

Australian Capital Territory

Road Transport (Road Rules) Amendment Regulation 2019 (No 1)

Subordinate law SL2019–14

made under the

Road Transport (General) Act 1999, section 23 (Regulations about infringement notice offences) and section 233 (General regulation-making power)

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

EXPLANATORY STATEMENT

The purpose of this Regulation is to incorporate nationally agreed amendments to the Australian Road Rules (ARRs) and introduce a mobile device interaction ban for learner and provisional licence holders.

This Regulation amends the following road transport legislation:

- *Road Transport (Offences) Regulation 2005* (the offences regulation)
- *Road Transport (Road Rules) Regulation 2017* (the road rules regulation)
- *Road Transport (Safety and Traffic Management) Regulation 2017*

The authority to make this Regulation is contained in:

- sections 23 and 233 of the *Road Transport (General) Act 1999*; and
- section 33 of the *Road Transport (Safety and Traffic Management) Act 1999*.

Section 23 of the *Road Transport (General) Act 1999* gives the power for a regulation to be made that prescribes an offence as an infringement notice offence and the amount of the penalty payable, including different amounts payable for different offences and different amounts payable for the same offence committed by different people.

Section 233 of the *Road Transport (General) Act 1999* gives the Executive the power to make regulations for the *Road Transport (General) Act 1999*. Regulations issued can prescribe matters that are necessary or convenient for the carrying out or giving effect to the *Road Transport (General) Act 1999* or other road transport law and prescribe offences for contravention of a regulation.

Section 33 of the *Road Transport (Safety and Traffic Management) Act 1999* gives the Executive the power to make regulations for the *Road Transport (Safety and Traffic Management) Act 1999*.

This Regulation:

- a) Incorporates the 12th ARR amendment package approved by Transport Ministers in November 2017. The road rules regulation is based on the ARRs, which is national model law enacted in all Australian States and Territories.
- b) Allows for zero emissions vehicles to drive in transit lanes until 31 December 2023. This is in line with the ACT's *Transition to Zero Emissions Vehicle Action Plan 2018-2021* which was announced on 16 April 2018.
- c) Implements a mobile device interaction ban for learner and provisional driver licence holders
- d) Provides technical amendments to clarify the definitions of *nature strip* and *shoulder of a road* and the reference of *road* used in the road rules regulation.

Human rights implications

During the development of this Regulation, due regard was given to its compatibility with human rights as set out in the *Human Rights Act 2004* (HRA).

Section 28 of the 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 limitation
- c) the nature and extent of the limitation
- d) the relationship between the limitation and its purpose
- e) any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve.

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

Any restrictions or impositions applied to individual rights have been chosen on the basis that they are necessary and that they represent the least restrictive approach possible in order to achieve safe and accessible road use by all road users on roads and road related areas in the ACT.

The road rules regulation provides a single regulation of road rules applying to vehicles and road users on roads and road related areas in the ACT. Insofar as the road rules regulation regulates the manner in which a person may move on ACT roads and road related areas, any amendments to that regulation could be seen to be limiting a person's right to move freely within the ACT (section 13 of the HRA).

The achievement of road safety is an important objective for the ACT community and therefore 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 roads and road related areas are safe for all road users. It is not considered that there are any less restrictive means available to achieve the purpose of regulating road use. The road rules exist in all Australian jurisdictions.

Mobile device interaction ban for learner and provisional licence holders

During 2018, the ACT Government engaged with the ACT community on implementing a new Graduated Licensing Scheme in the ACT for learner and provisional driver licence holders. This consultation included implementation of a mobile device interaction ban for novice drivers.

This Regulation introduces a new strict liability offence for learner and provisional licence holders who use a mobile device while driving except in permitted circumstances.

Nature of the right affected

This amendment could be seen to be engaging the following rights under the HRA:

- section 8 – Recognition and equality before the law
- section 22 – Rights in criminal proceedings

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 amendment may be seen to be engaging in discrimination by implementing a mobile device interaction ban for learner and provisional drivers that is more extensive than that which applies to full driver licence holders.

Section 22 (1) of the HRA provides that everyone has the presumption of innocence until proven guilty. The rights under section 22 of the HRA are very important rights that have long been recognised in the common law and are now codified in the ACT through the HRA. These rights may be subject to limits, particularly when those who are subject to the offence would be expected to be aware of its existence. The analysis of this right is contained in the section entitled “Strict Liability Offences”.

