

Road Safety (Driving Instructors) Regulations 2010

Regulatory Impact Statement

December 2009



ECONOMIC ASSOCIATES

Road Safety (Driving Instructors) Regulations 2010

Regulatory Impact Statement

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ECONOMIC ASSOCIATES

PUBLIC COMMENT

Public comment is invited on the proposed regulations and the regulatory impact statement. All comments and submissions should be marked Road Safety (Driving Instructors) Regulations 2010 and be forwarded in writing to:

Regulatory Policy and Legislation Branch
DoT Legal Division
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GPO Box 2797
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or sent by email to yvonne.han@transport.vic.gov.au no later than 5.00 pm on 1 February 2010.

Please note that all comments and submissions will be treated as public documents.

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EXECUTIVE SUMMARY

Introduction

This regulatory impact statement (RIS) has been prepared to fulfil the requirements of the Subordinate Legislation Act 1994 and to facilitate public comment on the proposed Road Safety (Driving Instructors) Regulations 2010 (‘the proposed Regulations’).

Under the Subordinate Legislation Act 1994 Regulatory Impact Statements (RIS) must conform to a number of legislative requirements, and cover issues including:

- The nature and extent of the problem;
- The policy objectives of proposed solutions to the problem;
- The case for regulation;
- The authorising legislation, objectives, nature and effects of the proposed Regulations;
- Stakeholder consultation;
- Alternatives to the proposed Regulations;
- Cost-benefit analysis of the proposed Regulations and alternative policy options; and
- National Competition Policy tests.

Regulatory scheme for driving instructors

As is outlined below, the Road Safety Act (‘the Act’) mandates that commercial driving instructors be authorised. The Act also contains powers that allow the Secretary of the Department of Transport to require that applicants for a driving instructor authority pass a course of instruction, and demonstrate that they are ‘fit and proper’ to hold an authority. In practice, this has been done through the provision of a criminal history check and medical certificate to the Secretary.

The proposed Regulations, which are the subject of this RIS, prescribe certain aspects of the granting and administration of driving instructor authorities. The medical certificate requirement is included in the proposed Regulations for clarity and transparency. Were that requirement not to be included in the proposed Regulations, the Secretary using relevant powers in the Act could continue to require that applicants for a driving instructor authority supply a medical certificate.

The legislative proposal

In addition to the Road Safety (Driving Instructors) Regulations 1999 being remade, the proposed Regulations include a number of new provisions relating to the information to be provided to the Victorian Taxi Directorate (VTD) by applicants for a driving instructor authority and a provision imposing a fee for a lost driving instructor authority.

The existing Road Safety (Driving Instructors) Regulations 1999 sunset on 23 February 2010.

Legislative authority

The Road Safety Act 1986 allows the Secretary of the Department of Transport to grant a driving instructor authority if the Secretary is satisfied that the applicant is qualified to hold a driving instructor authority. A full driving instructor authority is issued for a period of three years although the term of is not specified in either the Act or the proposed Regulations. Under certain circumstances driving instructor authorities may be issued for a twelve month period if the applicant has health issues. Commercial driving instructors must hold a driving instructor authority which authorises them to teach others to drive motor vehicles (excluding motor cycles) of up to 4.5 tonnes gross vehicle mass and with a seating capacity of up to twelve persons. Requirements that applicants for a driving instructor authority provide a criminal history check and a medical certificate and subject themselves to a driver record check are imposed under the fit and proper person provision in section 33 of the Act. Adoption of the proposed Regulations would not alter those requirements although the proposed Regulations now include an explicit requirement for a medical certificate. The medical certificate provision is intended to provide clarity about this requirement.

The proposed Regulations

The proposed Regulations require that applicants for a driving instructor authority make application to the Secretary, accompanied by a medical certificate and passport photographs. Other important requirements are that an authorised driving instructor must display their photograph in the driving instruction vehicle, produce their driving authority on request from an authorised person and keep records as required by the Secretary.

The regulatory problem

The proposed Regulations address a number of risks:

- Risks facing young drivers: According to the Transport Accident Commission (TAC) young drivers are over-represented in fatal road trauma statistics. In 2008 drivers aged 18-25 years accounted for 24.7% of all fatalities on Victorian roads but represented only 12% of the Victorian population. Despite the number of fatalities in this age group having fallen by 65% since 1987, the level of road trauma experienced by young drivers remains relatively high.
- Behaviour of driving instructors: Over the three year period to and including 2008-09 97 complaints were made against driving instructors of which the most prevalent were abusive language or behaviour (30%) and instructor skills and abilities including driving infractions (38%).
- Health risks facing driving instructors: Research shows that medical conditions can cause road crashes. As with other commercial drivers, driving instructors face higher than average health-related risk because of the long distances they drive (or supervise the driving of others) relative the average driving public.

- **Consumer protection:** The product being offered by individual driving instructors is not readily discerned in advance of purchase by intending learner drivers or by their parents or guardians in the case of young intending learners. Regulation of driving instructor competence and suitability (via powers in the Act) and mandatory checks of driving instructor health in the proposed Regulations provide assurance to potential learner drivers that individual driving instructors will comply with at least minimum mandated standards. In economic terms, regulation reduces the costs involved in searching for a driving instructor. Regulation also recognises that practical driving instruction places young, potentially vulnerable people in one-to-one confined contact with someone (the instructor) who determines their movements during the course of the lesson. Regulation reduces the possibility that the instructor will be an unsafe or inexperienced driver or that the instructor will be someone known to have criminal intent.
- **Community protection:** While as learner drivers and as first time licensed drivers, data presented earlier indicates that first time drivers are a risk to themselves and to road users more generally. During driving lessons, the driving instructor protects the learner and other road users. It is desirable for the safety of the learner, the first time licensed driver and other road users that learners intending to take lessons commercially are able to identify instructors who are competent and suitable.

Legislative objective

In accordance with section 33 of the Act, the proposed Regulations prescribe processes for applying for and granting driving instructor authorities, including requirements for medical certificates, display of driving instructor authorities, retention of records, notification of changes in medical condition, and payment of fees.

The relevant objective in section 1 of the Act is:

‘(a) to provide for safe, efficient and equitable road use.’

The policy objectives are to:

- Ensure that authorised driving instructors can be readily identified by intending learners and as appropriate their parents or guardians;
- Provide for effective processes of issuing and monitoring driving instructor authorities while minimising compliance costs for the driving instructor sector
- Minimise health-related crash risk in the driving instructor sector.

The means by which the proposed Regulations are intended to contribute to these objectives are:

‘(a) To provide for the application for and issue of driving instructor authorities;

(b) To set out conditions that must be followed by holders of driving instructor authorities;

(c) To require that driving instructors must produce their driving instructor authority and identity photograph if requested to do so by a member of the police force’.

Costs of the proposed Regulations

Compliance costs associated with the proposed Regulations are estimated to amount to \$0.403 million annually (including \$0.174 million for medical certificates) and agency costs are estimated to be \$0.151 million annually. Total compliance and agency costs would be \$0.554 million per annum. Total agency and compliance costs equate to \$384 annually for each ‘active’ authorised driving instructor or \$192 annually for each authorised driving instructor (approximately 50% of whom are believed to be active).

Over a ten year period at a real discount rate of 3.5% and assuming a 2% annual growth in the number of authorised and intending driving instructors, the present value of agency and compliance costs would be \$5.014 million.

Assessment of the legislative proposal and options

The RIS compares the proposed Regulations, an industry self-regulation option and a voluntary code of compliance option against a base case of no regulation. Factors in the assessment were:

- The interest of parents, guardians and the community generally in protecting generally young learner drivers from instructors who are incompetent, medically unfit or otherwise unsuitable.
- The private interests of instructors and their students: the former in earning an adequate return for their work and investment; and the latter in avoiding high costs in searching for a suitable instructor and paying an affordable price for instruction which leads to a successful practical driving test; and
- The interests of the road using public.

The option of deleting the medical certificate requirement is not considered in the RIS. Most but not all jurisdictions require a medical certificate before authorisation of driving instructors. Although the Department of Transport does not have evidence that the benefits of a medical certificate requirement exceeds the costs, the Department believes that it is appropriately part of the requirements imposed under the fit and proper provisions of the Act and is consistent with requirements for commercial passenger vehicle driver accreditation.

The regulatory proposal offers more certainty than the other options (that is, no regulation, self regulation and voluntary code) that these interests will be protected and balanced as appropriate. The costs of the regulatory proposal are small (about \$0.55 per lesson or \$7.40 in total over the average course of 13.5 lessons) and it is possible that the alternatives which offer less certainty of outcome would not be appreciably cheaper.

Accordingly the adoption of the preferred regulations is the preferred option.

Legislation in other jurisdictions

Provisions similar to those in the proposed Regulations are in force in other Australian state and territory jurisdictions.

Effects of the preferred option

(a) Competition assessment

The proposed Regulations are not restrictive of competition.

(b) Small business assessment

The proposed Regulations would not adversely affect small businesses relative to large businesses because they impose obligations on individual driving instructors rather than on their employers. Irrespective of whether they are self employed or employed by small or large businesses, individual commercial driving instructors have the same obligations under the Act and Regulations.

(c) Consistency with broader policy

The Act requires that driving instructors be authorised. The proposed Regulations, as provided for by the Act, set out processes relating to authorisation. The requirement in the proposed Regulations relating to medical certificates is intended to protect the safety and security of those who engage driving instructors and the safety of other road users.

(d) Change in administrative burden

The proposed Regulations would increase the administrative burden on the driver training sector be approximately \$0.053 million per year. Because the estimated change in administrative burden is considerably less than the \$250,000 threshold in the Victorian Guide to Regulation, the Department does not intend undertaking a Standard Cost Measurement.

