freight Industry Groups
- Government Organisations

Matters raised in these information sessions were fully documented for review by the Steering Committee.

Written comments were invited by 30 November 1998. Several submissions were received late and their comments have been incorporated into this report.

### **3. Methodology**

To allow for subsequent querying, each submission received was initially categorised as being from either a:

- Driving Instructor
- Driving Instructor Organisation
- Driving Instructor course provider
- Driving School
- Post-Licence trainer
- Association / Consumer Group
- Internal RTA
- Freight Industry group
- Government Organisation
- Member of the Public

The last category was applied where the submission gave no indication of the nature of the respondent's interest in the Review.

Each submission was read and the key points raised were highlighted. An analysis spreadsheet was set up, to tabulate the findings. Each of the issues from the Issues Paper was recast as a *proposition* (rather than as a *question*), so that where a submission mentioned a specific issue, the response to that issue could be scored as follows:

- "2" for definite agreement
- "1" for qualified agreement
- "0" for mentioning the issue but not stating a position
- "-1" for qualified disagreement
- "-2" for definite disagreement

In this way, a distribution of opinions for any issue could be readily established, and an "average" calculated to indicate the overall acceptance or rejection of the proposition. Where an issue had a series of individual points within it, these were given separate numbers, eg 6a, 6b and 6c.

It should also be noted that a few issues were presented as a series of alternative propositions (eg Issue 27 - consumer issues to be handled through either RTA / Dept of Fair Trading / industry / further legislation / Code of Business Practice). Responses were logged as "votes" for the preferred alternative(s). Opposition to any particular alternative was only logged where it was specifically stated in the response. In the tables below, responses are summarised in terms of "votes" for *but not against* each alternative.

In addition to the 43 issues outlined in the Issues Paper, any new issue raised by a respondent *which was relevant to the Review* was added to the set of issues. By the end of the analysis, some 129 issues (or variants) had been identified. Most of these additional issues related to quite specific concerns and were typically only referred to by a single respondent. A full description of the issues raised is included in Section 9. Summary sheets, showing a tabulation of the responses, were prepared for consideration by the Steering Committee.

#### **4. Responses Received**

A total of 80 submissions were received. Of these, 71 were received by the closing date of 30 November 1998. Two organisations were given an extension of time to lodge their detailed submissions. Similarly, a response was received after the closing date, but was subsequently accepted.

During the analysis of the individual responses, several were noted as being particularly well prepared and comprehensive, and it was suggested that the Steering Committee members read those submissions in some detail.

## 5. Frequently Raised Issues

The issues *raised* by the greatest number of respondents are shown below. It should be noted that not all respondents in this Table actually expressed an *opinion* about the particular issue.

Issue Number	Short Description	No. of Responses addressing the Issue
1	Issues addressed by the legislation	28
3	Code of Ethics	30
4	Who should administer DI Act (or equivalent)	27
5	Relationship of DI industry & Act	27
6	Competitiveness of industry	29
11	Entry requirements	27
13	Cross-border recognition	28
16	Dual controls	31
22	Licence required for post-licence instructors	38
23	Licensing of in-house instructors	32
24	Standard curricula	29
26	Monitoring & benchmarking	26
27	Authority for resolving consumer issues	28
28	Insurance requirements	36
29	Dual controls for post-licence instruction	26
30	Restriction of Act to training on public roads	26
34	Exemption of Government instrumentalities	32
36	Conditional instructor's licences	29
39	Retain provision for course in driving instruction	26
40	Pre-training "Eligibility Advice"	28
43	Retention of existing legislative framework	36

## 6. Major Areas of Agreement

The issues on which there was broad consensus across a reasonable number of responses were as follows:

