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

**ROAD TRANSPORT LEGISLATION AMENDMENT
REGULATIONS 2002 (No.2)**

SUBORDINATE LAW SL2002-31

EXPLANATORY STATEMENT

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AUSTRALIAN CAPITAL TERRITORY

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EXPLANATORY STATEMENT

Overview

The *Road Transport Legislation Amendment Regulations 2002* amend the *Road Transport (Driver Licensing) Regulations 2000*, the *Road Transport (General) Regulations 2000*, the *Road Transport (Safety and Traffic Management) Regulations 2000*, the *Road Transport (Vehicle Registration) Regulations 2000*, and the *Road Transport (Offences) Regulations 2001*.

Most of these amendments are made under or in relation to changes made to the Road Transport legislation by the *Road Transport Amendment Act 2002* (the Act) and will provide for:

- the introduction of image retention for driver licenses and proof of age cards in order to help combat identity fraud;
- the introduction of a written-off vehicle register (WOVR) to help prevent the registration of stolen vehicles; and
- the streamlining of procedures for issuing an identity card to authorised persons for the purposes of the Road Transport Legislation.

Detail

Part 1 – Preliminary

Regulation 1 – Name of Regulations

This regulation names the amendment regulations as the *Road Transport Amendment Regulations 2002* (hereafter referred to as the Amendment Regulations).

Regulation 2 – Commencement

This regulation provides for the commencement of the changes to the Road Transport legislation. The provisions concerned with the retention of images (Part 2), the identifying particulars for authorised people (Regulation 11) and clarifying the use of bus lanes (Part 5) commence on the day after notification of the Amendment Regulations. Provisions correcting minor errors in the *Road Transport (Driver Licensing) Regulations 2000* also commence at this time.

The provisions concerned with the WOVR commence immediately after the commencement of section 13 of the Act. This is to allow time for the implementation of the changes required before insurers and other ‘designated persons’ have to notify the authority of written-off vehicles. In light of the need to revoke a current exemption declaration, regulation 10, covering the authorisation of traffic marshals, will also commence at that time.

Part 2 – Road Transport (Driver Licensing) Regulations 2000

Regulation 3 – Regulations amended – pt 2

Specifies that the *Road Transport (Driver Licensing) Regulations 1999* are the regulations being amended.

Regulation 4 – Regulation 78 (2) (d)

This regulation corrects an error in the original legislation by replacing ‘subregulation (d)’ with ‘paragraph (c)’.

Regulation 5 – Regulation 120 (1) (b) (iv)

This regulation corrects an error in the original legislation by replacing ‘subparagraph (i)’ with ‘subparagraph (iii)’.

Regulation 6 – Regulation 120 (2)

This regulation corrects an error in the original legislation by replacing ‘subparagraph (1) (b) (i) or (ii)’ with ‘subparagraph (1) (b) (iii) or (iv)’.

Regulation 7 – New part 8A

Inserts Part 8A, Protection of photographs and signatures.

Proposed new regulation 138A – *Definitions for pt 8A* – inserts definitions for the part.

Proposed new regulation 138B – *Disclosure of photographs and signatures for proof of age cards – Act, s 33D (1) (g)* – specifies the reasons for which a photograph or signature taken for a proof of age card may be disclosed to the registrar of liquor licences or a public servant assisting the registrar.

This regulation also ensures that the Office of Fair Trading is able to have access to proof of age cards and driver licence images produced by the Road Transport Authority (the authority) for proper administration and enforcement under the Liquor Act 1975.

Regulation 8 – Dictionary, new definitions

This regulation inserts the new definitions for part 8 into the Dictionary.

Part 3 – Amendments of Road Transport (General) Regulations 2000

Regulation 9 – Regulations amended – pt 3

Specifies that Part 3 amends the *Road Transport (General) Regulations 2000*.

Regulation 10 – Regulations 6 and 7

This regulation provides that traffic marshals (persons authorised to direct traffic under Australian Road Rule 304) are exempt from certain requirements otherwise applied to authorised persons. In particular, the requirements for traffic marshals to be an Australian citizen and to be issued with (and use) an identity card are administratively cumbersome and unnecessary, bearing in mind that traffic marshals are often volunteers authorised for bicycle races and similar events. The requirement for a traffic marshal to be adequately trained remains.

Regulation 11 – Regulation 9

This regulation substitutes Regulation 9 with Regulation 8A and 9.