Importance of the purpose of the limitation

There are four types of driver distraction: physical distraction, visual distraction, auditory distraction and cognitive distraction. The act of interacting with a mobile device involves all four types of distraction.

Any activity that distracts a young or inexperienced driver or competes for their attention while operating a vehicle can not only result in lane deviations, greater fluctuations in speed and delays in driver reaction time, but also increases the risk of a driver not anticipating and responding appropriately to unexpected hazards.

Evidence shows that young and novice drivers are particularly vulnerable to the effects of driver distraction due to their inexperience in the road environment and the

use of mobile devices by young and novice drivers has been found to increase crash risk.

The NSW Graduated Licensing Scheme Policy Framework (2014) notes that:

Younger drivers have been found to make more judgment errors and perform worse on secondary tasks, especially in higher risk situations, than older drivers when distracted.

Research published by the University of Canberra in August 2016, surveyed 612 young ACT drivers (aged 17-24 years) on the extent and nature of risky driving behaviours. The paper noted that 73 per cent of the survey sample had read at least one text message while driving in the past week, while 55 per cent had sent at least one text message. Participants reported using mobile phones while driving in other ways, including for GPS navigation (61 per cent) and social media (21.2 per cent).

Nature and extent of the limitation

Learner and provisional licence holders will be allowed to use their mobile device as a navigational system provided that the device is securely mounted and there is no interaction during travel, including by voice.

Learner and provisional licence holders will also be able to use their mobile device to stream, play or listen to music or audio files provided that the body of the device is not being held by the driver and there is no interaction with the device during travel, including by voice.

Learner and provisional licence holders are not allowed to:

- use their device hands-free (including in speaker-mode)
- blue tooth or sync their phone to the vehicle or another device, for any purpose (other than for navigational purposes or to stream or play music as indicated above) that requires their interaction with the device
- interact with a mobile device using their voice

The restrictions that apply to all drivers in relation to sending text messages and using their mobile device for messaging, social networking, mobile application or accessing the internet will apply.

Relationship between the limitation and its purpose

The ACT Government is committed to achieving Vision Zero and realising the goal of zero deaths and serious injuries on ACT roads.

Young and novice drivers are disproportionately represented in casualty crashes in the ACT. The involvement of 17 year old ACT drivers in casualty crashes is almost three times their proportion of the licenced population. In 2017, there were five fatal crashes and 751 injury crashes. Of those five fatal crashes, two involved provisional drivers, aged 19 and 20 years, and one involved a 22 year old provisional motorcyclist.

This is an opportunity to influence new driver's development on the road and set them up for a lifetime of safe and responsible driving behaviour.

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 protecting our young and novice drivers. There is strong evidence that this change will save young lives.

Community support for introduction of this mobile device interaction ban is high. This amendment aligns the ACT with other jurisdictions, in particular, NSW, noting that NSW does not allow the playing or streaming of music through a mobile phone by a learner or provisional licence holder.

A public awareness campaign is being undertaken to support the introduction of this mobile device interaction ban for learner and provisional driver licence holders.

The Transport and Infrastructure Council (TIC) endorsed the Australian Graduated Licensing Scheme Policy Framework, which sets out components of a Graduated Licensing Scheme that are standard, enhanced or exemplar models. The mobile device interaction ban being introduced in the ACT meets the exemplar model.

The *ACT Road Safety Action Plan 2016-20* also includes an action to introduce a full mobile phone and other technology ban for young drivers.

Strict liability offences

This Regulation creates new offences and provides technical amendments to several existing offences in the road rules regulation.

Section 8 of the road rules regulation provides that an offence against that regulation is a strict liability offence.

This Regulation may be seen as engaging the right under section 22 (1) of the HRA to the presumption of innocence until proven guilty.

The rights under section 22 of the HRA are very important rights that have long been recognised in the common law and are now codified in the ACT through the HRA. These rights may be subject to limits, particularly when those who are subject to the offence would be expected to be aware of its existence.

Careful consideration has been given to whether applying strict liability to the new 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 public safety and 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

This regulation includes three (3) new strict liability offences:

- Section 151 (4) - lane filtering where no lane filtering sign applies
- Section 292A (1) - drive/tow vehicle with unrestrained moving load
- Section 300AA - learner or provisional licence holder use mobile device

The new offences are regulatory in nature and target a regulated activity that applies to drivers and motorbike riders. These rules are essential to providing a safe road environment for the community, with shared responsibility by all road users.

