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

**ROAD TRANSPORT (SAFETY AND TRAFFIC
MANAGEMENT) AMENDMENT REGULATION 2016
(No 2)**

SL2016-21

EXPLANATORY STATEMENT

**Circulated by authority of
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Minister for Road Safety**

ROAD TRANSPORT (SAFETY AND TRAFFIC MANAGEMENT) AMENDMENT REGULATION 2016 (No 2)

Introduction

This explanatory statement relates to the *Road Transport (Safety and Traffic Management) Amendment Regulation 2016 (No 2)* (the regulation) as presented to the Legislative Assembly. It has been prepared in order to assist the reader of the regulation and to help inform debate on it. It does not form part of the regulation and has not been endorsed by the Assembly.

The Statement must be read in conjunction with the regulation. It is not, and is not meant to be, a comprehensive description of the regulation. What is said about a provision is not taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

Outline

This regulation amends the *Road Transport (Safety and Traffic Management) Regulation 2000* (the Safety and Traffic Management Regulation) and the *Road Transport (Offences) Regulation 2005* (the Offences Regulation).

This regulation makes three amendments relating to the use of a mobile phone by the driver of a motor vehicle. The amendments also apply to the use of other wireless hand-held devices such as iPads or other tablet computers.

This first amendment modifies the operation of the Australian Road Rules (ARR) so that drivers can use a mobile phone to listen to music without committing an offence.

It is an offence under rule 300 of the ARR for a driver to use a mobile phone while the vehicle is moving, or is stationary but not parked. Rule 300 allows jurisdictions to enact exemptions to this rule. Section 30B of the Safety and Traffic Management Regulation provides for the exemptions to rule 300 in the ACT road transport legislation. Currently section 30B (1) provides that a driver does not commit an offence against rule 300 where the phone is used for navigation purposes and is secured in a mounting and used hands-free.

This regulation amends section 30B (1) to also allow the use of a mobile phone to stream, play or listen to music or audio files while driving, provided the phone is not being held by the driver and the driver does not need to press anything on the body of the phone or otherwise manipulate any part of the body of the phone.

This change allows drivers to listen to music or audio files, either directly from a phone or via Bluetooth streaming to a vehicle's audio system, provided the driver is not holding or touching the phone.

The second amendment inserts a new definition of the term *mobile phone*. The definition includes any other wireless hand-held device designed or capable of being used for telecommunication other than a CB radio or any other 2-way radio. This definition extends the concept of mobile phone to cover the use of iPads or other tablet computers, which may be used for telecommunications but which do not fit within the general definition of mobile phone. The dangers posed by drivers using tablets for telecommunications purposes (such as sending emails or skyping) are the same as those posed by drivers using conventional mobile phones, and as such that behaviour should also be covered by the offence of using a mobile phone while driving.

The third amendment amends the Offences Regulation, schedule 1, part 1.2, item 457 to amend the penalty for using a mobile phone while driving for messaging, social networking, mobile applications or accessing the internet.

Currently a driver who uses a mobile phone while driving, other than in accordance with the exemptions outlined in section 30B of the Safety and Traffic Management Regulation, commits an offence subject to an infringement notice penalty of \$416 and 3 demerit points. This regulation amends the penalty where a driver uses a mobile phone for messaging, social networking, mobile application or accessing the internet, to \$511 and 4 demerit points.

The higher level of risk associated with texting while driving is widely acknowledged in research on the risks posed by driver distraction. Using a mobile phone while driving, to engage in other activities such as using social media, involves the same or similar distraction risks. The new penalty better reflects the seriousness of the conduct and the potential risk associated with this dangerous behaviour.

There is no change to the penalty for drivers who use their hand-held mobile phone to make or receive a call.

It is not considered that there are any human rights implications associated with this amendment.

There are no climate change implications associated with this amendment.

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. This regulation will commence on 1 September 2016.

Clause 3 Legislation amended

This clause lists the legislation to be amended by the regulation. This regulation will amend the *Road Transport (Safety and Traffic Management) Regulation 2000* and the *Road Transport (Offences) Regulation 2005*.

Clause 4 Section 30B (1)

Section 30B specifies that a mobile phone may be used to perform a navigational or intelligent highway and vehicle system function if the phone is secured in a mounting affixed to the vehicle. The effect of this amendment is that a mobile phone may also be used to stream, play or listen to music or audio files, provided the phone is not being held by the driver, and the driver does not press a button or otherwise manipulate the body of the phone.

Clause 5 New section 30B (3)

This clause inserts a definition of *mobile phone*. Currently rule 300 of the ARRs defines mobile phone to not include CB radio or any other two-way radio. This new definition reflects the definition in the ARRs, as it excludes CB radios and two-way radios, but it includes any other wireless hand-held device designed or capable of being used for telecommunication. This ensures that a driver who uses an iPad or other tablet computer for messaging, social networking, mobile applications or to access the internet will also be subject to the offence in rule 300 of using a mobile phone while driving.

Clause 6 Road Transport (Offences) Regulation 2005 Schedule 1, part 1.2, item 457

This regulation amends the penalty for using a hand held mobile device while driving.

Schedule 1, part 1.2, item 457 currently imposes a penalty for using a hand held mobile phone while driving of \$416 and 3 penalty units. This clause amends that penalty so that the infringement notice penalty for using a mobile phone while driving for messaging, social networking, using a mobile application or accessing the internet is \$511 and 4 demerit points.

The penalty for a driver using a hand-held mobile phone to make or receive a call remains unchanged at \$416 and 3 demerit points.