Issue Number	Short Description	No. of Responses FOR <sup>1</sup>	No. of Responses AGAINST <sup>2</sup>
1	Issues addressed by the legislation still relevant	26	0
4	D.I. Act (or alternative) to be administered by: <ul style="list-style-type: none"> <li>• RTA</li> <li>• other authority</li> </ul>	22 3	
5	How should the industry maintain probity & professionalism? <ul style="list-style-type: none"> <li>• retain legislated minimum standards</li> <li>• self-regulation</li> </ul>	21 0	
6	Competitiveness of industry: <ul style="list-style-type: none"> <li>• industry is competitive</li> <li>• consumer has adequate choice</li> <li>• more competition would be beneficial</li> </ul>	24 14 2	2 1 15
8	Training & licensing requirements affect competition	1	16
10	Market failure would occur if Act abolished	18	3
11	Entry requirements are: <ul style="list-style-type: none"> <li>• necessary</li> <li>• an unreasonable barrier</li> <li>• an unreasonable cost</li> </ul>	19 4 2	3 17 19
12	Current penalties are reasonable & appropriate	21	2
13	States should have similar systems, to promote cross-border recognition	25	0
16	Dual controls should be mandatory	25	4
28	Insurances required: <ul style="list-style-type: none"> <li>• 3rd party property damage</li> <li>• public liability</li> <li>• professional indemnity</li> </ul>	29 27 26	3 3 3
31	Unsatisfactory Vehicle provisions should apply on private property	18	4
34	Withdraw exemption for Government instrumentalities	25	4
35	Tenure rule should: <ul style="list-style-type: none"> <li>• be made more flexible</li> <li>• at least include an experience requirement</li> </ul>	18 15	4 1
37	RTA should have option to require completion of a driver training course	21	1
38	<ul style="list-style-type: none"> <li>• RTA should advise driving school if it is investigation a DI for inappropriate behaviour</li> <li>• Driving school should advise RTA of complaints about a DI</li> </ul>	17 15	3 2
39	Retain driver instruction training requirement	25	1
40	Pre-training "Eligibility Advice" should be retained	25	3
41	RTA should be allowed more administrative flexibility	14	3
43	Alternative regulation schemes: <ul style="list-style-type: none"> <li>• Retention of existing legislative framework</li> <li>• other options</li> </ul>	26 12	0 35

### Notes:

1. Either "Qualified Agreement" or "Definite Agreement" with the proposition
2. Either "Qualified Disagreement" or "Definite Disagreement" with the proposition

## 7. Major Areas of Disagreement

The following issues were the subject of strongly divergent views amongst a reasonable number of responses:

Issue Number	Short Description	No. of Responses FOR <sup>1</sup>	No. of Responses AGAINST <sup>2</sup>
19	Instructor licence information should be required in any advertising	9	15
22	Licence should be required for post-licence instructors	23	15
26	Monitoring of pass rates should be introduced	13	13
27	Consumer issues should be resolved by: <ul style="list-style-type: none"> <li>• RTA</li> <li>• Dept of Fair Trading</li> <li>• industry-managed process</li> <li>• further legislation</li> <li>• Code of Business Practice</li> </ul>	12 20 5 1 6	
29	Dual controls should be required for post-licence instruction in light vehicles	12	14

### Notes:

1. Either "Qualified Agreement" or "Definite Agreement" with the proposition
2. Either "Qualified Disagreement" or "Definite Disagreement" with the proposition
- 3.

## 8. Analysis by Group

An analysis of the responses of various groups compared to the overall responses was also undertaken, to determine whether there were significant variations between the comments of that group as against the overall response. This analysis indicated that, for those issues where there was a reasonably high response rate within the group:

a) RTA staff, compared with the overall response, were:

- more strongly opposed to leaving the competence of instructors to market forces;
- less strongly of the view that the current penalties are reasonable and appropriate;
- more in support of mandatory dual controls;
- more in support of mandatory instructor information in advertising;
- less inclined to support RTA handling consumer complaints, showing stronger support for Dept of Fair Trading;
- undecided (as a group) as to whether some government departments should be exempt, compared with the overall response that the exemption should be removed;
- more strongly against self-regulation or co-regulation.

b) Driving Instructors / Driving Schools / Driving Instructor Organisations, Industry Associations & Consumer Groups all tended to be in alignment with the majority view, particularly on the matter of mandatory insurances. The driving instructing industry made many disparaging comments on the Victorian deregulation experiment, and several in that group felt that the industry in NSW was in fact already *excessively* competitive.

Driving Instructors were more strongly opposed to advertising controls than the overall response. Driving Schools were more strongly in support of advertising being controlled by a Code of Practice or similar and were slightly opposed to standard curricula despite overall mild support. They also slightly opposed benchmarking.

One submission was notable for its strong endorsement of a Professional Standards Council to oversee the industry rather than legislative control.

- c) Government agencies (other than RTA) tended to focus on a few issues of direct interest rather than responding to the broad range of issues presented.
- d) The Post-Licence training industry was strongly (but not unanimously) of the view that instructors in that industry should not be required to be licensed, while the overall response to this issue was more divided.

## 9. Issues Raised

Forty-three issues were raised in the initial Issues Paper.

Some responses presented issues or options not raised in the Issues Paper and these are also listed below. These matters tended to be raised by just one respondent, but those which were mentioned in three or more responses are shown in **bold type**.

