

Australian Capital Territory

Road Transport (Offences) Amendment Regulation 2023 (No 1)

Subordinate law SL2023-12

made under the

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 increase infringement notice penalty amounts for most offences under the road transport legislation and to correct a typographical error in the existing regulation.

Overview

This Regulation amends the following road transport legislation:

- *Road Transport (Offences) Regulation 2005* (the offences regulation)

The authority to make this Regulation is contained in:

- sections 23 and 233 of the *Road Transport (General) 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 Act and prescribe offences for contravention of a regulation.

Schedule 1 of the *Road Transport (Offences) Regulation 2005* (the offences regulation) lists the offences contained in each Act and Regulation that form part of the road transport legislation. If an offence may be dealt with by infringement notice, the schedule prescribes the infringement notice penalty amount that is payable. Most

road transport infringement notice penalties other than those relating to parking offences and offences against the *Heavy Vehicle National Law (ACT)* (HVNL) include a component, not identified separately, accounting for the Victim Services Levy (VSL) applicable to the offence. The VSL is currently set at \$60.

Most infringement notice penalties, excluding the amount of the VSL, are being increased by the estimated 2022-23 Wage Price Index (WPI) of 3.75%.

The reason for indexation of infringement penalty amounts is to maintain the value of those penalties in real terms in order to preserve their deterrent effect. Any variation to that indexation is outlined below.

Government policy is that, in general, the infringement notice penalty for an offence should not exceed 20% of the maximum fine that may be imposed by a court for that offence (the 20% limit). The 20% limit is based on the existing penalty unit amount of \$160 for an offence committed by an individual.

Where an existing infringement notice penalty is not approaching the 20% limit the indexation has been undertaken by deducting \$60 from the existing infringement penalty amount, indexing that amount by 3.75% and then adding \$60.

Where an existing infringement notice penalty amount is near the 20% limit the indexation has been undertaken by deducting \$60 from the existing infringement penalty amount, indexing that amount by 3.75%, applying the 20% limit and then adding the VSL amount of \$60.

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

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

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

For offences against the *Heavy Vehicle National Law (HVNL)*, maximum court-imposed penalties and infringement penalty amounts are indexed by provisions of the HVNL and the *Heavy Vehicle (General) National Regulation (NSW)* and published on the National Heavy Vehicles Regulator's (NHVR's) website. This amendment regulation does not adjust those amounts and the offences regulation directs readers to the NHVR's website.

The child rate infringement notice penalty amounts of \$75 for public passenger ticketing and conduct offences under the *Road Transport (Public Passenger Services) Regulation 2002* have not been increased. This amount continues to represent an appropriate deterrence for these offences.

The infringement penalty amount relating to section 236 (4A) of the *Road Transport (Road Rules) Regulation 2017* about pedestrians engaging in commercial activities, such as window washing, at designated intersections has not been increased. This

amount continues to represent an appropriate deterrence for these offences. Infringement penalty amounts for items 1 to 4 of Part 1.12 about races, attempts to break speed records, speed and acceleration trials and trials intended to test the skill of a driver or reliability of a vehicle without approval from the road transport authority are not increased by this regulation.

Items 10 to 29 of Part 1.12 are not included in the amendment regulation as the offences for these items either do not have an infringement notice penalty or the existing infringement notice penalty is at a level that does not result in an increase under the indexation protocols for annual adjustments of infringement notice penalties.

A correction of a typographical error in the existing regulation has also been made to the short description in column 3, in relation to stopping in a parking area for charging electric powered vehicles at item 278 in part 1.12A replacing “changing” with “charging”.

No other amendments have been made by the amendment 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).

The offences regulation does not, of itself, impose restrictions or limitations on a person’s human rights. The proposed amendments to the offences regulation increase most infringement notice penalty amounts under the road transport legislation to maintain the value of those penalties in real terms and preserve their deterrence effect. The amendments do not change the infringement notice arrangements under the road transport legislation that offers people a choice of accepting a lesser penalty without admitting the offence or remaining liable for prosecution and diverts people away from the criminal justice system.

As such the amendments are not considered to be limiting any human rights.

Climate change implications

There are not considered to be any climate change implications arising from these amendments.

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 (Offences) Amendment Regulation 2023 (No 1)*.

Clause 2 Commencement

This clause provides that the regulation will commence on 1 July 2023.

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*.

Clause 4 Schedule 1, parts 1.2D to 1.11

This clause substitutes Schedule 1, parts 1.2D to 1.11 of the *Road Transport (Offences) Regulation 2005*.

Clause 5 Schedule 1, part 1.12, items 5 to 9

This clause substitutes Schedule 1, part 1.12, items 5 to 9 of the *Road Transport (Offences) Regulation 2005*.

Clause 6 Schedule 1, parts 1.12A to 1.15

This clause substitutes Schedule 1, parts 1.12A to 1.15 of the *Road Transport (Offences) Regulation 2005*.