

ICAC

Independent Commission
Against Corruption
SOUTH AUSTRALIA

Failing the Corruption Road Test

Corruption Risks in South Australia's Driver Training Industry

A report by the Hon. Ann Vanstone QC
Commissioner



Failing the Corruption Road Test

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Commissioner's foreword



Before being removed from my purview by amendments made to the *Independent Commissioner Against Corruption Act 2012* (SA), the Office for Public Integrity (OPI) had received more than forty complaints and reports in relation to the conduct of authorised examiners. While the OPI continues to receive complaints and reports about public administration, including authorised examiners, I do not have access to that information unless the complaint is referred to me as potential corruption.

There was enormous value in having access to the information contained in complaints and reports received by the OPI. Together with intelligence gained through corruption investigations, it is this information that presents a holistic picture of corruption risks across the public sector and the environments that allow corrupt activity to thrive.

When considered in its entirety, the prevalence of allegations and patterns of behaviour can point to specific corruption risks that ought to be addressed by public sector agencies.

It is on this basis that I have formed the view that there has been a pattern of wrongdoing over time among some individuals serving as authorised examiners appointed by the Registrar of Motor Vehicles for the purpose of conducting practical driving tests.

This report outlines insights gained through the examination of more than forty complaints and reports received by the OPI.

It is this broader picture of patterns in behaviour that suggests the controls in place to prevent corruption in the driver licensing industry are less than adequate. Further, there are likely to be lessons drawn from this report to assist other agencies having licensing and other regulatory functions in managing corruption risks.

This report has been prepared in accordance with section 42 of the *Independent Commission Against Corruption Act 2012* (SA). A copy was provided to the former Chief Executive of the Department for Infrastructure and Transport and the Registrar of Motor Vehicles for comment. Their feedback has been noted throughout the report where relevant.

I would like to thank the former Chief Executive and the Registrar of Motor Vehicles for their assistance in reviewing the report. I am pleased that they have '*welcomed the report as a valuable contribution that will support the case for reform*'. Indeed, I acknowledge the work that is progressing to address integrity risks, which I discuss in the report, and I encourage the Department to continue in its efforts to minimise the risks of corruption in the driver licensing function.

A handwritten signature in black ink that reads 'Ann Vanstone'. The signature is written in a cursive, flowing style.

The Hon. Ann Vanstone QC
Independent Commissioner Against Corruption

There was enormous value in having access to the information contained in complaints and reports received by the OPI. Together with intelligence gained through corruption investigations, it is this information that presents a holistic picture of corruption risks across the public sector and the environments that allow corrupt activity to thrive.

Corruption risks in the driver licensing industry in South Australia

The complaints and reports reviewed by my officers deal with allegations that bribes were being offered in exchange for licences by both examiners and students; that examiners had not tested students in accordance with the 'Rules Governing Authorised Examiners'; and that a small number had engaged in inappropriate conduct.

Perhaps the most serious consequence of conduct of this nature is the potential for there to be licensed motorists in the community who have not demonstrated the required standards of competency.

The risk this presents to public safety is obvious.

Such conduct can also undermine the public's confidence in the integrity of government agencies more broadly. Across the public sector, agencies have regulatory functions for a range of purposes. Examples include motor vehicle and boat licensing and registration, issuing licences for building and trades, liquor and gambling, real estate services and firearms, and permits for things like disability parking.

It is important that agencies charged with exercising such powers and functions have the mechanisms necessary to identify corruption risks, and to detect and deal with improper conduct when it occurs.

I mention the broad range of licensing functions undertaken by government to demonstrate that the corruption risks I discuss in this report relating to driver licensing may also exist for other regulatory roles. I do not have adequate information to suggest that improper conduct is occurring in agencies performing these regulatory roles, or that they are not already effectively managing corruption risks.

I would however encourage all public authorities with similar functions to consider the lessons learned here with the view to assessing whether they have adequate controls in place to deal with the risks of corruption.

Some of the observations I have made in relation to corruption risks in the driver licensing industry were also recognised during the Government's 'Driver Training Review' that commenced in 2017.¹ The review was in part prompted by examples of low standards of training and assessments, inappropriate behaviour and allegations of fraud and corruption by some industry participants. Indeed, there have been occasions where individuals were convicted of fraud and corruption offences.

The review involved consultation with industry participants and members of the community. It confirmed that there was a need for reform. In particular, it was clear that the standards to enter and remain in the driver training industry needed to be improved.

It is concerning that 85% of industry participants reported that they were aware of corruption in the industry.²

The review revealed examples of corrupt and inappropriate behaviour that included:

- ▶ issuing licences to applicants who had not demonstrated competency
- ▶ accepting bribes
- ▶ engaging in other business activities whilst training or assessing applicants for a licence
- ▶ engaging in inappropriate behaviour with minors
- ▶ engaging in other deceptive behaviour such as misrepresenting their accreditation
- ▶ omitting mandatory components of a driving test
- ▶ refusal to issue receipts for monies paid by a client
- ▶ training applicants for a licence on testing routes³

I understand the Government has committed to addressing these behaviours through legislative reform and a Bill was under review during 2021. Reforms likely to be introduced include:

- ▶ mandatory cameras and GPS in all driver training vehicles
- ▶ a mandatory code of practice
- ▶ higher standards to enter the driver training industry
- ▶ the ability for the Registrar of Motor Vehicles to issue sanctions such as suspension and cancellation of accreditation, or fines for unacceptable or inappropriate behaviour
- ▶ mandatory training material to be used to train learner drivers⁴

I commend the steps taken to understand the corruption risks in the industry and the attempt to address some issues.

1 'Driver Training Review', Consultation Outcomes from the Community and Industry Consultation Stages, Department of Planning, Transport and Infrastructure, January 2020.

2 'Cracking down on corrupt driving instructors' media release, Premier Steven Marshall, February 2020. <https://www.premier.sa.gov.au/news/media-releases/news/cracking-down-on-corrupt-driving-instructors>

3 Ibid.

4 'Tough reforms to strengthen standards in driver training' media release, Premier Stephen Marshall, June 2021. <https://www.premier.sa.gov.au/news/media-releases/news/tough-reforms-to-strengthen-standards-in-driver-training>

The reports and complaints I have reviewed reveal conduct of the type that has been described in the Government's review as corrupt and inappropriate. I will elaborate on this conduct later in the report. I will also discuss the systems and processes within the Department for Infrastructure and Transport and their effectiveness in preventing corruption.

