

2013

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

**ROAD TRANSPORT (OFFENCES) AMENDMENT REGULATION 2013
(NO 1)**

SL2013-19

EXPLANATORY STATEMENT

**Presented by
Simon Corbell MLA
Attorney-General**

ROAD TRANSPORT (OFFENCES) AMENDMENT REGULATION 2013 (NO 1)

Outline

This regulation is made under the *Road Transport (General) Act 1999*, section 23 (Regulations about infringement notice offences).

The purpose of this regulation is to increase the infringement notice penalties for road transport offences by 10% for the 2013–14 financial year, and to increase certain traffic-related infringement notice penalties by a further \$20 to fund services for victims of crime.

10% increase

The *Road Transport (Offences) Regulation 2005*, schedule 1, lists the offences contained in each Act and regulation that form part of the road transport legislation. If an offence may be dealt with by infringement notice, the schedule prescribes the infringement notice penalty amount that is payable.

Regular increases in infringement notice penalties in line with growth in wages and inflation are required to maintain the value in real terms of these penalties and to preserve their deterrent effect.

Road transport infringement penalties typically increase in line with the wage price index (WPI) for the relevant financial year. For the previous financial year (2012–2013) the increase was 3.5%.

From 1 July 2013, this regulation will increase road transport infringement notice penalties by 10% instead of the WPI. The purpose of this increase is to offset expenditure in the 2013–2014 financial year on a range of road safety initiatives, including the Rewards for Safer Drivers program and the new ACT alcohol interlock scheme, contained in the recently enacted *Road Transport Legislation Amendment Act 2013 (No 2)*.

Victims of crime and levy component

The ACT Government 2013–2014 Budget also includes a revenue initiative to assist in funding victims support services. The Victims Services Levy (VSL) component of traffic infringement penalties is increased from \$10 to \$30.

For most road transport infringement notice penalties, the VSL is administratively applied as a \$10 component, which is allocated as an ongoing funding source to improve services for victims of crime. For court-imposed fines, the levy is applied by section 24 of the *Victims of Crime Act 1994*.

Parking-related infringement notice penalties do not have the \$10 VSL component.

The VSL component of infringement notice penalties can be increased by an amendment regulation to the *Road Transport (Offences) Regulation 2005*.

This regulation applies a \$20 increase on top of the general 10% increase to all traffic-related infringement notice penalties which include the VSL component. The increase of \$20 is also subject to the '20% rule' discussed below.

20% of maximum penalty policy

Government policy is that, in general, the infringement notice penalty for an offence should not exceed 20% of the maximum fine that may be imposed by a court for that offence (the 20% level).

The 20% limit was fixed at a level that makes it an attractive alternative to disputing the matter in court, while still providing an effective deterrent against re-offending.

Accordingly, where the existing infringement notice penalty for an offence is already at or above the 20% limit, there is no increase in the prescribed penalty by this regulation.

Where the existing infringement notice penalty amount is near the 20% limit and would exceed that limit if the amount were increased by the full 10%, the penalty is increased by a lesser percentage so that it equals 20% of the maximum court imposed fine for the offence.

In all other cases, the infringement notice penalty is increased by 10%, with \$20 added if the VSL is applicable.

For this regulation, the 20% limit has been calculated on the basis of the value of a penalty unit as it will be after amendment by the Legislation (Penalty Units) Amendment Bill 2013. That Bill proposes to amend section 133 of the *Legislation Act 2001* to increase the value of a penalty unit from \$110 to \$140, for an individual, and \$550 to \$700, for a corporation. With the increase in the value of the penalty unit, the number of road transport offences that can have an increase in infringement penalties while remaining at or under the 20% level can be expanded.

However, a consequence of increasing the infringement penalties in this manner is that 11% of the penalties in schedule 1 of the *Road Transport (Offences) Regulation 2005* (about 160 infringement notice penalties) will temporarily exceed the 20% level from 1 July 2013 until the commencement of the Bill.

The penalties in schedule 1 have been increased in this manner so that all the increases in infringement notice penalties can be implemented concurrently. The infringement notice systems managed by ACT Policing and the Office of Regulatory Services require each infringement notice penalty to be increased and tested on an individual basis. There are about 1,150 traffic and parking infringement notice penalties in total, making this a significant effort.

Implementing all of the increases imposed in the near future from 1 July 2013 avoids the need to separately apply the increases in different regulations (the 10% increase, the increased VSL and the proposed change in penalty unit values), each requiring separate sets of updates to infringement notice systems.

Notes on clauses

Clause 1 **Name of regulation**

This is a formal provision that sets out the name of the regulation.

Clause 2 **Commencement**

This is a formal provision that provides for the commencement of the regulation.

The regulation commences immediately after the commencement of the *Road Transport Legislation Amendment Regulation 2013 (No 2)*, section 3.

The *Road Transport Legislation Amendment Regulation 2013 (No 2)* also contains amendments to schedule 1 of the *Road Transport (Offences) Regulation 2005*. Section 3 of that regulation states that it commences on 1 July 2013.

Clause 3 **Legislation amended**

This clause lists the legislation to be amended by the regulation. This regulation will amend the *Road Transport (Offences) Regulation 2005*.

Clause 4 **Infringement notice penalty—Act, dict, def *infringement notice penalty*, par (a) Section 6 (2)**

This clause amends the penalty formula applied to a camera-detected infringement notice offence when the recipient is a corporation.

The effect of the amended formula is that the victims services levy is not multiplied by 5 for the purpose of determining the infringement notice penalty payable by a corporation.

Clause 5 **Schedule 1**

New penalties

This clause substitutes existing schedule 1 with a revised Schedule that incorporates all the adjusted infringement notice penalties for offences under the road transport legislation. The adjusted amounts are set out in column 5 of the table in parts 1.2 to 1.15 of the schedule.

As explained in the Overview, the infringement notice penalties are increased by 10%, except where the penalty amount already equals or exceeds 20% of the maximum fine that a court could impose for the offence.

Where the existing infringement notice penalty amount is near the 20% level and would exceed that level if the amount were increased by 10%, the penalty is increased by a lesser percentage so that it equals the 20% level.

It should be noted that some offences under the road transport legislation cannot be dealt with by infringement notice. For these offences, there is no amount prescribed in column 5 of the table.

The victims services levy increase of \$20 is applied after the penalty is increased by 10%, also subject to the 20% level. However, the levy component does not apply to some parking-related infringement notice offences. These offence provisions are listed below.

Infringement notice offences excluded from victims services levy component

Australian Road Rules

- sections 167 to 169
- sections 170 (2) to 197 (1)
- sections 198 (1) to 205
- sections 208 (1) to 211 (3)

Road Transport (Safety and Traffic Management) Regulation 2000

- sections 44 (1) to 46 (2)
- sections 49 (1) to 52 (2) (b)
- section 57A (1) and (3)
- sections 85 (2) to 87 (2)

Short description amendments

Clause 4 also contains changes to the short descriptions of two items in schedule 1 to more accurately describe the offence to which they relate.

Part 1.2 (*Australian Road Rules*), item 79, column 3, which relates to turning right from a road, has been amended to clarify that the offence applies when a driver is turning right from a road *into* a road-related area or adjacent land (not *from* an area/land).

Part 1.5 (*Road Transport (Driver Licensing) Act 1999*), item 12, column 3, which relates to driving while right to drive suspended under a law of the Territory, has been amended to clarify that an infringement notice for this offence can only be issued to interstate drivers or drivers who have never held an ACT licence.