Details explaining these new offences are contained in the clause notes for each provision.

This regulation makes technical amendments to the following existing strict liability offences in the road rules regulation:

- Section 65 (Giving way at marked foot crossing (except at intersection) with flashing yellow traffic light)
- Section 72 (Giving way at intersection (except T-intersection or roundabout))
- Section 73 (Giving way at T-intersection)
- Section 81 (Giving way at pedestrian crossing)
- Section 82 (Overtaking or passing vehicle at children's crossing or pedestrian crossing)
- Section 115 (Driving in roundabout to left of central traffic island)
- Section 300 (Use of mobile phone)

Details explaining these amendments are contained in the clause notes for each provision.

Importance of the purpose of the limitation

It is considered paramount that these offences be ones of strict liability to encourage road users to obey the road rules when sharing the road with others and develop a community that shares responsibility for road safety.

Road safety affects the whole of the ACT community. Australia adopts a safe system approach to road safety which requires responsible road user behaviour. It makes allowance for human error. The safe system approach relies on safe speeds, safe roads and roadsides, safe vehicles, as well as safe people and safe behaviours. The road rules regulation plays an important role in establishing safe people and safe behaviours on our roads.

It must be recognised that people are generally on notice concerning what behaviour is permitted on our roads and road related areas. For a person to commit an offence under the road rules regulation they would be required to be actively involved in the

behaviour resulting in the offence. A public awareness campaign is being run to inform learner and provisional licence holders of the new mobile device interaction ban. The public have been on notice of this intention since early 2018.

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. All road users are provided with adequate education about their obligations and the requirements when using roads or road related areas.

Relationship between the limitation and its purpose

A robust regulatory framework is essential to establish safe people and safe behaviours on our roads, with benefits for both the community and individuals.

The inclusion of strict liability offences supports the application of the road transport infringement notice scheme. Infringement notice schemes minimise the cost of litigation for the Territory while offering people a choice concerning whether to accept a lesser penalty without admitting the offence or remaining liable to prosecution.

The penalties for these offences are within the normal range for strict liability offences and are in accordance with the *Guide to Framing Offences*.

Less restrictive means reasonably available to achieve this purpose

It is not considered that there are any less restrictive means reasonably available to achieve the purpose of protecting road users.

Section 23 (1) (b) of the *Criminal Code* 2002 provides a specific defence of mistake of fact for strict liability offences. Section 23 (3) of the *Code* makes it clear that other defences may also be available for strict liability offences, including the defence of intervening conduct or event (section 39), duress (section 40), sudden or extraordinary emergency (section 41), self-defence (section 42) or lawful authority (section 43).

The road rules regulation also includes defences to an offence under that 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.

Climate change implications

The climate change impacts of these amendments have been considered. The ACT's *Transition to Zero Emissions Vehicle Action Plan 2018-21* commits to a range of measures to support the transition to emissions vehicles. One of these measures is to encourage use of zero emissions vehicle by allowing for them to drive in transit lanes until 2023.

Zero emissions vehicles result in less air pollution and are generally cleaner to run, helping to keep Canberra's environment clean and healthy. They are also quieter, reducing overall noise levels in urban areas.

CLAUSE NOTES

Part 1 Preliminary

Clause 1 Name of regulation

This is a technical clause that states the name of the Regulation as the *Road Transport (Road Rules) Amendment Regulation 2019 (No 1)*.

Clause 2 Commencement

This clause provides that the Regulation will commence on 1 July 2019.

Clause 3 Legislation amended

This clause lists the regulations that are being amended by this Regulation. This Regulation amends the:

- *Road Transport (Offences) Regulation 2005*
- *Road Transport (Road Rules) Regulation 2017*
- *Road Transport (Safety and Traffic Management) Regulation 2017*

Clause 4 Legislation repealed

This is a technical clause that repeals the *Road Transport (Safety and Traffic Management) Protective Helmets for Motorbike Riders Approval 2016 (No 1)* (DI 2016-22) consequential on the changes at clauses 44 and 45.

Part 2 Road Transport (Offences) Regulation 2005

Clause 5 Section 21 (2) (a) (vii)

This clause is a minor and technical amendment consequential on the changes at clause 58.