Issue	Assertion
	<b>A. FROM ISSUES PAPER:</b>
1a	The issues (professionalism, competence and integrity of the industry) addressed by the legislation are still relevant
1b	It is now possible to address these issues in an ongoing manner through other measures
2	Issues such as the competence of instructors should be left to market forces
3a	An industry Code of Practice or Code of Ethics should be included within the Driving Instructors Act
3b	An industry Code of Practice or Code of Ethics should be addressed by the industry itself
4a	The Driving Instructors Act (or alternative) should continue to be administered by the RTA
4b	The Driving Instructors Act (or alternative) should be assigned to a different authority
5a	The existing Act should be retained to prescribe minimum standards for the driving instruction industry
5b	The industry should be left to find its own way
5c	The Act should be extended to mandate improved service delivery by the industry
5d	Provisions in a new regulatory regime should be based on encouragement of increased self control and greater acceptance of responsibility from within the industry
6a	The current driving instruction industry is sufficiently competitive
6b	The consumer has adequate choice in price, availability and level of service
6c	The consumer and the industry would benefit from a more competitive environment
7	There is evidence that the driving instruction industry, as regulated by the Driving Instructors Act 1992 and other legislation, is not meeting client needs
8	The training and licensing requirements of the Act cause significant adverse effects on the level and degree of competition
9	There are areas of market failure that are not being effectively addressed by the current legislation or the industry
10	Market failure would occur if the Driving Instructors Act were abolished

11a	The entry requirements (prerequisites and grounds for refusal of an application) to become a driving instructor, together with grounds for suspension or cancellation of an instructor's licence, are necessary to achieve the objectives of the Act
11b	The requirements represent an unreasonable barrier to entry
12	The current penalties in the Driving Instructors Act and Regulation are reasonable and appropriate
13	It is important that the review place particular emphasis on ensuring, if possible, that the NSW driving instructor regulatory system is similar to systems operating in other Australian States so that full cross-border recognition can be given to instruct
14	The entry requirements for becoming a licensed driving instructor impose unreasonable costs on market entrants
15	A total direct cost of about \$1,100,000 per annum is appropriate for ensuring NSW driving instruction industry compliance with the competence and probity standards mandated in the Driving Instructors Act
16a	It is necessary to regulate that driving instructors must instruct in vehicles fitted with dual controls
16b	The dual control requirement is adequately defined in the legislation
17	The current regulatory regime impacts excessively on fee levels and accessibility of driving instruction
18	It is necessary to regulate advertising for the procurement of driving instructors
19	It is necessary that the Act requires inclusion of instructor licence information in any advertising
20a	If the requirements of the Act concerning inclusion of instructor licensing information in advertising are to be retained, they should be rewritten in a more understandable form
20b	The Act and/or Regulation should allow some reasonable flexibility of interpretation of advertising requirements
21	The content of driving school or instructor advertising should be subject to a code of practice or some other monitoring measure
22	A driving instructor's licence should be required to be held by instructors giving post-licence instruction i.e those who teach drivers who already hold a licence for the class of vehicle being driven
23	Deliverers of 'in-house' driving instruction (instruction given by company personnel to other company personnel) should be required to be licensed driving instructors
24	Standard curricula for training of learner drivers should be introduced and instructors be required to teach to them
25	Government should be intervening on issues of quality of delivery of driving instruction
26a	Monitoring of pass rates, benchmarking and other service quality and/or performance criteria should be introduced with the power to take corrective action or remove an unsatisfactory performer from the industry
26b	If benchmarking is introduced, instructor pass rates should be published
27a	Consumer issues be resolved through the RTA
27b	Consumer issues be resolved through the Department of Fair Trading
27c	Consumer issues be resolved through an industry managed process
27d	Consumer issues should be further addressed by legislation
27e	A code of business practice in relation to consumer issues should be established and, if necessary, appropriately regulated
28a	Driving instructors and/or driving schools should be required, as a minimum, to have 3rd party property insurance
28b	Driving instructors and/or driving schools should be required, as a minimum, to have public liability insurance
28c	Driving instructors and/or driving schools should be required, as a minimum, to have professional indemnity insurance
28d	Driving instructors and/or driving schools should be required, as a minimum, to have full comprehensive insurance
29	Dual controls should be required in cars (vehicles under 4.5 tonnes GVM) used for post-licence instruction
30	The Act should only apply to instruction given on the public street
31	The unsatisfactory vehicle provisions of the Act should apply to instruction given on private property
32	The satisfactory vehicle provisions should remain in the Act even though they duplicate sections of the Motor Traffic Act
33	Duplication of Traffic Act provisions in the Driving Instructors Act (if any such duplication is to remain) should be comprehensive
34	The current exemption of some government instrumentalities from the requirements of the Act should be withdrawn
35a	The Act should be amended to allow the RTA some flexibility of interpretation of the requirement that applicants are to have held a licence of the class of vehicle which they intend to teach for at least three out of the last four years
35b	This tenure rule should be replaced by, or be complementary to, a requirement for a minimum of actual driving experience
36	The facility for the RTA to issue a conditional driving instructor's licence to a partially trained instructor should be discontinued