(e) Implementation and enforcement issues

The proposed Regulations are similar to those already in force including the medical certificate requirement currently authorised under the Act. The proposed Regulations will be administered by the VTD which will also be responsible for enforcement. The VTD will continue its program of inspections and of responding to complaints. Just over 200 inspections were carried out in 2008-09.

Relevant to the current Regulations, the proposed Regulations impose the following additional requirements:

- Applicant for a driving instructor authority to provide the Secretary with a specimen of their signature;
- Applicant for a driving instructor authority to allow themselves to be photographed by the Secretary;

- Applicant for a driving instructor authority to provide a medical certificate to the Secretary (already required under authorising provisions in the Act);
- A fee equal to two fee units to be levied for replacement of damaged, lost or stolen driving instructor authority;
- The holder of a driving instructor authority to notify the Secretary of any change in medical condition.

Because the obligations imposed on regulated parties are largely the same as currently apply, including the medical certificate requirement imposed under the Act, the Department sees no need for transitional provisions in the proposed Regulations.

The proposed Regulations provide for a penalty of five penalty units to be imposed on authorised driving instructors who fail to return their identify photograph and authority on cancellation or expiry of the authority.

(f) Evaluation strategy

The VTD will continue to monitor the activities of authorised driving instructors and to target its enforcement resources to activities of driver instructors that are of concern.

(g) Results of consultations

The proposed Regulations were discussed with representatives of the driver training sector who did not have concerns other than that the driving instructor fee was relatively high. While acknowledging this concern, the Department notes that the proposed fee represents an increase of only about \$2 per year since the Regulations were introduced in 1999. The Department also notes that the VTD is endeavouring within the resources available to it to allocate more inputs to monitoring and enforcement in the driver instruction sector.

This RIS will be available for public comment for a period of twenty-eight days.

(h) Fees

The proposed Regulations do not increase the level of fees to be charged although a new fee is proposed for replacement of a lost or damaged driving instructor authority. The proposed Regulations provide for a driving instructor fee currently equal to \$408.60 for a full (three year) authority and \$22.70 to replace a lost, stolen or damaged driving instructor authority. The fee for a three year driving instructor authority is the same as that currently levied.

Fees in the proposed Regulations are consistent with the costs of administering the Regulations as estimated by the VTD.

Annual fee revenue on a full cost recovery basis would be \$151,000. Over the ten year life of the proposed Regulations the present value of fee revenue would be \$1.368 million (at a 3.5% real discount rate and assuming a 2% annual growth in the population of intending and authorised driving instructors).

There appear to be no compelling economic or equity grounds for setting fees at less than a full cost recovery level.

1 INTRODUCTION

1.1 Requirements for Regulatory Impact Statements

This regulatory impact statement (RIS) has been prepared to fulfil the requirements of the Subordinate Legislation Act 1994 and to facilitate public comment on the proposed Road Safety (Driving Instructors) Regulations 2010 (‘the proposed Regulations’).

Under the Subordinate Legislation Act 1994, the introduction of all new or remade regulations or addition to current regulations is required to be accompanied by an evaluation that allows for analysis and public scrutiny of the proposed regulation changes. This evaluation, known as a Regulatory Impact Statement (RIS), must conform to a number of legislative requirements, and cover issues including:

- The nature and extent of the problem;
- The policy objectives of proposed solutions to the problem;
- The case for regulation;
- The authorising legislation, objectives, nature and effects of the proposed Regulations;
- Stakeholder consultation;
- Alternatives to the proposed Regulations;
- Cost-benefit analysis of the proposed Regulations and alternative policy options; and
- National Competition Policy tests.

In addition to the Road Safety (Driving Instructors) Regulations 1999 being remade, the proposed Regulations include a number of new provisions relating to the information to be provided to the Victorian Taxi Directorate (VTD) by applicants for a driving instructor authority and a provision imposing a fee for a lost driving instructor authority.

The existing Road Safety (Driving Instructors) Regulations 1999 sunset on 23 February 2010.

1.2 Regulatory scheme for commercial driving instructors

As is outlined below, the Road Safety Act (‘the Act’) mandates that commercial driving instructors be authorised. The Act also contains powers that allow the Secretary of the Department of Transport to require that applicants for a driving instructor authority pass a course of instruction, and demonstrate that they are ‘fit and proper’ to hold an authority. In practice, this has been done through the provision of a criminal history check and medical certificate to the Secretary.

The proposed Regulations, which are the subject of this RIS, prescribe certain aspects of the granting and administration of driving instructor authorities. The medical certificate requirement is included in the proposed Regulations for clarity and transparency. Were that requirement not to be included in the proposed Regulations, the Secretary using relevant powers in the Act could continue to require that applicants for a driving instructor authority supply a medical certificate.

1.3 Legislative authority

The Road Safety Act 1986 allows the Secretary of the Department of Transport to grant a driving instructor authority if the Secretary is satisfied that the applicant is qualified to hold a driving instructor authority (section 33(1)). The Secretary may require the applicant to:

- Demonstrate that he or she is a fit and proper person;
- Pass a training course approved by the Secretary or otherwise demonstrate that they are competent to hold an authority;
- Comply with any prescribed processes and requirements. (section 33(2)). The requirements that applicants provide a medical certificate and undergo a criminal history and driver history checks are authorised by section 33(2)(a).

A driving instructor authority authorises the holder of the authority to teach others to drive a motor vehicle of gross vehicle mass (GVM) not exceeding 4.5 tonnes and with a seating capacity not exceeding twelve adults for the term and subject to the conditions specified in the authority. 'Motor vehicle' excludes motor cycles (section 33(3)).

A full driving instructor authority is issued for a period of three years although this term of is not specified in either the Act or the proposed Regulations. Under certain circumstances driving instructor authorities may be issued for a twelve month period.

The Act at section 33A(1) makes it an offence for a person, for financial gain and while on a highway, to teach another person to drive a motor vehicle without holding a driving instructor authority, or to breach of any condition of an authority. The prescribed penalty is eight penalty units.

The current driving instructor Regulations are administered by the Victorian Taxi Directorate (VTD) within the Department of Transport.

1.4 The proposed Regulations

The proposed Regulations provide that:

- An applicant for a driving instructor authority must provide the Secretary with a completed application form (Regulation 6(1)(a));
- The applicant must provide a medical certificate to the Secretary to the effect that the applicant is not suffering from a medical condition that would prevent the applicant

from holding an authority (Regulation 6(1)(b))¹. Inclusion in the proposed Regulations of a specific provision relating to medical certificates is intended to provide clarity about this requirement;

- The applicant must provide the Secretary with two recent passport sized photographs (Regulation 6(1)(c)). This provision together with proposed Regulations 6(2), 7 and 8 is intended to ensure the integrity of the driving instructor authority system, and to allow the person engaging the instructor to verify that the instructor is indeed authorised;
- The applicant must provide the Secretary with a specimen of his or her signature (Regulation 6(1)(d));
- The applicant must allow himself or herself to be photographed by the Secretary (Regulation 6(2)). The purpose of this provision is to ensure that the photograph displayed in each driving instruction vehicle is consistent with the image captured by the VTD;
- The applicant must pay a fee of one fee unit for each month of the term of the authority (Regulation 6(3));
- The Secretary is to issue an identity photograph to the holder of a driving instructor authority (Regulation 7);
- The holder of the driving instructor authority is to display the photograph in the vehicle (Regulation 8);
- The Secretary may impose conditions on, vary or revoke a driving instructor authority (Regulation 9). The conditions that might be imposed by the Secretary are:
 - A requirement to wear an optical aid such as spectacles while driving if required by the applicant’s driver licence or if specified in a medical report;
 - A requirement to supply a medical certificate annually if frequent monitoring was indicated by a medical report;
- The Secretary may replace a lost, stolen or destroyed authority for which a fee of two fee units applies (Regulation 11);
- The holder of a driving instructor authority is required to produce the authority on request by a police officer or authorised person (Regulation 12);
- The holder of a driving instructor authority is required to keep any record required by the Secretary and to produce the records at the request of an authorised person

¹ The applicant is to provide a medical certificate each time they apply for a driving instructor authority. An applicant wishing to hold a full driving instructor authority would need to provide a medical certificate to the Secretary every three years unless the medical certificate indicated a need for regular monitoring in which case the Secretary might require that a certificate be provided annually.

(Regulation 13). VTD currently advises applicant driving instructors that they will as a minimum be required to keep the records in the English language for a period of at least twenty-four months. This provision is intended to facilitate investigation of complaints against driving instructors and allow the VTD to verify that instructors are not providing instruction to persons who do not hold a learner's licence. The records to be kept are:

- The date of every lesson provided; and
- The learner driver's name, date of birth, address, learner permit number and expiry date;
- The holder of a driving instructor authority must notify the Secretary of any change in the information provided by the authority holder to the medical practitioner who issued their medical certificate (Regulation 15). All drivers have a legal obligation to report changes in their medical condition. The proposed Regulation applies a similar obligation to authorised driving instructors. Because this provision will be difficult to enforce, forms and other advisory notices to the driving instructor industry will carry notification of the obligation to inform VTD of any change in medical condition that could impair driving instructor abilities.

Relative to the current regulations, the additional requirements in the proposed regulation are:

- The applicant for a driving instructor authority is to provide the Secretary with a specimen of their signature;
- The applicant is to allow themselves to be photographed by the Secretary;
- The applicant is to pay a fee equal to two fee units for a replacement driving instructor authority;
- The applicant is to provide the Secretary with a medical certificate. As the requirement for a medical certificate is currently imposed by the Secretary under the fit and proper person provision of section 33 of the Act, including this in the Regulations helps to clarify the requirements;
- The holder of a driving instructor authority is to notify the Secretary of any change in their medical condition.

