

Australian Capital Territory

Road Transport (Driver Licensing) Amendment Regulation 2019 (No 1)

Subordinate law SL2019–29

made under the

Road Transport (Driver Licensing) Act 1999, section 26 (Regulation-making power) and section 28 (Driver licensing system) and *Road Transport (General) Act 1999*, section 23 (Regulations about infringement notice offences) and section 233 (General regulation-making power)

EXPLANATORY STATEMENT

Purpose of the Regulation

The purpose of this Regulation is to introduce reforms to the ACT's driver licensing scheme for learner and provisional car drivers announced by the Government in June 2019. The goal of the reforms is to reduce the number of young and novice drivers involved in fatal and serious injury crashes and help them gain experience and confidence on the road in a staged way.

This Regulation amends the *Road Transport (Driver Licensing) Regulation 2000*. The *Road Transport (Driver Licensing) Regulation 2000*, as in force immediately before the commencement of this Regulation is referred to as the pre-amendment regulation.

This Regulation also makes consequential amendments to the *Road Transport (General) Regulation 2000* and the *Road Transport (Offences) Regulation 2005*.

The amendments in this Regulation:

- a) Increase the minimum learner licence tenure for persons who are under 25 when they are issued with a learner licence from 6 months to 12 months.
- b) Mandate required driving hours for learner drivers before they are eligible for a provisional licence, to ensure that adequate experience is gained prior to independent driving.
- c) Introduce a Hazard Perception Test as an eligibility requirement for a provisional licence, to ensure that new drivers have the cognitive capacity to identify and react to hazards on and around the road.
- d) Introduce a two staged provisional licence (P1 and P2) that focuses on increased restrictions on provisional drivers who are under the age of 25.

- e) Introduce late-night peer-passenger restrictions for P1 drivers to reduce the risk of provisional drivers crashing as the dangers of distraction, challenging driving conditions, risk-taking behaviour and fatigue are enhanced at night.
- f) Reduce the demerit point threshold for learner drivers to ensure that sanctions are a swift and certain deterrent and in recognition that they are our safest drivers.
- g) Remove options for provisional drivers to increase their demerit point threshold to ensure that sanctions are a swift and certain deterrent and in recognition that they are over-represented in road accidents.
- h) Provide learner drivers with the option to complete approved learner driver training courses to achieve a component of the required driving hours and to provide additional road safety education.
- i) Establish a new application and approval process for licence training courses.

The Regulation also includes transitional provisions that:

- a) Preserve the current licensing scheme for persons who hold a learner or provisional licence prior to 1 January 2020 for that licence. A current learner will proceed to the new provisional licence conditions if issued with a provisional licence after 1 January 2020.
- b) Preserve the validity of pre-learner training courses completed before 1 January 2020.
- c) Preserve current training course provider approvals for pre-learner and pre-provisional rider training courses and heavy vehicle driver training courses.
- d) Preserve current pre-learner licence training course provider approvals for a maximum period of 12 months to allow time to transition providers to the new application and approval process.

The authority to make this Regulation is contained in:

- sections 26 and 28 of the *Road Transport (Driver Licensing) Act 1999*; and
- sections 23 and 233 of the *Road Transport (General) Act 1999*.

The majority of the changes in this Regulation are authorised by section 28 of the *Road Transport (Driver Licensing) Act 1999*. This provides for a regulation to establish the driver licensing system. The regulation (the *Road Transport (Driver Licensing) Regulation 2000*) is to provide for a system of licensing drivers of motor vehicles used on roads or road related areas that provides a way of authorising the driving of motor vehicles on roads and road related areas and identifying people as licenced drivers of motor vehicles.

A regulation may also:

- a) make provision in relation to the:
 - a. issue or refusal to issue driver licences
 - b. the renewal and the refusal to renew driver licences

- c. the imposition of conditions on driver licences
- b) make provision in relation to the cancellation, variation and suspension of driver licences
- c) fix periods for which a driver licence or renewal remains in force
- d) require the production of information by applicants for driver licences or for renewals or variation of driver licences
- e) make provision in relation to the recognition by the road transport authority of things done under a corresponding law
- f) prescribe different classes and kinds of driver licences, grade each class or kind by reference to the driving skills required for the class or kind, and prescribe the eligibility criteria for the issue of each class or kind of licence
- g) make provision in relation to competency-based assessment schemes relating to driver licensing
- h) require people who are applicants for driver licences and holders of driver licences to submit to tests or medical or other examinations to assess fitness to obtain, hold or continue to hold a driver licence, a varied driver licence or an exemption from holding a driver licence
- i) make provision in relation to driver training schemes
- j) make provision in relation to the accreditation of driving instructors, including the conduct and content of driving instruction and examinations.

Section 26 of the *Road Transport (Driver Licensing) Act 1999* gives the Executive the power to make regulations under that Act.

Section 23 of the *Road Transport (General) Act 1999* gives the Executive the power to make regulations about infringement notice offences. A regulation may prescribe 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 under that Act.

Human rights considerations

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).

Broadly this Regulation could be seen to engage with, and place limitations on, the following HRA rights:

- Section 8 – Recognition and equality before the law
- Section 13 – Freedom of movement

- Section 22 – Right to be presumed innocent (Rights in criminal proceedings)

The preamble to the HRA notes that few rights are absolute and that they may be subject only to the reasonable limits in law 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
- 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.

The limitations on human rights in this Regulation are proportionate and justified in the circumstances because they are the least restrictive means available to achieve road safety. The achievement of road safety is an important objective for the ACT community. There are significant public interest benefits that arise from a regulatory framework that contributes to a reduction in the involvement of young and novice drivers in fatal and serious injury crashes.

