

Road Transport (General) (COVID-19 Emergency Response) Application Order 2021 (No 1)

Disallowable instrument DI2021-222

made under the

Road Transport (General) Act 1999, section 14 (Application orders and emergency orders)

EXPLANATORY STATEMENT

This instrument is made under section 14 of the *Road Transport (General) Act 1999* (the Act).

Section 14 (1) allows the Minister to order that the operation of regulations made under the road transport legislation, or a provision of such regulations, is suspended for a stated period or varied in the way stated in the order.

An order under subsection (1) is a disallowable instrument.

Road transport legislation is defined in section 6 of the Act and includes any other Act or any regulation prescribed by regulation.

The *Road Transport (Vehicle Registration) Regulation 2000*, *Road Transport (Driver Licensing) Regulation 2000* and *Road Transport (Offences) Regulation 2005* form part of the road transport legislation.

This instrument orders that sections of the *Road Transport (Vehicle Registration) Regulation 2000*, *Road Transport (Driver Licensing) Regulation 2000* and the *Road Transport (Offences) Regulation 2005* are varied in response to the current emergency.

BACKGROUND

On 30 January 2020, the Director-General of the World Health Organisation (WHO) declared the outbreak of COVID-19 a Public Health Emergency of International Concern. On 11 March 2020, the Director-General of the WHO declared COVID-19 a global pandemic. The WHO requested that every country urgently take necessary measures to ready emergency response systems.

On 16 March 2020, the Minister for Health declared a public health emergency under section 119 of the *Public Health Act 1997* (the Public Health Act) due to the public health risk to the ACT community posed by COVID-19. The emergency declaration has since been extended a number of times.

From 5pm on 12 August 2021, the ACT went into lockdown restrictions to contain the spread of COVID-19 and reduce its risk to the health of Canberrans. The lockdown restrictions require all Canberrans to stay home and leave only for essential reasons. The lockdown restrictions remain in effect until midnight Friday 17 September 2021 and may be extended if required.

This instrument orders that various sections of the *Road Transport (Vehicle Registration) Regulation 2000*, *Road Transport (Driver Licensing) Regulation 2000* and the *Road Transport (Offences) Regulation 2005* are varied to ensure members of the community are not disadvantaged at this time due to the necessary suspension of Government and other Services.

RETROSPECTIVITY

Various elements of the instrument will apply retrospectively and remain in effect until the instrument expires on 31 March 2022, or when it is revoked, whichever is earlier. The expiry date of 31 March 2022 aligns with the expiry date of the *Road Transport (Driver Licensing) Amendment Regulation 2020 (No 1)* (SL2020-14), which came into effect at the start of the COVID-19 response.

The retrospective application is in the most part non-prejudicial and is necessary to ensure that people are not disadvantaged at this time due to the necessary suspension of Government and other Services.

HUMAN RIGHTS IMPLICATIONS

The instrument does not engage any human rights set out in the *Human Rights Act 2004*.

CLIMATE CHANGE IMPLICATIONS

There are no climate change implications associated with this instrument.

CLAUSE NOTES

Part 1 Preliminary

Clause 1 Name of instrument

This clause specifies the name of the instrument. This clause provides that the instrument may be cited as the *Road Transport (General) (COVID-19 Emergency Response) Application Order 2021 (No 1)*.

Clause 2 Commencement

This clause provides that the instrument commences on the day after notification.

As outlined above and in the clause notes below, certain orders contained in this instrument will have retrospective application to ensure that members of the community are not disadvantaged as a result of the cessation of certain services.

Clause 3 Expiry

This clause states that this instrument expires on 31 March 2022, or if revoked earlier, when it is revoked.

Part 2 Road Transport (Driver Licensing) Regulation 2000

This part contains orders that the operation of *the Road Transport (Driver Licensing Regulation) 2000* or provisions of the *Road Transport (Driver Licensing) Regulation 2000* are varied in the way stated in the order.

Clause 4 Eligibility to apply for learner licence—s 16 (2) (b) (i)

Under section 16 of the *Road Transport (Driver Licensing) Regulation 2000*, a person must successfully complete a pre-learner rider training course within the 1-month period before the day the person applies for a learner motorcycle licence.