First, it is important to understand the current environment for driver licensing in South Australia, including the responsibilities of authorised examiners, who are entrusted with an important function by the Registrar of Motor Vehicles.

Driver licensing in South Australia

South Australia's Graduated Licensing Scheme is a staged approach to attaining a licence to drive. It progresses through four phases from a learner's permit to a full driver's licence.⁵

Beginning with a theoretical test to gain a learner's permit, individuals must then complete 75 hours of supervised driving that is recorded in a learner driver log book. From here, individuals may choose to either take a Vehicle On Road Test (VORT) or complete a Competency Based Training and Assessment (CBT&A).

A VORT is a single practical driving test with an authorised examiner assessing the student over the course of the test using a prescribed route. The CBT&A method comprises 30 tasks that are signed off by an authorised examiner as the student demonstrates competency in each task over a period of time. The final task⁶ is a practical driving assessment that can only be attempted once the student has demonstrated competency in all previous tasks.

If the authorised examiner assesses the student as having successfully completed the requirements of the VORT or the CBT&A program, the examiner will issue the student with a Certificate of Competency. Certificates of Competency are provided to the Registrar of Motor Vehicles as evidence that a student has met the required level of driving competence. Then a driver's licence can be issued.

Individuals may be taught to drive by anyone who meets the requirements of a 'Qualified Supervising Driver'. That is someone who has held an unconditional licence to drive for the previous two years without disqualification.

Persons receiving a fee or payment for teaching someone to drive must hold a 'Motor Driving Instructors' licence. Individuals applying for a driving instructor's licence must demonstrate competency by completing a road rules theoretical test and a practical test known as a 'regulator assessment'. Applicants must also supply employment references, a current police check, a current working-with-children check and proof of identity.⁷

Only those motor driving instructors who have been appointed as an 'Authorised Examiner' are permitted to deliver the VORT or CBT&A driving assessments.

5 Any reference to driver licensing in this report refers to the attainment of a 'C class' (car) vehicle licence.

6 Also referred to as the 'final drive' or 'last testing session'.

7 <https://www.sa.gov.au/topics/driving-and-transport/industry-services/driving-instructors/motor-driving-instructor-s-licence>

Authorised Examiners

Authorised examiners are defined in the *Motor Vehicles Act 1959* (SA) ('Motor Vehicles Act') as:

- (a) a police officer appointed by the Commissioner of Police for the purpose of conducting practical driving tests; or
- (b) a person appointed by the Registrar for the purpose of conducting practical driving tests; or
- (c) a person appointed by some public authority, and approved by the Registrar, for the purpose of conducting practical driving tests⁸

The Authorised Examiner function was outsourced to private sector operators in the early 1990s.

The complaints and reports I refer to in this report relate to authorised examiners appointed by the Registrar. Any reference to an authorised examiner in this report refers to an authorised examiner appointed by the Registrar.

Authorised examiners are appointed at the discretion of the Registrar and must comply with certain obligations and conditions. Examiners must hold a current motor driving instructor's licence and abide by the '*Rules Governing Authorised Examiners*'. Appointments are made explicitly for undertaking either the VORT and/or the CBT&A methods of testing, and for a particular class or classes of vehicles.⁹

Once approved, individuals will be issued with an '*Instrument of Appointment*' signed by the Registrar appointing them an authorised examiner for a term concurrent with the term of the motor driving instructor's licence, unless terminated earlier.¹⁰

Code of conduct and cause for disciplinary action

A voluntary code of conduct was approved by the Registrar of Motor Vehicles and currently sets out the minimum standards of practice expected of all licensed motor driving instructors and authorised examiners. The code of conduct is not enforceable; however, a failure to meet the minimum standards '*may give rise to investigation by the Registrar into a person's fitness to hold a motor driving instructor's licence*'.¹¹

The code outlines the required standards of behaviour including acting with honesty and integrity, having respect for others, being competent and managing the teaching business competently.

Under the Motor Vehicles Act, the Registrar may cancel or suspend any instructor's licence '*for such term as the Registrar thinks fit if satisfied that the holder has been guilty of conduct making the holder unfit to hold such a licence*'.¹²

8 *Motor Vehicles Act 1959* (SA) s 5.

9 <https://www.sa.gov.au/topics/driving-and-transport/industry-services/driving-instructors/authorised-examiners>

10 EXH046; EXH065.

11 South Australian Motor Driving Instructors Code of Conduct, Government of South Australia, November 2015.

12 *Motor Vehicles Act 1959* (SA) s 98A (7).

Some examples of conduct the Registrar might consider warrants disciplinary action are set out, including:

- ▶ any physical or sexual assault or inappropriate conduct (including inappropriate comments or touching)
- ▶ drug possession and trafficking
- ▶ stalking of students, parents, other motor driving instructors, authorised examiners or government officers
- ▶ dishonesty and fraud or poor or unscrupulous business practices
- ▶ driving offences¹³

The Registrar may also take disciplinary action in the event an examiner breaches the *Rules Governing Authorised Examiners*.

I am surprised that the current code of conduct approved by the Registrar in 2015 is voluntary. It is difficult to hold individuals to account against standards that they are not required to meet.

I am however pleased to see that a Bill is being considered which, if passed, will make a condition that the accreditation holder must not contravene a code of practice.¹⁴

Rules Governing Authorised Examiners

The 'Rules Governing Authorised Examiners' (Rules) provide examiners with direction as to the process for assessing driving students and for the issuing of certificates of competency.¹⁵

Certificates of competency must only be issued where an individual has been 'assessed and has demonstrated competency in accordance with the *VORT Operator's Manual* or the *CBT&A Operator's Manual*'.¹⁶ Certificates must be completed and signed by both the authorised examiner and the applicant at the end of a successful VORT or final assessment of the CBT&A, and issued to the applicant.

The Rules detail the requirements relating to the booking of assessments, including that there must be at least two clear calendar days in between making a booking (either a VORT or CBT&A) and conducting the assessment.

The Rules require authorised examiners to permit an auditor to ride in the vehicle and observe a VORT or CBT&A final assessment. Examiners must comply with reasonable directions from an auditor, and must not take any action to avoid an audit.