Clause 6 New section 21 (2) (a) (viii)

This clause is a technical amendment consequential on the changes at clause 61. This clause includes the new mobile device offence for learner and provisional licence holders as a double demerit point offence during a holiday period.

Clause 7 Schedule 1, part 1.12A, items 58 and 59

This clause makes a minor and technical amendment to the short description consequential on the changes at clause 21.

Clause 8 Schedule 1, part 1.12A, new items 60A and 60B

This clause inserts a new offence consequential on the changes at clause 22.

Clause 9 Schedule 1, part 1.12A, items 68.5 and 69.7, column 3

This clause makes minor and technical amendments to the short descriptions consequential on the changes at clause 23.

Clause 10 Schedule 1, part 1.12A, item 94, column 3

This clause makes minor and technical amendments to the short description consequential on the changes at clause 23.

Clause 11 **Schedule 1, part 1.12A, item 95, column 3**

The clause makes minor and technical amendments to the short description consequential on the changes at clause 24.

Clause 12 **Schedule 1, part 1.12A, item 148 to 150**

This clause makes minor and technical amendments to the short descriptions consequential on the changes at clauses 26 and 27.

Clause 13 **Schedule 1, part 1.12A, new item 201A**

This clause inserts a new strict liability offence consequential on the changes at clause 33. It sets the infringement notice penalty at \$151 which is the same as the infringement notice penalty incurred for similar existing offences that can be committed by motorcycle riders such as ride motorbike/bicycle more than 2 abreast in marked lane.

The maximum penalty for this offence is 20 penalty units consistent with the majority of offences in the road rules regulation.

Clause 14 **Schedule 1, part 1.12A, item 467**

This clause inserts a new strict liability offence consequential on the changes at clause 47. It sets the infringement notice penalty at \$200 which is the same as the infringement notice penalty incurred for similar existing offences that can be committed by motorcycle riders such as not sit astride motorbike rider's seat and ride motorbike without at least one hand on bars.

The maximum penalty for this offence is 20 penalty units consistent with the majority of offences in the road rules regulation.

Clause 15 **Schedule 1, part 1.12A, new item 498A**

This clause inserts the new offence created in clause 50. It sets the infringement notice penalty at \$577 which is the same as the infringement notice penalty incurred for similar existing offences such as drive/tow vehicle with unsecured load.

Clause 16 **Schedule 1, part 1.12A, item 519, columns 2 and 3**

This clause makes minor and technical amendments to the short description consequential on the changes at clauses 54, 55, 56 and 58.

Clause 17 **Schedule 1, part 1.12A, new item 519A**

This clause inserts a new item consequential on the changes at clause 61 and sets the penalties for the new mobile device offence for learner and provisional licence holders.

The penalties for this strict liability offence are:

- Using a mobile device – infringement penalty of \$480, 3 demerit points
- Using a mobile device for messaging, social networking, mobile application or accessing internet- infringement penalty of \$589, 4 demerit points

The penalty amounts align with that for the same offence for full licence holders. The penalty amounts have been increased by 2.5% following a decision of budget cabinet.

A decision was made to increase the penalty amount on commencement of the offence and in advance of the other penalty increases to provide certainty for learner and provisional licence holders, especially as provisional licence holders have a lower demerit point threshold than learner and full licence holders.

The penalty amounts for this offence include a component, not identified separately, which is equivalent to the victim services levy established under the *Victims of Crime Act 1994*.

The penalty amount is rounded down to the nearest whole dollar amount.

Part 3 Road Transport (Road Rules) Regulation 2017

Clause 18 Section 12

Section 12 was intended to provide an indication that unless expressly stated in the regulation a reference to a road was to include a reference to a road related area, similar to the way section 19 indicates a reference to a driver includes a reference to a rider and a reference to driving includes a reference to riding unless otherwise expressly stated. Section 12 was not intended to define what constituted a road as road is defined in the *Road Transport (General) Act) 1999*.

To address concerns with the intention of this provision, this clause replaces the existing section 12 with one clarifying that unless expressly stated otherwise a reference to road includes a reference to road related area.

Clause 19 Section 45 (2) (e)

This clause incorporates clause 3 (1) of the 12th ARR amendment package. This clause amends section 45 (2) (e) to clarify that a driver changes direction to the left by moving to the left to, or from, a stationary position.