Regulation 8A, *Identifying particulars for authorised people – Act, s20 (1) (b)*, specifies that the ‘identifying particulars’ of an authorised person referred to in Section 20 (1) (b) of the *Road Transport (General) Act 1999*, consist of the unique number allocated to the person by the authority. The authority records a unique number when a person is authorised under the Road Transport legislation and, if used on an identity card, the number allows the person to be identified without his/her name being given out.

This change arises from the need to balance the occupational health and safety issues associated with disclosing the authorised person’s full name and the right of the member of the public to be able to identify the person who has exercised powers under the Road Transport legislation.

Regulation 9 maintains the requirement in the previous version of this regulation, that an identity card must show the name and signature of the person who issued the card.

Regulation 12 – New Part 6

This regulation inserts a new Part 6, *Written-off vehicles register*

Regulation 20, *Definitions for pt 6*, contains the definitions relevant to the new Part 6.

Regulation 21, *What is a notifiable vehicle*, specifies which written-off vehicles must be notified by vehicle age, body type and weight.

Regulation 22, *When a vehicle is a statutory write-off*, defines a statutory write-off in line with the nationally agreed definition.

Regulation 23, *Who must give written-off vehicle information to road transport authority*, specifies which people (designated persons) must provide written-off vehicle information

to the authority. These are insurers, wreckers, dealers and persons responsible for a vehicle.

This regulation also exempts a designated person if the written-off vehicle information has been:

- provided by another designated person;
- entered by a designated person in a corresponding WOVR in another jurisdiction; or
- given by a designated person to a corresponding road transport authority.

Proposed Regulation 24, *Information about notifiable vehicle to be given to the road transport authority* broadly specifies the information that must be provided to the authority for each written off vehicle, and when it must be given. The authority can approve more specific requirements for the information given, such as nationally agreed codes for damage severity and location, under subregulation 24 (4).

Regulation 25, *Defence for failing to report write-offs*, provides a designated person with a defence for failing to notify a written-off vehicle. The defence is that the designated person believed on reasonable grounds either that the vehicle was not a notifiable vehicle or that the designated person was not required to provide the information to the authority.

Regulation 26, *Statutory write-offs – duty to attach notice*, concerns marking a statutory write-off to alert potential buyers that the vehicle can not be registered. The designated person must, within the compliance period specified, deface the vehicle's identifier (usually the compliance plate) and attach a complying statutory write-off notice.

Regulation 27, *Unauthorised interference with statutory write-off notices*, prohibits a person from interfering with a statutory write-off notice attached to a vehicle. A penalty is appropriate given the possible consequences. For example, a person may purchase a statutory write-off unawares and later find, after much expense in restoring the vehicle, that the vehicle can not be registered.

Regulation 28, *Written-off vehicles – duty to deface vehicle identifier*, requires the designated person who assesses a vehicle to be a statutory write-off to deface the vehicle identifier (usually the compliance plate) in accordance with an approved method (see Regulation 31 below). The approved method is likely to simply be a chisel mark across the compliance plate that does not obliterate the identifying numbers. The chisel mark serves as an extra warning to the consumer of a statutory write-off and indicates to another designated person that the vehicle has already been assessed as a statutory write-off.

Regulation 29, *Entry of vehicle information in written-off vehicles register*, makes explicit that the authority may enter information that is provided under proposed regulation 24 on the WOVR. This regulation also allows the authority to enter in the register a written-off vehicle of its own initiative, although this likely to be a rare occurrence.

Regulation 30, *Statement of whether a vehicle is written-off*, allows a person to apply for a statement of whether a vehicle is written-off, and specifies the information that must be provided in the statement. The statement will be useful to the potential buyer of a written-off vehicle, particularly if the vehicle is going to be repaired and re-registered. Written-off information is also useful in alerting potential buyers of a vehicle to the possibility that a vehicle may have been stolen and rebirthed.

Regulation 31, *Approvals for pt 6*, provides for the following approvals:

- by the Minister, a corresponding WOVR, to ensure that insurers are not exempt from notifying the authority if notification has been given to a WOVR that is not linked to the national database, accessed by all jurisdiction through the National Exchange of Vehicle and Driver Information System;
- by the authority, a statutory write-off notice; and
- by the authority, a method for defacing vehicle identifiers.

Regulation 13 – Dictionary, new definitions

This regulation inserts the new definitions for Part 6 into the Dictionary.

Regulation 14 – Schedule 1, new part 1.5A

This regulation inserts the authority's decision to record a vehicle in the written-off vehicle register into the list of reviewable decisions.

Regulation 15 – Schedule 1, part 1.11, new item 7A

This regulation inserts the authority's decision to refuse to approve application for registration of a repairable write-off into the list of reviewable decisions.