Examiners must not offer assistance or instruction to the applicant during either a VORT or an assessment task of a CBT&A, and cannot conduct a VORT within six months of providing lessons for a student.

13 <https://www.sa.gov.au/topics/driving-and-transport/industry-services/driving-instructors/motor-driving-instructor-s-licence>

14 *Driver Training and Assessment Industry Bill 2021* (SA) s 20 (7).

15 A numbered certificate contained within a book allocated by the Registrar to an Authorised Examiner for the purpose of certifying the driving competency of an applicant.

16 Rules Governing Authorised Examiners, Government of South Australia, July 2016, p.10.

Instructions relating to the record keeping responsibilities of authorised examiners are also set out in the Rules. These include the preparation and submission of a monthly return verifying activities undertaken and attaching copies of certificates of competency issued and cancelled for each month.

It would seem that the expectations of authorised examiners are clearly set out in legislation, the code of conduct (albeit voluntary), and the Rules Governing Authorised Examiners. Indeed, the examples mentioned provide guidance as to the practical application of the Act and examples of the types of conduct that might cause disciplinary action against an authorised examiner.

While expectations may be well explained, it is not clear to me how well understood these obligations are among individuals entrusted with the authority to issue certificates of competency.

Complaints and reports about Authorised Examiners

The nature of complaints and reports received by the OPI and reviewed by my officers in relation to authorised examiners mainly related to failures to comply with the Rules Governing Authorised Examiners and allegations of bribery. A smaller number of complaints were made in relation to alleged inappropriate conduct.

Conduct of the type that has been the subject of these complaints and reports gives rise to a significant risk of corruption. I will provide some detail of this conduct so as to demonstrate the concerns I have in relation to the corruption risks, and the ability of the Department to manage them.

Breaches of the Rules Governing Authorised Examiners

The matters reviewed revealed a number of breaches of the Rules Governing Authorised Examiners. The most common related to examiners **not conducting all procedures required during a test or assessment**.¹⁷ It is perhaps not surprising that the practice of **inappropriately issuing certificates of competency**¹⁸ was just as prevalent across the complaints and reports.

The Rules are explicit in setting out obligations that authorised examiners must observe. For example, driving tests and assessments must commence no more than five minutes before and no later than 15 minutes after the time for which the test was booked.¹⁹ For VORTs, tests must be conducted on a route that is allocated to the booking. The examiner *'must ensure that the VORT is a continual test without deviating from the approved VORT route'*.²⁰

17 EXH001; EXH003; EXH009; EXH010; EXH015; EXH016; EXH017; EXH029; EXH037; EXH043.

18 EXH003; EXH005; EXH010; EXH015; EXH016; EXH017; EXH025; EXH029; EXH032; EXH044.

19 Rules Governing Authorised Examiners, Government of South Australia, July 2016, p.9.

20 Ibid p.14.

Specifically, allegations were that during tests and assessments, authorised examiners failed to ensure students completed all the required tasks,²¹ and that students exceeded speed limits during tests and deviated from routes.²² Other allegations were that authorised examiners issued certificates of competency despite having to intervene (for example by applying the brakes)²³ or provided assistance to students during an assessment.²⁴

The Rules stipulate that the authorised examiner:

'must not offer verbal or physical practical driving advice, assistance or instruction to the applicant during the VORT (or the assessment of a task) except to clarify a direction or parameter;

*'must record an immediate fail item if the applicant causes a risk to public safety during the VORT such that the Examiner is required to intervene.'*²⁵

It is of course reasonable that driving tests and assessments set out mandatory tasks that must be executed competently by students. It is also reasonable for the community to expect that authorised examiners observe these tasks being competently carried out before licences are issued.

To monitor compliance with obligations, authorised examiners are audited during some tests and assessments. The audit process involves an assessment officer from the Department travelling in the vehicle during a practical driving test to observe whether the examiner is conducting and scoring the assessment in accordance with the requirements of the Registrar.²⁶

An audit would ordinarily identify if an examiner were not conducting a test in line with procedures, or if certificates of competency were being issued inappropriately.

I did however come across complaints and reports where it appeared that authorised examiners were attempting to **avoid an audit**.²⁷

The Rules go some way to address this risk by requiring a minimum of two clear calendar days between an examiner booking a test in the 'EzyReg' online system and conducting the test.²⁸ Presumably this is to allow the Department time to plan for, and allocate an auditor to attend assessments.

I have also reviewed matters where it was reported to the OPI that **examiners were conducting a VORT within six months of providing driving lessons**.²⁹ The Rules state that the authorised examiner:

*'must not conduct a VORT if the applicant has received driver training with the Examiner within the last six (6) months regardless of whether any payment was made for that training'*³⁰

21 EXH006; EXH009; EXH011; EXH015; EXH016; EXH017; EXH029; EXH032; EXH043.

22 EXH016.

23 EXH016.

24 EXH017.

25 Rules Governing Authorised Examiners, Government of South Australia, July 2016, p.12,14.

26 <https://www.sa.gov.au/topics/driving-and-transport/industry-services/driving-instructors/authorised-examiners>

27 EXH006; EXH029.

28 Rules Governing Authorised Examiners, Government of South Australia, July 2016, p.8.

29 EXH023; EXH038; EXH044.

30 Rules Governing Authorised Examiners, Government of South Australia, July 2016, p.14.

What is clear is that some authorised examiners do not always conduct driving tests and assessments in accordance with their obligations.

Information from complaints and reports further indicated that examiners **were incorrectly recording information relating to driving lessons in a student's log book**.³¹ This is also in breach of the Rules, whereby under the CBT&A process, authorised examiners must:

'sign-off each task as soon as reasonably practical after the successful completion of that task;

'ensure that the applicant signs each task in the space provided as soon as reasonably practicable'.³²

I am aware of allegations that examiners had deliberately recorded false information in student log books. This was to claim that the student had completed driving hours or lessons where they had not, presumably in an attempt to justify the fee and certificate of competency.³³ In others, the examiner was alleged to have failed to record driving hours or made undated log book entries.³⁴

Complaints also allege that a number of examiners would **only accept cash payments**, and that they **did not issue receipts**.³⁵ While not a breach of the Rules, as is pointed out in the code of conduct, driving instructors have an obligation to operate their business in accordance with Australian Consumer Law.³⁶

This means that businesses have an obligation to provide a receipt for any payment over \$75. For lesser amounts, businesses must provide a receipt to a consumer within 7 days of a request.³⁷ It is difficult to be certain of the reason some examiners refuse to provide receipts. One conclusion might be that not doing so avoids any record of the service provided, the date it was provided, and the fee that was charged.

