



Transport  
for NSW

## Transport for NSW

Driving Instructors Regulation 2016

Regulatory Impact Statement

May 2016

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## Executive Summary

The proposed Driving Instructors Regulation 2016 (proposed Regulation) is a remake of the Driving Instructors Regulation 2009 (2009 Regulation). The proposed Regulation is made under the *Driving Instructors Act 1992*. It remakes the 2009 Regulation with amendments that are relatively minor in nature and aim to improve clarity and provide better support for the driving instruction industry and people using their services.

This document is a Regulatory Impact Statement (RIS) for the proposed Regulation. It considers the objectives of the proposed Regulation, alternative options to the remaking of the 2009 Regulation with amendments, and the costs and benefits of the options.

Option 1, allowing the 2009 Regulation to lapse and not remake it, will result in the repeal of the 2009 Regulation with no replacement regulation in its place. This is not supported as the costs outweigh the benefits.

Option 2, remaking the 2009 Regulation without amendment, is not supported as this does not present as much benefit as Option 3.

Option 3, remaking the 2009 Regulation with amendments, is the preferred option as it presents the highest net benefits.

Public consultation on the proposed Regulation and this RIS will occur for a period of at least 28 days.

## 1. Public consultation

A public notice of the exhibition of the proposed Driving Instructors Regulation 2016 (proposed Regulation) with this Regulatory Impact Statement (RIS) has appeared in the Sydney Morning Herald and the Daily Telegraph.

The proposed Regulation and RIS are available for download at the Transport for NSW website [Draft Driving Instructors Regulation 2016](#). A link to this page is given at the [Driving Instructor's page](#) of the Roads and Maritime Services website.

This RIS has also been distributed to key stakeholders listed at Section 7.

### 1.1 How to make a submission

Interested parties are invited to submit written comments on the proposed Regulation to Transport for NSW in the following ways:

By post:            Driving Instructors Regulation 2016  
                         Driver and Vehicle Policy  
                         Transport Policy  
                         Freight, Strategy and Planning  
                         Transport for NSW  
                         PO Box K659  
                         Haymarket NSW 1240

By email:            [drivinginstructorsregulation@transport.nsw.gov.au](mailto:drivinginstructorsregulation@transport.nsw.gov.au)

The closing date for submissions is 5pm on Friday 17 June 2016.

### 1.2 What will happen with the submissions

Transport for NSW will review submissions received and the proposed Regulation may be amended as appropriate. Copies of the submissions will be provided to the Legislation Review Committee of the NSW Parliament with the final version of the proposed Regulation. All submissions received will be published on the Transport for NSW website. Contact details of individuals who have made a submission will not be published. If you wish all or part of your submission to be treated as confidential, please clearly state this in your submission.

## 2. Title of the proposed Statutory Rule and Authority

The proposed Regulation is called the Driving Instructors Regulation 2016 made under the *Driving Instructors Act 1992* (the Act).

## 3. Name of proponent and responsible Minister

The Minister for Roads, Maritime and Freight is the Minister responsible for making the proposed Regulation.

## 4. Background

### 4.1 Overview

The *Subordinate Legislation Act 1989* provides for regulations to have a limited life. In most cases, regulations are automatically repealed after five years. When a regulation is due for repeal, the responsible agency must review the regulation and the need for the regulation. The agency must then

make a decision about whether the regulation should be remade. The results of this review are required to be published in a RIS and submissions invited from the public.

The Driving Instructors Regulation 2009 (the 2009 Regulation) commenced on 1 September 2009 to support the implementation of the Act. At present, the Regulation is due to be automatically repealed on 1 September 2016, unless remade or the repeal is postponed.

The Act authorises Roads and Maritime Services to issue licences for driving instructors engaged in instructing another person for the purpose of teaching that other person to drive a motor vehicle for monetary or other reward. As stated at section 2A of the Act, the primary objects are to:

- ensure that driving instructors meet minimum standards relating to competency in driving instruction, probity and character in order to protect the community and to benefit the driving instruction industry
- minimise the potential for corruption in the driving instruction industry and inappropriate behaviour by driving instructors
- promote the safety and protection of persons receiving driving instruction.

As at December 2015, there were 4,897 active driving instructor licences in the Roads and Maritime database. About 78 per cent of these are instructors for class C (car) driver licences. For the period 2013 to 2015, on average 277 new driving instructors licences were issued each year and the average number of renewals and replacements was 530 annually. Driving instructor's licences are valid for five years.