The ACT Government is committed to developing a community that shares responsibility for road safety and to the realisation of Vision Zero – a strategy outlined in the ACT Road Safety Strategy 2011-20 and the ACT Road Safety Action Plan 2016-2020, which aims to achieve zero road fatalities by 2020. This requires a strong licensing scheme that focuses on education, assisting drivers to gain experience and confidence on the road in a staged way and encourages road users to obey the road transport laws.

Recognition and equality before the law

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.

‘Equality before the law’ has been essentially held to mean that judges and administrative officials must not act arbitrarily in enforcing laws¹. The non-discrimination provisions in the HRA are founded on articles 2 (1) and 26 of the

¹ NNowak, M *UN Covenant on Civil and Political Rights: CCPR Commentary*, 2nd revised edition, N.P. Engel, Publisher, 2005 at 606

International Covenant on Civil and Political Rights (the ICCPR). ‘Discrimination’ as the term appears in the ICCPR is understood as meaning any ‘distinction, exclusion, restriction or preference which is based on any ground which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms’.

a) Nature of the right affected

This Regulation introduces new eligibility requirements to obtain a provisional licence, places new restrictions on provisional licence holders and amends the demerit point threshold for learner and provisional drivers. The reduction in the demerit point threshold means that learner licence holders no longer have the same demerit point threshold as a full licence holder.

This may be seen to be engaging in discrimination by placing additional requirements on obtaining a provisional licence, placing restrictions on drivers who hold a provisional licence and treating learner and provisional drivers differently to full licence holders.

b) The importance of the purpose of the limitation

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

This Regulation is designed to reduce risks for our new and young drivers who are over-represented in road accidents and help them gain experience and confidence on the road in a staged way. This Regulation introduces requirements designed to assist learner and provisional car drivers to gain education and experience that better prepare them for safer independent driving.

c) The nature and the extent of the limitation

Learner drivers will be required to meet additional requirements to obtain a provisional licence.

Provisional drivers who are subject to P1 licence conditions are restricted to one peer-aged passenger between the hours of 11pm and 5am. The restrictions are not a curfew and do not prevent provisional drivers from driving between the hours of 11pm and 5am. A P1 provisional driver is simply prohibited from having more than one peer-aged passenger during those hours. A peer-aged passenger is a passenger between 16 and 22 years old. It does not include family members.

This restriction also does not apply if the person is:

- A police trainee undertaking recruit training or assessment and driving a police vehicle
- Driving the motor vehicle to or from an educational institution for the purpose of education
- Driving the motor vehicle to or from a place of their employment
- Driving the motor vehicle in the course of their employment

This mitigates any adverse impacts on young people's family responsibilities, employment and social opportunities.

Evidence shows that young and novice drivers are particularly vulnerable to the effects of driver distraction, challenging driving conditions and fatigue due to their inexperience in the road environment. Driving with multiple peer-aged passengers late at night has been found to increase crash risk for provisional drivers.

The late-night peer passenger restrictions do not apply to P2 drivers, acknowledging that risk is reduced with age and cognitive development.

d) The relationship between the limitation and its purpose

This Regulation contains measures that enhance the skill and experience of young and novice drivers in the ACT. The measures are designed to reduce the number of young and novice drivers involved in fatal and serious injury crashes and will contribute to building a safer Canberra community by putting in place the systems, processes and protections necessary to reduce the harm disproportionately experienced by our most vulnerable drivers. They also set our young and novice drivers up for a lifetime of safe and responsible driving behaviour.

This Regulation creates an environment of facilitated learning, development and experience that will subsequently reduce the financial and emotional costs of road trauma to the community and to individuals.

e) Any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve

The driver licensing system is a regulatory framework, and as such the policy objectives of this Regulation cannot be achieved without regulatory reform.

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. The right to move freely within the ACT means that a person cannot be arbitrarily forced to remain in, or move to or from, a particular location.

Insofar as this Regulation regulates the manner in which a person may move on ACT roads and road related areas, it is not limiting a person's right to move freely within the ACT. However, it could be argued that the late-night passenger restrictions introduced for provisional licence holders could limit the right to freedom of movement of people in the community who do not have access to other transport options. The restrictions are not a curfew and do not prevent provisional drivers from driving between the hours of 11pm and 5am and therefore do not limit the drivers right to freedom of movement.

Strict liability offences

This Regulation creates a new strict liability offence and makes minor and technical amendments to existing strict liability offences in the *Road Transport (Driver Licensing) Regulation 2000*.

A strict liability offence means that there are no fault elements for the physical elements of the offence to which strict liability applies, which essentially 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. 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.

a) Nature of the right affected

This Regulation includes one new strict liability offence in relation to driving a motor vehicle with more than one peer-aged passenger between 11pm and 5am. This new offence is regulatory in nature and targets a regulated activity that applies to P1 provisional car licence holders.

This Regulation also makes minor and technical amendments to a number of existing strict liability offences in the *Road Transport (Driver Licensing) Regulation 2000*.

b) The importance of the purpose of the limitation

It is paramount that this new offence be one of strict liability to encourage provisional licence holders to develop safe and responsible driving skills 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 driver licensing system plays an important role in establishing safe people and safe behaviours on our road.

A public awareness campaign is being run to inform learner and provisional licence holders of the new licensing scheme. The public have been on notice of the intention to reform the ACT's licensing scheme for learner and provisional licence holders since 2018. The commencement of the reforms on 1 January 2020 was announced in June 2019.

c) The nature and the extent of the limitation

The requirements to which the offences apply are not burdensome in nature and relate to the safe driving of young and novice drivers on our roads and road related areas. All road users are provided with adequate education about their obligations and the requirements when driving on roads and road related areas.

d) The relationship between the limitation and its purpose

A robust regulatory framework is essential to establishing safe young and novice drivers and safe behaviours on our roads, with benefits for both individuals and the community.