What is clear is that some authorised examiners do not always conduct driving tests and assessments in accordance with their obligations. There is further evidence that some examiners are issuing certificates of competency on occasions where the required standards have not been met.

One has to question what might be the motivation for doing this?

Bribery and licensing

I have no doubt that bribery is a problem within the driver licensing industry in South Australia.

I come to this conclusion based on a number of matters the former Commissioner and I have assessed and investigated.³⁸ The conduct described in these matters points to the prevalence of bribery in the industry. The Government's Review also points to this.

31 EXH025; EXH032; EXH038; EXH044.

32 Rules Governing Authorised Examiners, Government of South Australia, July 2016, p.12.

33 EXH025; EXH032.

34 EXH038; EXH044.

35 EXH023; EXH034; EXH038; EXH044.

36 South Australian Motor Driving Instructors Code of Conduct, Government of South Australia, November 2015, p.5.

37 <https://www.accc.gov.au/consumers/prices-surcharges-receipts/receipts-proof-of-purchase>

38 EXH004; EXH006; EXH011; EXH017; EXH018; EXH022; EXH024; EXH026; EXH030; EXH031; EXH033; EXH038; EXH040; EXH041.

If authorised examiners are not adequately audited, do not complete log book records accurately and completely, insist on cash only payments and do not issue receipts, there is a real risk that bribery is occurring undetected.

My officers have received information from students who allege their examiner offered them a guaranteed pass on their driving test if they paid as much as \$3000.³⁹ For some, this price was said to include additional lessons in the event that the student was required to undertake an external test validation by the Department, or an auditor presented for the test and the examiner had no choice but to fail the student and pass them at a later time.⁴⁰ An allegation against one examiner was that they would fail a student unless they paid a fee of \$2200.⁴¹

In other cases, where the student failed a driving test, allegations were made that an examiner subsequently offered the student a pass for amounts of up to \$500.⁴²

It has also been reported that students have proposed bribes to authorised examiners.⁴³ In many of these cases it has been the examiner who has reported the conduct after refusing to accept the bribe.

This demonstrates that there are reputable examiners in the industry who operate with integrity. I have no doubt that this is the case. It does however suggest that the practice of 'purchasing' a driver's licence is a known and accepted practice among some students and examiners.

If authorised examiners are not adequately audited, do not complete log book records accurately and completely, insist on cash only payments and do not issue receipts, there is a real risk that bribery is occurring undetected.

Unregulated pricing

Driving instructors and authorised examiners are at liberty to set their own pricing for lessons and tests. This discretion is acknowledged in the Government's Review which identified that for driving lessons, 'there was a high level of variance in the price paid per hour, ranging from \$45 to \$140'.⁴⁴

I am aware of a practice of providing 'package deals' or 'lump sum payments' for lessons and either a VORT or CBT&A assessment.⁴⁵ Often there would be a commitment by the examiner that a licence would be granted as part of this arrangement.⁴⁶

This almost always comes with a hefty price tag.

39 EXH006; EXH015; EXH017; EXH025; EXH030; EXH031; EXH038.

40 EXH006.

41 EXH030.

42 EXH006; EXH011; EXH022; EXH026.

43 EXH017; EXH018; EXH022; EXH026; EXH033; EXH040.

44 'Driver Training Review', Consultation Outcomes from the Community and Industry Consultation Stages, Department of Planning, Transport and Infrastructure, January 2020, p.10.

45 EXH006; EXH015.

46 EXH006; EXH015; EXH030; EXH032.

This pricing model can provide an incentive for the examiner to fast-track a student by issuing a certificate of competency before they are ready. It could also present a temptation for examiners to issue a certificate without providing any instruction or testing at all.⁴⁷

At least one investigation by my officers involved an individual who had paid a lump sum for lessons and a test and was concerned they had been issued a licence before they were a competent driver.⁴⁸

The Government’s Review also identified that ‘28% of respondents were not confident with all of their driving skills after gaining a full driver’s licence’.⁴⁹

I see some value in the Registrar setting a price guide for driving lessons and tests conducted by non-government authorised examiners and motor driving instructors.

While still providing private examiners scope to set their own pricing, it would provide some guidance for consumers as to what is a reasonable fee for a particular service. It would offer some transparency in identifying a fair price, as opposed to a bribe.

I am told that there is no requirement that examiners report to the Registrar, or maintain records of the price they charge for lessons or tests.⁵⁰ Doubtless this has contributed to the conduct that I have seen in relation to bribes and lump sum payments.

With this activity going unreported and unrecorded, it is difficult to see how corrupt activity could be detected.

I recommend that the Registrar set a price guide for driving lessons and tests for (private) authorised examiners.

RECOMMENDATION 1

I recommend that the Registrar prohibit package deal pricing for driving lessons and tests. Fees charged for lessons and tests should be based on services provided.

RECOMMENDATION 2

I recommend that the Registrar require authorised examiners to provide a record of prices charged for lessons and tests in their monthly returns, including evidence of payment received.

RECOMMENDATION 3

47 EXH015.
48 EXH044.
49 ‘Driver Training Review’, Consultation Outcomes from the Community and Industry Consultation Stages, Department of Planning, Transport and Infrastructure, January 2020, p.10.
50 EXH067.

The former Chief Executive advised me that while the Department agrees in principle with Recommendation 3, it should be considered together with the development of a digital logbook to record information which automatically feeds into the Registrar's systems. I understand this initiative is currently being contemplated by the Department.

Once an examiner earns a reputation for fast-tracking students for a fee they can become sought after for this purpose. Indeed, some of the reports made to the OPI were from authorised examiners who had been approached by students for this reason. It might also go some way to explain why we have seen a pattern of matters that involve allegations of bribery amongst some ethnic communities.⁵¹ I think it is important to further understand why this might be the case.

Prevalence of bribery in ethnic communities

It is not surprising that individuals seek out driving instructors and examiners from their own communities. There are most certainly advantages to dealing with people who understand the relevant language and culture.

However, for some communities where there are few examiners who speak the language, this can create a situation where they enjoy some power over students.