2 CASE FOR REGULATION

2.1 Introduction

Learner drivers are exposed to road safety risk and personal safety risk in undergoing driving instruction. Personal safety risk arises in travelling in a vehicle with an unfamiliar person who has control over the vehicle. There is strong empirical evidence that newly licensed drivers face a much higher risk than experienced drivers. Learner and newly licensed drivers are not only a road safety risk to themselves. As the empirical data shows, their presence on the road exposes other road users to higher than normal levels of risk.

VicRoads data reported in section 2.3 suggests that the large majority of first time learner drivers - who are likely to be young people - take lessons from commercial instructors. The Act ensures that commercial driving instructors are competent persons who do not have an adverse driving history or adverse criminal history and that they are medically fit to undertake the work of a commercial driving instructor.

The proposed Regulations support the Act in allowing intending learner drivers to readily identify driving instructors who are certified by the VTD as being professionally qualified and suitable. The government's road safety motivation in regulating commercial driving instructors in the Act would be weakened if authorised – and hence trained and suitable – driving instructors could not be readily distinguished from other persons purporting to be driving instructors.

Three types of benefit flow from the combination of the competence and suitability requirements in the Act and proposed Regulations and the 'credentialing' provisions in the proposed Regulations (such as the requirement that an authorised instructor's driving instructor authority be displayed in the instruction vehicle):

- Firstly, learner drivers face lower costs in finding suitable instructors because they can immediately screen out anyone who does not possess a driving instructor authority. In economic terms the proposed regulations reduce search costs for intending purchasers of driving instructors.
- Secondly, being competent and suitable, instruction provided by authorised driving is more likely to be safe and to lead to safe driving by newly licensed drivers. In addition having been certified as medically fit, authorised driving instructors are more likely to be able to safely control the instructing vehicle and the learner without the hindrance of constraining medical conditions. The resulting economic benefit takes the form of lower crash costs to learners and other road users.
- Thirdly, learner drivers are less likely to be exposed to instructors who would compromise their personal safety. The direct impact is reduced crime related costs for victims and the consumer. An indirect benefit arises from a reputational effect: in other words more learners and their guardians will opt for lessons from trained and suitable commercial instructors if the commercial driving instructor sector has a reputation for being safe.

These issues are addressed in more detail in the following discussion.

2.2 The learner driver sector

The administration of driving instructor authorities is the responsibility of the Victorian Taxi Directorate (VTD) within the Department of Transport. VicRoads issues 106,000 learner driver permits and 150,100 driver licences each year.²

There are 2,885 authorised driving instructors in Victoria³ and 887 driving schools in Victoria listed in the Yellow Pages.

Assuming all first time learner drivers undertake at least one paid driving lesson, each authorised driving instructor would be responsible on average for 36 learner drivers.

There were 307 applications for new driving instructor authorities made in 2006-07 and 265 in 2007-08 but only 181 in 2008-09. VTD believes that the steep decline in 2008-09 can be attributed to the introduction of enhanced training requirements (not a subject of this RIS).

The Australian Driver Trainers Association (Victoria) (ADTA) has advised that learners using commercial driving instructors purchase an average of twelve to fifteen lessons at a cost of around \$45 per lesson. From information supplied by VicRoads, 70% of learner drivers could be taking lessons commercially⁴. Assuming each of those learner drivers took 13.5 commercial lessons at a cost of \$45 per lesson, annual revenue for the industry would be \$45.1 million. From anecdotal information, 50% of authorised driving instructors could be inactive. If so, the average revenue per active instructor would be \$31,300 per year.

Some driving instructors work for driving schools or operate their business within a franchise network. The ADTA estimates however that up to 66% of driving instructors could be operating independently.

2.3 Risks facing young drivers

According to the Transport Accident Commission (TAC) young drivers are over-represented in fatal road trauma statistics. In 2008 drivers aged 18-25 years accounted for 24.7% of all fatalities on Victorian roads but represented only 12% of the Victorian

² Ombudsman Victoria (2007) *Investigation into VicRoads driver licensing arrangements*, December, Session 2006-07, PP No 55, Victorian Government Printer, p15.

³ VTD advice

⁴ VicRoads advised that 75% of driver licence applicants aged 18-19 years attend their driver test with an instructor and that, in at least half of licence tests involving older people, the applicant is accompanied by an instructor. Assuming that the majority of first time driver licence applicants are young people, it seems reasonable to assume that 70% of all first time driver licence applicants would be accompanied by an instructor during their driver test.

population. Despite the number of fatalities in this age group having fallen by 65% since 1987, the level of road trauma experienced by young drivers remains relatively high.

Fatalities data by age group for 2008 is shown in Table 1.

Table 1 Road fatalities by age group, Victoria, 2008

Age group	No of fatalities	% of fatalities
0 to 4	5	1.7
5 to 15	6	2.0
16 to 17	11	3.6
18 to 20	28	9.2
21 to 25	44	14.5
26 to 29	22	7.3
30 to 39	46	15.2
40 to 49	43	14.2
50 to 59	32	10.6
60 to 69	17	5.6
70+	49	16.2
Total	303	100.0

Source: TAC website accessed 25 August 2009

According to VicRoads⁵, probationary drivers are involved in fatal, serious and ‘other’ injury crashes at triple the rate of experienced drivers. VicRoads identified several factors that contribute to the higher crash risk of these drivers:

- Inexperience and lack of driver competence;
- The very high risk of crashing in the first six to twelve months of driving on a P licence (solo driving);
- Late night driving and multiple passengers, involved in half of fatal crashes for first year probationary drivers;
- Drink driving accounting for half of the deaths involving drivers 21 to 25 years of age;
- Poor driving records, speeding and lack of motivation for safe driving, and poor vehicle safety.⁶

VicRoads noted that⁷

‘Research reveals that lack of driving experience is the most significant factor contributing to young driver crashes. New drivers lack a number of important traffic skills, including the ability to observe and make sense of the road and traffic environment, to anticipate emerging hazards and recognise danger, and to make accurate assessments and decisions quickly to avoid hazards. Crashes

⁵ VicRoads (2007) *Regulatory Impact Statement Graduated Licensing System*, p6

⁶ Ibid pp7-8

⁷ Ibid p8.

are most likely to occur in the first six months of driving without supervision when the new solo driver is least inexperienced. New drivers are less able to cope with complex driving situations and are less able to judge, anticipate and compensate for hazardous conditions and behaviour of other road users. These skills develop with increased experience as a driver.’

Between 2002 and 2005 in Victoria, an average of 81 people were killed in crashes involving at least one driver aged 21, 1,600 people involved in those crashes were taken to hospital and 4,742 sustained other injuries.⁸

Research in Britain reported in a recent UK Driving Standards Agency Discussion Paper found similar outcomes. There, 19% of drivers have some type of accident in their first twelve months of licensed driving and a further 70% experience a near miss⁹. The British research also mirrors VicRoads emphasis on both new driver age and experience. Firstly, in Britain drivers starting to drive at 27 years of age are about 30% safer than those starting at 17 years. Secondly, after only one year of driving, a driver who started driving at 17 is over 50% safer than when they started¹⁰. The Driving Standards Agency paper also noted the importance of ensuring that young people participate in the driver instruction system, with over 100,000 young people in Britain estimated to be possibly driving without a licence, with attendant risks to their safety¹¹.

2.4 Driving instructor related risks

2.4.1 Risks posed by driving instructor behaviour

VTD has only recently begun a program of monitoring and enforcement directed at driving instructors. The results of 2008-09 activities (Table 2) would appear not to be of concern because out of 211 inspections, only nine infringement notices, defect notices or warnings were issued. In the three years to and including 2008-09, VTD revoked one driving instructor authority.

⁸ Ibid p12

⁹ Driving Standards Agency, Department for Transport (UK) (2008) *Learning to Drive: A Consultation Paper*, p18.

¹⁰ Ibid, pp15-16.

¹¹ Driving Standards Agency (2008) p66

Table 2 VTD enforcement activity, 2008-09

Enforcement activity	No
Total inspections	211
Actions taken by VTD as a consequence of inspections	
Investigation	0
Rectification notice	0
Infringement	1
Official warning	0
Defect notice+	6
Verbal warning	2

Notes: * Inspection includes VTD contact with driving instructor to check driving instructor authority, driver licence and vehicle condition; + Defect notice signals the defect to be rectified eg replace tyres, light globes etc
Source: VTD

Data on complaints made against driving instructors however suggests a continuing need to monitor instructor behaviour and competence. Over the three year period to and including 2008-09 97 complaints were made against driving instructors of which the most prevalent were abusive language or behaviour (30%) and instructor skills and abilities including driving infractions (38%).

