

EXPLANATORY STATEMENT

Mutual Recognition Act 1992

Automatic Mutual Recognition (South Australia) (Exemption – Motor Driving Instructors) Declaration 2022

This explanatory statement provides notes on the operation of the *Automatic Mutual Recognition (South Australia) (Exemption – Motor Driving Instructors) Declaration 2022* (the Declaration). The specific provisions in the Declaration are outlined in Attachment A. The information in the explanatory statement is an aid to understanding the Declaration and should not be substituted for the Declaration.

Context and purpose

Part 3A of the *Mutual Recognition Act 1992* of the Commonwealth (MRA) provides for the automatic mutual recognition of occupational registrations (AMR). AMR will provide an entitlement for an individual to carry on an activity in a second State, under the registration covering the activity in their home State through Automatic Deemed Registration (ADR).

Part 3A of the MRA provides for the making of declarations that exclude certain registrations from ADR where a Minister of a State is satisfied that the declaration is necessary because of a significant risk arising from circumstances or conditions in the declaration state, to consumer protection, the environment, animal welfare or the health or safety of workers or the public. The *Legislation Act 2003* of the Commonwealth provides for the making of legislative instruments.

Summary

Through this Declaration, the Treasurer of South Australia has excluded a registration from ADR for the period 1 July 2022 to 1 October 2027. By virtue of the making of the Declaration, the Treasurer is satisfied that the exclusion is necessary because of a significant risk to consumer protection and the safety of the public. The Declaration provides an explanation of the specific risks arising from the registration in the context of the circumstances and conditions in South Australia. The information relied on to support the decision is provided in Attachment B.

Consultation

South Australia did not conduct public consultation as the Treasurer and state considers it inappropriate in the circumstances.

In preparing the declaration, the Treasurer had regard to the expert information available and the positions of persons likely affected.

The Treasurer acted on the advice of the Department for Infrastructure and Transport and in recognition of the risk assessment undertaken and summarised in Attachment B.

Attachment A

Automatic Mutual Recognition (South Australia) (Exemption – Motor Driving Instructors) Declaration 2022

Part 1 – Preliminary

Section 1 – Name

This section provides that this Declaration is to be cited as the *Automatic Mutual Recognition (South Australia) (Exemption – Motor Driving Instructors) Declaration 2022* (the Declaration).

Section 2 – Commencement

This section provides the date on which the Declaration comes into operation. The Declaration comes into operation on 1 July 2022.

Section 3 – Authority

This section outlines the authority through which the Declaration is made. The Declaration is made under section 42S of the *Mutual Recognition Act 1992* (Commonwealth).

Section 4 – Simplified outline of the instrument

This section explains that the purpose of this instrument is to exempt a specified registration from the Automatic Deemed Registration (ADR) provisions of the *Mutual Recognition Act 1992* (MRA), the application of the exclusion and the period of the exclusion.

Section 5 – Definitions

This section provides, for the purposes of this Declaration, self-explanatory definitions of the following terms:

- The Act is defined in this section as meaning the *Mutual Recognition Act 1992*.

Section 6 – Exemptions

The Declaration is made in accordance with paragraph 42S(1)(a) of the MRA, Motor Driving Instructor licence issued under the *Motor Vehicles Act 1959 (South Australia)* (shown in column 1) is excluded from ADR because the Minister making the Declaration is satisfied that there is a significant risk to consumer protection or the safety of the public (as outlined in column 2).

This means that an individual cannot carry on the activities authorised under this registration in South Australia without a Motor Driving Instructor licence issued under the *Motor Vehicles Act 1959 (South Australia)*. An individual may obtain a Motor Driving Instructor licence under Part 3 of the MRA.

In accordance with subsection 42S(2) of the MRA, this provision in the Declaration also provides a statement of the risk to consumer protection or the safety of the public (as shown in column 2).

The following table replicates the provisions in the Declaration.

