

2010

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

**ROAD TRANSPORT (SAFETY AND TRAFFIC MANAGEMENT)
AMENDMENT REGULATION 2010 (No 1)**

SUBORDINATE LAW SL2010-38

EXPLANATORY STATEMENT

Presented by
Mr Jon Stanhope
Minister for Transport

OVERVIEW

This regulation is made under section 34 (1) of the *Road Transport (Safety and Traffic Management) Act 1999*. It amends the *Road Transport (Safety and Traffic Management) Regulation 2000*. The purpose of the regulation is to implement revised Australian Road Rule 300 (ARR 300), which was amended by a working group of the National Transport Commission (NTC) in October 2008 and approved by Transport Ministers voting as the Australian Transport Council (ATC) on 6 February 2009.

ARR 300 deals with the use of mobile phones by drivers of motor vehicles. As the NTC Discussion Paper which accompanied the 8th package of amendments to the Australian Road Rules explains:

“Use of mobile phones by drivers: the Rules prohibit a driver using a mobile phone while the vehicle is in motion or stationary but not parked. The Rules apply to a driver holding the phone in the driver’s hand. It has been identified that some drivers are now holding the phone between their shoulder and neck. The proposal seeks to clarify the original intent of the Rules as it applies to mobile phone use by drivers.”¹

The NTC Discussion Paper explains at page 25:

“Rule 300 was changed in 2005 with the 5th Amendment Package and now refers to a mobile phone that the driver is holding in his hand rather than the original “hand-held mobile phone”.... This would seem to pick-up on the suggestion made by [a commentator on the amendments] to use the word “hold”.

The proposed rule, although drafted differently to that proposed by [the commentator] does prohibit “entering data” unless the phone is in a cradle; however, the proposed rule change goes further in that it also prohibits the reading of text messages, video messages or e-mails, whether or not the phone is in a cradle.

Total prohibition was considered and ruled out. Mobile phones are accepted as a device readily used by today’s community and keeps [sic] persons in touch in times of need and are also used extensively in business applications. It was considered the best approach would be to guide rather than ban their use. It is hoped that education, along with appropriate enforcement, would see the intent of the rule followed. Future actions may investigate a total prohibition.”

The amendments in this Regulation do not create a new offence or alter the existing penalty levels for the existing offence involving the use of mobile phones and are not considered to impact on human rights in a different way from the existing the road rule. Rather, the amendments are to clarify the original intent of ARR 300 to close inadvertent loopholes.

¹ <http://www.ntc.gov.au/filemedia/Reports/ARR8thpackagediscussionpaper.pdf>

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 (Safety and Traffic Management) Regulation 2000*.

Clause 4 New section 6B

This clause inserts new section 6B into the *Road Transport (Safety and Traffic Management) Regulation 2000*.

New section 6B provides for the substitution of revised ARR 300 with the text approved by the ATC. That text is set out in full enclosed between quotation marks.

Key concepts such as *held* and *use* are defined in subrule 300 (4). These terms have inclusive definitions, indicating that they are not intended to be interpreted too narrowly. *Held* includes held by or resting on any part of a person's body, excluding clothing or items such as pouches worn by the driver. *Use* includes holding the phone, entering anything into the phone otherwise than by voice, turning the phone on or off and operating any function of the phone. Handing the phone to another person in the car is not *using* the phone for the purposes of subrule 300 (4).

In summation, revised ARR 300 will ensure that a driver cannot:

- use any part of his or her body to hold a mobile phone while driving (including to cradle the phone between the person's head and shoulder or to place it on the driver's lap to view the screen);
- use the phone in a hands-free cradle to make a video-call, email, text message or similar communication; or
- read automatically-opened communications such as text messages or emails on mobile phones, whether a phone is in secured in a cradle or otherwise.