

Road Transport (General) Exclusion of Road Transport Legislation (Summernats) Declaration 2021 (No 1)

Disallowable instrument DI2021— 289

made under the

Road Transport (General) Act 1999, section 13 (Power to exclude vehicles, persons or animals from road transport legislation)

EXPLANATORY STATEMENT

Section 13 (1) of the *Road Transport (General) Act 1999* (the Act) provides that the Minister may declare that the road transport legislation, or a provision of the road transport legislation, does not apply to a vehicle, person or animal in a place or circumstance stated in the declaration. Subsection 13 (3) of the Act makes such a declaration a disallowable instrument.

The Summernats 34 Car Festival 2022 (Summernats 34) is to be held at Exhibition Park in Canberra (EPIC) from 6 January 2022 to 9 January 2022 (inclusive). The event consists of a number of competitive motor vehicle events, including burnouts, horsepower performance tests, speed tests and driving skills contests. The vehicles competing in these events may be highly modified registered or unregistered vehicles which, due to their modifications, may be unable to comply with Australian Vehicle Standards or Australian Design Rules or be operated by interstate drivers with high powered vehicle restrictions on their interstate driver licence.

This Instrument contains four declarations under section 13 (1) to support Summernats 34. These are:

- Clause 3- disapplying section 5B of the *Road Transport (Safety and Traffic Management) Act 1999*;
- Clause 4- disapplying the *Motor Accident Injuries Act 2019*;
- Clause 5- disapplying provisions of the *Road Transport (Vehicle Registration) Act 1999* and *Road Transport (Vehicle Registration) Regulation 2000*; and
- Clause 6- disapplying section 60 of the *Road Transport (Driver Licensing) Regulation 2000*.

This Declaration is a disallowable instrument and must be presented to the Legislative Assembly within 6 sitting days after its notification pursuant to Section 64 of the *Legislation Act 2001*.

Human rights implications

During the development of this Instrument, due regard was given to its effect and the operation of Summernats 34 in relation to the 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.

Section 13 of the HRA provides a right for people to move freely within the ACT.

The declarations in this Instrument do not of themselves restrict a person's freedom of movement within the Territory, however the operation of the event in closing parts of EPIC in which Summernats 34 will be conducted to members of the public will restrict the free movement of people in that area of the Territory during the event.

As parts of the road transport legislation are being disapplied for Summernats 34 to operate as intended, highly modified vehicles will be travelling in parts of EPIC in a manner not consistent with the road rules. As such, the restriction on the free movement of people in parts of EPIC at those times is considered reasonable and proportionate to ensure safety of non-participants and represents the least restrictive approach that enables the event to proceed.

Climate change implications

An Environmental Authorisation issued to EPIC by the Environment Protection Authority (EPA) will be in place for the Summernats 34.

Clause notes

Clause 1 is a formal provision that provides for the name of the instrument.

Clause 2 explains when the specific clauses of the instrument commence.

Although the event officially begins on 6 January 2022, the instrument (other than clause 3) commences on 5 January 2022, when some entrants may arrive.

Clause 3 of the instrument commences on 6 January 2022, when the event officially begins.

Clause 3 provides that section 5B of the *Road Transport (Safety and Traffic Management) Act 1999* does not apply to a designated vehicle while being used in the drifting area and the power skid area declared in Schedule 2 of the instrument beginning on a drifting official or power skid official declaring the drifting course or power skid course ‘active’ and ending on a drifting official or power skid official declaring the drifting course or power skid course ‘inactive’.

Designated vehicle is defined in Clause 8 and means a registered entrant motor vehicle, a registered promotional vehicle, an unidentified motor vehicle and an uninsured motor vehicle.

It remains an offence to improperly use a motor vehicle within EPIC outside the drifting area and the power skid area declared in Schedule 2 of the Instrument. Vehicles involved in the event in any other capacity (e.g. service or trader vehicles) are unaffected by the declaration and required to comply with the road transport legislation.

Clause 4 provides that the *Motor Accident Injuries Act 2019* does not apply to a designated vehicle, or a motor vehicle involved in a motor accident with a designated vehicle within the declared area.

The event is held under the auspices of Motorsport Australia. The Motorsport Australia insurance policy provides up to \$100 million of general liability cover for any one occurrence, subject to the terms, conditions and limitations of their insurance policy. In particular, the Motorsport Australia policy excludes participant-to-participant claims for drivers, entrants or crew in participating vehicles. However, this policy does not operate where *Motor Accident Injuries Act 2019* insurance is in force, except where specifically excluded by law. The Motorsport Australia liability insurance will assume responsibility for any property damage or personal injury claims result that may arise within the declared area during the event.

Declared area, is defined by Clause 8 and means the area of EPIC enclosed by the fence outlined in Schedule 1.

Clause 5 provides that specified provisions of the *Road Transport (Vehicle Registration) Act 1999* and the *Road Transport (Vehicle Registration) Regulation 2000* will not apply to a relevant vehicle within the declared area.

Relevant vehicle is defined by Clause 8 and means an entrant motor vehicle or a promotional vehicle.

Clause 5 is necessary because some vehicles participating in Summernats 34 will not be registered as they cannot meet Australian Vehicle Standards or Australian Design Rules (e.g. motorised bathtubs and drag cars). Other competing vehicles, although registered (having complied with registration requirements at the time of registration), have been subsequently modified to the point where they no longer comply with the Australian Vehicle Standards or Australian Design Rules. It is an offence to operate these non-complying vehicles on a road or road related area. Clause 5 therefore enables these vehicles to participate lawfully in the event within EPIC. All participating vehicles are subject to a vehicle safety inspection by Summernats officials prior to being permitted to enter the grounds of EPIC.

Clause 6 provides that section 60 of the *Road Transport (Driver Licensing) Regulation 2000* does not apply within the declared area.

It is an offence for interstate drivers who have a high-powered vehicle restriction on their driver licence to operate a high-powered vehicle on a road or road related area under ACT road transport legislation. To enable these drivers to participate lawfully in Summernats 34, Clause 6 has the effect of excluding the application of section 60 of the *Road Transport (Driver Licensing) Regulation 2000* within the declared area.

This Clause will not disapply section 60 of the *Road Transport (Driver Licensing) Regulation 2000* outside of the declared area.

Clause 7 includes a note that references to an Act in this instrument includes a reference to the statutory instruments made or in force under the Act including any regulation.

Clause 8 contains definitions of terms used in the Instrument.

Clause 9 provides for the expiry of the specific clauses in the Instrument.

Although Summernats 34 officially ends on 9 January 2022, the Instrument (other than clause 3) expires at midday on 10 January 2022 to allow sufficient time for the departure of entrants' vehicles after the formal end of the event.

Clause 3 expires at 6:00 pm on 9 January 2022 when the event officially ends.

Schedule 1 and **Schedule 2** provides maps that define declared areas, declared drifting areas and declared power skid areas referenced in the Instrument and within which the Instrument has effect.