The inclusion of strict liability offences also 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 *Guideline to Framing Offences*.

e) Any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve

It is not considered that there are any less restrictive means reasonably available to achieve the purpose of protecting young and novice drivers and the community as a whole.

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).

Climate change implications

There are no climate change implications associated with this Regulation.

CLAUSE NOTES

Clause 1 **Name of regulation**

This clause specifies the name of the Regulation. This clause provides that the Regulation may be cited as the *Road Transport (Driver Licensing) Amendment Regulation 2019 (No 1)*.

Clause 2 **Commencement**

This clause provides for the commencement of the Regulation. The Regulation will commence on 1 January 2020.

Clause 3 **Legislation amended**

This clause names the regulation that is being amended by this Regulation. This Regulation amends the *Road Transport (Driver Licensing) Regulation 2000*. It also makes consequential amendments to the *Road Transport (General) Regulation 2000* and the *Road Transport (Offences) Regulation 2005*.

Clause 4 **Legislation repealed**

This clause repeals the *Road Transport (Driver Licensing) Provisional Driver Training Course Approval 2014 (No 1)* (NI2014-466) consequential on the changes made by clause 12.

Clause 5 **Section 4, note 1**

This clause clarifies that other legislation applies in relation to offences against the *Road Transport (Driver Licensing) Regulation 2000*. This clause inserts new dot points in section 4, note 1, indicating that Chapter 2 of the Criminal Code applies to the following provisions of the *Road Transport (Driver Licensing) Regulation 2000*:

- s 11A (Unauthorised use of L-plates)
- s 11B (Unauthorised use of P-plates)
- offences against div 3.2 (Learner licences)
- offences against div 3.3 (Provisional licences)

Clause 6 **New section 10A**

This clause inserts new section 10A which replicates section 22 of the pre-amendment regulation and moves it out of Part 3 to Part 2.

Clause 7 **New sections 11A and 11B**

This clause inserts new sections 11A and 11B which replicate sections 24 and 38 of the pre-amendment regulation moving them out of Part 3 to Part 2. Minor and technical amendments have been made to recognise that a corresponding law of another jurisdiction may apply and to align this provision with current drafting practices that require a strict liability offence to specifically state that it is a strict liability offence. The offences in these sections are currently infringement notice

offences. The *Guide to Framing Offences* states that in order for an offence to be an infringement notice offence it must be a strict liability offence.

Clause 8 **Section 12 (1) (f)**

This clause clarifies that a person's signature is not required to be shown on a driver licence receipt.

Clause 9 **New section 12 (8A)**

This clause clarifies that a driver licence receipt is not required to be issued in any specific colour.

Clause 10 **Section 13 (3)**

This clause clarifies that a driver licence receipt is issued to a person as an interim measure until the person receives their driver licence.

Clause 11 **Part 3 heading**

This clause is a minor and technical amendment consequential on the changes made by clause 12.

Clause 12 **Divisions 3.1 to 3.5**

This clause substitutes divisions 3.1 to 3.5 of the pre-amendment regulation. The new structure of these divisions sets out the requirements for learners, provisional drivers, heavy vehicle learners and full licences in individual divisions. This restructure will result in sections 38 to 41 becoming blank provisions to prevent the necessity to renumber the entire *Road Transport (Driver Licensing) Regulation 2000* which would have significant operational implications.

This clause omits section 19 (Learner driver logbook to be issued to learner car drivers). The new eligibility requirements for obtaining a provisional licence provide that the road transport authority must be satisfied that a person has successfully completed the required driving hours and hazard perception test. An applicant for a provisional licence must also provide evidence that they have successfully completed a driver assessment administered by an authorised person or competency-based driver assessment administered by a driving instructor. Removing a prescribed logbook from the regulatory framework provides flexibility for how this information is recorded and provides for the use of electronic recording methods.

This clause omits section 38A (Provisional driver training courses). Provisional driver training courses will not form part of the ACT's driving licencing scheme for provisional car and motorcycle drivers from 1 January 2020. The new eligibility requirements for obtaining a provisional licence are designed to assist learner drivers to gain education and experience that better prepare them for safer independent driving.

Successful completion of a provisional driver training course currently entitles a provisional licence holder to an increase in their demerit point threshold from 4 points to 8 points. It also entitles a provisional licence holder not to display p-plates. A provisional licence holder is only eligible to undertake a provisional driver training

course if they have held their provisional licence for at least 6 months. Part 11 of this Regulation clarifies that a person who has completed this course before 1 January 2020 retains the increased demerit threshold and exemption from displaying p-plates.

This clause moves existing division 3.1 (Require medical standards and authorised medical reviewers) to Part 4 where the authority to require a licence holder to undergo a medical examination exists.

Division 3.1 Licence training courses

Division 3.1 establishes the framework for approving a person to provide driver training courses.

Section 15 Driver training course providers—approval

Section 15 establishes the application and approval process for driver training courses. Driver training courses include pre-learner licence training courses, learner licence training courses, pre-learner rider training courses, pre-provisional rider training courses and heavy vehicle driving training courses.

Applicants will need to include specific information in their application for approval, such as, the applicant's knowledge and skills to provide the training. Approval will be via a notifiable instrument, may be subject to conditions and will be valid for a period of 5 years.

This section replaces section 26 of the pre-amendment regulation.

The intention is for the new application and approval process to be rolled out in a staged manner. Part 11 of this Regulation clarifies that existing approvals remain in place.

Division 3.2 Learner licences

Division 3.2 sets out the driving licensing system for learner licences.

Section 16 Eligibility to apply for learner licence

Section 16 sets out the eligibility requirements for obtaining a learner licence in the ACT. No changes have made to these requirements from the pre-amendment regulation requirements. Minor and technical amendments have been made consequential on the introduction of new section 15.