37	The RTA should have the option, where appropriate, to require that instructor licence applicants satisfactorily complete a driver training course
38a	Given due privacy considerations, it should be required that the RTA advise a driving school if one of its instructors is being investigated for alleged inappropriate behaviour
38b	A driving school should be required to advise the RTA of any complaints and investigations about a driving instructor for inappropriate behaviour
39	The current training provisions in the Act, that instructor licence applicants complete 'a course in driving instruction approved by the Authority and conducted by an organisation approved by the Authority' should be retained
40	The RTA should retain the 'Eligibility Advice' system which protects ineligible licence applicants from unnecessarily taking a driving instructor course
41	It is appropriate, in the interests of customer service and having a capacity to respond appropriately to particular situations, that the RTA be allowed greater administrative flexibility within the provisions of the Driving Instructors Act and Regulation
42	There are other issues, not currently covered by the Driving Instructors Act and Regulation, which need to be addressed, including proposals for amendment, addition to, or deletion from, the legislation
43a	Support retention of existing legislation framework
43b	Support no regulation
43c	Support self-regulation or co-regulation
43d	Support other industry management systems
43e	Other models warrant consideration
	<b>B. ADDITIONAL ISSUES RAISED:</b>
44	Thanks for opportunity to participate - no comment made
45	'Fitness' test should precede any payment by applicant
46	DI applicants should face a panel as part of the "fitness" assessment process
47	Regulation of maximum daily hours of tuition is required
48	DI remuneration is too low
49	ALL initial learner training should be on dual control car, even if parents/friends then take over the training
50	DI training courses should include economic aspects of the industry
51	Free driving instruction should be curtailed
52	Emphasis should be on road safety, not competition
53	Ref to No. 38 - schools to be advised AFTER investigation is complete
54	DIs should regularly cross-check themselves with their peers
55	'Dual controls' will have to be redefined, in light of new clutchless manual & sequential auto systems
56	Mutual Recognition Act should contain provisions for probity/competence checks
57	Results of "fitness" test should be released by Police direct to applicant, not RTA
58	Must retain exemption re dual controls in learner's own cars
59	RTA should ask how many lessons preceded a failed test in an instructor's vehicle
60	Dual controls are not required for "in-house" tuition
61	Ref to No.35a - tenure should be 5 YEARS MINIMUM
62	Ref to No.36 - conditional licence holders should have a cap on fees chargeable
63	Learners should be taught correct steering technique to minimise injuries in an air bag-equipped car; ABS brake "feel"
64	HV DI entry skills are inadequate
65	Literacy, numeracy & language skills essential for DIs
66	Ref No.28 - should also have Workers Comp insurance
67	Ref No.34 - only emergency services should be exempt from the Act
68	DI licence should be shown to learner on first lesson; no need for ongoing display
69	Replace "tenure" with "competence in the operation of the respective class of vehicle"
70	Reduce "10year" condition in Section 18 of Act to "5years" (prior period of conviction for fraud, etc)
71	Section 30 (duplicate licences) - validate all circumstances before granting duplicate - holder may be facing cancellation
72	"In-house" instruction - should not require a DI licence if giving instruction on same class of vehicle as already licensed for
73	Ref No 24 - standard curricula required in 4WD training - both recreational & vocational. Operators to be licensed
74	Regulate driving schools (presumably instead of DIs)
75	DI Act should only refer to relevant provisions of the Traffic Act, not duplicate them in detail