Clause 20 Section 45 (3) (e)

This clause incorporates clause 3 (2) of the 12th ARR amendment package. This clause amends section 45 (3) (e) to clarify that a driver changes direction to the right by moving to the right to, or from, a stationary position.

Clause 21 Section 65 (2) (a) and (b)

This clause partially incorporates clause 4 of the 12th ARR amendment package. Section 65 requires drivers to give way to and not obstruct pedestrians or bicycle riders on a marked foot crossing with a flashing yellow traffic light.

This clause amends section 65 (2) (a) and (b) by including that a driver is required to give way to and not obstruct a pedestrian, either, on or entering the marked foot crossing. The clause also removes the existing reference to a bicycle rider from section 65 (a) and (b) as that requirement is relocated to a new subsection 65 (2) (d) and (e) (see clause 22).

Clause 22 New section 65 (2) (d) and (e)

This clause inserts new sections 65 (2) (d) and (e), consequential on the changes at clause 21, to relocate the existing requirement for a driver to give way to and not

obstruct a bicycle rider, either, on or entering the marked foot crossing. Creating these new subsections achieves consistency with drafting of the national model law.

Clause 23 Section 72 (4) (b) etc

This clause incorporates clause 5 (1) of the 12th ARR amendment package. Section 72 (4) (b) requires a driver who is turning left using a slip lane, to give way to a pedestrian on the slip lane.

This clause amends section 72 (4) (b) to require the driver to give way to a pedestrian, either, on or entering the slip lane.

This clause amends section 73 (5) (b) to require the driver to give way to a pedestrian, either, on or entering the slip lane.

This clause amends section 81 (2) to require the driver to give way to a pedestrian or bicycle rider on or entering the crossing.

Clause 24 Section 82

This clause incorporates clause 9 of the 12th ARR amendment package. Section 82 requires a driver to not overtake or pass a driver who is stopping or has stopped at a children's or pedestrian crossing to give way to a pedestrian or bicycle rider at the crossing.

This clause extends the application of section 82 to a pedestrian or bicycle rider entering the crossing.

Clause 25 Section 115 heading

This clause incorporates clause 10 (1) of the 12th ARR amendment package and makes a minor and technical amendment to the heading of section 115, consequential on the changes at clauses 26 and 27.

Clause 26 Section 115 (1) (c)

This clause incorporates clause 10 (2) of the 12th ARR amendment package. Section 115 (1) (c) requires, where a driver is driving over the central traffic island in a roundabout, that the driver must drive to the left of the centre of the traffic island.

This clause amends section 115 (1) (c) to require a driver driving over a central traffic island in a roundabout to drive as near as practicable to the left of the centre of the traffic island.

Clause 27 New section 115 (3) (c)

This clause incorporates clause 10 (4) of the 12th ARR amendment package. Section 115 (3) provides that a driver can drive over the central traffic island if the driver's vehicle is too large to drive in the roundabout and the traffic island is designed to be driven over.

This clause insets section 115 (3) (c) to prohibit driving over the central traffic island if it cannot be done safely.

Clause 28 **New section 141 (1) (d)**

This clause incorporates clause 11 (2) of the 12th ARR amendment package. Section 141 prohibits a driver overtaking a vehicle on the left unless the vehicle is on a multilane road and the vehicle can be overtaken in a marked lane to the left of the vehicle, the vehicle is stationary, doing a U-turn or turning right and the vehicle can be safely overtaken on the left.

This clause inserts a new section 141 (1) (d) to allow a motor bike rider to pass or overtake to the left of a vehicle to the left if the rider is lane filtering in accordance with section 151A.

Clause 29 **New section 146 (1) (ea)**

This clause incorporates clause 12 (1) of the 12th ARR amendment package. Section 146 (1) requires a driver to drive completely in a marked lane unless one of a number of exemptions applies.

This clause inserts a new exemption for a motor bike rider who is lane filtering in accordance with section 151A.

Clause 30 **New section 146 (2) (f)**

This clause incorporates clause 12 (3) of the 12th ARR amendment package. Section 146 (2) requires a driver to drive in a line of traffic where there are two or more lines of traffic but no marked lanes unless one of a number of exemptions applies.

This clause inserts a new exemption for a motor bike rider who is lane filtering in accordance with section 151A.

