

1996

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

MOTOR TRAFFIC (AMENDMENT) BILL (No. 2) 1996

EXPLANATORY MEMORANDUM

**Circulated by the authority of
Tony De Domenico MLA
Minister for Urban Services**

MOTOR TRAFFIC (AMENDMENT) BILL (No. 2) 1996 EXPLANATORY MEMORANDUM

Outline

The Motor Traffic (Amendment) Bill (No. 2) 1996 ("the Bill") amends the *Motor Traffic Act 1936* ("the Act") to change procedures for examination of learner drivers who wish to obtain a provisional driver's licence ("learners").

In summary, this Bill provides for the accreditation of driving instructors so that they may conduct the examination for provisional licences. People will be able to choose to have the examination conducted by an accredited driving instructor in the private sector or by an inspector appointed by the Registrar of Motor Vehicles (Government licence examiner). The Bill also enables a learner to undergo the required tests over time through several examinations (the results are to be recorded in a "learner driver log book") instead of all in one hit in the one examination as currently required.

Existing section 9B of the Act empowers the Registrar to grant provisional licences but subsection 9B(14) provides that a provisional licence shall not be granted unless the Registrar is satisfied as to the capability of the applicant to drive with safety to the public. Existing subsection 9B(15) contemplates that the Registrar may require the applicant to undergo a driving test to establish her or his capability to drive safely.

What happens in practice is that after a learner obtains a learner licence under existing section 9A of the Act she or he seeks tuition from a source of her or his own choosing (usually a friend, family member or driving school) and then applies for a provisional licence under existing section 9B. The applicant undertakes a driving test conducted by a Government licence examiner following which the licence may be granted by the Registrar. The Bill changes this approach in the following ways.

The Bill will enable the assessment of learners for provisional licences to be undertaken by an accredited driving instructor in the private sector following which the Registrar may grant the licence.

The assessment of a learner by an accredited driving instructor will make use of a learner driver log book. The log book is to contain all of the areas in which a learner must demonstrate competence in order to obtain a certificate of competency. The Registrar may grant a provisional licence to a person who has obtained a certificate of competency by completing the learner driver log book in this way. The accredited driving instructor will, as each area of competence is demonstrated by the student, make a note to that effect on the log book. The completion of the log book may take place over time and on several different occasions. On demonstration of all the required competencies in the log book, the accredited instructor will complete the certificate of competency which will be the basis on which the Registrar will consider the capability of the learner under existing subsection 9B(14).

A driving instructor may not complete the log book and certificate of competency unless he or she is an accredited driving instructor. In other words, only an accredited driving instructor or Government licence examiner may examine a learner for the purposes of obtaining a provisional licence.

A driving instructor may apply to the Registrar for a certificate of accreditation. The Registrar shall assess the application against specified criteria including whether the applicant has satisfactorily completed an approved accreditation training course. It is only individual instructors who can be accredited. It will not be possible for an organisation (such as a driving school) to obtain accreditation. There will exist a code of practice for accredited instructors which will contain requirements for accredited instructors and also the competencies which must be passed by a learner. A breach of the code will be a basis upon which the Registrar may suspend or cancel accreditation or require the instructor to undergo further training.

It will not be necessary for a driving instructor to obtain accreditation to simply instruct learners. Accreditation is only necessary to enable the instructor to complete the learner driver log book and certificate of competency. A driving school may employ both accredited and non-accredited instructors.

The option will still exist for a learner to receive instruction from friends, family members or non-accredited driving instructors and if they wish to then undergo a driving test conducted by a Government licence examiner. The Government test will cover the same areas of required competency which are set out in the log book but the test will continue to be conducted in the one session. In other words, the use of the services of an accredited driving instructor will be optional.

It is intended that the Registrar will monitor the performance of accredited driving instructors. This will involve a Government officer being present on occasion during instruction or examination by an accredited driving instructor.

Financial implications

This Bill will enable some savings to be made over time through allowing examination of learners by private driving instructors. There are administrative costs associated with the implementation of the accreditation scheme.

Details of the bill are as follows:

Clause 1 - Short title

Clauses 1, 2 and 3 deal with formal matters. Clause 1 provides for the citation of the Bill once enacted as the *Motor Traffic (Amendment) Act (No. 2) 1996*.

Clause 2 - Commencement

Clause 2 provides for the commencement of the Act.

Clause 3 - Principal Act

Clause 3 provides that for the purposes of the Bill, the "Principal Act" is the *Motor Traffic Act 1936*.