Section 17 Issue of learner licences

Section 17 sets out when the road transport authority must issue a learner licence. This section mirrors the same section in the pre-amendment regulation.

Section 18 Duration of learner licences

Section 18 contains the duration for which a learner licence may be issued. The period for which a learner car licence must be issued is increased from 2 years to 5 years. This provides a longer timeframe for a learner licence holder to complete the new requirements to be issued with a provisional licence.

Section 19 Restrictions on learner motorcycle licence riders

Section 19 contains restrictions on learner motorcycle licence riders. This section mirrors section 20 of the pre-amendment regulation.

A minor and technical amendment has been made to align this provision with current drafting practices that require a strict liability offence to specifically state that it is a strict liability offence. The offences in this section are currently infringement notice offences. The *Guide to Framing Offences* states that in order for an offence to be an infringement notice offence it must be a strict liability offence.

Section 20 Restrictions on learner car licence drivers

Section 20 contains restrictions on learner car licence drivers. This section mirrors section 21 of the pre-amendment regulation.

Minor and technical amendments have been made to remove the definition of driving supervisor from this section to the dictionary consequential on the changes made by clause 12 and to align this provision with current drafting practices that require a strict liability offence to specifically state that it is a strict liability offence. The offences in this section are currently infringement notice offences. The *Guide to Framing Offences* states that in order for an offence to be an infringement notice offence it must be a strict liability offence.

Division 3.3 Provisional licences

Division 3.3 sets out the driving licensing system for provisional licences.

Section 21 Definitions—div 3.3

Section 21 inserts definitions of *P1 licence conditions* and *P2 licence conditions* for division 3.3. *P1 licence conditions* include any conditions or restrictions that apply to a provisional car licence under division 3.3 (for example, passenger restrictions) and apply for the first 12 months of a provisional licence. *P2 licence conditions* include any conditions or restrictions that apply to a provisional car licence under division 3.3 (for example, display green p-plates) and apply for the remaining two years of a provisional licence.

Section 22 Eligibility to apply for provisional licence

Section 22 sets out the eligibility requirements for issue of a provisional car or motorcycle licence. The eligibility requirements for a provisional motorcycle licence are unchanged. Minor and technical amendments have been made consequential on new section 15.

Section 22 establishes new eligibility requirements to be issued with a provisional car licence. The new eligibility requirements are:

- If you are under 25 when issued with your learner licence you must hold your learner licence for 12 months before you can apply for a provisional licence
- Required driving hours

- 100 hours including 10 hours at night if you are under 25 when issued with your learner licence
- 50 hours including 5 hours at night if you are 25 and older when issued with your learner licence
- Successful completion of a hazard perception test

Learners also still need to complete either the competency-based training and assessment administered by an ACT Accredited Driving Instructor or a one-off driver assessment administered by an authorised person, currently a government official.

Section 22 provides that a person who has held their learner licence for at least three months is eligible to complete an approved learner licence training course. An approved learner licence training course will satisfy the number of driving hours stated in the approval instrument and be counted towards completion of the required driving hours.

Section 22 recognises a hazard perception test completed under a law of another jurisdiction for persons who transfer an interstate licence to an ACT licence.

Section 23 Hazard perception test

Section 23 requires the road transport authority to provide a test to determine a person's ability to recognise potentially dangerous situations on a road (a hazard perception test).

To be eligible to complete the hazard perception test a person must hold a current learner licence and have held that licence for more than three months.

Section 24 Issue of provisional licences

Section 24 sets out when the road transport authority must issue a provisional licence. A provisional licence issued under this section to a person who is younger than 25 years old at the time the licence is issued, is issued subject to P1 licence conditions. A provisional licence issued under this section to a person who is 25 years or older at the time the licence is issued, is issued subject to P2 licence conditions.

Section 25 Duration of provisional licences

Section 25 contains the duration for which a learner licence may be issued. The duration of a provisional motorcycle or car licence remains three years.

A provisional licence issued subject to P1 licence conditions, has those conditions apply for 12 months and then P2 licence conditions apply for the remaining period of the licence. A provisional licence issued subject to P2 licence conditions is subject to those conditions for the full duration of the provisional licence.

Section 26 When additional class to be included as provisional class

Section 26 establishes when an additional class is to be included as provisional class. This section mirrors section 34 of the pre-amendment regulation with minor and technical amendments to the notes consequential on changes made by this Regulation.

Section 27 Duration of additional provisional classes

Section 27 establishes the duration for which any additional provisional class applies. This section mirrors section 35 of the pre-amendment regulation.

Section 28 Provisional motorcycle licence restrictions— ACT licences

Section 28 contains restrictions that apply to a person who is the holder of a provisional motorcycle licence. These restrictions include the requirement to display p-plates, not ride a motorbike that has a power-to-weight ratio over 150kW/t or carry a pillion passenger. This section removes the current exemption from displaying p-plates for provisional motorcycle licence holders who have held their provisional licence for at least 6 months and are either 26 years old or have completed an approved provisional driver training course.

It is important that police officers and other road users are able to identify provisional riders on the road, recognising their inexperience, and to enforce certain road rules that apply specifically to provisional riders. There is no road safety evidence that supports exemptions from displaying p-plates.

Section 29 Provisional motorcycle licences—towing restrictions

Section 29 contains towing restrictions on holders of a provisional motorcycle licence. A provisional motorcycle licence holder must not tow another vehicle during the first year of their provisional motorcycle licence. This provision mirrors section 36A of the pre-amendment regulation with a minor and technical amendment to align this provision with current drafting practices that require a strict liability offence to specifically state that it is a strict liability offence. This offence is currently an infringement notice offence. The *Guide to Framing Offences* states that in order for an offence to be an infringement notice offence it must be a strict liability offence.