76	Ref 24 - curriculum should require minimum number of lessons, and include defensive driving component
77	Ref 22,39 - Instructor licence applicants should be required to "demonstrate competency" rather than "complete a course"
78	DI training should include practical training, eg observation of actual instruction in progress
79	Ref 42 - Competency based approach should be required for more advanced skills, immediately prior to RTA licence test
80	Ref 42 - The age and condition of vehicles used for instruction should be more tightly controlled
81	Ref 42 - A system of Management Agreements with Driving Schools would be a better approach than legislation and regulation
82	Post-licence training industry is very different from pre-licence industry, works well un-regulated and would not benefit from regulation
83	Insufficient time was allowed to respond, not all instructors have received the Issues Paper, suspects RTA want to escape its responsibility for the DI Act
84	An option of CBT&A would enhance competition by providing an alternative means of assessment.
85	Ref 7 - For most customers, their "need" is simply to pass the RTA test
86	Ref 13 - Cross-border recognition should not be allowed to reduce standards in NSW
87	Ref 68 - The requirement to display the instructor's licence in the vehicle is not practical if the instructor is required to change vehicles regularly
88	Ref 39 The current instructor's training course is far too complex and costly
89	Ref 3 Any Code of Practice should be developed in consultation between RTA and DIs, and all DIs must agree in writing to abide by it
90	A Quality Assurance process (ADTA procedures) should be mandated
91	Ref 42, 79, 84 - Competency based assessment for all classes of licence would improve the quality of training.
92	DIs should be re-assessed when their licences are renewed
93	Ref 34 - 2-year phase-out period for withdrawal of Government dept exemptions
94	Ref 6c - Consumers, not the industry, would benefit from more competition
95	Ref 11a/b - should be limits placed on number of DI licences issued, to preserve standards
96	Ref 48 - Act should specify maximum & minimum fees for driving instruction
97	Ref 11 - Medical Check, & Entry Knowledge/Driving Tests are not necessary. RTA Exit Test should cover driving AND teaching ability
98	Ref 11 - Police check should not involve personal contact with applicant
99	Ref 24 - Learner Driver Competencies need to be developed
100	Ref 37 - All approved courses should follow National Competencies for DIs
101	Ref 16,29 - Motorcycles should have been granted a formal exemption from the requirement to fit dual controls, display Instructors Licenses etc
102	Ref 38 - Draft procedures for advice re investigation of DIs should be referred to the Privacy Commissioner
103	Ref 24 - Minimum syllabus requirements should be set, but not a detailed syllabus
104	Ref 43 - Due to its internal shortcomings, RTA's role in driving instruction should be regulatory only
105	There is at present no regulation of professional KNOWLEDGE TEST training, which is provided by some driving schools
106	Ref 27b - Mechanism for lodging a complaint needs to be clearly explained
107	Ref 19,20,21 - The Act should prohibit inappropriate advertising that is inconsistent with the RTA's objectives
108	Ref 26 - industry should do its own benchmarking
109	Five-year period for retention of records is excessive
110	DIs should be able to recommend to RTA that a learners licence should be cancelled, if the pupil is not physically or mentally capable of obtaining a full licence (NB - IS THIS A DRIVER TESTING ISSUE?)
111	Ref 12 - RTA permits some breaches of the Act/Regulation if legal advice indicates a less than 100% chance of success
112	Ref 22 - Post-licence industry needs a governing body (independent of RTA); this body could accredit new entrants and train its own instructors
113	Ref 35a/b - a DI should be required to have been a practising DI for 3 to 5 yrs before he/she can open a Driving School
114	Ref 28a/b/c/d - DIs and driving schools should be made aware of the necessity to comply with the provisions of the "Workplace Injury Management and Workers Compensation Act 1998". Act should also refer to the "duty of care" provisions of the OH&S Act.
115	RTA should be more forthcoming when DIs request reasonable information
116	Some type of "Pre-Learner" (14-16 yrs) education should be included in part of the DI training curriculum
117	Ref 18/19/20 - Act should not allow advertising which promotes aggressive driving attitudes
118	Ref 41 - RTA should advise industry of examples of inflexibility in the Act before freeing the Act up
119	Submission lists specific changes in wording for sections of the Act & Regulation

120	May be need for more consumer education, as well as education for RTA staff on the role of Dept of Fair Trading
121	Ref 43b - Professional Standards Council is the most appropriate body to oversee the industry if co-regulation is the chosen path
122	Tax advantages enjoyed by TAFE, DECA should be removed
123	Low-distance heavy vehicles (i.e those used only for instruction) should have lower rego charges
124	Remove the words "any test the RTA requires" from the Act - adopt more appropriate wording
125	Ref12 - guidelines required to describe "unsatisfactory driving record"
126	Ref13 - mention Trans-Tasman Mutual Recognition (NSW) Act in DI Act
127	List all Sydney Registries which can conduct the driving & impart knowledge tests
128	Act should allow exemptions and provisional/limited licences for those organisations which are currently exempt
129	Recognition of Prior Learning should be examined as an option

## 10. Conclusions

Of the 43 issues discussed in the Issues Paper, 21 attracted a both reasonable number of responses and a general *consensus* of opinion. Conversely, only 5 of the issues attracted a strong *divergence* of opinion.

