

2008

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

**ROAD TRANSPORT LEGISLATION AMENDMENT REGULATION 2008
(NO. 2)**

SUBORDINATE LAW SL 2008-47

EXPLANATORY STATEMENT

Presented by
Jon Stanhope MLA
Minister for Transport

ROAD TRANSPORT LEGISLATION AMENDMENT REGULATION 2008 (NO. 2)

OVERVIEW

This regulation makes amendments to the scheme for heavy vehicle parking in residential areas set out in Division 3.1.3 of the *Road Transport (Safety and Traffic Management) Regulation 2000*. The amendments in this regulation are made under sections 23 and 90 of the *Road Transport (General) Act 2000*, section 33 of the *Road Transport (Safety and Traffic Management) Act 1999* and section 23 of the *Victims of Crime Act 1994*.

The substantive amendments in the regulation are contained Schedule 1, Part 1.3. Parts 1.1, 1.2 and 1.4 of the regulation contain consequential amendments to the *Road Transport (General) Regulation 2000*, the *Road Transport (Offences) Regulation 2005* and the *Victims of Crime Regulation 2000*.

Schedule 1, Part 1.3 of the regulation contains amendments to provisions in the road transport legislation that regulate the parking of heavy vehicles on residential land. The amendments are consequential on the repeal of the *Land (Planning and Environment) Act 1991* on 31 March 2008. Before its repeal, that legislation provided a mechanism for enforcing the scheme set out in the *Code of Practice for Parking Heavy Vehicles in Residential Areas* DI 1997-194 (the Code of Practice). The Code of Practice was made under former section 150M of the *Motor Traffic Act 1936* and continued to have effect under transitional arrangements set out in former section 121 the *Road Transport (Safety and Traffic Management) Regulation 2000*. Some of the basic restrictions on parking heavy vehicles on residential land that were set out in the Code of Practice were also incorporated as parking offences in the *Road Transport (Safety and Traffic Management) Regulation 2000*. However, elements of the Code with a “land use” dimension, for example provisions to regulate the use of refrigeration units on heavy vehicles parked on residential land, or to prevent the operation of heavy vehicles on residential land at night, remained wholly governed by the Code of Practice.

The Code of Practice was linked to the *Land (Planning and Environment) Act 1991* because parking a heavy vehicle on residential land in contravention of the Code of Practice was specified to be a “controlled activity” for the purposes of schedule 5 of the *Land (Planning and Environment) Act 1991*. An order could be sought under section 256 of that Act to stop the controlled activity, and it was an offence to contravene a section 256 order.

This regulation also repeals the 1997 Code of Practice, as it cannot operate effectively following the repeal of the *Land (Planning and Environment) Act 1991*. Redundant provisions dealing with exemptions from the Code of Practice are also omitted. There are new offences to incorporate those elements of the Code of Practice that were not included when division 3.1.3 of the *Road Transport (Safety and Traffic Management) Regulation 2000* was initially introduced. The new offences include offences about the required distance between heavy vehicles and property boundaries, the operation of refrigeration units and night operation of heavy vehicles. The amendments in new division 3.1.3A will provide a new mechanism for enforcing heavy vehicle parking

restrictions to replace the enforcement mechanism previously available for “controlled activities” under the *Land (Planning and Environment) Act 1991*.

New division 3.1.3A provides enforcement powers for authorised persons (it is anticipated that the authorised persons will be parking operations personnel from the Office of Regulatory Services). These powers include the power to enter premises to check whether a vehicle is in breach of the heavy vehicle parking scheme, for example enabling the authorised person to measure whether a vehicle complies with length, height and weight restrictions or is parked the required distance from boundaries and the setback line at the front of the property, or to check a vehicle’s registration documents or the vehicle identification number.

CLAUSE NOTES

Clause 1 Name of Regulation

This clause is a formal provision to set out the name of the regulation.

Clause 2 Commencement

This clause is a formal provision that sets the commencement of the regulation. The amending regulation will commence the day after notification.

Clause 3 Legislation amended - schedule 1

This clause explains that the legislation amended by the regulation is set out in Schedule 1.

