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

**ROAD TRANSPORT LEGISLATION AMENDMENT
REGULATION 2012 (No 1)**

SL2012-44

EXPLANATORY STATEMENT

**Circulated by authority of
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Attorney-General**

ROAD TRANSPORT LEGISLATION AMENDMENT REGULATION 2012 (NO 1)

Outline

This Regulation is made under the following provisions:

- *Road Transport (Driver Licensing) Act 1999*, dictionary, definition of **vehicle**, paragraph (b)
- *Road Transport (General) Act 1999*, dictionary, definition of **vehicle**, paragraph (b)
- *Road Transport (Mass, Dimensions and Loading) Act 2009*, dictionary, definition of **vehicle**, paragraph (b)
- *Road Transport (Public Passenger Services) Act 2001*, dictionary, definition of **vehicle**, paragraph (b)
- *Road Transport (Safety and Traffic Management) Act 1999*, dictionary, definition of **vehicle**, paragraph (b)
- *Road Transport (Vehicle Registration) Act 1999*, dictionary, definition of **vehicle**, paragraph (b).

Overview

This regulation prescribes tracked vehicles (like bulldozers, tractors and excavators) as **vehicles** for the purposes of the ACT road transport legislation.

The policy objective of this regulation is to address the High Court's comments in *Verey v Andy's Earthworks Pty Ltd* [2012] HCA Trans 297 (16 November 2012) ('*Verey*').

In *Verey*, an application for special leave to appeal from the NSW Court of Appeal, the High Court appeared to accept that tracked vehicles do not fall within the definition of vehicle in the *Road Transport (General) Act 2005* (NSW).

In dismissing the application, Heydon J stated:

This application turns on the construction of the words 'any description of vehicle on wheels' in paragraph (a) of the definition of 'vehicle' in the *Road Transport (General) Act 2005* (NSW).

The Court of Appeal of the Supreme Court of New South Wales held that those words did not include an excavator, the cabin of which rested on a base connected to two parallel endless tracks which rested on the ground. The court did so even though within the tracks were front and rear wheels and even though the locomotive power of the excavator depended on the rear wheels.

The primary reason for the Court of Appeal’s conclusion was that the evidence did not demonstrate that any significant part of the weight of the excavator rested on the wheels and the tracks were not part of the wheels. The applicant makes various criticisms of that reasoning. However, the reasoning is insufficiently attended by the risk of error to justify the grant of special leave to appeal.

Justice Heydon’s comment in *Verey* creates a degree of uncertainty as to whether the ACT definition of **vehicle** includes tracked vehicles, as these ordinarily have wheels that do not come into direct contact with the ground.

The following ACT road transport legislation (the ‘affected legislation’) defines a **vehicle** as ‘any description of a vehicle on wheels’ or ‘any other vehicle prescribed by regulation’:

- *Road Transport (Driver Licensing) Act 1999*
- *Road Transport (General) Act 1999*
- *Road Transport (Mass, Dimensions and Loading) Act 2009*
- *Road Transport (Public Passenger Services) Act 2001*
- *Road Transport (Safety and Traffic Management) Act 1999*
- *Road Transport (Vehicle Registration) Act 1999*.

This regulation provides certainty by prescribing **tracked vehicles** as **vehicles**. **Tracked vehicles** are defined to include vehicles moving on wheels inside endless tracks.

It is appropriate to prescribe tracked vehicles to ensure that they are subject to road transport laws when they travel on roads or road-related areas, even though they mainly operate off-road. In particular, prescribing tracked vehicles ensures that they are covered by the compulsory third-party insurance scheme when they travel on roads during the course of their operation.

This regulation does not engage human rights under the *Human Rights Act 2004*, because the amendments made are technical in nature and aimed only at responding to the specific issue of the High Court’s interpretation of the definition of ‘vehicle’.

Notes on clauses

Clause 1 Name of regulation

This clause states the name of the regulation.

Clause 2 Commencement

This clause states that the regulation commences on the day after notification. This commencement period ensures that certainty is provided as quickly as possible.

Clause 3 Legislation amended

This clause states that this regulation amends the following legislation:

- *Road Transport (Driver Licensing) Regulation 2000*
- *Road Transport (General) Regulation 2000*
- *Road Transport (Mass, Dimensions and Loading) Regulation 2010*
- *Road Transport (Public Passenger Services) Regulation 2002*
- *Road Transport (Safety and Traffic Management) Regulation 2000*
- *Road Transport (Vehicle Registration) Regulation 2000.*

Clauses 4 to 9 Tracked vehicles—Act, dict, def *vehicle*, par (b)

Clauses 4 to 9 insert new parallel sections into the legislation mentioned in clause 3.

The new sections are identical in their function and purpose—they extend the definition of *vehicle* to include tracked vehicles.

Subsection (1) of these clauses prescribe any *tracked vehicle* as a *vehicle* for the purpose of the affected legislation, other than tracked vehicles used exclusively on a railway or tramway. It should be noted that vehicles on railways and tramways are already excluded from the definition of *vehicle*

Subsection (2) of these clauses define a *tracked vehicle* as a vehicle that moves on wheels inside endless tracks.