This clause orders that from and including 12 August 2021, section 16 of the *Road Transport (Driver Licensing) Regulation 2000* is varied to extend the period in which a person must complete an approved pre-learner rider training course from 1 month to 3 months.

This additional timeframe will ease the pressure on Government services once these services recommence and ensure applicants do not have to undergo these training courses again once these services recommence.

Clause 5 Duration of learner licences—new s 18 (4A) and (4B)

Section 18 of the *Road Transport (Driver Licensing) Regulation 2000* provides for the duration of learner licences. Under subsection (1), a learner motorcycle licence has a duration of 1 year.

This clause applies from and including 9 August 2021 and orders that section 18 of the *Road Transport (Driver Licensing) Regulation 2000* is varied by inserting new subsections (4A) and (4B) to provide that a learner motorcycle licence that expires between 9 August 2021 and 31 January 2022, will now expire 6 months after the day of the licence's original expiry.

This clause ensures these learner motorcycle licence holders are not disadvantaged because of the lockdown and cessation of certain services. This approach mirrors the approach taken in the *Road Transport (Driver Licensing) Amendment Regulation 2020 (No 1)* to learner motorcycle licences at the beginning of the COVID-19 response.

Clause 6 Eligibility to apply for provisional licence—s 22 (2) (c)

Successful completion of a pre-provisional rider training course is required within the 1-month period before the day the person applies for a provisional motorcycle licence under section 22 of the *Road Transport (Driver Licensing) Regulation 2000*.

This clause orders that from and including 12 August 2021, section 22 (2) (c) of the *Road Transport (Driver Licensing) Regulation 2000* is varied to extend the period in which a person must complete an approved pre-provisional rider training course from 1 month to 3 months.

This additional timeframe will ease the pressure on Government services once these services recommence and ensure applicants do not have to undergo these training courses again once these services recommence.

Clause 7 Extension of renewal time for learner motorcycle licence—s 85A

This clause makes a technical amendment consequential on the changes at clause 5 by inserting a new subsections (2A) and (2B) that provide that a person who has had their learner motorcycle licence period extended under clause 5, also has the requirement in relation to when they must have completed an approved road ready training course extended from 3 year to 3 years and 6 months.

Clause 8 Meaning of *automatic disqualifying circumstance*—s 91 (a) and (b)

This clause makes a technical amendment consequential on the changes at clause 9. This clause orders that from and including 12 August 2021, the timeframes in section 91 (a) and (b) are amended to align with the extended timeframes in sections 92 (2) and (3) made by clause 9.

Clause 9 Non-ACT licence holders to hold driver licence in certain circumstances—s 92 (2) and (3)

Section 92 of the *Road Transport (Driver Licensing) Regulation 2000* provides that the period for which holders of a non-ACT driver licence (e.g. interstate licence holders, holders of an external territory licence, New Zealand citizens) and foreign driver licence holders can drive on ACT roads on their non-ACT or foreign driver licence is 3 months.

Section 31 of the *Road Transport (Driver Licensing) Act 1999* makes it an offence to drive a vehicle in the ACT unless that person is the holder of an Australian driver licence that authorises the person to drive a motor vehicle of that kind. Exemptions to this offence are found under division 6.2 of the *Road Transport (Driver Licensing) Regulation 2000*. Section 94 of this Regulation exempts a holder of a foreign driver licence from holding an Australian driver licence while driving on a road or road related area in the ACT, a motor vehicle of the kind that the licence held by the person authorises the person to drive. A person ceases to be exempted under section 94 (2) of this Regulation if an automatic disqualification circumstance applies.

Section 91 (a) and (b) of this Regulation provides that an automatic disqualifying circumstance applies to a holder of an interstate or foreign driver licence who resides in the ACT for a continuous period of longer than three months.

This clause orders that from and including 12 August 2021, the period a person can drive on ACT roads on their interstate, external territory driver licence, New Zealand licence or foreign driver licence is extended from 3 months to 6 months.

This clause ensures that these licence holders are not disadvantaged as a result of driving assessments and Government Services being temporarily suspended and to allow for timely processing of these assessments once they resume.