In order to safeguard the professionalism and standards of driving instruction, Roads and Maritime administers a strict application process for driving instructors' licences. The requirements include police checks, theory and practical tests, an assessment and an instructor training course. More information can be found at [Getting a driving instructor's licence](#).

This document is a RIS on the proposed Regulation and provides interested stakeholders, including the driving instruction industry and members of the wider community, with an opportunity for direct input into the regulatory development process.

## 4.2 Methodology for preparing this Regulatory Impact Statement

This RIS has been prepared in accordance with the *Subordinate Legislation Act 1989*, the Better Regulation Office's *Guide to Better Regulation 2009* (the Guide), and the Independent Pricing and Regulatory Tribunal (IPART)'s [A best practice approach to designing and reviewing licensing schemes \(2013\)](#).

In accordance with the requirements of the *Subordinate Legislation Act 1989*, this RIS includes:

- a statement of the objectives sought to be achieved (section 5.1)
- identification of the alternative options by which those objectives can be achieved (section 6)
- assessment of the costs and benefits of the proposed Regulation and of each option (section 6)
- an assessment as to which of the options involves the greatest net benefit for or the least net cost to the community (section 6)
- a statement of the consultation program to be undertaken (section 7).

Pursuant to the *Subordinate Legislation Act 1989*, in order for the proposed Regulation to be made, its objectives must be reasonable and appropriate, its anticipated benefits must outweigh its anticipated costs, and it must provide the greatest net benefit or be at the least net cost to the community as compared to alternative options available and considered. This RIS considers the extent to which the proposed Regulation discharges these threshold requirements.

The Better Regulation Office acts as a regulation gatekeeper, reviewing and advising on a regulation's compliance with the Better Regulation requirements. To assist agencies with this process, the Guide includes seven principles for better regulation, against which the proposed Regulation must be assessed. These are:

- Principle 1: The need for government action should be established
- Principle 2: The objective of government action should be clear

- Principle 3: The impact of government action should be properly understood by considering the costs and benefits of a range of options, including non-regulatory options
- Principle 4: Government action should be effective and proportional
- Principle 5: Consultation with business and the community should inform regulatory development
- Principle 6: The simplification, repeal, reform or consolidation of existing regulation should be considered
- Principle 7: Regulation should be periodically reviewed, and if necessary reformed, to ensure its continued efficiency and effectiveness.

This RIS includes an assessment of the proposed Regulation in accordance with these principles (Section 6.5).

The IPART best practice approach is not intended to replace the requirements set out by the Better Regulation Office or other government agencies. Instead, it offers a targeted approach for considering whether licensing is the best government response and is consistent with the principles of Better Regulation.

The framework involves a series of steps or questions, separated into four stages:

- Stage 1 – Is licensing appropriate?
- Stage 2 – Is licensing well designed?
- Stage 3 – Is licensing administered effectively/efficiently?
- Stage 4 – Is the licensing scheme the best response?

This RIS includes an assessment of the proposed Regulation in accordance with the IPART best practice approach (Section 6.6).

## 5. The proposed Regulation

### 5.1 Objectives and suggested changes of the proposed Regulation

Similar to the 2009 Regulation, the objectives of the proposed Regulation are to make provisions with respect to the following:

- the circumstances in which a person providing driving instruction is not a driving instructor for the purposes of the Act
- the fees for driving instructors' licences and certificates
- the production, and improper use or care, of driving instructors' licences
- the records to be kept by driving schools and driving instructors
- the requirements for comprehensive motor vehicle insurance in respect of motor vehicles used to provide driving instruction
- the requirements for duplicate driving controls in driving instructors' vehicles
- savings matters.

The proposed Regulation is a remake of the 2009 Regulation with a number of amendments. A public consultation draft of the proposed Regulation is at Appendix 1. The proposed amendments, as compared to the 2009 Regulation, are as follows:

1. **Clause 2 Commencement.** The commencement date will reflect the date for the proposed Regulation.
2. **Clause 4 Certain persons not driving instructors for purpose of Act.** A new sub clause 4(b)(ii), 'is not receiving instruction for the purposes of removing a condition from that licence' has been added. This clarifies that a driving instructor needs to hold a driving instructor's licence when instructing people who wish to remove certain driver licence conditions (e.g. 'can only drive automatic vehicles').

3. **Clause 6 Production of driving instructor's licence.** The 2009 Regulation provides for the display or production of a driving instructor's licence in two ways. First, if a vehicle used for driving instruction is provided by a person receiving driving instruction, or is a motor bike, the driving instructor is required to produce his or her driving instructor's licence to the person and allow the person time to examine the licence. Secondly, for other vehicles, the driving instructor's licence is required to be displayed in a conspicuous position so that all matters on the face of the licence can be conveniently seen and read by any person.