The main themes emerging from the survey were that:

- i) the issues addressed by the Driving Instructor Act 1992 are **still relevant**;
- ii) there is strong overall support for **retention of a legislative framework** for the administration of the Driving Instructor industry (although the ADTA, the largest representative driving instruction industry group, expressed support for less regulation and a Professional Standards Council to oversee the industry);
- iii) the RTA should continue to administer the Act;
- iv) **entry requirements** are reasonable, to ensure ongoing professional operation of the industry;
- v) current **penalties** are appropriate;
- vi) the **Tenure Rule** should allow some flexibility, and be complemented by a driving experience requirement;
- vii) **insurances** (3rd party property, professional indemnity and public liability) should be mandated;
- viii) **exemptions** for some Government departments should be withdrawn;
- ix) **dual controls** should be mandatory for pre-licence training (though no clear consensus emerged on the role of dual controls in the post-licence training industry);
- x) despite the controls imposed by the Act and Regulation, the industry in NSW is already sufficiently **competitive** (and some felt it to be *excessively* competitive);
- xi) the **Eligibility Advice** system should be retained; and
- xii) the NSW regulatory system should be **similar to those operating in other States**, so long as NSW standards are not lowered to achieve this.

Two issues seem to have been misunderstood by some respondents. Issue 18 related specifically to advertising by Driving Schools for the procurement of instructors, though a number of responses seemed to interpret the issue as relating to general commercial advertising by Driving Schools. Issue 39 referred to the desirability of driving instructors having had the experience of being formally trained to drive the type of vehicle on which they are giving instruction. Responses suggested that this issue was read as referring to a need for *formal training in instructional methods*, rather than formal training to drive.

A substantial number of issues and options were raised by respondents, in addition to those presented in the Issues Paper. Some of these offer useful insights into specific areas of operation and ideas which may be worth pursuing.

## Appendix 4 - Respondents to Issues Paper

The respondents have been categorised as being from either a:

- AUD - Audit Group
- CON - Association/Consumer Groups
- DI - Driving Instructor
- DIC - Driving Instructor Course Providers
- DIO - Driving Instructor Organisations
- DS - Driving School
- F - Freight Industry Group
- GOV - Government Organisation
- PL - Post-licence training
- PUB - Member of the Public
- RTA - Roads and Traffic Authority

Submission No.	Name			Type	Position	Organisation
29	Mr	Steven	Gray	CON		NRMA
32	Mr	Peter	Eagle	CON	Manager, Operations	Insurance Council of Australia Limited
50	Mr	Mark	Hall	CON		Motorcycle Council of NSW
63	Mr	Peter	Wilkinson	CON	Chairman	Kuringai Police and Community Safety Committee
72	Mr	Tony	Snepp	CON	State Secretary	Australian College of Road Safety (NSW Chapter)
75	Mr	Alan	Finlay	CON	Manager, Public Affairs	NRMA
9	Mr	J.	Koolhaas	DI		
11	Mr	Bob	Allan	DI		
13	Mr	Peter	McKinnon	DI		McKinnon Training Services
14	Ms	Beverley	Pal	DI		
16	Mr	Jim	Fraser	DI		Raymond Terrace Driver Training
17	Mr	Peter	Stanfield	DI		
18	Mr	Brian	Nelson	DI		
25	Mr	Eric	Rotik	DI		
39	Mr	Geoff	Natrass	DI		
46	Mr	Stephen	Wiggins	DI		
48		Gianc	Banga	DI		
49		Kerry	O'Sullivan	DI		Trent Driving School
64	Mr	Philip	Norman	DI		
1	Mr	Chris	Polhill	DIO	Secretary	The Driving Instructor Group of the Illawarra
65	Mr	Chris	Polhill	DIO	Secretary	The Driving Instructor Group of the Illawarra
70	Mr	Allan	Porter	DIO	Executive Director	Australian Driver Trainers Association
71	Mr	Brian	Watson	DIO	President	Independent Driving Instructors Guild of NSW

