

2014

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

**HEAVY VEHICLE NATIONAL LAW (ACT) (TRANSITIONAL
PROVISIONS) REGULATION 2014**

SL2014-16

EXPLANATORY STATEMENT

**Presented by
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HEAVY VEHICLE NATIONAL LAW (ACT) (TRANSITIONAL PROVISIONS) REGULATION 2014

Outline

The Heavy Vehicle National Law (ACT) (Transitional Provisions) Regulation 2014 will ensure that infringement notice offences under the Heavy Vehicle National Law (ACT) are treated in the same way as other ACT traffic infringement offences, for the purposes of the *Crimes Act 1900*.

The *Heavy Vehicle National Law (ACT) Act 2013* commenced in the ACT and five other participating jurisdictions on 10 February 2014. The Heavy Vehicle National Law provides that infringement notices relating to heavy vehicle offences are issued under part 10.2 of that Law.

By national agreement, the procedures for issuing Heavy Vehicle National Law infringement notices follow the laws applied in each participating jurisdiction. In the ACT, the *Road Transport (General) Act 1999* and the *Road Transport (Offences) Regulation 2005* set out the relevant procedures.

Section 187 (1) of the *Crimes Act 1900* provides that part 1C of the *Crimes Act 1914* (Cwlth) applies in relation to most types of ACT summary offences. Part 1C includes protections for people arrested and interviewed for indictable Commonwealth offences.

However, section 187 (2) provides that the provisions of part 1C do not apply to a range of offences, including infringement notice offences under the *Road Transport (General) Act 1999*, where a police officer intends to either proceed by way of infringement notice or take no further action in relation to the offence.

The rationale for section 187 (2) is that the protections of part 1C are not appropriate or necessary to circumstances where an offender is dealt with by way of infringement notice. Applying those requirements would be an impediment to dealing efficiently with routine traffic matters.

This reasoning would also apply to summary heavy vehicle offences under the National Heavy Vehicle Law.

Section 42 of the *Heavy Vehicle National Law (ACT) Act 2013* allows for a regulation prescribing transitional matters necessary or convenient to be prescribed because of the enactment of the Act. This Regulation, made under that section, amends section 187 (2) of the *Crimes Act 1900* to the effect that part 1C of the *Crimes Act 1914* (Cwlth) does not apply to infringement notice offences for the Heavy Vehicle National Law, where the police officer intends to serve an infringement notice under the Heavy Vehicle National Law or not take any further action.

Human Rights Implications

This regulation is consistent with human rights.

Section 28 of the *Human Rights Act 2004* provides that human rights are subject only to reasonable limits set by laws that can be demonstrably justified in a free and democratic society. Section 28 (2) of the Human Rights Act provides that in deciding whether a limit on a human right is reasonable, all relevant factors must be considered, including:

The nature of the right being limited

Removing the protections in part 1C of the *Crimes Act 1914* (Cwlth) may engage the right to a fair trial and rights in criminal proceedings.

The importance of the purpose of the limitation

The purpose of the limitation (ensuring consistency in the enforcement of the road transport legislation) is of high importance. Without this regulation, people issued with an infringement notice under the National Heavy Vehicle Law would be subjected to burdens that people who are issued with an infringement notice for other traffic offences would not be subjected to. This regulation ensures that all people who are issued with an infringement notice for a routine traffic offence are treated equally, delivering consistent enforcement practice for all road users

The nature and extent of the limitation

Any limitation is not extensive. It applies to drivers who have been issued with an infringement notice for an offence under the National Heavy Vehicle Law.

The nature between the limitation and its purpose

The amendment provides that part 1C of the *Crimes Act 1914* (Cwlth) does not apply to infringement notice offences for the Heavy Vehicle National Law, where the police officer intends to serve an infringement notice under the Heavy Vehicle National Law or not take any further action.

While prima facie the amendment removes protections for suspects being interviewed, in reality those protections would in practice impose a burden on people issued with an infringement notice under the National Heavy Vehicle Law. A similar burden was not imposed on those people prior to the National Heavy Vehicle Law commencing, nor does it apply to drivers who are issued with infringement notices for similar offences under the road transport legislation. This Regulation protects the interests of heavy vehicle owners and operators, and provides for consistent enforcement practice for all road users.

Less restrictive means reasonably available to achieve the purpose

There are not any less restrictive means available to achieve the purpose of the amendment.

For these reasons it is considered that the any limitation arising from this regulation is reasonable and proportionate.

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 on the day after its notification day.

Clause 3 Modification of Act, pt 6—Act, s 42 (2)

This clause modifies part 6 of the *Heavy Vehicle National Law (ACT) Act 2013* to include a new section 42A Modification—Crimes Act 1900. Section 42A provides that the *Crimes Act 1900* is modified as set out in Schedule 1 of this Regulation. Section 42A (2) provides the section expires on the day this Regulation expires.

Clause 4 Expiry—regulation

This clause provides that this Regulation expires on the day the *Heavy Vehicle National Law (ACT) Act 2013*, part 6 (Transitional) expires.

Schedule 1 Modification—Crimes Act 1900

This clause substitutes a new section 187 (2) (b) (i) of the *Crimes Act 1900*. The new, substituted, section extends the exemption from the requirements in part 1C of the *Crimes Act 1914* (Cwlth) to infringement notice offences under the *Heavy Vehicle National Law (ACT)*, where a police officer intends to issue an infringement notice or take no further action in relation to the offence. This is consistent with the treatment of infringement notice offences under the *Road Transport (General) Act 1999*.