Clause 4 - Interpretation

Clause 4 amends existing section 4 by inserting new definitions of the "certificate of competency" and "learner driver log book". The Registrar may grant a provisional licence on the basis that a person has obtained a certificate of competency (refer to clause 9). The learner driver log book sets out the areas of competency which must be demonstrated by the learner before the learner may obtain a certificate of competency completed by the accredited driving instructor (refer to new section 13R inserted by clause 10).

Clause 5 - Substitution

Clauses 5, 6 and 7 split existing PART 2 - REGISTRATION OF, AND LICENCES TO DRIVE, MOTOR VEHICLES into two parts, one dealing with drivers' licences and the other with registration. The two new parts are PART 1A - DRIVING LICENCES and PART 2 - REGISTRATION OF MOTOR VEHICLES and they consist mostly of renumbered existing sections. Clause 10 inserts a third new part in the Act, PART 1B - ACCREDITATION OF DRIVING INSTRUCTORS which contains the new provisions on accreditation of driving instructors.

Clause 5 replaces the existing heading to Part 2 of the principal Act and substitutes the new heading "PART 1A - DRIVING LICENCES".

Clause 6 - Relocation

Clause 6 renumbers existing sections 7, 7A, 8 and 8A of the principal Act which concern registration so that these sections appear in the new PART 2 - REGISTRATION OF MOTOR VEHICLES.

Clause 7 - Renumbering

Clause 7 renumbers existing sections dealing with drivers' licences so that they appear at the start of the new PART 1A - DRIVING LICENCES.

Clause 8 - Learner Licences and Learner Licences Receipts

Clause 8 inserts new subsection 7A(1A) to require the Registrar to provide a learner driver log book when issuing a learner licence or a learner licence receipt in relation to a light vehicle. The learner driver log book is to record those areas of competency which have been demonstrated by the learner to the satisfaction of the accredited driving instructor (refer to new section 13R inserted by clause 10).

Clause 9 - Provisional Licences and Endorsements

This concerns existing subsection 9B(14) which requires the Registrar to be satisfied that an applicant is capable of driving with safety to the public before granting the applicant a provisional licence. Clause 7 renumbers existing section 19B as section 7B.

Clause 9 inserts new subsection 7B(14A) to require the Registrar to have regard to a certificate of competency presented by the applicant when assessing the applicant's capability of driving with safety to the public. It is intended that the Registrar shall make the assessment that a person is capable of driving safely on the basis of a certificate of competency completed by the learner and the accredited driving instructor. New section 13R inserted by clause 10 provides for an accredited driving instructor and learner to complete a certificate of competency once the instructor is satisfied that the learner has demonstrated competence in each of the required areas set out in the learner driver log book.

The Registrar may also continue to assess the ability of the learner to drive safely on the basis of a test conducted by the Government licence examiner where the learner has chosen to not go through the certificate of competency process.

Clause 10 - Insertion

Clause 10 inserts a new part, that is, PART 1B - ACCREDITATION OF DRIVING INSTRUCTORS. New Part 1B establishes the process of obtaining accreditation as a driving instructor and the factors that the Registrar must consider before granting accreditation.

Clause 10 also inserts the heading to new PART II— REGISTRATION OF MOTOR VEHICLES which part consists of existing registration provisions.

Summary of requirements in new PART 1B - ACCREDITATION OF DRIVING INSTRUCTORS

Only accredited driving instructors may complete a learner driver log book and the certificate of competency in the log book. In other words, only an accredited driving instructor can attest that a learner has demonstrated competency in the required areas for the purpose of obtaining a provisional licence. New section 13S

makes it an offence for a person other than an accredited driving instructor to complete a learner driver log book. New section 13T makes it an offence to pretend that he or she is an accredited driving instructor. It should be noted that people who are not accredited driving instructors such as friends, family or paid driving instructors may still teach learners how to drive.

An accredited driving instructor must meet certain requirements during the period of accreditation. If the driving instructor fails to meet these requirements then the Registrar may suspend or cancel his or her accreditation. The requirements are not subject to criminal penalty. An accredited driving instructor is required to

- a) display the certificate of accreditation in the instructing vehicle (refer to new section 13G);
- b) undergo such further training as may be required by the Registrar (refer to new section 13N);
- c) ensure the vehicle is registered, displays the required "L" plates and if the vehicle is provided by the instructor, that the vehicle has the required dual controls (refer to new section 13P);
- d) have insurance to indemnify the instructor against any claims for compensation (refer to new section 13Q); and
- e) comply with requirements set out in the code of practice approved by the Registrar (refer to new section 13U).

