

Western Australia

Motor Vehicle Drivers Instructors Act 1963

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Motor Vehicle Drivers Instructors Act 1963

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Motor Vehicle Drivers Instructors Act 1963

An Act to provide for the licensing of instructors engaged, for reward, in the teaching of persons to drive motor vehicles and for incidental and other purposes.

1. Short title

This Act may be cited as the *Motor Vehicle Drivers Instructors Act 1963*¹.

2. Commencement

This Act shall come into operation on a date to be fixed by proclamation¹.

3. Interpretation

In this Act, unless the contrary intention appears —

Director General means the chief executive officer of the department of the Public Service principally assisting the Minister in the administration of this Act;

driving instructor means a person who —

- (i) on his own account or in conjunction with another; or
- (ii) as an employee, servant or agent of a person,

for fee, reward, salary, wages or other remuneration or for any consideration whatever, by whomsoever paid or payable, gives advice, instructions or demonstrations to a person for the purposes of teaching him to drive a motor vehicle;

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licence means a valid and current licence issued under this Act authorising the holder thereof to act as a driving instructor and any renewal of the licence;

motor vehicle has the same meaning as it has in Part IVA of the *Road Traffic Act 1974*;

permit means a valid and current permit issued under this Act authorising the holder thereof to act as a driving instructor and any renewal of the permit;

road has the same meaning as it has in Part IVA of the *Road Traffic Act 1974*;

section means a section of this Act.

[Section 3 amended by No. 12 of 1973 s. 36; No. 58 of 1974 s. 23; No. 106 of 1981 s. 4; No. 76 of 1996 s. 32; No. 7 of 2002 s. 13; No. 54 of 2006 s. 39.]

4. Delegation

- (1) The Director General may delegate to a person any power or duty of the Director General under another provision of this Act.
- (2) The delegation must be in writing signed by the Director General.
- (3) If a person is not employed in the Director General's department, a power or duty can only be delegated to the person under this section if the person has been approved by the Minister for the purposes of this section.
- (4) An approval under subsection (3) may be given in respect of —
 - (a) a specified person or persons of a specified class; or
 - (b) the holder or holders for the time being of a specified office or class of office.
- (5) A person to whom a power or duty is delegated under this section cannot delegate that power or duty.
- (6) A person exercising or performing a power or duty that has been delegated to the person under this section, is to be taken to do so

in accordance with the terms of the delegation unless the contrary is shown.

- (7) Nothing in this section limits the ability of the Director General to perform a function through an officer or agent.

[Section 4 inserted by No. 7 of 2002 s. 14.]

4A. Agreements for performance of functions

- (1) The Director General may enter into an agreement providing for the Director General's functions under this Act that are described in the agreement to be performed on behalf of the Director General.
- (2) The agreement may be with the Commissioner of Police, a local government, or any other person or body, whether or not the person or body has itself functions of a public nature.
- (3) A function described in the agreement may be performed —
- (a) in accordance with the agreement; and
 - (b) on and subject to terms and conditions in the agreement.
- (4) If the performance of a function is dependent upon the opinion, belief, or state of mind of the Director General it may be performed under the agreement upon the opinion, belief, or state of mind of the body or person with whom the agreement is made or another person provided for in the agreement.
- (5) For the purposes of this Act or any other written law, an act or thing done by, to, by reference to, or in relation to, a body or person in connection with the performance by that body or person under the agreement of a function of the Director General is as effectual as if it had been done by, to, by reference to, or in relation to, the Director General.

[Section 4A inserted by No. 7 of 2002 s. 14.]