With little competition, some examiners might find that they can get away with charging significant fees for licences simply because members of their community have few alternatives and become somewhat dependent on the examiner to get their licence.

It has been explained to me that some examiners have cultivated a fear within their communities of the authorities, with some even referring to public officers as the 'police'. I am told these examiners are very clear about making the distinction between themselves and the government, to the extent that where government auditors present for tests, the students are so petrified they rely on the examiner 'to protect them'.

This creates an obvious power imbalance.

Even in the absence of engendering such fear, it could also be that examiners in these communities are simply seen to be a trusted conduit between the individual and the government whereby they are relied upon to provide advice and assistance to navigate the process of getting a driver's licence.

In itself, there should be no problem with this, providing the examiner meets the expectations of the Registrar in executing his or her functions. I am pleased that in some cases, conduct which clearly does not meet these expectations has been reported. However, I fear that there might be many more cases that are not.

This might be for a few reasons.

In 2020, Transparency International conducted a survey of 20,000 individuals in 17 Asian countries. It reported that nearly one in five people who had used a public service in the previous 12 months had paid a bribe. The country with the highest proportion was India, where 39% had paid a bribe in the previous 12 months. Indonesia reported 30% of people, and in China it was 28%.⁵²

51 EXH006; EXH017; EXH025; EXH038; EXH044.

52 Global Corruption Barometer – Asia 2020 Citizen's Views and Experiences of Corruption, Transparency International, p.21.

Survey respondents indicated that one reason for paying a bribe was to *'get things done better or more quickly'* (21%), or because it was asked of them (24%). As many as half (50%) of respondents in India said they paid a bribe because they were asked.

Almost a quarter of respondents (23%) reported that *'although they were not explicitly asked, they knew an informal payment was expected'*.⁵³

More than half (54%) of all respondents said they would not report a bribe as they thought they would *'suffer retaliation if they report corruption'*. In India this was higher, at 63% of respondents.⁵⁴

A similar survey was undertaken in Afghanistan by the United Nations Office on Drugs and Crime. It reported that in 2012, *'half of Afghan citizens paid a bribe while requesting a public service and the total cost of bribes paid to public officials amounted to US\$3.9billion'*.⁵⁵

It was reported that two thirds of the adult population of Afghanistan consider the receipt of gifts (referred to as *'administrative bribery'*) by civil servants from service users to be acceptable.⁵⁶

*'While corruption is seen by Afghans as one of the most urgent challenges facing their country, it seems to be increasingly embedded in social practices, with patronage and bribery being an acceptable part of day-to-day life. For example, 68 per cent of citizens interviewed in 2012 considered it acceptable for a civil servant to top up a low salary by accepting small bribes from service users (as opposed to 42 per cent in 2009).'*⁵⁷

Of those survey respondents who indicated they had paid a bribe in the previous 12 months, approximately three quarters did not report it to relevant authorities, compared to 22% that did.⁵⁸

This high proportion of unreported corruption may be due to the fact that only 18% of *'reported bribery cases in Afghanistan actually lead to the initiation of a formal procedure against the implicated public official'*.⁵⁹

These surveys provide some insight for public sector agencies dealing with multicultural communities. It is clear that for some nationalities it is a common and acceptable practice to offer and accept bribes when dealing with public officers; perhaps so much so that, for some, they do not even consider bribery to be a crime. Even for those who do, they are unlikely to report it for fear of retaliation, or simply because they believe nothing will be done about it.

With this in mind, and based on what I have seen from the matters I have reviewed, I think it is likely that some education is necessary for both examiners and students in multicultural communities.

53 Global Corruption Barometer – Asia 2020 Citizen's Views and Experiences of Corruption, Transparency International, p.21.

54 Ibid p.32.

55 Corruption in Afghanistan: Recent Patterns and Trends, December 2012, United Nations Office on Drugs and Crime Vienna, p.5.

56 Ibid p.27.

57 Ibid p.5.

58 Ibid p.21.

59 Ibid p.22.

It appears to me that there is not enough awareness in some communities as to what an examiner’s obligations are throughout the process of gaining a driver’s licence. This includes the responsibilities in relation to recording information in log books and providing receipts.

I think it is also likely that members of some ethnic communities do not know what is considered a reasonable price for driving lessons and tests. It is possible that some students are unwittingly paying a high price for lessons and tests in the false belief that it is a fair price.



I recommend that the Registrar ensure students are provided with information as to what they should reasonably expect from motor driving instructors and authorised examiners. This should include information on pricing, the Rules Governing Authorised Examiners (particularly their obligations in relation to completing log book records and providing receipts, and that conducting a VORT within 6 months of lessons is prohibited) and the process for making a complaint.

This information ought to be made available in a range of languages and students should be required to sign an acknowledgement that it has been received and understood.

RECOMMENDATION 4



It appears to me that there is not enough awareness in some communities as to what an examiner’s obligations are throughout the process of gaining a driver’s licence.

The role of the Registrar of Motor Vehicles

Offering cash to those responsible for issuing licences or executing other statutory functions is not unique to the South Australian public sector.

Through assessments and investigations my officers have observed some opportunities to improve practices in managing the driver licensing function of the Registrar and the Department.

The Registrar has a number of powers and responsibilities relating to the granting of driver's licences and the appointment of authorised examiners under the Motor Vehicles Act.

As referred to earlier in this report, legislation was recently drafted in response to the findings of the Government's Driver Training Review. If passed, the *Driver Training and Assessment Industry Bill 2021 (SA)* will introduce reforms aimed at '*stamping out those within the industry who are taking advantage of the current system*'.⁶⁰

At the time of writing this report, the Bill was yet to be introduced to Parliament. Its objectives are:

- (a) *to provide for the accreditation of persons who act as driver trainer-examiners for fee or reward; and*
- (b) *to ensure that driver trainer-examiners meet minimum standards of competency in driver training and assessment, probity and character in order to protect the community and benefit the driver training and assessment industry; and*
- (c) *to ensure that all reasonable and practicable measures are implemented to improve road safety and protection of learner drivers*
- (d) *to ensure that all reasonable and practicable measures are implemented to improve road safety standards for learner drivers; and*
- (e) *to promote the safety and protection of learner drivers.*⁶¹

The Bill also seeks to make related amendments to the Motor Vehicles Act.

