

2002

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

**URBAN SERVICES (APPLICATION OF CRIMINAL CODE)
AMENDMENT REGULATIONS 2002**

Subordinate Law SL2003 - 1

EXPLANATORY STATEMENT

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EXPLANATORY STATEMENT

Criminal Code amendments

The *Criminal Code 2002* commences on 1 January 2003. It applies to offences created on or after that date. The *Urban Services (Application of Criminal Code) Amendment Regulations 2002* amend offence provisions in the following regulations that will commence after the commencement of the Code to bring them into line with the current drafting practice for offences to which the Code will apply:

- the *Gas Safety Regulations 2001*;
- the *Road Transport (General) Regulations 2000*;
- the *Road Transport (Safety and Traffic Management) Regulations 2000*.

Application of Criminal Code to offences against regulations

New standard provisions to indicate that the Criminal Code applies to particular offences under the regulations are inserted into—

- the *Gas Safety Regulations 2001* (see new regulation 4AA inserted by regulation 4);
- the *Road Transport (General) Regulations 2000* (see new regulation 4A inserted by regulation 10);
- the *Road Transport (Safety and Traffic Management) Regulations 2000* (see new regulation 4A inserted by regulation 16).

Similar existing provisions are omitted from the *Road Transport (Safety and Traffic Management) Regulations 2000* by regulations 17 and 18.

Statement of the nature of the offences

A provision stating that each offence is an offence of strict liability is added to each regulation to which the Criminal Code will apply. Under the *Criminal Code 2002*, section 23 no fault (ie mental) elements apply to the commission of such an offence. The nature of the offence is not changed by the amendments. Rather, its nature as a strict liability offence is made clear.

Defence of 'without reasonable excuse'

The offences which have a 'without reasonable excuse' defence as part of the offence provision are amended by omitting it and recasting the defence as a separate subregulation. In each case an example of a reasonable excuse is included. See—

- the *Gas Safety Regulations 2001*, regulations 17E (4) and 18G (4) which are inserted by regulations 6 and 8, respectively;
- the *Road Transport (General) Regulations 2000*, regulation 26 (2) which is inserted by regulation 13.

Road Transport (General) Regulations 2000—redundant provision

Regulation 13 inserts new regulations 25 to 28 into the *Road Transport (General) Regulations 2000*. Existing regulation 25 (Defence for failing to report write-offs) is omitted. The Criminal Code, section 23 provides that the defence of mistake is available for a strict liability offence. Existing regulation 25 relates to the defence of mistake and it is therefore omitted as being unnecessary.

Also, regulation 13—

- replicates the substance of existing regulation 26 (Statutory write-offs—duty to attach notice) and regulation 27 (Unauthorised interference with statutory write-off notices) as regulations 25 and 26; and
- creates a new offence in new regulation 27, see below.

Road Transport (Safety and Traffic Management) Regulations 2000—redundant provisions

Regulation 16 inserts new regulation 4B (Offences against regulations are strict liability offences) and new regulation 4C (General defence of accident or reasonable effort) which replicate provisions repealed by regulations 17 and 18.

Other amendments

The opportunity has been taken to include 2 other amendments of the regulations being amended.

First, regulation 5 amends regulation 4A of the *Gas Safety Regulations 2001* to make it clear that all Australian Gas Association standards and codes are applied as in force from time to time. Regulation 7 consequentially omits regulation 18A (Instruments applied by pt 3A).

Second, regulation 13 inserts new regulation 27 (Statutory write-off notice to remain with vehicle) into the *Road Transport (General) Regulations 2000*. Its purpose is to ensure that if the part to which a statutory write-off notice is removed from a vehicle before the vehicle has been substantially demolished or dismantled, another notice is attached to the vehicle.