5. Driving instructors required to have licence or permit

- (1) After the expiration of 3 months from the coming into operation of this Act, a person shall not —
 - (a) act as a driving instructor in respect of a motor vehicle, unless authorised to do so by a licence or permit held by the person;
 - (b) advertise, notify or state that the person acts or is willing to act as a driving instructor unless —
 - (i) the advertisement, notification or statement specifies the kinds of motor vehicle, and the kinds of use of them, for which the person acts or is willing to act as a driving instructor; and
 - (ii) the person holds a licence or permit authorising the person to act as specified;
 - (c) if he is the holder of a licence or permit, act as a driving instructor in contravention of any conditions attached to the licence or permit; or
 - (d) while acting as a driving instructor, use upon a road a motor vehicle that is not equipped as required by the regulations or that does not comply with the provisions of the *Road Traffic Act 1974*, and the regulations made under that Act, applicable to the motor vehicle and relating to the construction and equipment of motor vehicles.
- (2) Without affecting the liability of any other person, where a person commits an offence under subsection (1) and that person is then acting as the employee, servant or agent of another person, that other person is guilty of an offence against this Act but if the offence committed by the employee, servant or agent is an offence under paragraph (a), (b) or (c) of that subsection that other person is not guilty of an offence against this Act, if he proves to the satisfaction of the Court before which he is charged that he did not know and could not with reasonable

diligence have discovered, as the case may be, that the employee, servant or agent —

- (a) did not hold an appropriate licence or permit; or
- (b) acted as a driving instructor in contravention of any conditions attached to the licence or permit held by the employee, servant or agent.

Penalty: \$1 000.

- (3) A Court before whom a person is convicted of an offence against this Act shall cause particulars of the conviction to be forwarded to the Director General.

[Section 5 amended by No. 113 of 1965 s. 8; No. 12 of 1973 s. 39; No. 58 of 1974 s. 25; No. 106 of 1981 s. 6; No. 49 of 1987 s. 3; No. 54 of 2006 s. 40.]

6. Licences

- (1) A licence shall be in the form prescribed.
- (2) A licence may authorise the holder to act as a driving instructor for any kind of motor vehicle, or kind of use, specified in the licence, or for all kinds of motor vehicles and uses.
- (3) If no kind of motor vehicle or use is specified in a licence, the licence authorises the holder to act as a driving instructor for all kinds of motor vehicles and uses.
- (4) A licence remains in force for a period of 12 months from the date of its issue, unless sooner suspended or cancelled.
- (5) A licence may be renewed and on each renewal the licence remains in force for a further period of 12 months, unless sooner suspended or cancelled.

[Section 6 amended by No. 54 of 2006 s. 41.]

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7. Application for licence

- (1) An application for a licence or a renewal thereof shall be in the prescribed form and shall be lodged with the Director General together with the appropriate prescribed fee.
- (2) The Director General shall, upon the receipt of an application for a licence, and may, upon receipt of an application for the renewal of a licence, cause enquiries to be made as to the character of the applicant.
- (3) Subject to subsection (4), the Director General shall require the applicant for a licence and may require the applicant for a renewal thereof to submit himself to a test —
 - (a) of the applicant's competency for any driving of a kind that the licence would authorise the applicant to teach; and
 - (b) of his knowledge of such of the provisions of the *Road Traffic Act 1974* and of the regulations made under that Act as relate to drivers of motor vehicles.
- (4) When an applicant for a licence or the renewal thereof has duly obtained from a body prescribed for the purposes of this section a certificate that the applicant is competent to act as a driving instructor in respect of motor vehicles of the class for which he has applied for a licence or a renewal thereof the Director General shall in respect of the applicant dispense with the tests referred to in subsection (3).
- (5) Where the Director General is satisfied that the applicant for a licence —
 - (a) has attained the age of 21 years;
 - (b) is a person of good character;
 - (c) is a fit and proper person to act as a driving instructor;
 - (d) is competent to teach persons to drive motor vehicles as the licence would authorise or is the holder of the certificate referred to in subsection (4) or has such other

qualifications and experience, as a driving instructor, as in the opinion of the Director General justifies a grant to him of a licence without his having obtained that certificate; and

- (e) is the holder of a current and valid licence under the *Road Traffic Act 1974*, to drive motor vehicles as persons would be taught by the applicant to do under the licence sought and has held a licence to the like effect, whether in this State or elsewhere for a continuous period of not less than 3 years, or such other period as the Director General may approve in a particular case, before the application was made,

the Director General shall grant the application.