10	Mr	R.A.	Milbourne	DS		Roy's Driving School
24	Mr	Andy	Andic	DS	Manager	Macquarie Driving School
33	Mr	Robert	Howarth	DS	Manager	Key Link Driving School
34	Mr	Tony	Brown	DS		Combined Driving School
37	Mr	Mark	Simpson	DS		Highlands Driving Academy
44	Mr	Victor	Bonett	DS		Bonett Driving School
45	Mr	Steven	Shiels	DS		Bathurst Driver Training
51	Mr	Bruce	Munro	DS		Kerry Haulage Driver Training
55	Mr	Stephen	Shiels	DS		Bathurst Driver Training
56	Ms	Angela	Clark	DS	Proprietor	Clarence Valley Driving School
59				DS		Watson' Driving School
62	Mr	Michael	Laurent	DS		Laurent Driver Training
19	Mr	Eugene	Brancourt	F		Unique Training Technologies P/L
2	Mr	Garry	Payne	GOV	Director-General	Department of Local Government
3	Ms	Julianne	Crawley	GOV	Personal Assistant	Minister for Roads and Ports
4	Mr	Robin	Cooper	GOV		Minister for Transport
5	Mr	Warwick	McDonald	GOV	Director-General	Department of Industrial Relations
6	Mr	Trevor	Anderson	GOV	Executive Director, Corporate Services	NSW Rural Fire Service
7	Mr	David	Storer	GOV	A/State Superintendent	Ambulance Service of NSW
20	Mr	Norm	Hawthorne	GOV	Ministerial Officer	Minister for Transport and Infrastructure Development
21	Mr	Bob	Smith	GOV	Director General	Land & Water Conservation
23	Mr	Brendan	Smyth	GOV	Minister for Urban Services	ACT
26	Mr	Colin	Jordan	GOV	Chief Executive	Vicroads
27	Ms	Louise	May	GOV	Ministerial Officer	Department of Fair Trading
30	Mr	Fred	de Vries	GOV	Plant Coordinator D.A.T.	Ku-Ring-Gai Municipal Council
31	Mr	Phil	Robeson	GOV	Manager, Training Services	NSW Rural Fire Service
40	Mr	E T	Page	GOV	Minister for local Government	NSW
53	Mr	Jim	Medd	GOV	GM, Human Resources Division	State Forests
60	Mr	John	Grayson	GOV	General Manager	Workcover NSW
61	Mr	George	O'Farrell	GOV	Acting Secretary	Department of Transport, Tasmania
66	Ms	Linda	Taylor	GOV		Department of Fair Trading
68	Mr	Michael	Egan	GOV	Treasurer of NSW	NSW
69	Mr	D.J.	Evans	GOV	Inspector, A/Commander, Traffic Services Branch	NSW Police Service
73	Ms	Diana	Laidlaw	GOV	Minister for Transport and Urban Planning	S.A. Department of Transport and Urban Planning
74	Mr	Bob	Debus	GOV	Minister for Emergency Services	NSW
76	Mr	Geoff	Craige	GOV	Minister for Roads and Ports	Victoria

78		P. R.	Blake	GOV	Executive Director (Land Transport & Safety)	Queensland Transport
79	Mr	Jeff	Shaw	GOV	NSW Minister for Fair Trading	NSW
80	Mr	John	Aquilina	GOV	NSW Minister for Education and Training	NSW
41	Mr	Andrew	Elliot	DIC	Coordinator, Commercial Driver Instruction	TAFE
67	Mr	Peter	Gifford	AUD	Director, Corruption Prevention and Education	ICAC
12	Mr	Peter	Finlay	PL	Director	Nationwide Defensive Driving School
22	Mr	Vic	Widman	PL		Great Divide Tours
35	Mr	Bill	Hartnett	PL	Managing Director	Drive Smart
38	Mr	Ian	Luff	PL	Managing Director	Sydney West Driver Education Centre
58	Mr	Jeff	Kelly	PL	Proprietor	Precision Driver Training
8	Mr	Stephen	Gunn	PUB		
15	Mr	Russell	Scott	PUB		
42	Mr	Roger	Ibbotson	PUB		
47	Mr	Keith	Hall	PUB	Senior Fire Fighter	
28	Mr	Jim	Carruthers	RTA	Manager, Traffic Unit	RTA
36	Mr	Craig	Orth	RTA	Driver Testing Liaison Officer, Sydney Operations Directorate	RTA
43	Ms	Sylvia	Stockwell	RTA	GM, Driver & Vehicle Procedures	RTA
52a	Ms	Irene	Agosti	RTA	Corruption Prevention & Investigation Section	RTA
52b	Mr	Ron	Eslick	RTA	Manager, IT Audit	RTA
54	Mr	Jim	Cummins	RTA		RTA Grafton
57	Mr	Grant	Tonkin	RTA	Driver Testing Co- ordinator, Country Operations Directorate	RTA
77	Mr	Don	Carseldine	RTA	RTA Manager, Licensing Policy	RTA