Exemptions for the purposes of paragraph 42S(1)(a)

Item	Column 1 Registration	Column 2 Statement of risk
1	Motor Driving Instructor licence (under the <i>Motor Vehicles Act 1959 (South Australia)</i>)	<u>Risk to safety of the public</u> The training of learner drivers will be compromised if Motor Driving Instructors who have not been trained and assessed to the high standards required to obtain a Motor Driving Instructor licence in South Australia are authorised to provide training. The safety of learner drivers will be at risk if Motor Driving Instructors who have not been deemed fit and proper to South Australia's high standards are authorised to conduct in vehicle training. <u>Risk to consumer protection</u> Motor Driving Instructors who have not been trained and assessed to South Australia's high standards may provide inadequate training to a learner driver, for which the learner driver is paying significant fees.

Subsection 4 provides a self-repeal date for section 6.

The Hon Stephen Mullighan MP

Treasurer (South Australia)

Attachment B - Information relied on to support the minister

Background Information on Motor Driving Instructors in South Australia

A Motor Driving Instructor (MDI) has a critical role in road safety by teaching learner drivers safe driving practices, interactions with other road users and application of the Australian Road Rules (ARR) in preparation for a practical driving test and being issued with a driver's licence.

In South Australia, MDIs are individuals licensed by the Registrar of Motor Vehicles (the Registrar) under the requirements of *the Motor Vehicles Act 1959 (South Australia)*, and operate as, or for private businesses. Only people who meet the standards prescribed in the Motor Vehicles Act, may be granted a MDI licence. These include:

- Holds a full South Australian driver's licence.
- Has held that licence for the preceding two years (prior to application) with no disqualifications or suspensions.
- Has held a full licence for at least four years in total within the preceding five years of application (excluding any periods of disqualification or suspension).
- Is a fit and proper person to hold a MDI licence.
- Is proficient as a MDI.

Application requirements

To satisfy the above requirements the person is required to lodge with the Registrar.

- An application form as prescribed by the Minister for Infrastructure and Transport.
- A medical fitness to drive certificate completed within the previous three months.
- A National Police Clearance.
- A South Australian Working With Children Check (WWCC).
- A resume with two employment references.
- A certified copy of their current Certificate IV in Transport and Logistics (Road Transport – Car Driving Instruction).
- Evidence of passing the MDI road rules theory test.

Depending on what information is contained in the documents, the person may or may not satisfy the requirements to be considered fit and proper. For example, the application is unlikely to be successful if they have:

- Been convicted of any sexual, fraud, financial, violent, drug related or theft offence.
- A history of driving offences, licence disqualifications or suspensions.

Delivery of Certificate IV in Transport and Logistics (Road Transport – Car Driving Instruction)

The Certificate IV in Transport and Logistics (Road Transport – Car Driving Instruction) is an accredited course provided through nationally accredited Registered Training Organisations (RTO). The Registrar will accept a Certificate IV issued by any RTO in Australia.

To ensure South Australian RTO who deliver the Certificate IV are preparing students to the proper standard, the Registrar enters into a Deed of Agreement with the RTO.

RTO who apply and meet the requirements for a Deed of Agreement are provided training material developed by the Department for Infrastructure and Transport (the Department) that map to the national qualification and that ensure the training materials meet the Registrar's standards for MDIs.

Assessment requirements for licensing Motor Driving Instructors

A person whose application and supporting documents are complete are then required to undertake a Regulator Assessment (RA) conducted by a Government Assessment Officer.

Regulator Assessment

The RA is a final assessment, conducted under section 98A (5) of the *Motor Vehicles Act 1959 (South Australia)*. This section prescribes that "...the Registrar may require the applicant to undergo tests as they may think necessary... to confirm the person's proficiency as a MDI.

The RA is conducted by a Government Assessment Officer and divided into three parts. The applicant to become a MDI must demonstrate competence in all of the parts. The RA includes the applicant:

- Undertaking a drive assessment:

This is a drive to novice or learner driver standard in a manual vehicle (in the relevant class of licence). The drive is based on the Competency Based Training and Assessment (CBTA), last training session which for Class C (Car) is unique to South Australia. The CBTA last training session brings together all the elements of the CBTA program as published in the Driving Companion or for heavy vehicles the relevant Trainee Guide. The drive assessment component requires the person to demonstrate 100% compliance with the ARR and 80% compliance with low risk driving behaviours/system of vehicle control.