Clause 10 Old learner licence—extension of duration—s 172A

Since 1 January 2020, any person who has renewed their learner licence has transitioned to the new ACT driver licensing scheme for learner and provisional drivers that commenced on that day and must satisfy any new eligibility requirements for a provisional licence.

Last year, the period for which learner licences issued prior to 1 January 2020 but expiring after was extended by 12 months in response to COVID-19.

This clause preserves the old licensing scheme for a person who holds a learner licence issued under the pre-amendment regulation (i.e. a licence issued before 1 January 2020) that expires between 9 August 2021 and 31 January 2022 for an additional 6 months.

Clause 11 Renewal of learner licence—s 179 (2)

This clause makes a technical amendment consequential on the changes at clause 10 by varying section 179 (2) to provide that a person who has had their learner car licence period

extended under clause 10, also has the requirement in relation to when they must have completed an approved road ready training course extended from 3 year to 3 years and 6 months.

Part 3 Road Transport (Offences) Regulation 2005

This part contains orders that provisions of the *Road Transport (Offences) Regulation 2005* are varied in the way stated in the order.

Clause 12 Infringement notices for offence detected by traffic offence detection device—time of service—s 13

Section 13 of the *Road Transport (Offences) Regulation 2005* provides that an infringement notice for an offence detected by a traffic offence detection device must be served on a responsible person for the vehicle involved in the offence within 28 days after the day the offence was committed.

This clause orders that for any infringement notices issued under this section on or after the instrument's notification day, section 13 of the *Road Transport (Offences) Regulation 2005* is varied to extend the time in which an infringement notice for an offence detected by a traffic offence detection device must be served on a responsible person for the vehicle involved in the offence from 28 days to 45 days.

The extension of time is required to address operational issues relating to the processing and posting of infringement notices and expected delays in infringement notices being posted out by the third party engaged by the ACT Government for that purpose.

Clause 13 Application for plan allowing participation in approved program—s 16G (2) (b)

Section 16G of the *Road Transport (Offences) Regulation 2005* provides that a person who applies to the administering authority for an infringement notice management plan through participation in an approved community work or social development program, must attach a written statement from the provider of the program that states there is a place for the person in the approved community work or social development program in the 3-month period after the day the statement is made.

This clause orders that from and including 12 August 2021, section 16G (2) of the *Road Transport (Offences) Regulation 2005* is varied to extend the timeframe in which a place in an approved community work or social development program is available from 3 months to 6 months.

This clause mirrors similar measures taken in 2020 to support previous lockdown impacts and ensures people can still apply for an infringement notice management plan that allows for participation in an approved community work or social development program within the timeframe required to respond to a road transport infringement notice.

Part 4 Road Transport (Vehicle Registration) Regulation 2000

This part contains orders that provisions of the *Road Transport (Vehicle Registration) Regulation 2000* are varied in the way stated in the order.

Clause 14 Issue of certificates of inspection etc—s 146 (3)

This clause orders that from and including 12 August 2021, section 146 (3) of the *Road Transport (Vehicle Registration) Regulation 2000* is varied to extend the timeframe in which a certificate of inspection is in force from 1 month to 3 months.

Certain vehicles may require an inspection by an authorised examiner under the *Road Transport (Vehicle Registration) Regulation 2000* before the vehicle can be registered under the *Road Transport (Vehicle Registration) Act 1999*. Where a vehicle is inspected or tested by an authorised examiner, the authorised examiner must issue a certificate of inspection for the vehicle under section 146 of the *Road Transport (Vehicle Registration) Regulation 2000*.

Under section 146 (3) of the *Road Transport (Vehicle Registration) Regulation 2000*, the timeframe in which a certificate of inspection for a vehicle is in force is 1 month.

During the lockdown, all Access Canberra Service Centres and the Access Canberra Motor Vehicle Inspection Station are closed or partially operating.

This clause ensures that applicants do not need to obtain another certificate of inspection to support registration transactions that are unable to be completed within a month of obtaining a certificate of inspection. This approach also mirrors previous measures put in place in 2020.