- (6) A licence may be issued subject to such conditions as the Director General may determine and as may be specified in the licence.
- (7) The Director General may, by notice sent to the holder of a licence, revoke or vary any conditions attached thereto or attach new conditions to the licence.

[Section 7 amended by No. 113 of 1965 s. 8; No. 12 of 1973 s. 39; No. 58 of 1974 s. 25; No. 106 of 1981 s. 5; No. 26 of 1982 s. 2; No. 76 of 1996 s. 35; No. 57 of 1997 s. 91(1); No. 39 of 2000 s. 61; No. 54 of 2006 s. 42.]

8. Tests and course of training required to obtain certificate

- (1) A prescribed body referred to in subsection (4) of section 7 shall not grant the certificate referred to in that subsection to a person until he —
 - (a) has passed such tests or course of training as the body may prescribe; and
 - (b) has paid to the body the prescribed fee for the tests or the course.
- (2) The tests and course of training referred to in subsection (1) —

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- (a) may be written, oral or practical and shall in particular include examination in the following matters namely: such provisions of the *Road Traffic Act 1974*, and the regulations made thereunder as relate to drivers of motor vehicles, driving practices, vehicle manipulation and teaching technique; and
- (b) shall be approved by the Director General.

[Section 8 amended by No. 12 of 1973 s. 39; No. 58 of 1974 s. 25; No. 106 of 1981 s. 5; No. 76 of 1996 s. 35; No. 57 of 1997 s. 91(2).]

9. Cancellation and suspension of licences

- (1) The Director General may, by notice sent to the holder of a licence, cancel or suspend the licence if —
 - (a) the licence was issued erroneously or granted in consequence of a false or fraudulent document, statement or representation;
 - (b) any prescribed fee for the licence is due and unpaid;
 - (c) the holder of the licence is convicted of an offence against this Act; or
 - (d) the Director General is no longer satisfied that the holder of the licence complies with any of the requirements applicable to him and specified in section 7(5).
- (2) When a licence is cancelled or suspended under this section the person to whom the licence was issued shall deliver the licence to the Director General within such period as may be specified in the notice referred to in subsection (1).
- (3) The Director General shall enter or cause to be entered in the record of licences and permits referred to in section 12 particulars of the cancellation or suspension of a licence under this section.

[Section 9 amended by No. 12 of 1973 s. 39; No. 58 of 1974 s. 25; No. 106 of 1981 s. 5; No. 76 of 1996 s. 35.]

10. Review of decision of Director General

- (1) Where the Director General —
- (a) refuses an application for a licence;
 - (b) cancels or suspends a licence;
 - (c) issues a licence subject to any conditions;
 - (d) revokes or varies any conditions attached to a licence; or
 - (e) attaches new conditions to a licence,

the Director General shall notify in writing the person making the application or the person to whom the licence was issued of that decision and of the grounds therefor.

- (2)(a) The applicant or person to whom the licence was issued may apply to the State Administrative Tribunal for a review of the decision of the Director General.

[(b) deleted]

[Section 10 amended by No. 12 of 1973 s. 39; No. 58 of 1974 s. 25; No. 106 of 1981 s. 5; No. 76 of 1996 s. 35; No. 55 of 2004 s. 782.]

11. Permits

- (1) Where —
- (a) an application is made for a licence; and
 - (b) the Director General is making, but has not completed, enquiries for the purpose of being satisfied that the applicant complies with the requirements applicable to him and specified in section 7(5), or is not satisfied that the applicant complies with all or any of those requirements; and
 - (c) the applicant requests a permit and pays the prescribed fee therefor,

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the Director General may issue to the applicant a permit authorising the holder thereof during the currency of the permit to act as a driving instructor.

- (2) The permit —
 - (a) is in force for such period, not exceeding 6 months, as the Director General determines and specifies in the permit;
 - (b) is subject to such conditions as may be so specified.
- (3) The Director General may at any time revoke the permit, vary any conditions attached to the permit or attach new conditions thereto.
- (4) The Director General shall, if a licence is issued to the holder of a permit, revoke the permit and may refund to the holder such portion of the fee paid for the permit, as the Director General thinks fit.