Table 3 Complaints against driving instructors in Victoria

Complaint	2006-07	2007-08	2008-09	Total	%
Instructor - sexual misconduct, physical	1	2		3	3.1%
Instructor - sexual misconduct, verbal	2		3	5	5.2%
Instructor - skills and abilities	1			1	1.0%
Instructor conduct - abusive language/ behaviour	12	7	10	29	29.9%
Instructor conduct - skills and abilities	2	3	16	21	21.6%
Instructor conduct - other	8	4		12	12.4%
Instructor conduct- driving infraction	4	8	4	16	16.5%
Vehicle other		4	4	8	8.2%
Vehicle unroadworthy	2			2	2.1%
Total	32	28	37	97	100.0%

Source: VTD

2.4.2 Risks posed by driving instructor health

There is no information available about the medical fitness of authorised driving instructors relative to that of the general driving population. However a recent Australian study by Lindsay and Baldock¹² found that of 298 crashes investigated by the researchers and occurring in Adelaide between April 2002 and October 2005, thirty-nine crashes (13%) evidenced that ‘a medical condition, or conditions, was the direct causal factor in the active participant’s involvement in the collision. Those 39 crashes consisted of 25 car drivers (11.5% of crashes involving car drivers/riders/cyclists); and 14 pedestrians (17.5% of all

¹² VLA Lindsay and MRJ Baldock (2008) ‘Medical condition as a contributing factor in crash causation’ 2008 Australasian Road Safety Research, Policing and Education Conference, November, Adelaide.

pedestrians).¹³ Causal medical conditions for drivers identified in the study are shown in Table 4.

Table 4 Identified medical conditions contributing to the crash for drivers

Identified medical condition/event	Number of cases
Cardiac-related event	7
Epileptic event	5
Schizophrenia-related episode	2
Hypoglycaemic event	2
Other psychosis-related episode	1
Dementia	1
Asthma-related event	1
Complications related to end stage Conn's disease	1
Loss of consciousness related to pregnancy	1
Chronic sleep deprivation with severe and chronic pain	1
Cumulative effect of multiple medical conditions	1
Loss of consciousness with cause yet to be determined	2
Total	25

Source: Lindsay and Baldock (2008) p 614

Of the twenty-five drivers in the Lindsay and Baldock study whose condition was a crash cause, those in the 24-49 age group represented 6%-8% of all crashes in that age group, compared with 28% of all crashes among drivers aged 70 years of older.

Medical practitioners when carrying out medical assessments of applicant diving instructors can refer to the medical standards (see Table 5) prepared by Austroads and the National Transport Commission¹⁴ and endorsed by all Australian Driver Licensing Authorities.

Table 5 Medical Standards in the *Assessing Fitness to Drive* Guidelines

Alcohol Dependency	Muscular/skeletal disorders
Anaesthesia	Neurological disorders (excluding epilepsy)
Cardiovascular disease	Older Drivers
Diabetes	Pregnancy
Drugs-Illicit	Psychiatric disorders
Drugs-Prescription and OTC	Renal failure
Epilepsy	Respiratory diseases
Gastrointestinal disorders	Sleep disorders
Hearing	Syncope/Blackouts
HIV/AIDS	Vestibular disorders
Metabolic and Endocrine Disorders (excluding diabetes)	Vision and eye disorders

Austrroads/National Transport Commission (2003) *Assessing Fitness to Drive for Commercial and Private Vehicle Drivers: Medical Standards for Licensing and Clinical Management Guidelines*

The matters to be assessed are those relevant to the task of safe driving (or supervising the driving of) a motor vehicle. Medical conditions that fail an applicant are set out in the *Assessing Fitness to Drive Guidelines*. The safe driving criterion is not met for conditions including alcohol dependency, primary/secondary cancer within the brain, acute myocardial infarction, anti-coagulant therapy, insulin requiring diabetes mellitus, epilepsy, chronic

¹³ Lindsay and Baldock (2008) p 613.

¹⁴ Austrroads/National Transport Commission (2003) *Assessing Fitness to Drive for Commercial and Private Vehicle Drivers: Medical Standards for Licensing and Clinical Management Guidelines*.

psychosis and narcolepsy. Equally, less severe examples of these conditions may result in a conditional approval such as monitoring to ensure a condition has not deteriorated such as diabetes controlled by diet.

Medical condition is a risk factor for all drivers, but like other commercial drivers, driving instructors, because of the time they spend driving or supervise the driving of others, have a higher risk exposure than drivers generally. A full time driving instructor who works forty hours per week could drive/supervise up to 40,000 km a year for work in addition to the driving they do for personal purposes¹⁵. Including their non-work driving, a driving instructor could drive/supervise 55,000 km per year compared with 15,000 km annually for non-commercial drivers¹⁶. For a large proportion of the kilometres that driving instructors drive/supervise, both the instructor and the learner are exposed to the instructor's health related risk.

VTD advises that it does not refuse many applications on medical grounds, possibly because intending applicants obtain a medical report prior to enrolling in the required driver instructor course. Intending applicants who find they would be unlikely to obtain a medical certificate probably withdraw at that point rather than incur the cost of the mandatory competency training.

2.5 Consumer and community protection

2.5.1 Consumer protection

Driving instruction is not a product that can be assessed and tested prior to purchase. Intending learner drivers or their guardians may become aware of particular driving instructors through word of mouth or advertising, but they may not be able to fully assess individual driving instructors until the learner driver sits their first practical driving test or at least until the learner shows development of driving habits that experienced drivers view as being unacceptable. Regulation of driving instructor competence and suitability (via powers in the Act) and of driving instructor health and credentialing in the proposed Regulations provide assurance to potential learner drivers that individual driving instructors who display an authority will comply with at least minimum mandated standards.

The proposed Regulations do not seek to influence other factors in the choice of driving instructors such as the type of instruction vehicle or the cost of lessons. They focus instead on assisting learners to identify instructors who have a driving instructor authority and ensuring that authorised instructors are fit to hold an authority. In economic terms, regulation reduces the costs involved in searching for a driving instructor. Those costs could range between \$45 for the first lesson during which a learner might perceive an instructor to be inadequate, to \$700 if a learner undertakes a full course of lessons before

¹⁵ Assuming 46 working weeks per year, 40 working hours per week and average speed of 20 km/hr allowing for traffic congestion and for working time not driving.

¹⁶ The RACV calculates and reports car operating cost comparisons based on an average of 15,000 km per year per vehicle. See www.racv.com.au

finding at their practical test that the instructor has not been teaching acceptable driver behaviour and conduct. The more the decision about which driver instructor to use is in the hands of the young learner driver, the larger will be the benefits of regulation.

Regulation also recognises that practical driving instruction places young, potentially vulnerable people in one-to-one confined contact with someone (the instructor) who determines their movements during the course of the lesson. The impacts and costs of incidents arising from instructor misconduct or incompetence though unknown would be considerably greater than the search costs referred to above.

Regulation reduces the possibility that the instructor will be an unsafe or inexperienced driver or that the instructor will be someone known to have criminal intent. Learner drivers do not do all their instruction with authorised driving instructors. Sometimes the accompanying driver will be a parent, sibling, other relative or friend, and it could be argued that regulation does not provide any protection if those accompanying drivers are incompetent, have health risks or are improperly motivated. However, in the non-commercial situation the learner driver is likely to have advance knowledge of the accompanying driver as well as the opportunity to decline offers of assistance if they believe there are risks with a particular accompanying driver. In any event however, the Act does not contain powers relating to instruction given by persons other than those who provide instruction for profit.

Almost by definition learner drivers will be dependent upon their instructor for their safety while on the road. Data already presented indicates the risk associated with young inexperienced drivers. Regulated standards for driving instructors minimise the risks that learner drivers face while on the road.

2.5.2 Community protection

While as learner drivers and as first time licensed drivers, data presented earlier indicates that first time drivers are a risk to themselves and to road users more generally. During driving lessons, the driving instructor protects the learner and other road users. Later, the licensed driver's behaviour will be influenced in some degree by the instruction provided by the authorised instructor and others. It is desirable for the safety of the learner, the first time licensed driver and other road users that learners intending to take commercial lessons are able to identify those commercial instructors who are competent and able to safely control the vehicle. The credentialing requirements in the proposed Regulations (such as the requirements that instructors display their photograph in the instruction vehicle and present their driving instructor authority on request to a police officer or other authorised person) assist the learner in identifying competent and suitable commercial instructors.

2.6 Legislative objective

In accordance with section 33 of the Act, the proposed Regulations prescribe processes for applying for and granting driving instructor authorities, including requirements for medical certificates, display of driving instructor authorities, retention of records, notification of changes in medical condition, and payment of fees.

The relevant objective in section 1 of the Act is:

‘(a) to provide for safe, efficient and equitable road use.’

The policy objectives are to:

- Ensure that authorised driving instructors can be readily identified by intending learners and as appropriate their parents or guardians;
- Provide for effective processes of issuing and monitoring driving instructor authorities while minimising compliance costs for the driving instructor sector
- Minimise health-related crash risk in the driving instructor sector.

The means by which the proposed Regulations contribute to these objectives are:

(a) To provide for the application for and issue of driving instructor authorities;

(b) To set out conditions that must be followed by holders of driving instructor authorities;

(c) To require that driving instructors must produce their driving instructor authority and identity photograph if requested to do so by a member of the police force’.

3 BASE CASE AND OPTIONS

3.1 Description of options

3.1.1 Base case

In the base case the requirements of the proposed Regulations would not apply but persons providing driving instruction for profit would remain under an obligation to possess a driving instructor authority as required by the Act. Persons possessing a driving instructor authority would have undergone a training course, provided a medical certificate and a criminal history check and been subject to a driver record check. However, applicants would do these things because they are required by the VTD. As discussed in section 1.3, section 33 of the Act allows the Secretary to impose requirements it believes necessary to demonstrate that an applicant is fit and proper to hold a driving instructor authority. In the absence of the proposed Regulations, the VTD would continue to rely on the Act in requiring intending applicants to submit a medical certificate. However, this would not necessarily represent the ‘business as usual situation’, i.e. what applicants would do in the absence of any requirement imposed under the authority of the Act. Thus, for the purposes of this RIS, the relevant costs (and benefits) of medical certificates are attributed to the Regulations. In the absence of the proposed Regulations, applicants for a driving instructor authority would be under no obligation to notify the Secretary of any change in their medical condition, display their photograph in the testing vehicle or keep such records as required by the Secretary. Authorised driving instructors would compete openly in the market. Some authorised driving instructors might choose to highlight their certified medical fitness and clean criminal history and driver records. Other driving instructors may choose to compete solely on price without mention of medical or personal suitability. While the base case would be the cheapest option it would offer no certainty for learners that the commercial instructor they choose would be an authorised instructor and accordingly is not favoured.

