

Australian Capital Territory

Road Transport (Safety and Traffic Management) Regulation 2017

Subordinate law SL2017–45

made under the

Road Transport (Safety and Traffic Management) Act 1999, s 33 (General regulation-making power)

REVISED EXPLANATORY STATEMENT

Introduction

This explanatory statement relates to the new *Road Transport (Safety and Traffic Management) Regulation 2017* (the Regulation). It has been prepared in order to assist the reader of the Regulation. This explanatory 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.

Overview

This Regulation contains provisions of the *Road Transport (Safety and Traffic Management) Regulation 2000* that were not incorporated in the *Road Transport (Road Rules) Regulation 2017*.

The Regulation contains provisions about impounding vehicles, unsafe loads, traffic offence detection devices (police speedometers, speed detection devices, camera, digital and laser speed measuring devices), parking schemes (meter and ticket parking schemes, heavy vehicle parking in residential areas, parking permits and mobility parking schemes) and some transitional arrangements to ensure continuity of existing arrangements.

Other than as identified below and under the heading Notes on Clauses, the Regulation does not amend the provisions from those in the *Road Transport (Safety and Traffic Management) Regulation 2000*. Therefore this explanatory statement does not provide notes on provisions that have transitioned from the *Road Transport (Safety and Traffic Management) Regulation 2000*.

Section headings have been amended to bring them into line with current drafting practices.

The location of definitions has been brought into line with ACT drafting practices. For example, the definition of a term that is used in one section only is located in that section. However, where the term is used in more than one section of the regulation it has been moved to the dictionary of the regulation.

The term ‘pay parking device’ has been removed and replaced with ‘parking meter’ and ‘parking ticket machine’ where appropriate.

The term ‘pay parking sign’ has been removed and replaced with ‘metered parking sign’ and ‘ticket parking sign’ where appropriate.

There are no climate change implications associated with this Regulation.

Human rights implications

It is not considered that any provision of this Regulation unreasonably limits an individual’s human rights. If an individual’s human rights are limited, any limitation is reasonable and justified.

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

- a) the nature of the right affected;
- b) the importance of the purpose of the limitation;
- c) the nature and extent of the limitation;
- d) the relationship between the limitation and its purpose; and
- e) any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve.

An assessment against section 28 of the HRA is provided below.

Right to equality

Section 8 of the HRA provides that everyone is entitled to equal and effective protection against discrimination, and to enjoy their human rights without discrimination. This Regulation may be seen to be engaging in positive discrimination by establishing a mobility parking scheme. The scheme allows permit holders to park at certain designated permit zone areas. A mobility parking permit may be issued to a person with a disability:

- who cannot walk because of permanent or temporary loss of the use of one or both legs or another permanent medical or physical condition;
- whose physical condition is detrimentally affected by walking 100m;
- who needs to use a walking frame, crutches, callipers, a scooter, a wheelchair or a similar mobility aid; or
- who is blind.

It is considered that any limitation on this right is reasonable and justified as it supports a person with a disability to be an active member of the community and access services.

Protection of the family and children

Section 11 of the HRA provides that families must be protected by society and the State. This right may be engaged by the enforcement powers in this Regulation in respect to parking of heavy vehicles in residential areas. Authorised persons have the power to enter premises to check whether a vehicle is in breach of the heavy vehicle parking scheme. This includes: enabling the authorised person to measure whether a vehicle complies with length, height and weight restrictions or is parked the required distance from boundaries and the setback line at the front of the property; check a vehicle's registration documents or the vehicle identification number. These powers were introduced in 2008 and replaced existing enforcement mechanisms in the *Land (Planning and Environment) Act 1991*.

Authorised persons must produce their identity card and tell the occupier the purpose of entry and that consent may be refused. If the occupier consents, the authorised person must ask the occupier to sign an *acknowledgement of consent* which states that the occupier was told the purpose of entry and that consent may be refused, the occupier consented to the entry and the time and date when consent was given. The Regulation provides for compensation when a person suffers loss or expense because of the exercise or purported exercise of a power under Division 7.3 of the Regulation. Authorised persons are also required by the Regulation to take all reasonable steps to ensure that they or any person assisting them cause as little inconvenience, detriment and damage as possible.