[Section 11 amended by No. 12 of 1973 s. 39; No. 58 of 1974 s. 25; No. 106 of 1981 s. 5; No. 76 of 1996 s. 35.]

12. Records and evidence

- (1) The Director General shall keep records of licences and permits and of matters relating thereto including but without limiting the generality of the foregoing, particulars in relation to the grant, refusal, renewal, suspension and cancellation of licences and the grant, refusal and revocation of permits.
- (2) A certificate purporting to be signed by the Director General or other prescribed officer certifying that on any date or during any period specified in the certificate the particulars set forth in the certificate as to any of the matters specified in subsection (1), did or did not appear on or from such records, is evidence of the particulars certified in and by the certificate without —
 - (a) proof of the signature or of the official character of the person purporting to have signed the certificate; and

- (b) the production of any record or document upon which the certificate is founded.

[Section 12 amended by No. 12 of 1973 s. 39; No. 58 of 1974 s. 25; No. 106 of 1981 s. 5; No. 76 of 1996 s. 35.]

[13. Deleted by No. 76 of 1996 s. 34.]

14. Regulations

- (1) The Governor may make regulations prescribing all matters that by this Act are required or permitted to be prescribed, or that are necessary or convenient to be prescribed, for carrying out or giving effect to this Act, and, in particular regulations may be made for or with respect to —
 - (aa) what is to be authorised by a licence or permit held by a person who, before an amendment to the regulations held a licence or permit that operated by reference to a vehicle classification that no longer exists, and, where anything that was formerly authorised by the licence or permit ceases to be authorised, making provision to facilitate the obtaining by the person of a licence or permit that authorises that thing;
 - (a) the renewal of licences and permits and the return of expired licences and permits;
 - (b) the display on or in any motor vehicle used by a driving instructor for the purpose of giving instruction in the driving of the motor vehicle, of the licence or permit held by the driving instructor and of any means of identifying him;
 - (c) the production to prescribed persons of licences and permits;
 - (d) regulating the method and manner in which a driving instructor may make known the place where and the fact that he is a driving instructor or is willing to give instruction in the driving of motor vehicles;

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- (e) the use of and the carriage of persons in any motor vehicles used for the purpose of giving instruction in the driving of motor vehicles;
 - (f) the provisions and use of special equipment on any motor vehicle used by a driving instructor upon any road for the purpose of giving instruction in the driving of that vehicle;
 - (g) the production to the Director General, by an applicant for a licence or a permit or by the holder of a licence or permit of —
 - (i) evidence of the medical fitness of the applicant or holder to be the holder of a licence or permit;
 - (ii) evidence of the fitness and qualifications of the applicant or holder to act as a driving instructor;
 - (iii) any prescribed means of identifying the applicant or holder;
 - (h) notification to the Director General and such other persons as may be prescribed by the regulations of any injuries sustained by any person or of any damage occasioned to any property during the course of driving instruction;
 - (i) the granting of exemption or conditional exemption from compliance with all or any of the provisions of this Act;
 - (j) the granting of duplicate licences or permits and matters connected with those licences or permits; and
 - (k) imposing a penalty not exceeding \$500, for a breach of any regulation.
- (2) A regulation may be of general or of limited application according to time, place or circumstances, and may be general or restricted to any specified class of subject matter.

[Section 14 amended by No. 113 of 1965 s. 8; No. 12 of 1973 s. 38; No. 58 of 1974 s. 25; No. 106 of 1981 s. 5; No. 49 of 1987 s. 4; No. 76 of 1996 s. 35; No. 39 of 2000 s. 62.]