Clause 4 Repeal

This clause repeals the Code of Practice in DI 1997-194, which can no longer operate effectively following the repeal of the *Land (Planning and Environment) Act 1991* on 31 March 2008.

Schedule 1 Amendments

Part 1.1 Road Transport Legislation

Item [1.1] Schedule 1, part 1.9, items 5 to 10

This item is a consequential amendment that omits from the schedule of reviewable decisions various references to provisions in the *Road Transport (Safety and Traffic Management) Regulation 2000* that will be omitted by item [1.12].

Part 1.2 Road Transport (Offences) Regulation 2005

Item [1.2] Schedule 1, part 1.13, new items 56A and 56B

This item is a consequential amendment that amends the table of offences in Schedule 1 of the *Road Transport (Offences) Regulation 2000* to insert new references to the offences in new sections 85A and 85B of the *Road Transport (Safety*

and Traffic Management) Regulation 2000 that will be inserted by this regulation, and to prescribe infringement notice penalty amounts for those offences.

Item [1.3] Schedule 1, part 1.13, new items 58A to 58C

This item amends the table of offences in Schedule 1 of the *Road Transport (Offences) Regulation 2000* to insert new items that refer to the offences in new sections 87B and section 87C of the *Road Transport (Safety and Traffic Management) Regulation 2000* and to prescribe the infringement notice penalty amount for those offences.

Part 1.3 Road Transport (Safety and Traffic Management) Regulation 2000

Item [1.4] Section 82, definition of code of practice

This item omits the definitions of “code of practice” and “exemption” and is linked to the omission of sections 89 to 97 by item [1.12]. These amendments are linked to clause 4, which repeals the Code of Practice in DI 1997-194. This item also omits the definitions “existing operator” and “existing operator’s certificate”, as these concepts will be explained in new section 87C.

Item [1.5] Section 85(3)

This item omits section 85 (3), which sets out the circumstances that provide a defence to the offence in section 85 (2). The defence in section 85(3) will be included as new section 87A by clause 15. New section 87A is a defence provision that applies to the offences in sections 85, 85A, 85B, 86 and 87. The drafting of the regulation is simplified by including a separate defence provision in section 87A instead of reproducing the defence in each of offences to which it applies.

Item [1.6] New sections 85A and 85B

This item inserts new offence provisions based on the Code of Practice.

New section 85A is based on section 3 of the Code of Practice, which restricted the number of heavy vehicles that could be parked on block of residential land. This section makes it an offence to park 2 or more heavy vehicles on residential land, or to park a heavy vehicle on residential land if another heavy vehicle is already parked there. The offence is not committed if one of the heavy vehicles is plant or equipment that is parked on the other vehicle and their combined height does not exceed 3.6 meters. The defence in new section 87A also applies to section 85A.

New section 85B is based on section 4.1 of the Code of Practice. This section makes it an offence to park any part of a heavy vehicle on residential land so that it is in front of the setback line of the front boundary, or less than 1.5 metres from any other boundary of that land. The purpose of this provision is to ensure that heavy vehicles parked on residential land do not encroach on surrounding properties or unduly affect the visual amenity of the streetscape. The defence in new section 87A also applies to section 85B.

Item [1.7] Section 86 (3)

This clause omits section 86 (3), which sets out the circumstances that provide a defence to the offence in section 86 (2). The defence in section 85(3) will be included as new section 87A by item [1.10].

Item [1.8] Section 86 (4)

This item is a consequential amendment. It removes the word “also”, as this word is redundant following the omission of section 86 (3).

Item [1.9] Section 87 (3)

This item omits section 87 (3), which sets out the circumstances that provide a defence to the offence in section 87 (2). The defence in section 85(3) will be included as new section 87A by item [1.10].

Item [1.10] New sections 87A to 87C

This item inserts new sections 87A to 87C after section 87.