To fulfil these responsibilities, it is necessary that the Registrar (and the Department in providing administrative support to the Registrar) has adequate systems and processes in place; not only for the effective execution of its functions, but also to detect and manage the types of corruption risks that have been reported to the OPI.

60 'Tough reforms to strengthen standards in driver training' media release, Premier Stephen Marshall, June 2021. <https://www.premier.sa.gov.au/news/media-releases/news/tough-reforms-to-strengthen-standards-in-driver-training>

61 *Driver Training and Assessment Industry Bill 2021 (SA)* s 3.

Records management

Section 73 of the Motor Vehicles Act requires the Registrar to ‘keep a register of the names and addresses of all licensed drivers, and of all endorsements on, and renewals, suspensions, and cancellations of, licences’.

The Act also sets out that the register will contain such other information as the Registrar thinks necessary for the administration of the Act, in a form to be determined by the Registrar.⁶²

I am advised that the register is held in a database known as ‘TRUMPS’.⁶³ Some information in respect of the appointment of authorised examiners is also recorded in TRUMPS.⁶⁴

Unfortunately, I am not confident the Department maintains accurate records of the particulars of the granting and expiry of appointments.

I am aware of an occasion where staff of the Department acknowledged they could not locate an examiner’s current instrument of appointment. The most recent record located was some six years out of date.⁶⁵

Instruments of appointment set out conditions, including:

The Appointment shall expire on the date of expiry of the Motor Driving Instructors licence current at the time of issue of this Instrument of Appointment, or upon any changes to your endorsements.

*A new Instrument of Appointment will be issued subject to renewal of the Motor Driving Instructors licence and all other conditions of this Instrument of Appointment being satisfactorily met.*⁶⁶

In this instance, while records of the examiner’s driving instructor’s licence renewal were kept, the Department could not establish if the instrument of appointment had been re-issued, along with the licence renewal. One suggested explanation was that the instrument of appointment had been issued, but a hard copy not saved to the file.⁶⁷

I find this to be extraordinary.

Not only does it suggest a reliance only on manual records management, but also that processes for maintaining up to date records were not always followed.

I am aware of an occasion where staff of the Department acknowledged they could not locate an examiner’s current instrument of appointment. The most recent record located was some six years out of date.

⁶² Motor Vehicles Act 1959 (SA) s 73 (2).

⁶³ Transport Regulation User Management Processing System.

⁶⁴ EXH047.

⁶⁵ EXH065; EXH066.

⁶⁶ EXH065.

⁶⁷ EXH048; EXH066.

It would be difficult to monitor and regulate the conduct of individuals executing the relevant statutory functions if there were no record of their having been appointed. In the event that allegations of irregular conduct were made against these individuals, it would be difficult to hold them to account.

It would be difficult to monitor and regulate the conduct of individuals executing the relevant statutory functions if there were no record of their having been appointed. In the event that allegations of irregular conduct were made against these individuals, it would be difficult to hold them to account.

Any agency that authorises private operators to execute statutory functions on its behalf must have adequate systems for maintaining records to demonstrate an individual has met the requirements of the position, and has a current approval to act in that capacity issued by a person with delegated authority. Such systems should also hold information about any restrictions or conditions on appointments, any history of complaints or disciplinary action, and, in the case of examiners, observations or concerns raised by auditors should also be recorded.

I am pleased to see the Bill sets out that the Registrar must keep a register of driver trainer-examiner accreditations⁶⁸ (where the term ‘driver trainer-examiner’ appears to have replaced the previously used separate terms ‘motor driving instructor’ and ‘authorised examiner’)⁶⁹. The Bill requires that for accredited driver trainer-examiners, the register must include:

- ▶ the person’s name and contact details
- ▶ the conditions (if any) of the accreditation
- ▶ any disciplinary action taken against the person (under the Act once passed)

I think there is scope for the register to capture information that is more comprehensive. A broader picture of the activities and conduct of an individual could offer the agency important insights that could raise red flags warranting further inquiry.

Officers who are charged with the responsibility of overseeing examiners ought to be trained to effectively monitor this information, to recognise indicators of wrongdoing, and to address activity of concern.

I recommend that the Registrar review its current systems and processes for recording information in respect of authorised examiners. Such a review ought to identify ways to reduce manual processes and improve systems for alerting the Department when appointments expire.

Consideration should also be given to expanding the type of information recorded to include a history of complaints made against each examiner, and relevant performance feedback from auditors.

RECOMMENDATION 5

68 *Driver Training and Assessment Industry Bill 2021* (SA) s 22.

69 Part 2 of the Bill seeks to repeal Part 3A of the *Motor Vehicles Act 1959* (SA) dealing with ‘Motor Driving Instructors’ licences.

Holding authorised examiners to account

As explained earlier, the Registrar may cancel or suspend any motor driving instructor's licence if '*satisfied that the holder has been guilty of conduct making the holder unfit to hold such a licence*'.⁷⁰ The Registrar may also take disciplinary action against examiners for any breach of the Rules Governing Authorised Examiners.⁷¹

To identify breaches of the Rules, regular audits of driving assessments are conducted. These involve persons authorised by the Department travelling in vehicles during a practical driving test (either a VORT or CBT&A final assessment) to assess whether the authorised examiner is '*conducting and scoring the assessment in accordance with the requirements of the registrar*'.⁷²

The Department also utilises a range of other sources of information to monitor the performance of authorised examiners including from SA Police. Allegations of breach of the Rules or poor performance are investigated by the Department. This may result in disciplinary action, including retraining, suspension or revocation of the appointment as an authorised examiner.⁷³

I apprehend however, that some examiners are contravening the Rules without consequence, and that some might be deliberately avoiding the Department's scrutiny.

It has been suggested to me that it is not unusual for examiners to book appointments on a Friday evening for a test on Sunday or early Monday morning to reduce the likelihood of an audit being allocated.⁷⁴

The former Chief Executive advised me that the booking system is currently configured to require two clear days between the date of making the booking and the test, preventing a Sunday test to be booked on a Friday evening as this is a breach of the Rules.

I apprehend however, that some examiners are contravening the Rules without consequence, and that some might be deliberately avoiding the Department's scrutiny.

70 *Motor Vehicles Act 1959 (SA)* s 98A (7).