Notes

- ¹ This is a compilation of the *Motor Vehicle Drivers Instructors Act 1963* and includes the amendments made by the other written laws referred to in the following table⁴. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Motor Vehicle Drivers Instructors Act 1963</i>	10 of 1963	15 Oct 1963	28 Feb 1964 (see s. 2 and <i>Gazette</i> 28 Feb 1964 p. 905-6)
<i>Decimal Currency Act 1965</i>	113 of 1965	21 Dec 1965	Act other than s. 4-9: 21 Dec 1965 (see s. 2(1)); s. 4-9: 14 Feb 1966 (see s. 2(2))
<i>Acts Amendment (Road Safety and Traffic) Act 1973 Pt. IV</i>	12 of 1973	25 May 1973	26 Oct 1973 (see s. 2 and <i>Gazette</i> 26 Oct 1973 p. 4049)
<i>Acts Amendment (Road Traffic) Act 1974 Pt. IV</i>	58 of 1974	3 Dec 1974	29 Aug 1975 (see s. 2 and <i>Gazette</i> 29 Aug 1975 p. 3085)
Reprint of the <i>Motor Vehicle Drivers Instructors Act 1963</i> approved 12 Jul 1977 (includes amendments listed above)			
<i>Acts Amendment (Traffic Board) Act 1981 Pt. I</i>	106 of 1981	4 Dec 1981	2 Feb 1982 (see s. 2 and <i>Gazette</i> 2 Feb 1982 p. 393)
<i>Motor Vehicle Drivers Instructors Amendment Act 1982</i>	26 of 1982	27 May 1982	27 May 1982
<i>Motor Vehicle Drivers Instructors Amendment Act 1987</i>	49 of 1987	3 Oct 1987	31 Oct 1987
<i>Road Traffic Amendment Act 1996 Pt. 3 Div. 4</i>	76 of 1996	14 Nov 1996	1 Feb 1997 (see s. 2 and <i>Gazette</i> 31 Jan 1997 p. 613)
<i>Statutes (Repeals and Minor Amendments) Act 1997 s. 91</i>	57 of 1997	15 Dec 1997	15 Dec 1997 (see s. 2(1))
<i>Road Traffic Amendment Act 2000 Pt. 3 Div. 2</i>	39 of 2000	10 Oct 2000	7 May 2001 (see s. 2 and <i>Gazette</i> 23 Mar 2001 p. 1665). (Proclamation in <i>Gazette</i> 9 Feb 2001 p. 767 revoked in <i>Gazette</i> 23 Mar 2001 p. 1665)
Reprint of the <i>Motor Vehicle Drivers Instructors Act 1963</i> as at 8 Feb 2002			

Short title	Number and year	Assent	Commencement
(includes amendments listed above)			
<i>Machinery of Government (Planning and Infrastructure) Amendment Act 2002</i> Pt. 3 ²	7 of 2002	19 Jun 2002	1 Jul 2002 (see s. 2 and <i>Gazette</i> 28 Jun 2002 p. 3037)
<i>State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004</i> Pt. 2 Div. 87 ³	55 of 2004	24 Nov 2004	1 Jan 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7130)
Reprint 3: The Motor Vehicle Drivers Instructors Act 1963 as at 1 Jul 2005 (includes amendments listed above)			
<i>Road Traffic Amendment Act 2006</i> Pt. 4 Div. 2	54 of 2006	26 Oct 2006	30 Jun 2008 (see s. 2 and <i>Gazette</i> 10 Jun 2008 p. 2471)

² The *Machinery of Government (Planning and Infrastructure) Amendment Act 2002* s. 67-69 read as follows:

“

67. Agreements under former *Transport Co-ordination Act 1966* section 15C

- (1) To the extent that, immediately before the commencement of this Act, an agreement under the former section 15C made provision about the performance of functions of the former Director General under a relevant Act, the agreement continues, when this Act comes into operation, as an agreement under the new provision of the relevant Act.
- (2) To the extent that the agreement continues under subsection (1), it applies as if —
 - (a) instead of being made by the Minister referred to in the former section 15C, the agreement had been made by the Director General referred to in the new provision of the relevant Act; and
 - (b) instead of providing for the performance of functions of the former Director General, the agreement made similar provision for the performance of the corresponding functions of the Director General referred to in the new provision of the relevant Act.
- (3) In this section —

former Director General means the Director General of Transport under the *Transport Co-ordination Act 1966* section 8 as in force before it was repealed by this Act;