The Government has announced plans to introduce digital licences which will allow for the display of a licence on a smartphone with other associated licensing functions. Introduction of a digital driving instructor's licence may be considered as part of the digital licensing program in the future. To facilitate any future changes, Clause 6 is proposed to be amended so that the first method of producing a driving instructor's licence will apply in all cases, irrespective of which party provides the vehicle or the type of vehicle involved. This would allow a person receiving driving instruction to examine a digital or physical product. Therefore, the requirement regarding display of a licence has been removed.

4. **Clause 7 Improper use or care of driving instructor's licence.** Clause 7(2) of the 2009 Regulation is related to the display of an improper driving instructor's licence. With the proposed changes at clause 6, consequential changes have been made and Clause 7 continues to deal with the improper use of a driving instructor's licence.
5. **Clause 9 Records to be kept by driving instructors.** Clause 9(1)(d) - the word 'learner's' has been replaced with the word 'driver' for better clarity and to be consistent with wording elsewhere, for example, clause 9(1)(a).
6. **Clause 9 Records to be kept by driving instructors.** Clause 9(1)(g) of the 2009 Regulation requires the keeping of records related to driving tests presented for students by a driving instructor. The purpose of record keeping is for auditing by Roads and Maritime, which already has the details of tests presented, negating the need for the instructor to keep them. Clause 9 of the proposed Regulation has been revised and no longer includes this requirement.
7. **Clause 9 Records to be kept by driving instructors.** Clause 9(1)(g) (which is clause 9(1)(h) in the 2009 Regulation) - the word 'learner's' has been replaced with the word 'driver' for the same reason as per item 5 above.
8. **Clause 10 Compulsory comprehensive motor vehicle insurance.** Clause 10(1)(b) - the words 'or undertaking a driving test' has been added as the Act and proposed Regulation differentiate instruction from driving tests, and this will ensure that the client is covered in the event of any incidents occurring during a driving test.
9. **Clause 12 Saving.** Reference to the old Driving Instructors Regulation 2003 has been updated to the 2009 Regulation.
10. **Schedule 1, Fees.** The fee for issue of a certificate under section 46 of the Act, as evidence of records, is proposed to change from \$22 to \$30 so that it is the same as a similar fee for the issue of a certificate relating to information from Roads and Maritime records under the Road Transport (Driver Licensing) Regulation 2008. Roads and Maritime records show that only a handful of section 46 certificates are issued in a year and any impact will be extremely low.

In relation to the fees in Schedule 1, there are generally Consumer Price Index (CPI) adjustments from 1 July each year for Roads and Maritime fees and charges. The proposed Regulation at Appendix 1 shows the fees as at 1 July 2015 and these may change with any CPI adjustments in 2016. The final Regulation made will show the correct fees prevailing at the time.

## 5.2 The groups impacted by the proposed Regulation

The impact of the proposed fee increase relating to section 46 certificates is expected to be minimal. The proposed Regulation is not expected to create any other additional impacts on the industry or any groups in the community as compared with the 2009 Regulation.

People who are currently eligible for a driving instructor's licence can continue to apply under the existing application process. The proposed changes are relatively minor, aiming to improve clarity and provide better support for the benefit of the driving instruction industry and people using their services.

## 6. Options and cost and benefit analysis of the proposed Regulation

This RIS will examine the following options:

- allowing the Regulation to lapse and not remake it
- remaking the existing Regulation without amendments
- remaking the Regulation with amendments.

### 6.1 Option 1: Allow the existing 2009 Regulation to lapse and not remake it

Option 1 will result in the repeal of the 2009 Regulation with no replacement regulation in its place. This is not supported as the costs outweigh the benefits.

#### Costs:

The costs of allowing the existing 2009 Regulation to lapse include:

- There will be significant gaps in the regulation of the driving instruction industry as the provisions in Section 5.1 above will no longer be available. This will adversely affect Roads and Maritime's ability to effectively administer the Act.
- Roads and Maritime will not be able to collect fees for the driving instructor licensing scheme. In the financial year 2014/15, the revenue collected was \$155,677. The figure for 2015/16 up to February 2016 was \$117,164. This revenue helps to pay to administer the scheme and would be lost if no fees could be collected.
- There will be detrimental effects on the operation of the driving instruction industry and the protection of people using their services.

#### Benefits:

- None. There is no benefit for this option.

