

2018

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

**ROAD TRANSPORT (OFFENCES) AMENDMENT
REGULATION 2018 (No 2)
SL2018-14**

EXPLANATORY STATEMENT

**Circulated by authority of
Shane Rattenbury MLA
Minister for Justice, Consumer Affairs and Road Safety**

ROAD TRANSPORT (OFFENCES) AMENDMENT REGULATION 2018 (No 2)

Introduction

This explanatory statement relates to the *Road Transport (Offences) Amendment Regulation 2018 (No 2)* (the regulation) as presented to the Legislative Assembly. It has been prepared in order to assist the reader of the regulation. It does not form part of the legislation and has not been endorsed by the Assembly.

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.

Outline

Schedule 1 of the *Road Transport (Offences) Regulation 2005* (the offences regulation), 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. Most road transport infringement notice penalties other than those relating to parking offences and offences against the Heavy Vehicle National Law include a component, not identified separately, accounting for the Victims Services Levy (VSL) applicable to the offence. The VSL is currently set at \$60.

Most infringement notice penalties, excluding the amount of the VSL, are being increased by 6% (in accordance with the 2014-15 Budget decision that the Government will set the Traffic and Parking fines indexation to 6% in 2014-15 and over each year of the forward estimates).

In addition to indexing existing infringement penalty amounts the regulation also:

- Inserts missing infringement notice penalty amounts for four offences related to hook turns and aligns those penalties with similar offences about making right turns
- Corrects a short description to reference a tram instead of a train and a short description to clarify that a warning device must be fitted to a personal mobility device rather than the rider of a personal mobility device
- Corrects the reference to section 12A (3) of the offences regulation
- Inserts a subsection to indicate that an offence against section 12A (3) is an offence of strict liability.

Most penalties under the HVNL are determined through a national process and have been adjusted accordingly. Two offences in the HVNL about producing a driver licence and disclosing the identity of a driver are “local” offences and have been indexed as such. Offence penalties including their indexation (for other than the above two local offences) are set under the HVNL. The regulation reflects the annual

indexation of penalties under the HVNL and maintenance amendments to the HVNL and Regulations that became effective on 1 July 2018.

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% limit). The 20% limit is calculated using the current penalty unit amount of \$150 for an offence committed by an individual.

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. Where an existing infringement notice penalty is not approaching the 20% limit the indexation has been undertaken by deducting \$60 (the value of the VSL) from the existing infringement notice penalty amount, indexing that amount by 6% and then adding \$60 (the value of the VSL).

Where an existing infringement notice penalty amount is near the 20% limit the indexation has been undertaken by deducting the VSL amount of \$60 from the existing infringement penalty amount, indexing that amount by 6%, applying the 20% limit and then adding the VSL amount of \$60.

Where the existing infringement notice penalty for an offence is already at or above the 20% limit, the infringement notice penalty has not been increased.

For offences to which the VSL does not apply the infringement penalty amounts are indexed as above except for ignoring the VSL amounts.

All infringement notice penalty amounts are rounded down to the nearest dollar.

There are no human rights or climate change implications arising from this regulation.

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 1 September 2018.

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 Section 12A (3) and note

This clause identifies that the offence is one of strict liability. Part 1.9 of the existing *Road Transport (Offences) Regulation 2005* provides for an infringement notice penalty against section 12A (3). The Guide for Framing Offences provides that a prerequisite for an infringement notice is that the offence is one of strict liability. Defences to the offence have not been specified and, as such, a person will have the normal defences, including having made a mistake, available to them.

Section 5 **Schedule 1, parts 1.2A to 1.9**

Section 6 **Schedule 1, parts 1.12 to 1.15**

These sections substitute the existing parts 1.2A to 1.9 and parts 1.12 to 1.15 with revised parts that incorporate 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 1.2A to 1.9 and parts 1.12 to 1.15 of the schedule.

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.

Details of amendments other than standard indexation of penalties described above in the schedule are as follows:

The reference in column 2 in Part 1.9 has been corrected to reference section 12A (3) instead of section 12 (4).

Infringement notice penalty amounts have been inserted at item numbers 11, 12.1, 12.2 and 13 in Part 1.12A to provide infringement notice penalties for offences relating to hook turns. These amounts have been set at the same level as for similar offences relating to right hand turns.

The short description at item 355 of Part 1.12A has been corrected to reference a tram instead of a train.

The short description at item 405 of Part 1.12A has been amended to clarify that a warning device needs to be fitted to a personal mobility device rather than the rider of a personal mobility device.

Amendments to Parts 1.11 and 1.12 relating to offences against the *Road Transport (Public Passenger Services) Act 2001* and the *Road Transport (Public Passenger Services) Regulation 2002* will be progressed through a separate process.