Section 30 Provisional licence—display P-plate

Section 30 requires the holder of a provisional licence (other than a motorcycle licence) to display p-plates for the relevant provisional licence conditions that apply to the provisional licence holder. This requirement does not apply to a police trainee undertaking recruit training or assessment and driving a police vehicle.

This section removes the current exemption from displaying p-plates for provisional licence holders who have held their provisional licence for at least 6 months and are either 26 years old or have completed an approved provisional driver training course.

It is important that police officers and other road users are able to identify provisional drivers on the road, recognising their inexperience, and to enforce certain road rules that apply specifically to provisional drivers. There is no road safety evidence that supports exemptions from displaying p-plates.

Section 31 Provisional licence passenger restrictions for cars—ACT licences

Section 31 introduces passenger restrictions for holders of a provisional car licence that is subject to the P1 licence conditions. This restriction forms a condition of a provisional licence. It is an offence under section 60 of the *Road Transport (Driver Licensing) Regulation 2000* to breach a condition to which a licence is subject.

A P1 provisional licence holder must not driver a motor vehicle (other than a motorbike) at any time between 11pm and 5am on the following day with more than 1 peer-aged passenger who is not a family member in the vehicle.

This restriction does not apply if the person is:

- A police trainee undertaking recruit training or assessment and driving a police vehicle
- Driving the motor vehicle to or from an educational institution for the purpose of education
- Driving the motor vehicle to or from a place of their employment
- Driving the motor vehicle in the course of their employment

A *peer-aged passenger* is defined as a person between 16 and 22 years old.

A *family member* includes but is not limited to a step-parent, stepson, step daughter, siblings, uncle, aunt, nephew, niece or cousin and for an Aboriginal or Torres Strait Islander person is, in accordance with the traditions and customs of the person's Aboriginal or Torres Strait Islander community, a family member.

Section 32 Provisional car licences—towing restrictions

Section 32 contains towing restrictions on holders of a provisional car licence. A provisional car licence holder must not drive a motor vehicle of a kind that may be driven by the holder of a car licence on a road or road related area if the vehicle is towing a vehicle other than a trailer or a trailer with a GVM over 750kg during the first year of their provisional car licence.

This provision mirrors section 37A of the pre-amendment regulation with a minor and technical amendment to align this provision with current drafting practices that require a strict liability offence to specifically state that it is a strict liability offence. This offence is currently an infringement notice offence. The *Guide to Framing Offences* states that in order for an offence to be an infringement notice offence it must be a strict liability offence.

Division 3.4 Heavy vehicle learner and licence eligibility

Division 3.4 sets out the driving licensing system for heavy vehicle licences.

Section 33 Heavy vehicle learners

Section 33 mirrors section 23 of the pre-amendment regulation with minor and technical amendments to the notes consequential on changes made by this Regulation.

Section 34 Heavy vehicle licence eligibility

Section 34 sets out the eligibility requirements for a heavy vehicle licence and mirrors the requirements in section 28 of the pre-amendment regulation. Minor and technical amendments have been to this section to align it with current drafting practices.

Division 3.5 Full licences

Division 3.4 sets out the driving licensing system for full licences.

Section 35 Eligibility to apply for full licence

Section 35 sets out the eligibility requirements for being issued with a full car licence, full motorcycle licence or a driver licence of a higher class.

To be eligible for a full car licence a person must have held a provisional licence (other than a provisional motorcycle licence) for at least 3 years.

To be eligible for a full motorcycle licence a person must have held a provisional motorcycle licence for at least 3 years.

To be eligible for a variation of a motorcycle licence to include a car licence, or a driver licence of a higher class as an additional class, the person must have held a provisional licence (other than a provisional motorcycle licence) for at least 1 year.

To be eligible for a variation of a licence to include a motorcycle licence as an additional class the person must have held a provisional motorcycle licence for at least 1 year.

This section mirrors the eligibility requirements contained in sections 30 and 39 of the pre-amendment regulation.

Section 36 Issue of full licences

Section 36 mirrors section 40 of the pre-amendment regulation with a minor and technical amendment to include a new note to align with current drafting practices.

Section 37 Duration of full licences

Section 37 mirrors section 41 of the pre-amendment regulation.

Clause 13 Sections 42 and 43

This clause is a minor and technical amendment to align these sections with current drafting practices.

Clause 14 Section 48 (2), note

This clause is a minor and technical amendment to align with current drafting practices.

Clause 15 **Section 56 (5), note**

This clause is a minor and technical amendment consequential on the changes made by clauses 12 and 23.

Clause 16 **Section 59 (1)**

This clause is a minor and technical amendment to remove an incorrect reference to the title of section 57.

Clause 17 **New section 60 (3)**

This clause is a minor and technical amendment to align this provision with current drafting practices that require a strict liability offence to specifically state that it is a strict liability offence. This offence is currently an infringement notice offence. The *Guide to Framing Offences* states that in order for an offence to be an infringement notice offence it must be a strict liability offence.

Clause 18 **Section 64 (2) (a)**

This clause is a minor and technical amendment consequential on the changes made by clause 12.

Clause 19 **New section 66A**

This clause inserts new section 66A which mirrors section 28 (3), section 29 (3) and section 30 (3) of the pre-amendment regulation. This section sets out exemptions from licence eligibility requirements for a person who holds or has at any time held an Australian driver licence (other than a learner licence) of that class or a higher class; an external territory driver licence corresponding to an Australian driver licence (other than a learner licence) of that class or a higher class or a foreign driver licence issued under the law of a recognised country that corresponds to that class or a higher class.