### 6.2 Option 2: Remake the existing 2009 Regulation without amendment

Option 2 involves remaking of the 2009 Regulation without amendments. This is not supported as this does not present as much benefit as Option 3.

#### Costs:

- Remaking without amendment will result in forgoing an opportunity to improve clarity of several provisions, which will better support the driving instruction industry and people using their services.

#### Benefits:

- Limited benefits. While a new regulation will be introduced, it will continue to retain provisions that can be amended to provide a higher level of clarity.

### 6.3 Option 3: Remake the 2009 Regulation with amendments

Option 3, remaking the 2009 Regulation with amendments, is the preferred option as it presents the highest net benefits.

#### Costs:

- Minimal. While there will be a proposed increase in the fee for section 46 certificates as evidence of records to align with similar fees for driver licences, the impact is expected to be minimal and no



other additional impact on the industry or any community group will result from the proposed Regulation.

**Benefits:**

- Introduction of the proposed Regulation will continue to give essential support to the Act.
- The proposed amendments will clarify and improve certain existing provisions to better support the driving instruction industry and people using their services.

## 6.4 Requirements under the *Subordinate Legislation Act 1989*

In order for the proposed Regulation to be made, the anticipated benefits to the community must outweigh the anticipated costs to the community, bearing in mind the impact of the proposal on the economy and on consumers, members of the public, relevant interest groups and any sector of industry and commerce that may be affected.

In addition, as compared to alternative options available and considered, the proposed Regulation must involve the greatest net benefit for or the least net cost to the community.

Option 3 meets these requirements.

## 6.5 The Better Regulation Principles

In order for the proposed Regulation to be made, it must demonstrate compliance with the Better Regulation Principles set out in the Guide. Each principle is considered below:

- Principle 1: The need for government action should be established  
There is a clear need for Government action as the 2009 Regulation will be repealed unless remade by 1 September 2016 or the repeal is postponed.
- Principle 2: The objective of government action should be clear  
The objective of the government action is clear. It is to remake the 2009 Regulation with amendments to continue to support the administration of the driving instructor licensing scheme.
- Principle 3: The impact of government action should be properly understood by considering the costs and benefits of a range of options, including non-regulatory options  
The proposed Regulation will not lead to any additional impact on the community, including the driving instruction industry.
- Principle 4: Government action should be effective and proportional  
The proposed Regulation will continue to effectively support the administration of the driving instructor licensing scheme.
- Principle 5: Consultation with business and the community should inform regulatory development  
This is being undertaken with the consultation program for this RIS.
- Principle 6: The simplification, repeal, reform or consolidation of existing regulation should be considered  
This has been considered in this RIS and the preferred option is to remake the 2009 Regulation with amendments.
- Principle 7: Regulation should be periodically reviewed, and if necessary reformed, to ensure its continued efficiency and effectiveness  
The proposed Regulation will be subject to regular review under the staged repeal program of the *Subordinate Legislation Act 1989*.

## 6.6 IPART best practice approach

An assessment of the proposed Regulation in accordance with the IPART best practice approach is as follows:

- Is licensing appropriate?  
Yes, the proposed Regulation will support the administration of the driving instructor licensing scheme in accordance with the Act.
- Is licensing well designed?  
Yes. Apart from the proposed increase in one fee which is expected to have minimal impact, the proposed Regulation will not lead to any other additional burden on the community, including the driving instruction industry.
- Is licensing administered effectively/efficiently?  
Yes, the proposed Regulation will support the effective and efficient administration of the driving instructor licensing scheme.
- Is the licensing scheme the best response?  
Yes, remaking the 2009 Regulation with amendments is the best option with the highest net benefits.

## 7. Consultation

Public comments are being sought on this RIS.

Copies of this RIS and the proposed Regulation are also being sent to the following stakeholders:

- Department of Justice
- Multicultural NSW
- NSW Fair Trading
- State Insurance Regulatory Authority
- Service NSW
- Australian Driver Trainers Association (NSW) Ltd
- NSW Driver Trainers Association.

Transport for NSW has contacted these stakeholders previously for preliminary suggestions about any changes that should be made to the 2009 Regulation and acknowledges their responses.

Transport for NSW will also send a letter to all holders of driving instructors' licences, inviting them to make a submission.

## 8. Conclusion

This RIS concludes that the proposed Regulation should be made to replace the 2009 Regulation to continue supporting the driving instructor licensing scheme in NSW.

## **9. Appendix 1 - Public consultation draft**

Separate file attached.

Driving Instructors Regulation 2016

Driver and Vehicle Policy

Transport Policy

Freight, Strategy and Planning

Transport for NSW

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