former section 15C means the *Transport Co-ordination Act 1966* section 15C as in force before it was repealed by this Act;

new provision means —

- (a) the *Control of Vehicles (Off-road Areas) Act 1978* section 4B;
- (b) the *Motor Vehicle Drivers Instructors Act 1963* section 4A;
- (c) the *Motor Vehicle (Third Party Insurance) Act 1943* section 3QA; or
- (d) the *Road Traffic Act 1974* section 6B;

relevant Act means —

- (a) the *Control of Vehicles (Off-road Areas) Act 1978*;
- (b) the *Motor Vehicle Drivers Instructors Act 1963*;
- (c) the *Motor Vehicle (Third Party Insurance) Act 1943*; or
- (d) the *Road Traffic Act 1974*.

68. Delegations under former *Transport Co-ordination Act 1966* section 18

- (1) To the extent that, immediately before the commencement of this Act, a delegation under the former section 18 applied to the performance of functions or powers of the former Director General under a relevant Act, the delegation continues, when this Act comes into operation, as a delegation under the new provision of the relevant Act.
- (2) To the extent that the delegation continues under subsection (1), it applies as if —
 - (a) instead of being made by the former Director General, the delegation had been made by the Director General referred to in the new provision of the relevant Act;
 - (b) instead of delegating the performance of functions of the former Director General, the performance of the corresponding functions of the Director General referred to in the new provision of the relevant Act were delegated; and
 - (c) any Ministerial approval that would have been required in order for the delegation to be made under the new provision of the relevant Act had been given.
- (3) In this section —

former Director General means the Director General of Transport under the *Transport Co-ordination Act 1966* section 8 as in force before it was repealed by this Act;

former section 18 means the *Transport Co-ordination Act 1966* section 18 as in force before it was amended by this Act;

new provision means —

- (a) the *Control of Vehicles (Off-road Areas) Act 1978* section 4A;
- (b) the *Motor Vehicle Drivers Instructors Act 1963* section 4;
- (c) the *Motor Vehicle (Third Party Insurance) Act 1943* section 3QB;
- (d) the *Rail Safety Act 1998* section 57A;
- (e) the *Road Traffic Act 1974* section 6A; or
- (f) the *Transport Co-ordination Act 1966* section 18;

relevant Act means —

- (a) the *Control of Vehicles (Off-road Areas) Act 1978*;
- (b) the *Motor Vehicle Drivers Instructors Act 1963*;
- (c) the *Motor Vehicle (Third Party Insurance) Act 1943*;
- (d) the *Rail Safety Act 1998*;
- (e) the *Road Traffic Act 1974*; or
- (f) the *Transport Co-ordination Act 1966*.

69. Regulations about transitional matters

- (1) If there is no sufficient provision in this Act for dealing with a transitional matter, regulations under an Act amended by this Act may include any provision that is required, or is necessary or convenient, for dealing with the transitional matter.
- (2) In subsection (1) —
transitional matter means a matter that needs to be dealt with for the purpose of effecting the transition from the provisions of the Acts amended by this Act as in force before this Act comes into operation to the provisions of those Acts as in force after this Act comes into operation.
- (3) Regulations including a provision described in subsection (1) may be expressed to have effect before the day on which they are published in the *Gazette*.
- (4) To the extent that a regulation including a provision described in subsection (1) may have effect before the day of its publication in the *Gazette*, it does not —

- (a) affect in a manner prejudicial to any person (other than the State or an agency of the State), the rights of that person existing before the day of its publication; or
- (b) impose liabilities on any person (other than the State or an agency of the State) in respect of anything done or omitted to be done before the day of its publication.

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³ The *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* Pt. 5, the *State Administrative Tribunal Act 2004* s. 167 and 169, and the *State Administrative Tribunal Regulations 2004* r. 28 and 42 deal with certain transitional issues some of which may be relevant for this Act.

⁴ The *Courts Legislation Amendment and Repeal Act 2004* Sch. 2 cl. 33 was repealed by the *Criminal Law and Evidence Amendment Act 2008* s. 77(13).