Clause 20 **Section 67 (1)**

This clause amends the eligibility requirements the road transport authority can exempt a person from if the road transport authority is satisfied that, because of a person's special circumstances, the person is a suitable person to be issued a driver licence or the particular class or kind applied for, consequential on the changes made by clause 12. The ability to exempt a person from the eligibility requirements for a learner licence has been removed.

Clause 21 **Section 69 (4)**

This clause is a minor and technical amendment consequential on the changes made by clause 12.

Clause 22 **Section 70 (1), note 1**

This clause is a minor and technical amendment consequential on the changes made by clauses 12 and 23.

Clause 23 **New sections 78A and 78B**

This clause inserts new sections 78A and 78B. These sections mirror sections 15 and 15A of the pre-amendment regulation.

Clause 24 **Section 85 (2) (c)**

This clause is a minor and technical amendment consequential on changes made by clause 12.

Clause 25 **Section 86 (2) (a)**

This clause is a minor and technical amendment consequential on the changes made by clause 12.

Clause 26 **Section 87 (1), note and 88 (5), note**

This clause is a minor and technical amendment consequential on the changes made by clauses 12 and 23.

Clause 27 **Section 99 (1), note**

This clause is a minor and technical amendment consequential on the changes made by clause 12.

Clause 28 **Section 99A (1), note**

This clause is a minor and technical amendment consequential on the changes made by clause 12.

Clause 29 **Section 99A (2) (b)**

This clause is a minor and technical amendment consequential on the changes made by clause 12.

Clause 30 **Section 99B (2), note**

This clause is a minor and technical amendment consequential on the changes made by clause 12.

Clause 31 **Section 102, note and 103 (5), note**

This clause is a minor and technical amendment consequential on the changes made by clauses 12 and 23.

Clause 32 **Section 103A, definition of *accreditation***

This clause is a minor and technical amendment to the definition of *accreditation* to clarify that accreditations issued under section 107 are for either accreditation as a driving instructor or a heavy vehicle assessor.

Clause 33 **New section 104 (1) (c) (iii)**

This clause clarifies that a person when applying for accreditation as a driving instructor can apply for accreditation to provide driver instruction only and does not also need to apply for accreditation to provide driver assessment.

Clause 34 **New section 104 (1) (d) (iii)**

This clause clarifies that if person only applies for accreditation to provide driver instruction not also driver assessment, they only need to demonstrate the skills required for providing driving instruction.

Clause 35 **New section 107 (2) (aa)**

This clause inserts that a certificate of accreditation must show if the accreditation is for driver instruction only and is consequential on the changes made by clauses 33 and 34.

Clause 36 **New section 107 (4)**

This clause clarifies that the road transport authority can approve an application for accreditation as a driving instructor for driving instruction only.

Clause 37 **Section 114 (1) (a)**

This clause is a minor and technical amendment consequential on the changes made by clause 12.

Clause 38 **Section 114A (2) (a)**

This clause is a minor and technical amendment to clarify that the offence of driving a vehicle that has a foot-operated accelerator on the passenger side does not apply to an authorised person providing driver assessment.

Clause 39 **Section 116**

This clause omits section 116 consequential on the changes made by clauses 12 and 47.

Clause 40 **Section 123 (5)**

This clause removes the reference to the relevant number or more demerit points and substitutes it with 4 or more demerit points, making the demerit point threshold for a learner or provisional licence holder 4 demerit points. This is reduction for learner drivers from the current threshold of 12 demerit points.

Clause 41 **Section 123 (7), definition of *relevant number***

This clause omits the definition of *relevant number* consequential on the changes made by clause 40 and removes references to increasing a person's demerit point threshold as a result of age and tenure or completion of an approved provisional driver training course.

There is no road safety evidence for increasing demerit point thresholds based on age and tenure or completion of an approved provisional driver training course. Evidence shows the need for swift, certain and severe sanctions to deter high risk driving behaviours among young and novice drivers. Given that provisional drivers and riders are high risk road users, featuring significantly in crash data, any opportunity to increase the provisional demerit point threshold has been removed.

Clause 42 **Section 124 (1)**

This clause removes the reference to the relevant number or more demerit points and substitutes it with 4 or more demerit points, making the demerit point threshold for a learner or provisional licence holder 4 demerit points. This is reduction for learner drivers from the current threshold of 12 demerit points.

Clause 43 **Section 124 (5), definition of *relevant number***

This clause omits the definition of *relevant number*, consequential on the changes made by clause 42 and removes references to increasing a person's demerit point threshold as a result of age and tenure or completion of an approved provisional driver training course.

There is no road safety evidence for increasing demerit point thresholds based on age and tenure or completion of an approved provisional driver training course. Evidence shows the need for swift, certain and severe sanctions to deter high risk driving behaviours among young and novice drivers. Given that provisional drivers and riders are high risk road users, featuring significantly in crash data, any opportunity to increase the provisional demerit point threshold has been removed.

Clause 44 **Section 125 (3)**

This clause removes the reference to the relevant number or more demerit points and substitutes it with 4 or more demerit points and is consequential on the changes made by clauses 41 and 43.

Clause 45 **Section 125 (3), example 1**

This clause is a minor and technical amendment consequential on the changes made by clauses 40 and 42.

Clause 46 **Section 126 (2)**

This clause is a minor and technical amendment consequential on the changes made by clause 12.

Clause 47 **New section 138C**

This clause inserts a new offence. A person who makes a record of, or purports to verify, the successful completion of all or part of an eligibility requirement for a licence and the record or purported verification is false, misleading or incomplete in a material particular, commits an offence. The maximum penalty for this offence is 20 penalty units. This amendment is consequential on the changes made by clauses 12 and 39. This offence replaces the offences in the pre-amendment regulation relating to completion of learner driver logbooks by driving instructors or authorised persons.