Clause 31 **New section 147 (f)**

This clause incorporates clause 13 (3) of the 12th ARR amendment package. Section 147 prohibits a driver from moving from one marked lane to another marked lane across a continuous lane separation line unless one of a number of exemptions applies.

This clause inserts a new exemption for a motor bike rider who is lane filtering in accordance with section 151A.

Clause 32 **New section 151A (2) (fa)**

This clause incorporates part of clause 14 of the 12th ARR amendment package. Section 151A provides that a lane filtering motorbike rider is exempt from a number of requirements of the road rules regulation providing they lane filter in accordance with section 151A (2).

This clause inserts a new section to clarify that lane filtering is prohibited in an area to which a no lane filtering sign applies.

Clause 33 **Section 151A (3)**

This clause incorporates part of clause 14 of the 12th ARR amendment package. Section 151A provides that a lane filtering motorbike rider is exempt from a number of requirements of the road rules regulation providing they lane filter in accordance with section 151A (2).

This clause replaces the existing section 151A (3). The amendments clarify that the rider of a motorbike may not lane filter on a road where a no lane filtering sign applies and that a no lane filtering sign applies to a length of road starting at the sign and ending at the nearer of the next end no filtering sign applying to the road, or if the length of road ends at a T-intersection or dead end, the end of the road.

This clause also inserts definitions of *end no lane filtering sign* and *no lane filtering sign*.

Clause 34 **New section 156 (1) (a) (iv)**

This clause, and clause 35, implement actions from the ACT's *Transition to Zero Emissions Vehicles Action Plan 2018-2021*. The Action Plan provides that zero emissions vehicles are to be allowed to be driven in transit lanes until 2023.

Section 156 provides the exceptions to the prohibition of driving in a transit lane. This clause inserts a new subsection providing that the driver of a zero emissions vehicle may drive in a transit lane.

Clause 35 **Section 156 (3) and (4)**

This clause inserts new subsections in section 156 consequential on the changes at clause 34.

This clause inserts a definition of *zero emissions vehicle* in line with the *Transition to Zero Emissions Vehicles Action Plan 2018-2021* to include pure electric, plug-in hybrid-electric vehicles and those vehicles powered by a hydrogen fuel cell.

This clause also inserts a sunset clause expiring subsections 156 (1) (a) (iv) and 156 (3) and (4) on 31 December 2023 so that zero emissions vehicles will not be permitted to drive in transit lanes after 2023.

Clause 36 **Section 200 (3), definition of *heavy vehicle***

This clause is a minor and technical amendment.

The existing definition of *heavy vehicle* in section 200 is inconsistent with the definition of *heavy vehicle* in the *Heavy Vehicle National Law* which is pointed to in the dictionary of the road rules regulation.

Clause 37 **Section 262 heading**

This clause incorporates clause 18 (1) of the 12th ARR amendment package and makes a minor and technical amendment to the heading of section 262, consequential on the changes at clauses 38 and 39.

Clause 38 Section 262 (4A)

This clause incorporates part of clause 18 (2) of the 12th ARR amendment package.

Section 262 describes how a bicycle rider must behave at a bicycle crossing at an intersection or another place.

This clause inserts a new subsection 262 (4A) providing that a bicycle rider may cross if the bicycle crossing lights are green even though the traffic lights show a red or yellow light.

Clause 39 Section 262A

This clause is a minor and technical amendment consequential on the changes at clause 38.

Clause 40 Section 266 (2C)

This clause incorporates clause 20 (1) of the 12th ARR amendment package.

Section 266 requires the driver of a vehicle to ensure that a passenger under 16 years of age travels in an appropriate place in the vehicle and is restrained by an appropriate seat belt or child restraint. The section also provides an exemption from the passenger being restrained if a doctor has issued a medical certificate identifying that the passenger should not be restrained in the prescribed ways if the certificate is carried.

This clause clarifies that it is the driver that is exempt rather than the passenger.

Clause 41 Section 266 (2D)

This clause incorporates clause 20 (2) of the 12th ARR amendment package and is consequential on the changes at clause 40.

Clause 42 Sections 266 (3B) and 267 (3A)

This clause incorporates clauses 20 (3) and 21 (1) and (2) of the 12th ARR amendment package.