3.1.2 Adopt the proposed Regulations

Duties in the proposed Regulations are described in section 1.3 of this RIS. The duties likely to give rise to a discernible cost burden on driving instructors (in addition to completing the application form) would include providing a medical certificate as part of their application for a driving instructor authority, allowing themselves to be photographed and displaying their photograph in the instruction vehicle. The costs imposed by the duty to notify the Secretary of any change in medical condition would be impossible to measure.

Because the Act requires commercial driving instructors to be authorised and medical certificates are already required under the fit and proper person provision in section 33 of the Act the range of practicable alternatives to the proposed Regulations is quite narrow. In the two alternatives that follow, applicant driving instructors would be required (under the Act) to demonstrate competence and suitability, but would not be subject to other requirements contained in the proposed Regulations such as providing a photograph, displaying a driver instructor authority or retaining records. Relative to the proposed

Regulations the maximum cost saving attributable to these two options would be \$0.403 million annually. The actual savings would be less because the self-regulation and code options would each have their own costs.

3.1.3 Adopt the proposed Regulations without the medical certificate requirement

Most but not all jurisdictions require a medical certificate before authorisation of driving instructors. Although the Department of Transport does not have evidence that the benefits of a medical certificate requirement exceeds the costs, the Department believes that it is appropriately part of the requirements imposed under the fit and proper provisions of the Act and is consistent with requirements for commercial passenger vehicle driver accreditation. The Department acknowledges that an option that excludes medical certificates would significantly reduce the costs of the proposal and, based on available data, would achieve similar outcomes as the preferred option.

3.1.4 Self regulation

In a self regulation option the industry would regulate matters covered by the proposed Regulations. Authorised driving instructors would voluntarily comply with these requirements, perhaps encouraged by the adoption of branding and certification strategies to allow member instructors to differentiate themselves in the product in the market from non-participating driving instructors. Intending purchasers of commercial driving instructor could interpret participating instructors as those who have some sort of industry seal of approval. In a self regulation environment authorised driving instructors who choose to participate in a self regulation scheme might still be required as a condition of participation to demonstrate to scheme organisers their suitability (medical examination), display their credentials, retain certain records and pay a fee to participate in the scheme. The key distinguishing feature in this option is the choice open to authorised instructors whether or not to be regulated.

Active participation by the industry body in receiving and responding to complaints against participating driving instructors would be essential to maintaining the integrity of a self regulation scheme.

This option might not be greatly cheaper than adoption of the proposed Regulations and would not offer the same certainty of outcome that intending learners could readily identify an authorised driving instructor. Accordingly the self-regulation option is not favoured.

3.1.5 Voluntary code of practice

A code of practice could be developed and implemented by an industry body for voluntary take up by authorised driving instructor members. As with self regulation, authorised driving instructors who take up the code could well incur costs implied in the proposed Regulations, example displaying identification in their vehicle, obtaining a medical certificate, and retaining records. To the extent that the industry body did not take an active role in managing compliance with the Code, the costs of this option for the industry

would be lower but with a concomitant lower certainty to clients and the community more generally about quality and security. While similar to the preceding option the voluntary code would lack the discipline and quality control of an industry managed scheme that would be able to exclude non-complying instructors. As just noted therefore this option would have lower costs for industry participants but potentially lower benefits for consumers as well.

This option, like the base case and to a lesser extent the self regulation option, offers cost advantages but without certainty of outcome that intending learners could readily identify an authorised instructor. Without the benefit of an industry seal of approval it would be weaker in terms of certainty than the self regulation option. For these reasons the voluntary code option is not favoured.

3.2 Discussion of options

The base case and options need to be considered in terms of a range of interests:

- The interest of parents, guardians and the community generally in protecting generally young learner drivers from instructors who are incompetent, medically unfit or otherwise unsuitable;
- The private interests of instructors and their students: the former in earning an adequate return for their work and investment; and the latter in avoiding high costs in searching for a suitable instructor and paying an affordable price for instruction which leads to a successful practical driving test;
- The interests of the road using public.

Against these criteria and relative to the proposed Regulations, the base case, the self regulation and the voluntary code options allow the greatest freedom for instructors and students to negotiate arrangements that are mutually satisfactory but potentially at the expense of relatively high search costs and a lower level of certainty about instructor suitability and competence. In addition while self regulation and a voluntary code would offer some protection to students and the community more generally, they do not offer certainty that the interests of the public (including the public as parents/guardians and road users) would be protected. With the large number and proportion of authorised driving instructors believed to be operating independently, implementation of a self regulation scheme and to a lesser degree a voluntary code would be constrained by the logistics of drafting and reaching consensus within the industry on the terms of the scheme and its logistics (such as processes for auditing and responding to customer complaints). The large number of driving instructors who operate as individuals also presents opportunities for opportunistic erosion of the scheme by those who seek short term market share gain via price competition. A voluntary code would be weaker in its protection and certainty unless actively managed either by the industry body or VTD. Because both these alternatives could contain consumer protection requirements similar to those in the proposed Regulations, the costs for the industry and the range of freedom for instructors to participate might not be significantly more advantageous than in the proposed Regulations.

Importantly however, none of the alternatives offers the certainty inherent in the proposed Regulations that intending learners will be readily able to identify an authorised driving instructor.

4 LEGISLATION IN OTHER JURISDICTIONS

4.1 New South Wales

Section 6 of the Driving Instructors Act 1992 requires that a driving instructor be licensed to act as a driving instructor. A person not so licensed may not be employed as a driving instructor (section 7) and a person who is not licensed must not promote themselves as a driving instructor (section 8). To be licensed an applicant must, inter alia, be twenty-one years of age, hold a driver licence and have held a driver licence for three of the preceding four years and have passed a course in driving instruction (section 10). An applicant for a driving instructor licence is to be notified to the Commissioner of Police (section 12). An applicant may be required to pass driving, knowledge and teaching ability tests (section 15), and may be required to obtain a medical certificate (section 16). Apart from failure to pass these tests, an application may be rejected if the applicant is not a person of good character or if the Authority has reason to believe the applicant had been involved in driver licensing fraud, or because of the applicant's record of motor vehicle related convictions in New South Wales or elsewhere or the applicant's criminal record (section 18). A licence may be issued subject to conditions (section 19) and a licensed driving instructor may be subject to tests during the term of the licence (sections 19 and 25). A licence may be suspended or cancelled (section 27). A licensed driving instructor is required to keep records (section 48). A licensed driving instructor must produce their licence on request by a police officer, an authorised person or a person seeking or receiving instruction (section 52).

Under section 6 of the Driving Instructors Regulation 2003, fees are payable for a licence or licence renewal or duplicate licence. The licence must be conspicuously displayed on the vehicle used for instruction purposes (section 7). Licensed driving instructors must keep records about their students and dates and times of instruction given to each student. The records must be retained for five years (section 10).

4.2 Queensland

Section 38 of the Transport Operations (Road Use Management-Accreditation and Other Provisions Regulations (2005) requires that intending driver trainers make application to the chief executive and pay a fee (section 38). To be accredited, the applicant must possess an open driver's licence, have completed a driver training course or competency assessment or have other suitable qualifications. The Chief Executive may refuse accreditation if the applicant has been convicted of or charged with qualifying offences, or if the chief executive believes that public safety would be endangered or granting the application would be contrary to the public interest (section 35).¹⁷ The accreditation period is one year (section 47). The Chief Executive may attach conditions to an application (section 39). A successful applicant for driver training accreditation is provided with an identity card which

¹⁷ In addition the Commissioner for Children and Young People and Child Guardian requires that people who train one child or more on a commercial basis be in possession of a blue card. See Queensland Transport *Information Sheet-How to Become and Accredited Driver Trainer*, accessed on the internet 29 July 2009.

must contain a photograph of the driver trainer and a copy of the driver trainer's signature (section 42). The identity card may be replaced if lost or damaged (section 48). The identity card is to be displayed when the driver trainer is giving pre-licence training (section 62). A driver trainer must keep written records of the training provided (section 63).

Accredited driver trainers are subject to a code of conduct (section 58).

4.3 South Australia

A licensed driving instructor must wear the licence while instructing (section 98AA of the Motor Vehicles Act 1959)¹⁸. The Act makes it an offence for a person, for commercial gain, to teach someone to drive unless the person is the holder of a motor driving instructor's licence (section 98A). To be awarded a driving instructor's licence must have held an unconditional driver's licence for a period of two years in the previous five years and held a driver's licence for four years in the preceding five years. The applicant must also be a fit and proper person and be proficient as a driving instructor (section 92A(2)). An applicant may be required to undergo a proficiency test (section 98A(5)). The period of the licence is to be not more than five years (section 98A(3)), and a licence may be issued subject to conditions (section 98A(2aa)).

Section 35 of the Motor Vehicles Regulations 1996 requires that applicants for a driving instructor's licence supply two photographs. The conduct of the proficiency test is subject to a fee (section 36). Section 37 exempts a person who is conducting an approved motor bike training course from the requirement in section 98A of the Act that the instructor be licensed.