Clause 48 **New part 11**

This clause inserts new Part 11 which contains the transitional arrangements necessary to support the smooth transition from the current scheme to the new scheme.

The transitional provisions:

- a. Preserve the current licensing scheme for persons who hold a learner or provisional licence prior to 1 January 2020 for that licence. A current learner will proceed to the new provisional licence conditions if issued with a provisional licence after 1 January 2020.

For example, if a person holds a learner licence issued prior to 1 January 2020, the person will not move into the new scheme until the person obtains a provisional licence or renews their learner licence. The person will not be required to wait 12 months to apply for a provisional licence, nor complete the required driving hours or Hazard Perception Test. However, once the person obtains a provisional licence, the person will be subject to the new requirements for provisional drivers.

If a person renews their learner licence after 1 January 2020, the person will be subject to the new learner requirements with recognition of any competencies achieved and associated hours of driving experience.

- b. Preserve the validity of pre-learner training courses completed before 1 January 2020.
- c. Preserve current training course provider approvals for pre-learner and pre-provisional rider training courses and heavy vehicle driver training courses.
- d. Preserve current pre-learner licence training course provider approvals for a maximum period of 12 months to allow time to transition providers to the new application and approval process.

Section 172 Definitions—pt 11

Section 172 inserts definitions of *commencement day*, *old licence* and *pre-amendment regulation* for Part 11. *Commencement day* is the day this Regulation commences. An *old licence* is a learner or provisional licence in force immediately before the commencement day but does not include a learner or provisional licence that was in force before the commencement day but was renewed on or after the commencement day. *Pre-amendment regulation* means the *Road Transport (Driver Licensing) Regulation 2000*, as in force immediately before the commencement of this Regulation.

Section 173 Eligibility to apply for learner licence—s 16

Section 173 applies to a person who applies for a learner licence on or after the commencement day and ensures that a person who successfully completed an approved road ready training course under the pre-amendment regulation is taken to have completed an approved pre-learner licence training course for the purpose of the eligibility requirements to be issued with a learner licence contained in section 16 of this Regulation.

Section 174 Eligibility to apply for provisional licence—s 22

Section 174 applies to a person who holds an old licence (learner licence) and applies for a provisional licence after the commencement of this Regulation. It provides that

such a person's eligibility requirements for a provisional car licence are the requirements under the pre-amendment regulation. The person's provisional licence will be issued subject to the new conditions introduced in clause 12.

Section 175 Old provisional licence holders not subject to P1 licence conditions

Section 175 provides that a person who holds a provisional licence on or after the commencement day, that is they currently have a provisional licence, their licence is not subject to the P1 conditions introduced by clause 12. It provides that such a provisional licence holder can display green p-plates rather than the pre-amendment regulation requirement to display red p-plates to enable them to be differentiated from provisional licence holders who are subject to the new P1 conditions. It also provides that if you are a provisional licence holder now who meets the exemptions in the pre-amendment regulation from displaying p-plates you retain that exemption. Current provisional licence holders who are exempt from displaying p-plates immediately before commencement day are not required to put p-plates back on after commencement day.

Section 176 Pre-learner licence training course providers

Section 176 provides that a course provider approved under section 26 (1) (a) of the pre-amendment regulation is from commencement day taken to be an approved provider under section 15 of a pre-learner licence training course for 12 months unless that approval is repealed earlier.

Section 177 Applications for driver training course approvals—s 15

Section 177 provides that the road transport authority need not consider applications for approval to provide a learner driver training course under section 15 of this Regulation before 1 February 2020. This is to provide time for the new application process to be implemented.

It also provides that the road transport authority need not consider applications for approval to provide a pre-learner licence training course under section 15 of this Regulation before 1 June 2020. This is to provide time for the new application process to be implemented and the new pre-learner licence training course content to be finalised.

Section 178 Training course providers

Section 178 provides that a course approved under section 26 of the pre-amendment regulation as a rider training course (pre-learner and pre-provisional) or a heavy vehicle driver training course is taken, on commencement day, to be approval under section 15 of this Regulation.

Section 179 Renewal of learner licence—s 85

Section 179 applies to a person who applies for renewal of an old learner licence on or after 1 January 2020. It provides that a person who applies to renew a learner licence issued before 1 January 2020 on or after 1 January 2020, and has completed an approved road ready training course within the 2-year period before the day the

application is made satisfies that requirement for renewal of the learner licence. Any person who renews their learner licence on or after 1 January 2020 will need to satisfy the new eligibility requirements for a provisional licence. The road transport authority will recognise any competencies or driving hours completed under the old licence.

Section 180 Renewal of provisional licence—s 85

Section 180 applies to a person who applies for renewal of an old provisional car licence on or after 1 January 2020. It provides that the renewed licence will be subject to the P1 licence conditions if the person is younger than 25 years old at the time the licence is renewed. If the person is 25 years or older at the time the licence is renewed the renewed licence will be subject to the P2 licence conditions.

Section 181 Demerit points and old licences

Section 181 applies to a person who holds an old licence and retains for those licence holders the pre-amendment regulation demerit point threshold.

Section 182 Expiry—pt 11

Section 182 provides that Part 11 expires 4 years after the commencement of this Regulation.

Clause 49 Dictionary, definition of *approved heavy vehicle driver training course*

This clause substitutes the definition of *approved heavy vehicle driver training course* consequential on the changes made by clause 12.

Clause 50 Dictionary, new definitions

This clause inserts new definitions of *approved learner licence training course* and *approved pre-learner licence training course* consequential on the changes made by clause 12. It also recognises that a pre-learner licence training course provided as part of the year 10 curriculum is an approved pre-learner training course. This is to prevent schools needing to be approved course providers under new section 15.

Clause 51 Dictionary, definition of *approved pre-learner rider training course*

This clause substitutes the definition of *approved pre-learner rider training course* consequential on the changes made by clause 12.