Right to privacy

Section 12 of the HRA provides that everyone has the right to not have his or her privacy interfered with unlawfully or arbitrarily. The right to privacy needs to be balanced against other rights and can be limited, provided it can be demonstrated that the limitation is necessary, reasonable and proportionate.

This Regulation may be seen to be engaging this right by establishing traffic offence detection devices, which include speed cameras (mobile and fixed) and red light cameras. These devices take a picture of a person's numberplate and use that information to issue an infringement notice to the registrable person. The Territory and police are subject to the *Information Privacy Act 2014*, in particular the territory privacy principles. Any camera operators are contractually required to comply with the *Information Privacy Act 2014* and act in accordance with the territory privacy principles in relation to the collection, use and storage of personal information.

The purpose of the limitation is to improve road safety by detecting road users who are not using our roads and road related areas in accordance with the laws that apply. Any limitation in relation to the right under section 12 of the HRA is not extensive, as it is limited to people disobeying the law. To disobey the law a person must engage in specific behaviour. It is not considered that there are any less restrictive means reasonably available to achieve road safety.

Section 12 of the HRA provides that a public authority must not unlawfully or arbitrarily interfere with a person's family or home. This right may be engaged by the enforcement powers in the Regulation in respect to parking of heavy vehicles in residential areas. These powers are discussed in the assessment against section 11 of the HRA.

Right to liberty and security of person

Section 18 of the HRA provides that everyone has the right to security of person. The right to security means that reasonable steps must be taken to ensure the physical safety and security of people. The Regulation may engage this right by the enforcement powers in the Regulation in respect to parking of heavy vehicles in residential areas. These powers are discussed in the assessment against section 11 of the HRA.

Freedom of movement

Section 13 of the HRA provides that everyone has the right to move freely within the ACT and to enter and leave it, and the freedom to choose his or her residence in the ACT. This is relevant in the ACT today, in respect to circumstances involving people's access to public places.

This Regulation could be seen to be limiting a person's right to move freely within the ACT by restricting where a person can park their vehicle and by establishing the heavy vehicle parking in residential areas scheme. The scheme applies to heavy vehicles used for commercial purposes and restricts the parking of such vehicles on residential land and land adjacent to residential land. Regulated restrictions include:

- there must be no more than one heavy vehicle parked on residential land at any time;
- heavy vehicles must park behind the minimum setback line of the front boundary and at least 1.5 metres from side and rear boundaries of the residential land;
- a person must not operate a heavy vehicle on residential land at any time between 10.00 pm and 6.00 am; and
- heavy vehicles used for commercial purposes (whether loaded or unloaded) which are more than 3.6 metres in height are prohibited from parking on residential land.

Insofar as the Regulation regulates the manner in which a person may move on ACT roads, road related areas and in the circumstances of heavy vehicles, residential land, it can be seen to be limiting a person's right to move freely within the ACT. Any limitation of the right under section 13 of the HRA is reasonable and proportionate. There are significant public interest benefits that arise from ensuring that behaviour on roads, road related areas and residential land is regulated, thus making these areas safe for all road users and protecting residential and community amenity. It is not considered that there are less restrictive means available to achieve the purpose of regulating road use.

Strict liability offences

Careful consideration has been given as to whether applying strict liability to a small number of offences in this Regulation, significantly enhances the effectiveness of the offence.

A strict liability offence means that there are no fault elements for the physical elements of the offence to which strict liability applies. Essentially this means that the conduct alone is sufficient to make the defendant culpable. There is a specific defence of mistake of fact for strict liability offences (section 23 *Criminal code 2002*).