Interpretation

New section 13A defines the terms "accredited", "approved training course", "certificate of accreditation", "light vehicle", "medical practitioner" and "relevant offence".

In summary, a "relevant offence" includes offences related to dangerous driving and driving influenced by alcohol or drugs; offences of dishonesty; sexual offences; and offences related to violence.

Accreditation

New section 13B sets out the criteria which an applicant must meet in order to obtain accreditation or renewal of accreditation. The following criteria set out in new 13B(1) (a),(b),(c), and (d) apply to any application for accreditation. The applicant must:

- (a) be not less than 21 years of age;
- (b) hold a full licence for a light vehicle (passenger car);
- (c) be medically fit to undertake driver instruction and examination; and
- (d) has not been convicted of a relevant offence (refer to new section 13A) in the past 3 years.

New subsection 13B (2) provides that a person is medically fit to undertake driver instruction and examination if that person has been examined and certified as such

by a medical practitioner some time in the 90 days preceding the date of application for accreditation.

If the applicant has not been accredited at any time in the previous 5 years, the applicant must have satisfactorily completed a training course approved by the Registrar (refer to new subparagraph 13B(1)(e)). Therefore people who apply for accreditation for the first time must first complete the approved training course.

The accreditation period is to be for 12 months (refer to new section 13E). It is anticipated that once a person obtains accreditation for the first time, the instructor will then seek renewal of accreditation on an annual basis. Application for renewal may be made before the expiry of the applicant's current accreditation. The Registrar may grant the application so that the renewed accreditation commences on expiry of the current accreditation. An application for renewal must be made no earlier than one month before the expiry of the existing accreditation period (refer to new subsection 13B(2)). A person who is renewing accreditation need not repeat the approved training course unless the Registrar has required the person to undergo further training under new section 13N.

New section 13H provides for the Registrar to suspend or cancel a person's accreditation in specified circumstances. New subparagraph 13B(1)(f) provides that the Registrar shall not grant accreditation if the applicant is disqualified from accreditation by a suspension or cancellation order (refer to new section 13K). New section 13N provides that the Registrar may require an accredited instructor to undergo further training. Where this requirement is made, the accredited instructor may not apply for a subsequent accreditation until he or she completes the required further training. This is the effect of new subparagraph 13B(1)(f)(ii).

Further information

New section 13C provides for the Registrar to require such further information as may be necessary in considering whether to grant accreditation or renewal of accreditation.

Certificate of accreditation

New section 13D requires the Registrar to issue a certificate of accreditation when granting accreditation. A person seeking renewal of accreditation must pay the determined fee in order to obtain a certificate of accreditation. There is no fee for a certificate of accreditation where the applicant has not been accredited during the previous 5 years.

Duration of accreditation

New section 13E provides that accreditation is to be for 12 months from the date of the granting of accreditation (unless the accreditation is suspended or cancelled).

Production of certificate

New section 13F requires an accredited driving instructor to produce his or her certificate of accreditation when required to do so by the Registrar, an inspector, a motor traffic officer or a police officer.

Display of certificate of accreditation

New section 13G requires an accredited driving instructor to display his or her certificate of accreditation in any vehicle used to instruct or examine a learner. This requirement then applies irrespective of whether the instructing vehicle is provided by the learner or the instructor. Failure to comply with this requirement is not a criminal offence but may result in suspension or cancellation of accreditation (refer to new section 13H).

Suspension or cancellation of accreditation

New section 13H allows the Registrar to suspend or cancel accreditation as a driving instructor if the Registrar is satisfied of the existence of specified circumstances. The period of suspension may extend beyond the expiry date of the accreditation but may not exceed 9 months. A person may not obtain accreditation if subject to a suspension order (refer to new subsections 13K(4) and 13B(1)(f)(i)). A cancellation order disqualifies a person from obtaining accreditation for a specified period of at least 12 months but not exceeding 24 months (refer to new subsections 13K(1), 13K(2) and 13B(1)(f)(i)). The Registrar may suspend or cancel accreditation if the instructor:

- (a) obtained accreditation by false statement or misrepresentation;
- (b) failed to display a certificate of accreditation in the vehicle as required by new section 13G;
- (c) failed to successfully complete a course of further training required under new section 13N;
- (d) failed to comply with new subparagraphs 13P(1)(a) or 13P(1)(b) which require the instructor to ensure that a learner's sign (L plate) is displayed on the vehicle and that the vehicle is registered;
- (e) failed to ensure that the vehicle has a brake, clutch (if a manual vehicle) and internal mirror but not a foot operated accelerator, for use by the instructor as required by new subparagraphs 13P(1)(c) and 13P(1)(d);
- (f) has failed to maintain a policy of insurance as required by new section 13Q; and
- (g) has breached the code of practice approved by the Registrar under new section 13U.