4.4 Western Australia

Section 5 of the Motor Vehicle Instructors Act 1963 requires that a person acting as a driving instructor must have a licence to do so. The licence period is twelve months (section 6(5)). The Director General may consider the character of the applicant is considering an application (section 7(2)) and may subject the applicant to a test of competency and a test of knowledge of the Road Traffic Act 1974 (section 7(3)). In addition, an applicant must be at least 21 years of age, be of good character and be a fit and proper person to act as a driving instructor (section 7(5)). A licence may be subject to conditions (section 7(6)). A driving instructor's licence may be cancelled or suspended (section 9).

The Motor Vehicle Drivers Instructors Regulations 1964 require that persons wishing to be licensed driving instructors make an application in writing (section 3) and may be required to undergo a medical examination (section 5). Once granted a driving instructor's licence must be produced on request by a police officer, a traffic inspector or a prospective learner driver who wishes to see the licence (section 8). A replacement licence may be issued (section 9).

¹⁸ 'The holder... of a licence must display the licence on his or her person at all times...'

4.5 Tasmania

The Vehicle and Traffic Act 1999 requires that a person providing driving instruction for reward hold an ancillary certificate¹⁹ authorising them to be a driving instructor (section 14).

The Vehicle and Traffic (Driver Licensing and Vehicle Registration Regulations 2000 provide that a person issued an ancillary certificate also be issued an identity card which must be displayed (section 35). An ancillary certificate may be suspended or cancelled (section 36).

4.6 Australian Capital Territory

A person may for accreditation as a driving instructor if they are at least twenty-one years of age, hold at least a full car licence, has suitable skills, is a suitable person, is medically fit, has complied with the required training and not otherwise disqualified from applying (section 104 of the Road Transport (Driving Licensing) Regulation 2000. The applicant must have completed an approved driver training course (section 104A(1)). A person wishing to become accredited must make application in the specified form, provide a medical certificate and supply a police report of their criminal or infringement history (section 105). An application for accreditation or renewal of accreditation may be refused if the applicant has breached an approved code of practice for driving instruction (section 106). A driving instructor must display their certificate of accreditation when operating as a driving instructor (section 108) and must produce the certificate when requested by a police officer or responsible person (section 108). The certificate may be replaced if it is lost, damaged or stolen (section 107). Accreditation is automatically suspended or cancelled if the driving instructor's driver's licence is suspended or cancelled (section 110). The road transport authority may take action in relation to a person's accreditation if for example a driving instructor is convicted or found guilty of an offence relevant to their suitability to be an accredited driving instructor (section 111).

Section 115(1) requires a driving instructor to maintain liability insurer cover to the extent of \$5 million (section 115(1)). Road instructors have obligations regarding completion of learner driver logbooks (section 116). Section 118 provides that the road transport authority may approve a code of practice dealing with, inter alia, driver instructor skills. A person wishing to become a driving instructor may be subject to a test of their driving ability and knowledge of road law, and may be required to provide evidence of their suitability to be accredited as a driving instructor (section 120(1)). An accredited driving instructor may be required to undergo assessment or tests of their continuing driving ability and road law knowledge. Driving instructors may also be required to undergo medical examination and provide information about their health and their medical treatments (section 120(1)). A driving instructor may be required to undertake an approved training course and provide evidence to the road transport authority of successful completion of the course (section 121).

¹⁹ The ancillary certificate requires proof of medical fitness

4.7 Northern Territory

The Motor Vehicles Act (section 25B(1)) requires that a person wishing to become a driving instructor must lodge an application. To be approved as a driving instructor, the applicant must be of good character, proficient as a driving instructor, hold a licence to drive the relevant class of vehicle, and have held a licence for at least three years or otherwise have suitable driving experience (section 25B(3)). Conditions may be attached to an approval (section 25C(1)). The approval remains in force so long as the approved driving instructor remains licensed to drive the relevant class of vehicle (section 25D). An applicant may be required to undergo a proficiency test and medical examination.

4.8 Requirements for Medical Certificates

Most jurisdictions use this discretion in legislation to mandate medical certificates as shown in the Table below.

Table 6 Medical certificate requirements in other jurisdictions

	Legislative provisions	Requirement as stated on agency website
New South Wales	'may be required to obtain medical certificate'	Required to pass a medical check
Queensland	No specific requirement	All drivers must be medically fit to drive
South Australia	'is a fit and proper person'	No specific requirement for medical check
Western Australia	'may be required to undergo medical examination	Required to have regular medical assessments
Tasmania	No specific requirement	Able to prove medical fitness
ACT	'may be required to undergo medical examination	Applicant must have medical assessment
Northern Territory	'may be required to undergo medical examination	Code of Practice says must be medically fit

Source: Driver licensing agency websites

5 COSTS AND BENEFITS OF THE OPTIONS

5.1 Decision criteria

Key policy intentions for the Regulations including consumer protection and the protection of the integrity of the driver licensing are not readily assessed in monetised benefit and cost terms. This RIS therefore adopts a scoring based multi-criteria approach to comparison of the base case and options. In the multi-criteria analysis approach each option is scored for its contribution to an identified objective.

5.2 Costs of the proposed Regulations

To place the costs of the proposed Regulations in context, Table 7 estimates compliance costs that would be incurred by driving instructors making application for a driving instructor authority for the first time and on renewal, and agency costs incurred by the VTD. Medical examinations would be the largest single cost item for the industry, representing 43% of compliance costs. Spread over approximately 1.0 million lessons annually (see section 2.1), the average compliance cost per lesson would be \$0.40 per lesson or \$5.40 for the average course of 13.5 lessons. Including agency costs, the costs of the proposed Regulations would be \$0.55 per lesson or \$7.40 for the average course of 13.5 lessons, equal to approximately 1% of the average cost of a driving lesson. A regulatory cost passed through to users of \$5.40 for each course of lessons would not be large enough to deter learners from taking professional driving instruction.

Total agency and compliance costs equate to \$384 annually for each 'active' authorised driving instructor or \$192 annually for each authorised driving instructor (approximately 50% of whom are believed to be active).

Over a ten year period at a real discount rate of 3.5% and assuming a 2% annual growth in the number of authorised and intending driving instructors, the present value of agency and compliance costs would be \$5.014 million.

Table 7 Estimated annual costs of the proposed Regulations

Task	Applicants' time (hrs)++	Applicants' time (\$/hr)**	Applicants' external costs	Annual costs new authorities	Annual costs renewals	Total costs
Applicant costs						
Medical examination*	1	\$48	\$110	\$39,500	\$134,300	\$173,800
Complete application form	1	\$48	\$0	\$12,000	\$40,800	\$52,800
Supply photo	1	\$48	\$20	\$17,000	\$57,800	\$74,800
Display photo	0.5	\$24	\$20	\$11,000	\$37,400	\$48,400
Secretary to take digital photo	1	\$48	\$0	\$12,000	\$40,800	\$52,800
Keep records				#	#	#
Notify change in medical condition				+	+	+
Total applicant costs						\$402,600
Agency costs (VTD)						\$151,102
TOTAL COSTS						\$553,702
Assumptions						
Value of driver instructor's time/ hour	\$48		Renewal of authority pa		850	
Medical examination cost	\$110		Driving instructor utilisation		80%	
New authority applicants pa	250		Driving instructor charge rate/hour		\$60	

Notes * Medical certificates are currently required under the Act. The cost shown is therefore not additional to that incurred by applicant driving instructors* * The value of applicants' time is based on a charge rate for driving instructors of \$60/hr (\$45 for a 45 minute lesson) adjusted for a utilisation rate of 80% where the utilisation rate represents the assumed proportion of a driving instructors' working time that is fee earning. The \$48/hr in the Table equals \$60/hr x 80%. Assuming a 40 hour week, 8 lessons of 45 minutes each per day and 15 minutes repositioning between lessons, a driving instructors utilisation would be 75%. # No additional costs attributable to proposed Regulations. Driving instructors would need to keep adequate records for taxation and insurance purposes. + Frequency and hence cost of notifying change in medical condition unable to be estimated. ++Time inputs in the Table are assumed and include travel. For example one hour to supply a photo includes travel to the place at which the photo is to be taken.

5.3 Multi-criteria assessment

The multi-criteria assessment (MCA) in Table 8 shows three objectives inferred from earlier sections of this RIS, and the criteria that would reflect achievement of those objectives. The three objectives are:

- Consumer protection including the safety of learners as drivers and their personal safety while in the company of instructors;
- Community protection including the safety of other drivers when to learner drivers on road; and
- Economic efficiency which includes:
 - Minimising search costs for learners in identifying a suitable instructor; and
 - Minimising compliance costs for authorised driving instructors and applicant instructors.
 - Reducing road crash costs for instructors, learners, other road users and the community generally.

The proposed Regulations contribute to the first two objectives in assisting learners who wish to undergo commercial instruction to readily identify an authorised instructor as a person who will be appropriately trained, fit and proper. The proposed Regulations contribute to the third objective in three ways: firstly by reducing the uncertainties and associated costs for learners in searching for a suitable commercial instructor - having identified a suitable commercial instructor the learner can be certain that the instructor is trained, fit and proper; secondly by imposing only minimal compliance obligations on authorised driving instructors; and thirdly by reducing potential road crash costs.

The scoring of the proposed Regulations in Table 8 reflects their inherent certainty that persons displaying a driving instructor authority would have been determined by the Secretary to be competent, fit and proper. The scoring of the self-regulation and voluntary code options reflects the lower level of certainty inherent in voluntary arrangements and the fact that the non-regulatory options would not be costless for participants.

The scoring weights in Table 8 reflect the relative importance that the RIS attaches to each objective. The weighted score (equal to the unweighted score times the scoring weight) reflects the relative performance of an option against each objective. Options are ranked according to their total weighted scores.