Strict liability offences more typically arise in a regulatory context where for reasons such as consumer protection and public safety, the public interest in ensuring that regulatory schemes are complied with, requires the sanction of criminal penalties. In particular, where a defendant can reasonably be expected, because of his or her involvement with the regulated activity, to know what the requirements of the law are, the mental, or fault, element can justifiably be excluded.

Nature of the right affected

The regulation includes existing strict liability offences from the *Road Transport (Safety and Traffic Management) Regulation 2000* that were not incorporated into the *Road Transport (Road Rules) Regulation 2017*. There are eleven (11) strict liability offences in this Regulation.

These offences relate to:

- parking heavy vehicles on residential land, land adjacent to residential land and residential land with multi-unit housing;
- operation of heavy vehicle refrigeration units on residential land;
- operation of heavy vehicles at night;
- provision of information or documents to authorised persons who are investigation potential breaches of Division 7.3 (Heavy vehicle parking in residential areas) of the regulation;
- a prohibition on car minding;
- obligation on a responsible person for a motor vehicle to ensure that a person holds an Australian or external driver licence before permitting that person to drive the vehicle; and
- obligation on a person in charge of a motor vehicle or trailer on a road, to ensure they have the responsible person for the vehicle's consent to use the vehicle.

Importance of the purpose of the limitation

Offences in this Regulation are an extension of the Australian Road Rules that are incorporated via the *Road Transport (Road Rules) Regulation 2017* and play an important role in establishing safe people and safe behaviours on our roads, road related areas and protecting community and residential amenity in residential areas.

Nature and extent of the limitation

The requirements to which the offences apply are not burdensome in nature and relate to the safe operation of our roads and road related areas, and protecting residential and community amenity. All road users are provided with adequate education about their obligations and the requirements when using roads and road related areas.

Relationship between the limitation and its purpose

The offences are regulatory in nature and of a type which is suitable for construction as a strict liability offence, being an offence of a type such that those affected by the offence could be expected to be aware of it.

Road safety affects the whole of the ACT community. Australia adopts a safe system approach to road safety which requires responsible road user behaviour. The safe system approach relies on safe speeds, safe roads and roadsides, safe vehicles, as well as safe people and safe behaviours.

Less restrictive means reasonably available to achieve this purpose

It is not considered that there are any less restrictive means to achieve the purpose of the regulation.

Under the Criminal Code, all strict liability offences have a specific defence of mistake of fact. Section 23 (3) of the Criminal Code makes it clear that other defences may still be available for use in strict liability offence cases. Section 23 (3) of the Code provides that other defences may also be available for strict liability offences, including the defence of duress (section 40), sudden or extraordinary emergency (section 41) or lawful authority (section 43).

The Regulation also includes:

- defences to an offence under this regulation where the defendant can prove that the offence was the result of accident or the reasonable efforts of the defendant could not have resulted in avoidance of the commission of the offence (section 8); and
- a specific defence of reasonable necessity to offences relating to heavy and commercial vehicles on residential land (section 53).

Notes on clauses

Clause 1 Name of regulation

This clause specifies the name of the regulation as the *Road Transport (Safety and Traffic Management) Regulation 2017*.

Clause 2 Commencement

This clause provides that the regulation will commence on the commencement of the *Road Transport (Road Rules) Regulation 2017*.

Clause 3 Dictionary

This clause provides that the dictionary at the end of the regulation is part of the regulation.

Clause 4 Notes

This clause provides that notes provided in the regulation are explanatory and do not form part of the regulation.

Clause 5 Offences against regulation-application of Criminal Code etc

This clause provides that other legislation applies in relation to offences against this regulation.

Clause 6 Offences against regulation-defence

This clause provides that a defendant has a defence to an offence if they can prove that the offence was the result of an accident or that the offence could not have been avoided by any reasonable efforts of the defendant.

