

2010

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

**ROAD TRANSPORT LEGISLATION AMENDMENT REGULATION 2010
(No 4)**

SUBORDINATE LAW SL2010—33

EXPLANATORY STATEMENT

Presented by
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Minister for Transport

OVERVIEW

This regulation is made under section 233 and 234 of the *Road Transport (General) Act 1999*, and section 39 (h) of the *Road Transport (Safety and Traffic Management) Act 1999*. It amends the *Road Transport (General) Regulation 2000* (the Regulation) and the *Road Transport (Safety and Traffic Management) Regulation 2000*.

The purpose of the regulation is to enable protective service officers of the Australian Federal Police to exercise traffic direction and marshalling functions as authorised persons for the purposes of rule 304 of the Australian Road Rules, for example when attending the scene of a traffic accident as the first response vehicle for the Australian Federal Police.

Rule 304 of the Australian Road Rule provides:

‘(1) A person must obey any reasonable direction for the safe and efficient regulation of traffic given to the person by a police officer or authorised person, whether or not the person may contravene another provision of the Australian Road Rules by obeying the direction.

Offence provision.

Note **Authorised person** and **police officer** are defined in the dictionary.

(2) It is a defence to the prosecution of a person for an offence against a provision of the Australian Road Rules if, at the time of the offence, the person was obeying a direction given to the person under subrule (1).’

CLAUSE NOTES

Part 1 Preliminary

This part deals with procedural matters.

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* and the *Road Transport (Safety and Traffic Management) Regulation 2000*.

Part 2 Road Transport (General) Regulation 2000

The amendments in this Part apply to the *Road Transport (General) Regulation 2000*.

Clause 4 New section 7

This clause inserts new section 7 into the *Road Transport (General) Regulation 2000*. New section 7 (1) provides that protective service officers are authorised persons for the purpose of rule 304 of the Australian Road Rules. The purpose of this provision is to enable protective service officers engaged under the *Australian Federal Police Act 1977 (Cwlth)* to perform traffic marshalling and control functions as required, for example when attending the scene of traffic accidents or otherwise as an adjunct to their protective security functions.

New section 7 (2) explains that section 20 of the *Road Transport (General) Act 1999*, which is about issuing authorised persons with identity cards, does not apply to authorised persons who are protective service officers. The note explains that a protective service officer already carries an identity card (this is sometimes also referred to as a warrant card) that contains the same type of information as an identity cards referred to in section 20. The exemption avoids the need for protective service officers to carry two identity cards.

New section 7 (3) explains that section 21 of the *Road Transport (General) Act 1999*, which requires an authorised person to show the person's identity card before exercising a power under the road transport legislation, does not apply to an authorised person who is a protective service officer while the person is exercising a function under rule 304. The exemption from section 21 is required because protective service officers are not issued with identity cards under section 20 of the *Road Transport (General) Act 1999*.

New section 7 (4) requires that a protective service officer show his or her AFP-issued identity card before giving a direction to someone under rule 304, if it is reasonably practicable in the circumstances to do so. For example, it might not be practicable for the officer to show his or her identity card to each motorist while the officer is directing streams of on-coming traffic, but it may be practicable to show a driver the officer's identity card when exercising functions when only two or three vehicles are involved - an example could be when an officer directs the vehicles involved in a collision to move off the road to part on an adjacent nature strip.

New section 7 (5) defines the terms 'AFP-issued identity card' and 'protective service officer', which are used in only in new section 7 and are therefore not included in the dictionary.

Part 3 Road Transport (Safety and Traffic Management) Regulation 2000

The amendments in this Part apply to the *Road Transport (Safety and Traffic Management) Regulation 2000*.

Clause 5 Division 2.2.1, note 3, table, new item 6A

This clause inserts new item 6A into the table for note 3 for Division 2.2.1. The table lists those Australian Road Rules for which provision is made by other territory laws. Item 6A is a reference to sections 6 and 7 of the *Road Transport (General) Regulation*

2000. Both of those sections deal with people who are ‘authorised persons’ for rule 304 of the Australian Road Rules - section 6 deals with traffic marshals for an activity (for example, a bicycle race) and new section 7 deals with protective service officers.

Clause 6 Section 33 (1), definition of authorised person

This clause amends section 33 of the Regulation, which contains definitions for the dictionary for the Australian Road Rules. The amendment affects the definition of ‘authorised person’, and makes it clear that an authorised person is someone who is appointed as, or prescribed to be, an authorised person. This amendment brings the definition of this term in the dictionary for the Australian Road Rules into closer alignment with the definition of ‘authorised person’ in the *Road Transport (General) Act 1999* and the *Road Transport (Safety and Traffic Management) Act 1999*, both of which envisage that authorised persons may be appointed, or prescribed by regulation.