71 Rules Governing Authorised Examiners, Government of South Australia, July 2016, p.3.

72 <https://www.sa.gov.au/topics/driving-and-transport/industry-services/driving-instructors/authorised-examiners>

73 <https://www.sa.gov.au/topics/driving-and-transport/industry-services/driving-instructors/authorised-examiners>

74 EXH066; EXH069.

However, I am also advised that while the system will prevent bookings to be made less than 48 hours prior to a test, this would still allow for a booking made at 5pm on a Friday for a test after 5pm on a Sunday.⁷⁵ This does not align with the Rules, where ‘two clear calendar days’ means:

- ▶ *if a test is to occur on a Thursday, the booking must be made by 11.59pm the previous Monday*
- ▶ *if a test is to occur on Friday, the booking must be made by 11.59pm the previous Tuesday*
- ▶ *if a test is to occur on a Saturday, the booking must be made by 11.59pm the previous Wednesday.⁷⁶*

It is unlikely the Department would allocate an audit to a Sunday evening or Monday morning test that is booked late on a Friday unless this was organised outside of normal business hours.

The former Chief Executive indicated that while the system technically allows Monday morning tests to be booked on a Friday evening, a pattern of this occurring would trigger greater scrutiny of the authorised examiner as it would suggest they might be attempting to avoid an audit.

I am pleased that there are some mechanisms in place to prevent and detect the avoidance of audits, but I think under current arrangements some risk remains. In the event there are conflicting views as to the adequacy of the system in preventing bookings outside of the Rules, this ought to be resolved.

I recommend that the Registrar review the booking system to ensure that it sufficiently allows the Department the opportunity to allocate an auditor to a test or assessment.

RECOMMENDATION 6

That there are many examples of examiners conducting driving tests within six months of lessons, in breach of the Rules, further demonstrates problems with the Department’s systems and record keeping. I expect it could be quite straightforward to identify examiners who have conducted tests and lessons within six months if the Department captured relevant information. Were records of students for whom an examiner had provided lessons kept, these could be compared with the names of students they have tested. Where the Rules have been breached, the examiner ought to be held to account.

⁷⁵ EXH069.

⁷⁶ Rules Governing Authorised Examiners, Government of South Australia, July 2016, p.8.

The system for recording such information ought not to allow the issue of certificates of competency in circumstances where lessons were conducted within six months of a test. Indeed, even an attempt to book a test under this scenario should be prevented.

Were a test result deemed invalid in these circumstances, this would be an effective deterrent.

I recommend the Registrar investigate a system for recording the names of students who have undertaken driving lessons and tests, and their instructors, with a view to identifying those students who have paid for lessons and a test within six months.

RECOMMENDATION 7

The former Chief Executive advised me that while the Department agrees in principle with Recommendation 7, it should be considered together with the development of a digital logbook to record information which automatically feeds into the Registrar's systems. I understand this initiative is currently being contemplated by the Department.

Another option to minimise the risk of bias or bribery influencing driving test outcomes and assessments is for the Department to manage the bookings and randomly allocate examiners to students. It may be that this is difficult to achieve in circumstances where there is a language barrier. Nonetheless, it is worth exploring.

I recommend that the Registrar explore the viability of bookings of tests and assessments and the random allocation of examiners being managed by the Department.

RECOMMENDATION 8

The former Chief Executive indicated to me that the implementation of Recommendation 8 would be more feasible if the driving test function was delivered by government rather than private authorised examiners. He provided examples of some complexities that might arise under the current model such as managing students with preferences for male or female examiners and vehicle type, cultural considerations and challenges around distances to be travelled. Also that, there *'would also be administrative complications arising out of late cancellations and no-shows from learner drivers.'*

I think it is both necessary and appropriate for the Registrar to be aware of and manage incidences of breach of the Rules. It is also important that intelligence gained from auditors during routine audits is fully utilised.

The value of audits

It was explained to me that where during a test, auditors⁷⁷ observe a breach of the road rules that ought to, but does not result in an immediate 'fail', the auditor has no mechanism to overturn the instructor's 'pass' result.⁷⁸

I imagine this must be frustrating for auditors.

I am aware of occasions where an examiner was observed giving instructions and physically intervening to assist a driver during a test. It was an auditor's opinion across several examples surveyed that the examiner should not have passed these students.⁷⁹

I am also aware of an occasion when an authorised examiner conducted the final drive assessment under the CBT&A method and an auditor found that the student had demonstrated such a lack of competency that she should not have even been presented for the assessment.⁸⁰

The Rules Governing Authorised Examiners provide:

The Authorised Examiner... must ensure that the applicant has achieved the required driving standard prior to undertaking the CBT&A-LTS⁸¹

The Rules require examiners to permit an audit occurring, comply with a reasonable direction during an audit, and not to take any action to avoid an audit. The Motor Vehicles Act is silent in respect of audits. The Rules do not set out an auditor's role in addressing occasions where they disagree with the examiner's assessment.

The role of auditors in what is quite an 'arm's length' relationship between the Department and authorised examiners should not be underestimated. Without this important function, conduct of the sort described in this report will continue to go undetected.

Auditors could play an important role in intelligence gathering to build a broader picture of individuals more likely to be engaging in corrupt conduct. They are also in a unique position of being able to identify clear breaches of the Rules, suspicions of bribery, and incompetent drivers inappropriately being issued a licence.

It is good that the Bill sets out responsibilities in respect of audits. However I believe it does not go far enough.

Auditors could play an important role in intelligence gathering to build a broader picture of individuals more likely to be engaging in corrupt conduct.

77 EXH048. Also referred to as 'Assessment Officers'.

78 EXH038.

79 EXH038. Not during an audit.

80 EXH038.

81 Rules Governing Authorised Examiners, Government of South Australia, July 2016, p.12. Where the LTS refers to the 'Last Training Session', being the session in which the assessment of a Task 30 of the 'The Driving Companion' is conducted.

The Bill provides that an auditor must advise the Registrar if they disagree with the decision of an examiner after a test to pass or fail a driver.⁸²

It further provides that an auditor must report any contravention or failure ‘to comply with any requirements under this Act or any conditions of their accreditation in a significant respect or to a significant degree’.⁸³

Based on this information, the Registrar may, after taking ‘such action as the Registrar thinks fit’, also make recommendations or give directions to the examiner to rectify any matter. The Registrar may also take disciplinary action.⁸⁴

It would certainly be beneficial to have this set out in legislation. Auditors and examiners must be clear about their responsibilities and the process for dealing with differences of opinion. However, it would still leave auditors with no mechanism to override an examiner’s pass result in the face of a failure to meet competency requirements, or a breach of the Rules by the examiner.