New subsection 13H(2) requires the Registrar to give at least 14 days written notice of the grounds on which the Registrar believes accreditation should be suspended or cancelled and requires the Registrar to consider any representations made by the instructor. New subsection 13H(3) requires the notice to the instructor to be sent to the instructor's last known place of residence.

New subsections 13H(7) and (8) provide that suspension or cancellation of accreditation shall take effect from the date of the notice to be provided to the instructor.

New subsection 13H(9) provides that a person shall not be taken to be accredited while his or her accreditation is suspended. New subsection 13H(10) provides that a person can not claim a refund of the fee for obtaining a certificate of accreditation where his or her accreditation is cancelled or suspended (this provision is not to apply where the cancellation is made at the request of the instructor).

New subsection 13H(4) provides that should the instructor have his or her driving licence suspended or cancelled then the instructor's accreditation shall automatically be suspended or cancelled.

New subsection 13H(6) enables an accredited driving instructor to require the Registrar to cancel his or her accreditation on request.

Further suspension or cancellation

A person who has had his or her accreditation as an instructor suspended may be liable to further suspension or cancellation of the accreditation because of actions by the instructor during the period of suspension. New section 13J gives the Registrar power to further suspend or cancel accreditation as a result of actions which could constitute grounds for suspension or cancellation under new section 13H.

Disqualification

New section 13K provides that suspension or cancellation of accreditation shall have the effect of disqualifying a person affected from applying for any subsequent accreditation for a specified period. New subsection 13B(1)(f)(i) provides that a person may not obtain accreditation if that person is disqualified from doing so.

New subsections 13K(1) and (2) provide that cancellation of accreditation shall result in disqualification for at least 12 months and for such longer period (less than 24 months) as may be specified. A person may not apply for a new accreditation if the person is subject to such a cancellation order.

The Registrar may suspend a person's accreditation for a specified time which period may extend beyond the expiry date of the person's current accreditation. A person may not obtain new accreditation while still subject to such a suspension order (refer to new subsection 13K(4)).

Return of certificate of accreditation

New section 13M deals with the return of the certificate of accreditation once a person's accreditation is suspended or cancelled. New subsection 13M(1) requires a person to return his or her certificate of accreditation within 7 days of suspension or cancellation. New subsection 13M(2) requires the Registrar to return the certificate

of accreditation on request to the holder of the certificate once the period of suspension has expired (unless the accreditation has expired in the meantime).

Further training

New section 13N enables the Registrar to direct an accredited driving instructor to undertake further training. It is anticipated that the Registrar may so direct if the instructor breaches the code of practice or if the Registrar otherwise considers that the instruction by the accredited driving instructor is not adequate.

Use of vehicle for instruction

New subparagraph 13P(1)(a) requires the accredited driving instructor to ensure that the required "L plates" are displayed on the vehicle in accordance with renumbered existing paragraph 7A(8)(b) (formerly 9A(8)(b)).

New subparagraph 13P(1)(b) requires the accredited driving instructor to also ensure that the vehicle is registered.

New subparagraph 13P(1)(c) requires the accredited driving instructor to ensure that the vehicle is equipped with an internal mirror, brake and clutch (if a manual vehicle) controls for use by the instructor. New subsection 13P(3) provides that this requirement does not apply if the vehicle used for instruction is supplied by the learner and not the instructor.

New subparagraph 13P(1)(d) requires the accredited driving instructor to ensure that the vehicle does not have a foot operated accelerator on the passenger side.

New subsection 13P(2) states that the above requirements apply whether the learner is simply being instructed on how to drive or is being examined to obtain a certificate of competency.

Insurance

New section 13Q requires an accredited driving instructor to maintain a policy of insurance which indemnifies the instructor against any action for damages. The policy must not be for less than \$5,000,000 in relation to a single claim, or such higher amount as may be prescribed.