Sections 266 and 267 provide some exemptions from the requirements to wear seat belts or child restraints. There are some inconsistencies in the existing provisions as some subsections provide exemptions if the person has a medical condition and others provide exemptions were the person has a medical condition or disability.

This clause amends sections 266 (3B) and 267 (3A) to clarify that the exemptions are applicable if the person has a medical condition or disability.

Clause 43 Section 267 (4)

This clause incorporates clause 21 (2) of the 12th ARR amendment package and is a minor and technical amendment to refer to certificate rather than medical certificate.

Clause 44 Section 270 (3), definition of *approved motor bike helmet*

Section 270 requires a motorbike rider to wear an approved motorbike helmet. It defines an approved motorbike helmet as one that is approved by the road transport authority under the *Road Transport (Safety and Traffic Management) Regulation 2017*.

This clause and clause 45 are technical amendments to amend section 270 to incorporate the requirements of the *Road Transport (Safety and Traffic Management) Protective Helmets for Motorbike Riders Approval 2016 (No 1)* (DI 2016-22) into the regulation. The clauses also align some of the wording with wording of clause 22 of the 12th ARR amendment package. They do not materially change the requirements for motorbike riders to wear a helmet that is safe. The standards to which a helmet worn by a motorbike rider must comply are not changed by this amendment .

This clause amends the definition of *approved motorbike helmet* and inserts examples of what constitutes a helmet that is in good repair and proper working condition.

Clause 45 Section 270 (3), new definition of *disapplied provision and relevant standard*

This clause and clause 44 are technical amendments to incorporate the requirements of the *Road Transport (Safety and Traffic Management) Protective Helmets for Motorbike Riders Approval 2016 (No 1)* (DI 2016-22) into the regulation.

This clause inserts definitions of *disapplied provision* and *relevant standard* into the regulation.

Clause 46 **New section 270 (4)**

This clause disapplies the provisions of section 47 (5) and (6) of the *Legislation Act 2001* which would otherwise require notification of instruments applied by reference (in this case the Australian, Australian/New Zealand and United Nations Economic Commission for Europe (UN ECE) Standards referred to in clause 45).

The standards referenced are technical in nature and describe performance standards with which motorbike helmets must comply. Due to this it is considered that the standards are technical in nature and are unlikely to be accessed by members of the public. Motorbike helmets sold in Australia must comply with one or more of these standards and are labelled with a sticker or stickers indicating which standard or standards it complies with.

The standards are regularly updated and the AS and AS/NZS standards are copyright. The ACT Government's access to the standards is regulated by terms and conditions that govern how they can be used and disclosed. The AS and AS/NZS standards referenced in clause 45 can be purchased from the publisher SAI Global in either electronic or paper versions through the Standards Australia website (www.standards.org.au) or on 131 242. The UN ECE is available as a downloadable pdf by searching for the standard in an internet browser. Alternatively, a copy of the relevant Standards can be viewed by contacting roadtransportregulation@act.gov.au to organise a viewing time during business hours.

Clause 47 **Section 271 (1)**

This clause incorporates clause 23 (1) of the 12th ARR amendment package.

Section 270 describes how a rider must position themselves on a motorcycle. The 11th ARR amendment package inserted an exemption from keeping both feet on the footrests or footboards if the rider was sitting and it was safe to do so. As part of that amendment package the requirement to keep both feet on the footrests or footboards was omitted. The inserted exemption, however, has no meaning without a requirement to keep both feet of the provided footrests or footboards. Consequentially, this clause reinserts the requirement to keep both feet on the footrests or footboards of the motorbike.

Clause 48 **Section 271 (1A)**

This clause incorporates clause 23 (2) of the 12th ARR amendment package and is a minor and technical amendment.

Clause 49 **New section 292 (2)**

This clause incorporates clause 24 of the 12th ARR amendment package and is minor and technical amendment consequential on the changes at clause 50.

Clause 50 **New section 292A**

This clause incorporates clause 25 of the 12th ARR amendment package.

The Load Restraint Guide (LRG) is an administrative document prepared by the NTC that provides drivers, operators and other participants in the road transport chain with basic safety principles which should be followed for the safe carriage of loads by heavy and light vehicles. As well as setting out basic principles the LRG sets out the performance standards for load movement and restraint systems. Not referencing the performance standards in the road rules regulation leads to some ambiguity about appropriate and safe load restraint requirements.