Table 8 Multi criteria assessment

Objective	Criterion	Proposed regulations	Self regulation	Voluntary code of practice	
Option and unweighted scores relative to the base case					
Consumer protection	Learner drivers in the commercial sector engage instructors who are trained, fit and proper	4	3	2	
Community protection	Learner drivers in the commercial sector engage instructors who are trained, fit and proper	4	3	2	
Economic efficiency	Minimise instructor selection costs for learners in the commercial sector	4	3	2	
	Minimise compliance costs for applicant and authorised instructors	-4	-2	-1	
	Reduce crash costs in the driving instructor sector	3	2	1	
Total unweighted score		11	9	6	
		Criterion weight	Option and weighted scores relative to the base case		
Consumer protection	Learner drivers in the commercial sector engage instructors who are trained, fit and proper	45%	1.80	1.35	0.90
Community protection	Learner drivers in the commercial sector engage instructors who are trained, fit and proper	40%	1.60	1.20	0.80
Economic efficiency	Minimise instructor selection costs for learners in the commercial sector	5%	0.30	0.23	0.15
	Minimise compliance costs for applicant and authorised instructors	5%	-0.30	-0.15	-0.08
	Reduce crash costs in the driving instructor sector	5%	0.15	0.10	0.05
Total weighted score		100%	3.55	2.70	1.80

Note: A score of 5 signifies that an option is highly effective relative to a particular objective. A score of three emphasises an option as being moderately effective. A negative score signifies that an option performs unfavourably relative to the base case. The weights in the Table assume a consumers preference for public safety and consumer protection (combined weight of 85 out of 100) with consumer protection being assigned slightly greater importance than public safety.

Adoption of the proposed Regulations emerges as the preferred option having the highest weighted score. The industry self-regulation option would be preferred (but marginally so) only if the weighting for ‘cost minimisation’ was to be increased to 35% and the weighting for consumer protection reduced to 15%. Given the community’s concern for the welfare of young people while in the care of others, that outcome is unlikely.

Hence adoption of the proposed Regulations is the preferred option.

6 THE PREFERRED OPTION AND ITS EFFECTS

6.1 The preferred option

The preferred option is the adoption of the proposed Regulations.

6.2 Competition assessment

The preferred option is not restrictive of competition. It does not:

- Limit the numbers of people who may hold a driving instructor authority;
- Impose methods of work on driving instructors;
- Favour large over small businesses or vice versa (the proposed Regulations impose obligations on individuals rather than on their employers);
- Impose substantial barriers to entry. Although the requirements restrict who is allowed to operate as a driving instructor, the Department believes that the potential barrier they create is low and that the requirements are such that their benefits outweigh any potential costs;
- Limit the amount of work able to be carried out by driving instructors.

6.3 Impact on small business

The Act requires that driving instructors who operate commercially are to be authorised. The proposed Regulations impose obligations on individuals who operate as driving instructors rather than on the businesses which employ them. Irrespective of whether they are self employed or employed by small or large businesses, individual commercial driving instructors have the same obligations under the Act and Regulations.

6.4 Groups affected

The proposed Regulations primarily affect people who wish to be authorised as driving instructors, those driving instructors who wish to renew their driving instructor authority, and learner drivers (including parents and guardians for those learner drivers who are less than eighteen years of age). The numbers of people in these groups are indicated in section 2.1 earlier. They include an estimated 70,000 learner drivers (and in some cases their parents and guardians) who take commercial driving instruction each year, 2,885 authorised driving instructors and 200 to 300 applicant driving instructors each year. The proposed Regulations would indirectly affect other road users and VicRoads as driver licensing manager.

6.5 Consistency with broader policy

The Act requires that driving instructors be authorised. The proposed Regulations, as provided for by the Act, set out processes relating to authorisation including processes that allow intending learners to identify authorised driving instructors. The Requirement in the regulations relating to medical certificates is intended to clarify the fit and proper person provision in the Act.

6.6 Change in administrative burden

Relative to the existing Regulations and to the powers in the Act with respect to medical certificates, the proposed Regulations impose the additional requirements that applicants for a driving instructor authority provide the Secretary with:

- The opportunity to take a digital image of the applicant;
- A signature; and
- Notification of any change in medical condition.

Of these requirements, only the first is substantive and able to be estimated.

Table 7 estimated the costs of the first of the requirements just listed as \$53,000 per year (Secretary to take photo). The total change in administrative burden would therefore be \$53,000 per year. This estimate does not include costs associated with medical certificates because medical certificates are currently required under authorising provisions in the Act. Because the estimated change in administrative burden is considerably lower than the \$250,000 threshold in the Victorian Guide to Regulation, the Department does not intend undertaking a Standard Cost Measurement.

6.7 Implementation and enforcement issues

The proposed Regulations are similar to those already in force. The proposed Regulations will be administered by the VTD which will also be responsible for enforcement. The VTD will continue its program of inspections and of responding to complaints. Just over 200 inspections were carried out in 2008-09.

Relevant to the current Regulations, the proposed Regulations impose the following additional requirements:

- Applicant for a driving instructor authority to provide the Secretary with a specimen of their signature;
- Applicant for a driving instructor authority to allow themselves to be photographed by the Secretary;
- Applicant for a driving instructor authority to provide a medical certificate to the Secretary (already required under authorising provisions in the Act);

- A fee equal to two fee units to be levied for replacement of damaged, lost or stolen driving instructor authority;
- The holder of a driving instructor authority to notify the Secretary of any change in medical condition.

The obligations imposed on regulated parties are largely the same as currently apply including the medical certificate requirement imposed under the Act. Accordingly the Department sees no need for transitional provisions in the proposed Regulations.

The proposed Regulations provide for a penalty of five penalty units to be imposed on authorised driving instructors who fail to return their identify photograph and authority on cancellation or expiry of the authority.

6.8 Evaluation strategy

The VTD will continue to monitor the activities of authorised driving instructors and to target its enforcement resources to activities of driver instructors that are of concern.

6.9 Consultation

During the preparation of this RIS consultations were conducted with a representative of the Australian Driver Trainers Association (Victoria) and with three authorised driver instructors. The following points were made:

- The proposed Regulations are not a concern for the industry;
- The driving instructor authority fee is relatively high;
- There is a need for more enforcement;
- During the period of deregulation in the early to mid-1990s, unprofessional behaviour began to creep into the industry;
- Record keeping appears limited to details about learner drivers to whom instruction is given. Those details would need to be kept even in the absence of the proposed Regulations; and
- The requirement in the proposed Regulations to notify the Secretary of changes in an authorised driver instructor's medical condition is not of concern.

The Department considered the concern raised about the level of the driving instructor fee. However the proposed level of fees has increased by only a small amount (equal to about \$2 per year) in the ten years since the current Regulations were introduced. The Department acknowledges the desirability of additional enforcement. Within the scope of its available resources, the VTD is endeavouring to allocate more monitoring and enforcement effort to the driving instructor sector.

This RIS will be available for public comment for a period of twenty-eight days.

7 FEES

7.1 Driving instructor authority fees

The existing fee for the issuing of a driving instructor authority is one fee unit for every month issued. The proposed fee for a three year driving instructor authority currently equates to \$408.60 and is the same as that levied at present.

The basis for the setting of the driving instructor authority fees contained in the proposed Regulation is shown in Table 9. The fee for a full (three year) driving instructor authority is \$408.60. VTD's costs over the same period are estimated by VTD to be \$412.00 for each driving instructor authority on issue. Fees proposed are similar to those currently levied (i.e. thirty-six fee units for three years). A more detailed cost base is shown in Appendix 1.

Table 9 Summary Cost basis for driving instructor authority fee

VTD cost item	Cost per year
Driver accreditation salary costs including overheads	\$29,061
Transport safety and compliance salary costs including overheads	\$98,142
Complaints team salary including overheads	\$4,099
Operating Expense (photo ID cards)	\$19,800
Total	\$151,102
Average fee revenue	\$151,102
No of driving instructor authorities on issue	2,885
No of driving instructor authorities issued or renewed pa	1,100
Annual cost per driving instructor authority issued or renewed	\$137
Three-yearly cost per driving instructor authority	\$412
Fee for one year driving instructor authority	\$136.20
Fee for three year driving instructor authority	\$408.60

If passed through to those learner drivers who take driving lessons commercially, imposition of these would add fifteen cents to the cost of each \$45 lesson, or \$2 to the average course of lessons costing \$600. Adoption of less than full cost recovery would be unlikely to be effective in encouraging further take up professional driving instruction or to have any substantive equity impact.

On a full cost recovery basis annual fee revenue would be \$151,000. Over the ten year life of the proposed Regulations at a 3.5% real discount rate and assuming a 2% annual growth in the population of intending and authorised driving instructors the present value of fee revenue would be \$1.368 million.

7.2 Replacement driving authority

The proposed Regulations provide for a fee of two fee units (\$22.70) to replace a driving instructor authority that is lost, stolen or damaged. This compares with VTD's estimate of

\$18 for each photo ID card excluding staff costs. The total cost, if staff time were included, is not expected to be lower than the proposed fee of 2 fee units.

8 REFERENCES

Austrroads/National Transport Commission (2003) *Assessing Fitness to Drive for Commercial and Private Vehicle Drivers: Medical Standards for Licensing and Clinical Management Guidelines*.

Driving Standards Agency, Department for Transport (UK) (2008) *Learning to Drive: A Consultation Paper*.