Regulation 16 – Schedule 1, part 1.11, item 30

This is a consequential amendment.

Regulation 17 – Schedule 1, part 1.11

This is a consequential amendment.

Part 4 – Amendments of Road Transport (Offences) Regulations 2001

Regulation 18 – Regulations amended – pt 4

Explains that Schedule 1 amends the *Road Transport (Offences) Regulations 2001*.

Regulation 19 – Schedule 1, part 1.5, item 18

This regulation replaces the previous offence of reproducing the likeness of a person depicted on a licence, with the offences for:

- unauthorised reproduction of photograph; and
- unauthorised reproduction of signature.

These offences correspond to subsections 39 (2) and 39 (3) (as renumbered from 33F (2) and 33F (3) respectively by Regulation 9 of the Act) of the *Road Transport (Driver*

Licensing) Act 1999. Subsection 39 (2) allows the reproduction of the likeness of a person on a driver licence or proof of age card for specific reasons; subsection 39 (3) allows the reproduction of a signature given for a driver licence for specific reasons.

Regulation 20 – Schedule 1, new part 1.7A

This regulation inserts the offences provided for in the proposed amendments to the *Road Transport (General) Regulations 2000*, being:

- designated person not notifying write-off information;
- designated person not attach statutory write-off notice ;
- designated person not deface vehicle identifier;
- unauthorised removal of statutory write-off notice.

The infringement penalty for each of these offences is \$200.

Part 5 – Amendments of Road Transport (Safety and Traffic Management) Regulations 2000

Regulation 21 – Regulations amended – pt 5

Specifies that Part 5 amends the *Road Transport (Safety and Traffic Management) Regulations 2000*.

Regulation 22 – Division 2.2.1, note 2, table

This regulation inserts Australian Road Rule Provision 280 (2) (a) and the corresponding new regulation, 27A, into the table in Note 2. This table sets out the provisions of the Australian Road Rules that are directly linked to a regulation in Part 2.2 of the Regulations.

Regulation 23 – Regulation 12

This substitution alters the original Regulation 12. The new regulation defines the ‘other’ vehicles that may use bus lanes (buses can already use the lane), and includes a note that links this regulation to the new Regulation 27A.

Regulation 24 – New regulation 27A

This new regulation makes explicit that the B light rules in the Australian Road Rules also apply to taxis and motorbikes.

Part 6 – Amendments of Road Transport (Vehicle Registration) Regulations 2000

Regulation 25 – Regulations amended – pt 6

Specifies that this part amends *the Road Transport (Vehicle Registration) Regulations 2000*.

Regulation 26 – Regulation 32A (3) (b)

This regulation substitutes ‘(b) the vehicle complies with the applicable vehicle standards’ for ‘(b) the vehicle satisfies the other requirements of these regulations (including the vehicle standards) for registration of the vehicle’.

Regulation 27 - Regulation 32A (5)

This regulation substitutes a new Regulation 32A (5) for the regulation inserted by the Act. This substitution links the definitions of ‘repairable write-off’ and ‘statutory write-off’ to new regulations 20 and 22, respectively, in the *Road Transport (General) Regulations 2000*. These definitions were included in the amendments to the *Road Transport (Vehicle Registration) Regulations 2000* in the Act so that the operation of the WOVV amendments was clear. The intention was always to have these definitions in the *Road Transport (General) Regulations 2000*, however the amendments to these regulations were not ready prior to Act being passed by the Legislative Assembly.

Regulation 28 – Regulation 32B

This regulation omits 32B in the Act which defines when a vehicle is a statutory write-off, to avoid duplication of the definitions in the *Road Transport (General) Regulations 2000* (see Regulation 20).

Regulation 29 – New regulation 68 (10)

This regulation inserts a new paragraph in regulation 68. Some statutory write-offs are currently registered in the ACT, and this insertion allows these vehicles to continue to be registered, despite subregulation 68 (9) (b). To preclude the renewal of registration for these vehicles would effectively have made the legislation retrospective.

Regulation 30 – Dictionary, new definition of approved corresponding WOVV

This regulation inserts into the dictionary ‘approved corresponding WOVV’, linking it to the definition found in the *Road Transport (General) Regulations 2000*, regulation 30 (1).

Regulation 31 – Dictionary, definition of corresponding WOVV

This regulation omits the previous definition of ‘corresponding WOVV’ inserted by the Act.

Regulation 32 – Further amendments, mentions of corresponding WOVV

This consequential amendment follows from replacing ‘corresponding WOVV’ with ‘approved corresponding WOVV.’