- Delivering commentary:

This is where the applicant must provide contemporaneous commentary on road hazards, traffic, interaction with other road users and applicable ARR. This demonstrates their ability to provide information and direction to learner drivers about the things they should be looking for and doing in everyday driving situations regardless of the class of licence.

- Training and delivery of tasks:

This is where the applicant is required to demonstrate their ability to provide quality training by delivering in a simulated environment "Tasks" from the Driving Companion.

The RA may also be completed as part of the Certificate IV in Transport and Logistics if the RTO delivering the training holds a Deed with the Department and a Departmental Assessment Officer is present to audit the RA.

Mutual recognition of interstate MDI licences:

Interstate applicants for mutual recognition must still demonstrate that they meet the fit and proper person requirements by having a South Australian WWCC and they must complete a RA before they are granted a MDI licence.

Identified risks of Automatic Deemed Registration for Motor Driving Instructors in South Australia.

Risk to the safety of the public – inadequate training and assessment requirements

The requirements to become a MDI in South Australia (mentioned above in the background) are more rigorous than other jurisdictions. After conducting some consultation with other jurisdictions on eligibility and training requirements to become a MDI, the jurisdiction which is closest in their level of rigour is New South Wales, with Western Australia showing the least.

In particular, the RA performed in South Australia is a very thorough test of the applicant's proficiency as a MDI. It is the only assessment to this standard within Australia, if an assessment is performed at all.

Since June 2020, only eight applicants have applied to operate as a MDI in South Australia based on holding an interstate MDI licence. Of those, only four applicants undertook a RA. As part of the drive assessment component of the RA, the highest score was 53 percent, with the lowest score being 21 percent, well below the learner driver standard of 80 percent. South Australian Government Assessment Officers have noted that interstate applicants performed poorly overall, cannot effectively provide commentary or deliver training, and do not drive to learner driver standards.

Based on these results, albeit a small sample size, there are considerable differences in the proficiency of driving instructors across Australia.

Therefore, if interstate MDI were permitted to operate in South Australia without having completed the necessary training and assessment requirements, in particular the RA, there is a significant risk that they will not be delivering professional driver training services to the same standard as MDI who hold a South Australian MDI licence. This will place learner drivers at a considerable risk of being disadvantaged by having engaged the services of an interstate MDI.

This further impacts the learner driver's capacity to drive, creating risks for their own safety and the safety of other road users.

Risk to the safety of the public – working with learner drivers under the age of 18 years

As part of the requirements to be deemed a fit and proper person to obtain a MDI licence in South Australia, a person is required to submit a WWCC to ensure they have been screened to deliver professional driver training services to learner drivers under the age of 18 years.

A jurisdictional scan has identified that not all jurisdictions require a WWCC for MDI who deliver driver training to learner drivers under the age of 18 years. In addition, a WWCC issued interstate is not accepted in South Australia.

There is a risk that interstate MDI delivering services in South Australia have not been appropriately screened and cleared to instruct learner drivers under the age of 18 years. As learner drivers under the age of 18 years are vulnerable people, this creates a significant risk to them when engaging the services of a MDI, particularly when this service is provided in a closed and restricted environment such as that of a motor vehicle.

Risk to consumer protection

Providing professional driving instruction to a learner driver is a paid service for which the learner driver is required to pay a fee, often based on a rate per driving lesson.

A number of lessons can often be required to ensure learner drivers are trained to a level where they are able to operate a vehicle and safely interact with traffic. Depending on the number of lessons, this can result in a significant cost to the learner driver.

There is an unacceptable risk to the learner driver who is paying for the services of a MDI, if the learner driver either is not aware, that the MDI does not train the learner driver adequately. This may mean that learner drivers will be inadequately prepared to take their practical driving test leading to an unnecessarily high fail rate and increased cost to these individuals.