Clause 52 Dictionary, definition of *approved pre-provisional rider training course*

This clause substitutes the definition of *approved pre-provisional rider training course* consequential on the changes made by clause 12.

Clause 53 Dictionary, definition of *approved provisional driver training course*

This clause omits the definition of *approved provisional driver training course* consequential on the changes made by clause 12.

Clause 54 **Dictionary, definition of *approved road ready training course***

This clause omits the definition of *approved road ready training course* consequential on the changes made by clauses 12 and 50.

Clause 55 **Dictionary, definition of *authorised medical reviewer***

This clause omits the reference to section 15A in the definition of *authorised medical reviewer* and substitutes it with a reference to section 78B consequential on the changes made by clause 23.

Clause 56 **Dictionary, new definition of *competency-based driver assessment***

This clause inserts a definition of *competency-based driver assessment* consequential on the changes made by clause 12.

Clause 57 **Dictionary, definition of *driver assessment*, paragraph (a)**

This clause amends the definition of *driver assessment* to clarify that driver assessment can be undertaken either by a driving instructor or an authorised person consequential on the changes made by clause 12.

Clause 58 **Dictionary, new definition of *driving supervisor***

This clause inserts a new definition of *driving supervisor* consequential on the changes made by clause 12. This amendment clarifies that a driving supervisor includes a driving instructor.

Clause 59 **Dictionary, definition of *eligibility requirements***

This clause substitutes the definition of *eligibility requirements* consequential on the changes made by clause 12.

Clause 60 **Dictionary, new definition of *hazard perception test***

This clause inserts a definition of *hazard perception test* consequential on the changes made by clause 12.

Clause 61 **Dictionary, definition of *learner driver logbook***

This clause omits the definition of *learner driver logbook* consequential on the changes made by clauses 12 and 39.

Clause 62 **Dictionary, definition of *P-plate***

This clause substitutes the definition of *P-plate* to provide that a p-plate for a provisional car licence subject to P1 conditions is red on a white background and a p-plate for a provisional car licence subject to P2 conditions is green on a white background. A p-plate for a holder of a provisional motorcycle licence is red on a white background.

Clause 63 **Dictionary, new definitions**

This clause inserts definitions of *P1 licence conditions* and *P2 licence conditions* consequential on the changes made by clause 12.

Clause 64 **Dictionary, definition of *provisional licence requirement***

This clause omits the definition of *provisional licence requirement* consequential on the changes made by clause 59.

Clause 65 **Dictionary, definition of *required medical standards***

This clause omits the reference to section 15 in the definition of *required medical standards* and substitutes it with a reference to section 78A consequential on the changes made by clause 23.

Schedule 1 **Consequential amendments**

Part 1.1 **Road Transport (General)
Regulation 2000**

This part amends the *Road Transport (General) Regulation 2000* to make minor and technical amendments consequential on the changes made by clause 12.

Section 1.1 **Schedule 1, part 1.4, item 1, column 3**

This section substitutes the reference to road ready training course with a reference to pre-learner licence training course consequential on the changes made by clause 12.

Part 1.2 **Road Transport (Offences) Regulation 2005**

This part amends the *Road Transport (Offences) Regulation 2005* to incorporate the new offence and makes minor and technical amendments consequential on the changes made by clause 12.

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.

Schedule 1 of the *Road Transport (Offences) Regulation 2005*, lists the offences contained in each Act and Regulation that forms part of the road transport legislation. If an offence may be dealt with by an infringement notice, the schedule prescribes the infringement notice penalty amount that is payable. Part 1.6 of Schedule 1 relates to the *Road Transport (Driver Licensing) Regulation 2000*.

Section 1.2 **Schedule 1, part 1.6, new items 1A and 1B**

This section inserts new items 1A and 1B consequential on the changes made by clause 7.

Section 1.3 **Schedule 1, part 1.6, items 1 to 12**

This section substitutes items 1 to 12 consequential on the changes made by clause 12.

Section 1.4 **Schedule 1, part 1.6, item 13**

This section omits item 13 consequential on the changes made by clause 7 and is replaced by item 1A at section 1.2.

Section 1.5 **Schedule 1, part 1.6, item 14, column 2**

This section is a minor and technical amendment consequential on the changes made by clause 12.

Section 1.6 **Schedule 1, part 1.6, item 15, column 2**

This section is a minor and technical amendment consequential on the changes made by clause 12.

Section 1.7 **Schedule 1, part 1.6, item 16**

This section omits item 16 consequential on the changes made by clause 7 and is replaced by item 1B at section 1.2.

Section 1.8 **Schedule 1, part 1.6, item 21**

This section substitutes item 21 consequential on the changes made by clause 12.

This section also sets the infringement notice penalty and demerit points for the offence of driving a motor vehicle between 11pm and 5am with more than one peer-aged passenger. The infringement notice penalty is set at \$480 which is consistent with that for using your mobile device to make a call on the basis that these offences are both about driver distraction.

The *Guide for Framing Offences* provides that infringement notice penalties should not be more than 20% of the maximum possible court-imposed penalty. The reasoning for the long-standing policy decision that an infringement notice should not exceed 20% of the maximum fine stipulated in the offence is to:

- Ensure that the infringement notice amount is a sufficient incentive for a person to forego their right to a trial and avoid using up valuable court time and resources
- Minimise the harm to innocent recipients who decide to pay the notice, irrespective of whether they believe they are innocent.

The infringement notice penalty is not more than 20% of the maximum possible court-imposed penalty for this offence.

The offence also comes with 3 demerit points. Demerit points are designed to encourage drivers to be more careful and are used to deter drivers from non-compliance with road transport laws. Demerit points have been found to be a strong deterrent to poor driving behaviour.