VLA Lindsay and MRJ Baldock (2008) 'Medical condition as a contributing factor in crash causation' 2008 *Australasian Road Safety Research, Policing and Education Conference*, November, Adelaide.

Ombudsman Victoria (2007) *Investigation into VicRoads driver licensing arrangements*, December, Session 2006-07, PP No 55, Victorian Government Printer.

Queensland Transport *Information Sheet-How to Become and Accredited Driver Trainer*.

VicRoads (2007) *Regulatory Impact Statement Graduated Licensing System*.

APPENDIX 1

FEES COST BASIS

Table 10 Fees cost basis

Driver Accreditation Salary	No of VTD staff allocated to driving instructors	Proportion of VTD staff time allocated to driving instructors	Salary per VTD staff member	Salary + 40% on costs*	Total salary cost allocated to driving instructors
Manager	1	0.01	\$119,995	\$167,993	\$1,680
Asst Mgr	1	0.02	\$88,450	\$123,830	\$2,477
Senior Officer	1	0.04	\$71,886	\$100,640	\$4,026
Admin Officer	1	0.04	\$62,140	\$86,996	\$3,480
Admin Officer	1	0.04	\$62,140	\$86,996	\$3,480
Admin Officer	1	0.04	\$62,140	\$86,996	\$3,480
Admin Officer	1	0.04	\$62,140	\$86,996	\$3,480
Admin Officer	1	0.04	\$62,140	\$86,996	\$3,480
Admin Officer	1	0.04	\$62,140	\$86,996	\$3,480
Total Admin Cost					\$29,061
Total Salary Cost					\$29,061
Transport Safety and Compliance Salary					
TSO	36	0.03	\$62,140	\$86,996	\$93,956
TSO Asst	1	0.02	\$88,450	\$123,830	\$2,477
TSO Mgr	1	0.005	\$119,995	\$167,993	\$840
Prosecution	1	0.01	\$62,140	\$86,996	\$870
Total Admin Cost					\$98,142
Total Salary Cost					\$98,142
Complaints Team Salary					
Asst Mgr	1	0.005	\$88,450	\$123,830	\$619
Admin Officer	1	0.01	\$62,140	\$86,996	\$870
Admin Officer	1	0.01	\$62,140	\$86,996	\$870
Admin Officer	1	0.01	\$62,140	\$86,996	\$870
Admin Officer	1	0.01	\$62,140	\$86,996	\$870
					\$4,099
Total Salary					\$131,302
Operating Expense					
Cost of photo ID card		\$1,100	\$18.00		\$19,800
Total operation					\$19,800
Total Operation					\$19,800
Total (salary plus operating)					\$151,102
Total DIA in a year					1100
Expenditure per DIA for one year					\$137
Expenditure per DIA for three year period					\$412

* Salary on costs include approximately 15% for operations (such as accommodation and IT) and 25% for employment related on-costs.

Source: VTD

APPENDIX 2

PROPOSED ROAD SAFETY (DRIVING INSTRUCTORS) REGULATIONS 2010

Road Safety (Driving Instructors) Regulations

Exposure Draft

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Victoria

Road Safety (Driving Instructors) Regulations

Exposure Draft

1 Objectives

The main objectives of these Regulations are—

- (a) to provide for the application for and issue of driving instructor authorities;
- (b) to set out conditions that must be followed by holders of driving instructor authorities;
- (c) to require that driving instructors must produce their driving instructor authority and identity photograph if requested to do so by a member of the police force.

2 Authorising provision

These Regulations are made under section 95 of the **Road Safety Act 1986**.

3 Commencement

These Regulations come into operation on 15 February 2010.

4 Revocation

The Road Safety (Driving Instructors) Regulations 1999¹ are **revoked**.

5 Definitions

In these Regulations—

authorised person means a person authorised by the Secretary under regulation 14(1) or 14(2);

authority means a driving instructor authority granted under section 33(1) of the Act;

identity photograph means an identity photograph issued under regulation 7 to the holder of an authority;

the Act means the **Road Safety Act 1986**.

6 Application for driving instructor authority

- (1) For the purposes of section 33(2)(c) of the Act, the following are prescribed requirements for the applicant for an authority—
 - (a) the applicant must provide the Secretary with a completed application form;
 - (b) the applicant must provide the Secretary with a certificate from a registered medical practitioner stating that the applicant is not suffering from a condition that would prevent him or her from holding an authority;
 - (c) the applicant must provide the Secretary with 2 recent passport-size colour photographs of the applicant showing a full front view of the applicant's head and shoulders on a white background;

- (d) the applicant must provide the Secretary with a specimen of the applicant's signature in a manner specified by the Secretary.
- (2) For the purposes of section 33(2)(c) of the Act, it is a prescribed requirement that an applicant for an authority must, if required by the Secretary, allow himself or herself to be photographed or have a digitised image of himself or herself made at a place and in a manner specified by the Secretary.
- (3) For the purposes of section 33(2)(c) of the Act, it is a prescribed requirement that an applicant must pay a fee of 1 fee unit for every month of the term for which the Secretary proposes to grant the applicant an authority.

7 Secretary must issue holder's identity photograph

- (1) If an authority is granted under section 33 of the Act, the Secretary must issue an identity photograph to the holder of the authority.
- (2) An identity photograph issued under subregulation (1) must include—
 - (a) a photograph or digitised image of the holder of the authority, if one was required by the Secretary under regulation 6(2); and
 - (b) a number to identify the authority; and
 - (c) the date on which the authority expires.

8 Prescribed location for display of identity photograph

For the purposes of section 33B of the Act, the prescribed location for the display of an identity photograph is a location where the identity photograph is clearly visible to persons seated in the driver seat and the front passenger seat.

9 Conditions concerning authority

- (1) The Secretary may impose any conditions on an authority if he or she thinks appropriate either—
 - (a) when granting or renewing the authority; or
 - (b) at any time during the period that the authority is in force.
- (2) The Secretary may on his or her own initiative or on the written application of the holder of an authority—
 - (a) vary or revoke a condition imposed by the Secretary on the authority; or
 - (b) impose a new condition on the authority.
- (3) The Secretary must give the person to whom an authority is granted, or whose authority is renewed, a written copy of any conditions the Secretary imposes on that authority.

10 Return of authority or identity photograph upon cancellation

The holder of an authority must immediately return his or her authority and identity photograph to the Secretary if his or her authority is cancelled or suspended or otherwise ceases to have effect.

Penalty: 5 penalty units.

11 Replacement of lost, stolen or destroyed authority or identity photograph

- (1) The Secretary may grant a duplicate authority or identity photograph if the Secretary is satisfied that the authority or identity photograph is illegible, altered or defaced or that it is lost, stolen or destroyed.

- (2) The holder of an authority must pay a fee of 2 fee units for the issue of a duplicate authority or identity photograph.

12 Production of authority upon request

It is a condition of an authority that, when teaching a person to drive pursuant to the authority, the holder must produce his or her authority and identity photograph for inspection if requested to do so by—

- (a) a member of the police; or
- (b) an authorised person.

13 Holder of authority to keep records

- (1) It is a condition of an authority that the holder must keep any records required by the Secretary.
- (2) It is a condition of an authority that the holder must—
 - (a) produce all records referred to in subregulation (1) if requested to do so by an authorised person;
 - (b) allow that person to make copies of the records.
- (3) It is a condition of an authority that the holder must notify the Secretary of any change in the information provided by the holder to the Secretary in his or her application.

14 Secretary may authorise persons to inspect authorities or records

- (1) For the purpose of regulation 12, the Secretary may authorise a person to require the holder of any authority to produce his or her authority and identity photograph for inspection.
-

- (2) For the purpose of regulation 13, the Secretary may authorise a person—
 - (a) to require the holder of an authority to produce records held by the holder of an authority under regulation 13; and
 - (b) to make copies of those records.
- (3) An authorisation under subregulation (1) or (2) must be in writing.
- (4) The Secretary may authorise the same person for the purposes of both regulations 12 and 13.

15 Medical certificates

It is a condition of an authority that the holder must notify the Secretary of any change in the information provided by the holder to the registered medical practitioner for the purposes of issuing the certificate provided to the Secretary under regulation 6(1)(b).

Road Safety (Driving Instructors) Regulations

Exposure Draft

ENDNOTES

¹ Reg. 4: S.R. No. 17/1999 as amended by S.R. No. 88/2004 and extended in operation by S.R. No. 8/2009.

Fee Units

These Regulations provide for fees by reference to fee units within the meaning of the **Monetary Units Act 2004**.

The amount of the fee is to be calculated, in accordance with section 7 of that Act, by multiplying the number of fee units applicable by the value of a fee unit.

The value of a fee unit for the financial year commencing 1 July 2009 is \$11.69. The amount of the calculated fee may be rounded to the nearest 10 cents.

The value of a fee unit for future financial years is to be fixed by the Treasurer under section 5 of the **Monetary Units Act 2004**. The value of a fee unit for a financial year must be published in the Government Gazette and a Victorian newspaper before 1 June in the preceding financial year.

Penalty Units

These Regulations provide for penalties by reference to penalty units within the meaning of section 110 of the **Sentencing Act 1991**. The amount of the penalty is to be calculated, in accordance with section 7 of the **Monetary Units Act 2004**, by multiplying the number of penalty units applicable by the value of a penalty unit.

The value of a penalty unit for the financial year commencing 1 July 2009 is \$116.82.

The amount of the calculated penalty may be rounded to the nearest dollar.

The value of a penalty unit for future financial years is to be fixed by the Treasurer under section 5 of the **Monetary Units Act 2004**. The value of a penalty unit for a financial year must be published in the Government Gazette and a Victorian newspaper before 1 June in the preceding financial year.