New section 87A, as mentioned previously, contains a defence to the offences in sections 85, 85A, 85B, 86 and 87. It sets out two circumstances in which a person will have a complete defence to a charge under those provisions. The defence applies only if the vehicle was on the land in either of those two circumstances for no longer than was reasonable. The two circumstances are:

- it was necessary to park the vehicle on the land to avoid contravening the Act or another territory law; or
- the vehicle was parked there to deliver or collect goods or passengers, or to provide services.

New section 87B is based on section 4.1 of the Code of Practice. This clause provides that it is an offence for a person to operate a refrigeration unit on a heavy vehicle that is parked on residential land. The purpose of this provision is to protect the amenity of residential neighbourhoods from noise generated by large refrigerated trucks. Consistent with the terms of the Code of Practice, the defence in section 87A does not apply to this offence. It should be noted that section 87B applies only to heavy vehicles and does not prevent light commercial vehicles with refrigeration units, such as food suppliers or florist’s vans, from stopping on residential land.

New section 87 C is based on section 5 of the Code of Practice. Section 87C (1) provides that is an offence for a person who is not an existing operator to operate a heavy vehicle on residential land between 10.00 pm and 6.00 am. Section 87C (2) provides that is an offence for an existing operator to operate a heavy vehicle on residential land between 12 midnight and 5.30 am. These offences are intended to protect the amenity of residential neighbourhoods from the noise associated with operating heavy vehicles at night..

By way of background, an existing operator is a person who was granted an existing operator certificate under the transitional arrangements that were put in place when

the heavy vehicle parking scheme first came into operation in 1997. Section 150Q of the since-repealed *Motor Traffic Act 1936* allowed certain heavy vehicle operators to apply for an existing operator's certificate within 12 months after that section came into force. A person could apply for a certificate within that 12 month period if he or she had parked a heavy vehicle on residential land on at least 24 occasions in the previous 2 years. Existing operators could also apply to be exempted from provisions of the Code of Practice. Existing operator certificates were specific to particular vehicles parked at particular premises and were not transferable. A certificate ceased to have effect if the operator no longer operated that vehicle or resided at those premises. There are less than 30 existing operator certificates still in force.

Item [1.11] Section 88

This item substitutes section 88. New section 88 explains what happens when conduct that constitutes an offence under sections 85, 85A, 85B, 86, 87 or 87B continues over more than 1 day. It makes it clear that a separate offence is committed for each day or part of a day that a contravention of the offence provision continues. For example, if a person leaves a vehicle parked in contravention of section 85 from 8.30 pm on a Monday until 12.30 pm on Friday that week, the person will have committed 5 offences under that section.

Item [1.12] Sections 89 to 97

This item is a consequential amendment arising from the repeal of the Code of Practice. It omits provisions that dealt with existing operator certificates and exemptions from the Code of Practice for existing operators. These provisions were part of a transitional scheme that “grandfathered” the concessional arrangements for existing operators when the heavy vehicle parking scheme was introduced in 1997. As indicated in the notes to item [1.10], there are less than 30 existing operator certificates remaining and the number continues to decline as the holders of the certificates move residence or change vehicles.

If there is a need to grant an exemption to an existing operator in the future, it would be possible to use the general exemption power contained in section 13 of the *Road Transport (General) Act 1999* to exempt an existing operator from a requirement of division 3.1.3.

Item [1.13] New division 3.1.3A

This item inserts new division 3.1.3A, which deals with the enforcement of offences under division 3.1.3 and replaces the enforcement mechanism that previously existed under section 256 of the repealed *Land (Planning and Environment) Act 1991*.

New section 89 defines the term “occupier”. It explains that an occupier includes a person believed on reasonable grounds to be the occupier of premises and a person apparently in charge of premises. The definition is included to identify the range of people who may be asked to consent to the entry of an authorised person onto the premises for the purposes of new division 3.1.3A.

New section 90 contains a power of entry that explains when an authorised person is permitted by law to enter premises for the purposes of heavy vehicle parking enforcement. In summary, the power can be exercised with the consent of the occupier, or where an authorised officer has reasonable grounds to believe a vehicle is parked on the premises in breach of division 3.1.3 and entry is necessary to gather certain information relating to the vehicle, such as measurements and registration details. For example, it may be necessary to establish how far the vehicle is parked from a property boundary or whether it exceeds the permitted measurements for a heavy vehicle parked on residential land.