## Appendix 5 - Direct Costs of Regulation

### COSTS TO GOVERNMENT

RTA	\$'000	\$'000
Routine Administration <sup>(1)</sup>	227	
Legal & related costs <sup>(2)</sup>	30	
Investigation of possible unlicensed driving schools <sup>(3)</sup>	<u>25</u>	
<b>Cost to RTA</b>		<b>282</b>
<b>Police</b>		
Police investigation of applicants <sup>(4)</sup>	<u>84</u>	
<b>Cost to Police</b>		<b><u>84</u></b>
<b>Net Cost to Government</b>		<b>366</b>
<b>COSTS TO INDUSTRY <sup>(5)</sup></b>		
<b>Driver Instructors <sup>(6)</sup></b>		<b><u>820</u></b>
<b>TOTAL COST OF REGULATIONS</b>		<b>1,186</b>

### Notes

1. Includes Salaries and on cost for 100% of 2 Clerks and 15% of 1 Administrative Officer (AO Cl 5), working on driving instructor-related tasks. Impact on licence processing and internal fraud detection is expected to be negligible.
2. Estimate based on approximately 20 Court actions per year @ \$1,500 each.
3. Includes Salaries and on cost for 5% of the time of Project Analyst (AO Cl 4), Compliance Officer (AO Cl 2), Unit Manager, Driver Testing Compliance (AO Cl 5).
4. Assumes 3 person-hours to undertake criminal record check and integrity check for 280 applicants per year @ \$100 per hour.
5. Only compulsory costs are included; penalty costs are discretionary and thus not included.
6. Estimate based on assumption that about 200 new *car* driving instructor's licences, 80 new *truck* driving instructor's licences and 40 riding instructor's licences will be issued per year, and 3,000 *existing* instructors. No records are kept on the number of licence *upgrades* per year from car to truck.

Cost to Instructors	<u>\$'000</u>
New Applicants - Car <sup>(b)</sup>	\$566
New Applicants - Truck <sup>(b)</sup>	\$86
New Applicants - Motorcycle <sup>(b)</sup>	\$38
Licence Renewal Fees <sup>(c)</sup>	\$70
Compulsory record keeping <sup>(c)</sup>	<u>\$60</u>
	<u>\$820</u>



i. New Applicants - Car	
Knowledge Test	\$0
Driving Test booking fee	\$35
Medical Certificate (extended consultation)	\$36
Certificate 111 in Road Transport Motor Vehicle	
Driving Instruction course	\$2000
4 Photographs for DI Licence	\$10
RTA Impart Knowledge Test booking fee	\$35
Issue of DI 5 years Licence	\$115
Installation of Dual Controls <sup>(a)</sup>	\$600
 Total	 \$2,831 x 200 pa = \$566k

<sup>(a)</sup> British experience indicates that the vast majority of driving instructors fit dual controls, even if they are not compulsory. It is assumed that all instructors will own a vehicle, with dual controls fitted.

ii. New Applicants - Truck	
Knowledge Test	\$0
Driving Test booking fee	\$35
Medical Certificate (extended consultation)	\$36
Course fees (Avg. UTTI, HPOTS & TETA)	\$850
4 Photographs for DI Licence	\$10
RTA Impart Knowledge Test booking fee	\$35
Issue of DI 5 years Licence	\$115
 Total	 \$1,081 x 80 pa = \$86k
iii. New Applicants - Motor Cycle	
Knowledge Test	\$0
Driving Test booking fee	\$35
Medical Certificate (extended consultation)	\$36
Attend learner rider course	\$52
Course fees (average)	\$700
4 Photographs for DI Licence	\$10
Issue of DI 5 years Licence	\$115
 Total	 \$948 x 40 pa = \$38k

iv. Annual cost equivalent of licence renewals based on 5-year licence fee of \$117 for 3000 existing Driver Instructors.

v. Most of the record keeping required under the Act would be kept as normal practice by most businesses. It is assumed that half of the 240,000 tests conducted per year are of applicants from driving schools, and that a driving instructor's time (NB not including car use costs) is valued at \$15/hr. Calculation: 120,000 tests @ 2 mins per unit @ 15 ph.

## Appendix 6 - Unauthorised Promotions

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