This clause inserts a new section 292A that places limits on how much a load is permitted to move relative to the vehicle on, or in, which it is being carried and specifies the performance standard that any restraint system must meet.

This clause inserts a new strict liability offence requiring a driver to not drive or tow a vehicle carrying a load unless the load is restrained so that it will not move relative to the vehicle to adversely affect the stability or weight distribution of the vehicle or become dislodged from the vehicle and that the performance standards of the load restraint system are met.

The maximum penalty for this offence is 20 penalty units consistent with the majority of offences in the road rules regulation.

Clause 51 **Section 299 (2) (bb)**

This clause is a technical amendment consequential on the changes at clause 58.

Clause 52 **New section 300 heading**

This clause is a technical amendment consequential on the changes at clause 58.

Clause 53 **New subsection 300 (1A)**

This is a technical amendment consequential on the changes at clause 61.

Clause 54 **Section 300 (1) and (2)**

This is a technical amendment consequential on the changes at clause 58.

Clause 55 **Section 300 (3)**

This is a technical amendment consequential on the changes at clause 58.

Clause 56 **Section 300 (3)**

This is a technical amendment consequential on the changes at clause 58.

Clause 57 **Section 300 (4), definition of *body* and *held***

This clause makes a technical amendment to the definition of *body* consequential on the changes at clause 58.

This clause amends the definition of *held* to address advances in mobile device technology.

Clause 58 **Section 300 (4), new definition of *mobile device***

This clause inserts a new definition of *mobile device*. This clause mirrors the existing definition of *mobile phone*. The term *mobile phone* is replaced by the term *mobile device* to more accurately reflect the definition and advances in technology.

Clause 59 **Section 300 (4), definition of *mobile phone* and examples**

This clause omits the definition of *mobile phone* in section 300 and the examples in section 300 (4) consequential on the changes at clause 58.

Clause 60 **Section 300 (4), definition of *use***

This is a technical amendment consequential on the changes at clause 58.

Clause 61 **New section 300AA**

This clause inserts a new strict liability offence for learner and provisional licence holders. Learner and provisional licence holders must not use a mobile device while the vehicle is moving, or stationary but not parked. Exemptions to this are:

- The mobile device is being used as a driver's aid and:
 - The body of the device is securely mounted; and
 - The use does not require the driver to press anything on the body of the device or otherwise manipulate any part of the body of the device or use the driver's voice
- The vehicle is an emergency vehicle or police vehicle
- The mobile device is being used to stream or play music or audio files and:
 - The body of the device is not being held by the driver; and
 - The use does not require the driver to press anything on the body of the device or otherwise manipulate any part of the body of the device or use the driver's voice

The maximum penalty for this offence is 20 penalty units consistent with the majority of offences in the road rules regulation.

Clause 62 **Schedule 3, End tramway sign**

This clause is a minor and technical amendment that relocates the existing *end tramway sign* from schedule 3 to schedule 2.

It aligns the regulation with part of clause 26 of the 12th ARR amendment package.

Clause 63 **Schedule 3, Tramway sign**

This clause is a minor and technical amendment that relocates the existing *tramway sign* from schedule 3 to schedule 2.

It aligns the regulation with part of clause 26 of the 12th ARR amendment package.

Clause 64 **Schedule 4, Green bicycle symbol**

This clause is a minor and technical amendment and is consequential on the changes at clauses 38 and 39.

Clause 65 **Dictionary, note 2**

This clause amends note 2 to include definitions of *AS* and *AS/NZS* by reference to the definition of these terms in the *Legislation Act 2001*, dictionary.

Clause 66 **Dictionary, note 4**

This clause amends note 4 to include definitions of *learner licence* and *provisional licence* by reference to the definition of these terms in the *Road Transport (General) Act 1999*, dictionary.

Clause 67 **Dictionary, definition of *nature strip***

This clause amends the definition of *nature strip* to clarify that a *nature strip* is an area between a *road* as defined by the *Road Transport (General) Act 1999* and *adjacent land* but does not include a *bicycle path*, *footpath* or *shared path*.

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Clause 68 **Section 73 (1) (e)**

This clause is a minor and technical amendment consequential on the changes at clauses 44 and 45.

Clause 69 **Section 73 (4), definition of *motorbike***

This clause is a minor and technical amendment consequential on the changes at clauses 44, 45 and 68.