Section 90 (3) deals with the time of day at which the powers of entry may be used. If the entry is sought because of a suspected breach of the provisions dealing with the operation of refrigeration units or the night operation of vehicles, the power may be exercised at any time. As the purpose of those offence provisions is to stop noise and disruption to the amenity of residential areas, it is appropriate that to enable prompt enforcement action to be taken when problems arise. The remaining offences are less time sensitive so it is reasonable to place reasonable restrictions on when the entry powers can be used in relation to suspected breaches. As heavy vehicle operators may work long hours and may not be home during standard business hours to provide relevant information or documents, a time span of 8 am until 8 pm has been specified for this purpose.

New section 91 provides that an authorised person cannot remain at premises unless the authorised person shows the occupier the person's identity card when requested to do so. This requirement is standard in ACT regulatory legislation, and allows the public to be confident that persons purporting to exercise powers on the part of the Government are properly authorised to do.

New section 92 explains what an authorised person is required to do when seeking consent to enter premises. In summary, the authorised person must show his or her identity card and let the occupier know why entry is sought and that consent to the proposed entry may be refused. Where consent is given, it must be acknowledged in writing and a copy of the acknowledgement must be given to the occupier. The written acknowledgement is important evidence of consent in any subsequent court proceedings.

New section 93 sets out the powers that an authorised person may exercise after entering premises. The purpose of the powers is to enable the authorised person to establish whether or not a heavy vehicle is on those premises in breach of division 3.1.3. Accordingly, these powers include the power to inspect the vehicle, take measurements, take photographs or make other records, or to require the occupier of premises to provide information, documents or assistance. For example, the authorised person might want to measure the length or height of the vehicle, to establish its distance from boundaries, to record the operation of a refrigeration unit, or to review registration labels and vehicle identification numbers to determine who is the responsible person for the vehicle. It is not anticipated that an authorised person would require entry to residential buildings on the premises, as heavy vehicles are generally too large to be parked within these structures.

An authorised person may also require the occupier or someone else at the premises to provide information, produce documents or give reasonable assistance.

Subsection 93(2) makes it an offence for a person to fail to take all reasonable steps to comply with a requirement made of the person under new subsection 93 (1) (d).

New section 94 is a standard provision that imposes an obligation on an authorised person to minimise the damage, inconvenience or detriment arising from the exercise of the authorised person’s functions under new division 3.1.3A. If damage does occur, the authorised person must notify the owner of the damaged item about that damage.

New section 95 is a standard provision that confers a right to compensation for any loss or expense arising from the exercise of an authorised person’s functions under new division 3.1.3A.

Item [1.14] Dictionary, note 3

This clause inserts a reference to the term “authorised person” in this note. This consequential amendment arises from the inclusion of division 3.1.3A, which confers certain enforcement powers on authorised persons.

Item [1.15] Dictionary, definitions of code of practice, exemption and existing operator’s certificate

This clause omits certain definitions from the dictionary, as they are no longer necessary.

Item [1.16] Dictionary, new definitions

This clause includes a definition of ‘premises’ in the dictionary, which makes it clear that ‘premises’ includes land. This consequential amendment arises from the inclusion of powers to enter premises in new division 3.1.3A.

Part 1.4 Victims of Crime Regulation 2000

Item [1.17] Schedule 1, part 1.2

This item inserts references to the offences in new sections 85A and 85B of the *Road Transport (Safety and Traffic Management) Regulation 2000* into Schedule 1, part 1.2 of the *Victims of Crime Regulation 2000*. The effect of this amendment is to exclude these offences from the application of the victims services levy. This exclusion is consistent with the exclusion of other parking offences from the application of the levy. The new offences in section 87B and 87C of the *Road Transport (Safety and Traffic Management) Regulation 2000* are not excluded, as those offences deal with the operation of heavy vehicles on residential land, not just the parking of those vehicles on that land.