

2010

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

ROAD TRANSPORT (GENERAL) AMENDMENT REGULATION 2010 (No 1)

SUBORDINATE LAW SL2010-18

EXPLANATORY STATEMENT

Presented by
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Minister for Transport

OVERVIEW

This regulation is made under section 233 of the *Road Transport (General) Act 1999*.

It amends the *Road Transport (General) Regulation 2000* (the Regulation). The amendments relate to technical and evidentiary aspects of notices given by the road transport authority under the road transport legislation where a person's driver licence, vehicle registration or right to drive has been or is about to be suspended under the legislation. It also amends section 10, which deals with evidentiary certificates.

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, which will be the day after notification on the Legislation Register.

Clause 3 Legislation amended

This clause explains that the amendments in the regulation apply to the *Road Transport (General) Regulation 2000*.

Clause 4 New sections 9 to 9B

New clause 9 fills an inadvertent gap in the road transport legislation. It provides for the contents of notices of suspension required to be given under section 44 of the *Road Transport (General) Act 1999*.

New clause 9A also fills an inadvertent gap in the road transport legislation. It provides for the contents of notices of suspension given under section 85 of the *Road Transport (General) Act 1999*.

New clause 9B deals with notices under the road transport legislation that are sent by prepaid post to person's residential address or address for service. The note to clause 9B (1) reminds readers of the obligation of drivers and registered operators of motor vehicles to inform the road transport authority of a change of address. Clause 9B (2) provides that a notice is taken to be given to a person when it is received at the person's address.

Clause 9B (3) contains certain presumptions regarding timeframes for postage and delivery of computer generated correspondence. By way of background, the road transport authority generates several hundreds of thousands of letters containing notices under the road transport legislation each year. These notices include driver licence and vehicle registration renewal notices, infringement notices and reminder notices, and notices of driver licence or vehicle registration suspension and cancellation. Well over 95% of these notices are generated by computer programs from templates. They are despatched by prepaid post, rather than being manually addressed and stamped.

As there are several provisions in the road transport legislation which provide for something to happen a specified time after a person is given a notice it is desirable to have a means of calculating when a notice that is sent by prepaid post can be said to have been “given” to the person.

Accordingly, new regulation 9B (3) (a) provides for a rebuttable presumption that a notice is posted 4 working days after the date of the notice, while 9B (3) (b) provides for a presumption that the notice is received 4 working days after it is posted, unless the contrary is established. The rebuttable presumption of receipt is based on section 62 of the New South Wales *Fines Act 1996*. The presumption is consistent with the standard delivery timeframes for postal articles and allows for some additional slippage due to unforeseen circumstances. Australia Post’s Customer Service Charter requires it to deliver 94% of standard letters in metropolitan areas such as the ACT by the next business day and by the second business day between country areas. According to its 2008 - 2009 Annual Report (page 17), Australia Post actually exceeded its community service obligations, by delivering 95.5% of domestic letters on time or early and 97.5% of bulk mail on time or early. The rebuttable presumption of receipt is also consistent with the obligation that clients have to inform the road transport authority when they change their address.

Clause 9B (4) disapplies section 250 (1) of the *Legislation Act 2001* to notices under the road transport legislation. Instead, the presumptions relating to the date of postage and date of receipt in new section 9B will apply to those notices.

Clause 9B (5) defines the concept “road transport authority record or register”, which encompasses various registers of information about drivers and vehicles that are required to kept under the road transport legislation.

Clause 5 Section 10

This clause replaces existing section 10 with a new provision that deals with evidentiary certificates for the purpose of section 72 of the Act. Former section 10 was incompletely drafted and the opportunity has been taken to correct that error as part of this drafting process. New section 10 provides for evidentiary certificates to be issued in relation to:

- authorised examiners
- approved premises
- the process for electronically generating notices; and
- the contents of electronically generated notices.