If the examiner can still issue a certificate of competency at the time of the test or assessment without objection from an auditor, even with the prospect of it later being disputed, it is likely that any promised bribe will be paid. This is because the ‘transaction’ occurred: the certificate of competency was granted. In the event a licence is later disputed and action taken to rectify the position, it is unlikely the student who paid a bribe would have any avenue of recourse against the examiner.

This would not undermine the environment allowing for bribes to be paid where competency was not demonstrated.

Nor would it prevent incompetent drivers putting the public at risk while the Registrar considered reports from an auditor.

I recommend that the Registrar review the powers of departmental auditors with a view to providing them with the ability to override a decision of an authorised examiner during a test or examination. The issue of a certificate of competency ought to be delayed until after the Registrar’s review of such a matter.

RECOMMENDATION 9

The former Chief Executive advised me that it would be rare for an authorised examiner to pass a student who is incompetent while an auditor is in the vehicle and that if this did occur, it would bring the examiner under scrutiny of the Registrar; also, that the Registrar could require further testing of a learner driver prior to issuing a licence.

82 *Driver Training and Assessment Industry Bill 2021 (SA)* s 13 (4).

83 *Ibid* s 13 (5).

84 *Ibid* s 13 (6).

Conclusion

It is clear that there is much work to be done to address corruption risks in the driver licensing industry in South Australia. I am pleased that the Government has acknowledged that reform is necessary.

It is apparent to me that effort is being directed at dealing with some of the risks that have been identified in this report. The Bill under consideration will go some way to resolving some concerns I have raised.

Former Commissioner, the Hon. Bruce Lander Q.C., raised some of the matters I have outlined in this report with the Chief Executive of the Department in July 2020. Commissioner Lander made four recommendations to the Chief Executive to deal with corruption risks by authorised examiners:

1. *Authorised examiners should not be permitted to conduct driving tests on their own students.*
2. *The Department should manage all driving test bookings and allocate them randomly to authorised examiners.*
3. *Vehicles used to conduct practical driving tests should be fitted with video recording equipment to record driving tests.*
4. *Video recordings of the practical driving tests should be required to be retained for a set period of time (such as four weeks) and be provided to the Department for random or targeted auditing.*

I agree with these recommendations and include them here for completeness. I have discussed recommendations one and two in this report. Recommendations three and four are likely to be dealt with in the proposed legislation.

The recommendations I have made are in the interests of reducing corruption risks associated with the present model where authorised examiners are private sector operators. The controls for minimising corruption in environments where services are delivered on behalf of government by the private sector must be particularly robust and effective. Naturally it is more difficult to manage risks where there is this separation.

It may be time to reassess the appropriateness of private authorised examiners.

I cannot comment on the rationale for privatising this function in the early 1990s. No doubt the fiscal implications and risks were considered.

What has been observed, however, is conduct within the industry that amounts to corruption, alongside practices and processes within the Department that are not always effective in preventing or detecting such conduct.

The controls for minimising corruption in environments where services are delivered on behalf of government by the private sector must be particularly robust and effective.

When considering the recommendations I have made to improve practices under the current model, I suggest that the Registrar also contemplate whether it would be more effective for the authorised examiner function to be delivered by government.

I can see a number of benefits to this approach.

For example, if tests and assessments were conducted by government employees, the incentive to advance a student through lessons and tests before they are ready would be removed. While still not impossible, with robust processes in place I think it is less likely for bribery to occur among government employed examiners.

The former Chief Executive suggested to me that the Government is best placed to deliver the authorised examiner function. In his view this would likely reduce the potential for corruption through greater control over a function that would be delivered by public sector employees.

Regardless of the model, agencies that are responsible for granting licences and other regulatory functions must be alive to corruption risks that can impact upon public safety and erode the public's confidence in government more broadly.

Systems and processes must be established to limit the opportunity to engage in wrongdoing, and detect patterns of behaviour that might reveal such conduct. Those with delegated authority must be responsible for holding individuals to account if inappropriate conduct is identified.

The South Australian public expect nothing less.

Summary of Recommendations

I recommend that the Registrar set a price guide for driving lessons and tests for (private) authorised examiners.

RECOMMENDATION 1

I recommend that the Registrar prohibit package deal pricing for driving lessons and tests. Fees charged for lessons and tests should be based on services provided.

RECOMMENDATION 2

I recommend that the Registrar require authorised examiners provide a record of prices charged for lessons and tests in their monthly returns, including evidence of payment received.

RECOMMENDATION 3

I recommend that the Registrar ensure students are provided with information as to what they should reasonably expect from motor driving instructors and authorised examiners. This should include information on pricing, the Rules Governing Authorised Examiners (particularly their obligations in relation to completing log book records and providing receipts, and that conducting a VORT within 6 months of lessons is prohibited), and the process for making a complaint.

This information ought to be made available in a range of languages and students should be required to sign an acknowledgement that it has been received and understood.

RECOMMENDATION 4

I recommend that the Registrar review its current systems and processes for recording information in respect of authorised examiners. Such a review ought to identify ways to reduce manual processes and improve systems for alerting the Department when appointments expire.

Consideration should also be given to expanding the type of information recorded to include a history of complaints made against each examiner, and relevant feedback from auditors.

RECOMMENDATION 5

I recommend that the Registrar review the booking system to ensure that it sufficiently allows the Department the opportunity to allocate an auditor to a test or assessment.

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I recommend the Registrar investigate a system for recording the names of students who have undertaken driving lessons and tests, and their instructors, with a view to identifying those students who have paid for lessons and a test within six months.

RECOMMENDATION 7

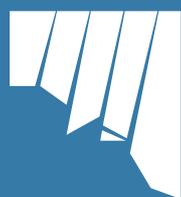
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RECOMMENDATION 8

I recommend that the Registrar review the powers of departmental auditors with a view to providing them with the ability to override a decision of an authorised examiner during a test or examination. The issue of a certificate of competency ought to be delayed until after the Registrar's review of such a matter.

RECOMMENDATION 9

***EXH** refers to exhibits and information held by the Commission in respect of matters that have been assessed or investigated.*



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