Learner driver log books

New section 13R requires a learner driver log book to contain the following materials:

- (a) the areas set out in the code of practice (refer to new section 13U) in which a learner must demonstrate competency in order to show that he or she is capable of driving a vehicle safely;
- (b) a certificate of competency which is to be completed by the instructor and the learner once the learner has shown competency in each of the areas set out in the log book; and
- (c) such other matters as may be prescribed.

Completion of learner driver log book

New section 13S makes it an offence, subject to the following exceptions, for a person other than an accredited driving instructor to fill in a part of the learner driver log book which is required to be completed by the accredited driving instructor. The penalty is 30 penalty units.

There is no offence where the learner completes a part of the log book intended for completion by the learner. There is also no offence where the learner completes a part of the log book intended for completion by the accredited driving instructor unless the learner does so in order to obtain a certificate of competency by fraud. A learner who completes the wrong part of the log book by mistake is therefore not committing an offence.

Holding Out

New section 13T makes it an offence for a person to hold themselves out to be an accredited instructor. The penalty is 30 penalty units.

Code of practice

New section 13U enables the Registrar to approve a code of practice relating to accredited driving instructors, their vehicles and the method of instruction and examination. Failure of an accredited driving instructor to comply with the code is a ground for suspension or cancellation of accreditation by the Registrar under new subparagraph 13H(1)(g).

The code of practice is to also set out those areas in which a learner must demonstrate competency in order to establish that he or she is capable of driving a motor vehicle safely. These areas of competency so identified in the code are to be set out in the learner driver log book as required in new section 13R. The code of practice is to be a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

Notification and commencement of code

New subsection 13V(1) provides that notice of a code (or variation) under new section 13U shall be published in the gazette with a statement concerning the commencement of the code and where and when the code of practice is to be

available for inspection. New subsection 13V(2) provides that the code shall commence on publication of the notice or such later date as may be specified.

Public access to code

New subsection 13W(1) requires the Registrar to make the code of practice available for inspection free of charge. New subsection 13W(2) requires the Registrar to supply a copy of the code of practice or any part of the code on payment of the prescribed fee.

Territory not liable

New section 13X provides that the Territory shall not be liable for the actions of an accredited driving instructor.

Approval of training courses

A person may not become an accredited driving instructor unless he or she has completed an "approved training course". In addition under section 13N the Registrar may require an accredited instructor to complete an "approved training course" for the purposes of further training, that is, a refresher course. New section 13A defines "approved training course" as a course approved under this provision, new section 13Y.

New section 13Y provides for the course to be approved by the Registrar by notice in the Gazette. New subsection 13Y(2) provides that the Registrar shall not approve a course unless satisfied that it provides an adequate standard of theoretical and practical instruction.

Clause - 11 General Offences

Clause 11 amends existing section 192 so that a contravention of new sections 13G, 13P and 13Q are not criminal offences. Breach of these new sections may result in suspension or cancellation of accreditation by the Registrar. Clause 11 also amends existing section 192 to make it clear that failure of the Registrar to comply with requirements of the Registrar under the Act are not criminal offences.

Clause 12 - Remission or refund of fees

Existing subsection 209(2) provides for the Registrar to refund fees where registration or licence is cancelled (as well as for other reasons). Clause 12 amends existing section 209 to allow the Registrar to refund fees for an accreditation certificate where the accreditation is cancelled at the request of the accredited instructor. New subsection 209(5A) provides that no refund may be made unless the former instructor surrenders the certificate to the Registrar or declares that the certificate is lost, stolen or destroyed.

Clauses 13 and 14 - relocation and renumbering

Clauses 13 and 14 relocate and renumber certain items in schedule 7 so that the schedule is consistent with the relocation and renumbering of existing provisions under this Bill.

Clause 15 - Insertion

Existing Schedule 7 lists those decisions of the Minister or the Registrar which are reviewable by the Administrative Appeals Tribunal pursuant to existing section 217D. Clause 15 amends the existing Schedule 7 so that the following decisions of the Registrar are also subject to review:

- (a) refusal to grant accreditation on the basis that a person has not satisfactorily completed the approved training course (refer to new subparagraphs 13B(1)(e) and 13B(1)(f)(i));
- (b) suspension or cancellation of accreditation (refer to new section 13H);
- (c) further suspension or further cancellation (refer to new section 13J);
- (d) specification of a period of disqualification (refer to new section 13K); and
- (e) requirement to undertake further training (refer to new section 13N).

Clause 16 - Amendment of cross-references

Clause 16 is a technical provision to ensure that any reference in the principal Act or in any other legislation to sections which have been renumbered in this Act shall be read as references to the renumbered sections.