Clause 10 Standards for safe carriage of loads-Act, s 14 (2)

This clause has been amended to incorporate the *Load Restraint Guide – Guidelines and Performance Standards for the Safe Carriage of Loads on Road Vehicles*, 2nd ed (2004) published by the National Transport Commission. Due to the incorporation of this load restraint guide, the amendment also disapplies section 47 (5) of the *Legislation Act 2001*. The *Legislation Act 2001*, section 47 (5) provides that an incorporated document is taken to be a notifiable instrument. A notifiable instrument must be notified on the legislation register under the *Legislation Act 2001*. However, the *Legislation Act 2001*, section 47 (5) may be displaced by the authorising law (the Act) or the incorporating instrument (this regulation) (see section 47 (7)). The *Legislation Act 2001*, section 47 (5) is displaced here because the incorporated document is subject to copyright and available on the Internet.

Clause 15 Average speed detection systems-Act, s 22AA and s 23B

This clause has been amended by inserting Schedule 1 (Average speed detection systems) in place of the table in section 103B of the *Road Transport (Safety and Traffic Management) Regulation 2000*. This amendment is in line with current drafting practices.

In addition, the opportunity was taken to remove the Athllon Drive average speed detection system listed in Schedule 1 as it was decommissioned in October 2016.

Clause 18 Major testing of laser speed measuring devices-Act, s 24 (1)

This clause has been amended to include Australian Standard AS 4691.1-2003. Section 47 (6) of the *Legislation Act 2001* provides that an incorporated document,

and any amendment or replacement of such a document, are taken to be notifiable instruments. A notifiable instrument must be notified on the legislation register under the *Legislation Act 2001*. However, section 47 (6) of the *Legislation Act 2001* may be displaced by the authorising law (the Act) or the incorporating instrument (this regulation) (see section 47 (7)). Section 47 (6) of the *Legislation Act 2001* is displaced here because the incorporated standards are subject to copyright and may be purchased over the Internet.

Clause 19 **Major testing of other traffic offence detection devices-
Act. s 24 (1)**

This clause has been amended to include Australian Standard AS 2898.1-2. Section 47 (6) of the *Legislation Act 2001* provides that an incorporated document, and any amendment or replacement of such a document, are taken to be notifiable instruments. A notifiable instrument must be notified on the legislation register under the *Legislation Act 2001*. However, section 47 (6) of the *Legislation Act 2001* may be displaced by the authorising law (the Act) or the incorporating instrument (this regulation) (see section 47 (7)). Section 47 (6) of the *Legislation Act 2001* is displaced here because the incorporated standards are subject to copyright and may be purchased over the Internet.

Clause 32 **Additional police powers-removing cars from metered
parking areas**

This clause has been amended as a result of splitting Section 109 (Additional police powers – removing parked cars) of the *Road Transport (Safety and Traffic Management) Regulation 2000* into two separate provisions to better reflect the removal of cars from metered parking areas and the removal of cars from ticket parking areas.

Clause 45 **Additional police powers-removing cars from ticket
parking areas**

This clause has been amended as a result of splitting Section 109 (Additional police powers – removing parked cars) of the *Road Transport (Safety and Traffic Management) Regulation 2000* into two separate provisions to better reflect the removal of cars from ticket parking areas and the removal of cars from metered parking areas.

Clause 74 **Responsible person to inspect driver licence**

This clause has been amended by inserting a note to subsection (3) to identify that the defendant has a legal burden in relation to the matters mentioned in subsection (3).

Part 10 **Transitional**

This part identifies a number of approvals, declarations and guidelines made under the repealed *Road Transport (Safety and Traffic Management) Regulation 2000* that need to continue to be in force to provide for the continuation of existing administrative arrangements without needing to remake those instruments. The transitional arrangements do not change how the approvals, declaration and guidelines function.

The transitional arrangements cover approvals for helmets for bicycle and motorbike riders, child safety equipment, parking authority guidelines, e-payment methods and police speedometers and declarations about Airservices Australia, emergency workers, parking authorities and parking permits.

Part 10 expires two years after the commencement of the regulation to provide time for the approvals, declarations and guidelines to be remade.