

ROAD SAFETY LEGISLATION AMENDMENT REGULATION 2024 (No 1)

Subordinate law SL2024-11

made under the *Road Transport (Driver Licensing) Act 1999*, the *Road Transport (General) Act 1999*, the *Road Transport (Safety and Traffic Management) Act 1999* and the *Road Transport (Vehicle Registration) Act 1999*.

EXPLANATORY STATEMENT

PURPOSE OF THE REGULATION

The purpose of the Regulation is to improve road safety and provide for traffic management in the ACT by amending the following regulations:

- *Road Transport (Driver Licensing) Regulation 2000*
- *Road Transport (General) Regulation 2000*
- *Road Transport (Offences) Regulation 2005*
- *Road Transport (Road Rules) Regulation 2017*
- *Road Transport (Vehicle Registration) Regulation 2000*

The amendments in this Regulation:

- Introduce a power to allow the Road Transport Authority (RTA) to issue Immediate Suspensions Notices (ISN) where road safety cameras capture vehicles travelling at speeds in excess of 45km/hr above the speed limit.
- Administrative amendments to delegations for National Heavy Vehicle Regulator (NHVR) officers.
- Update requirements for electric vehicle (EV) signage to reflect operational guidelines and introduce consistency with other jurisdictions.
- Administrative amendments to update the mechanism to cancel unregistered vehicle permits (UVPs).

Section 26 of the *Road Transport (Driver Licensing) Act 1999*, section 233 of the *Road Transport (General) Act 1999*, section 33 of the *Road Transport (Safety and Traffic Management) Act 1999* and section 13 of the *Road Transport (Vehicle Registration) Act 1999* gives the Executive the power to make regulations under that Act.

CONSULTATION ON THE PROPOSED APPROACH

Consultation has been undertaken with key Government stakeholders including the Chief Minister, Treasury and Economic Development Directorate (specifically Access Canberra and the Motor Accident Injuries Commission) and ACT Policing.

Amendment to EV signage aligns with ACT Government's Electric Vehicle Charging Infrastructure Operational Policy. Counterparts in all Australian jurisdictions have been broadly consulted for consistency in EV signage.

The NHVR has been consulted on amendments to delegations for NHVR officers.

CONSISTENCY WITH HUMAN RIGHTS

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 limitations on human rights in the Bill are proportionate and justified in the circumstances because they are the least restrictive means available to achieve road safety as it relates to dangerous driving.

Rights engaged

There are no human rights engaged with the amendment to electric vehicle signage.

There are no human rights engaged with the administrative amendment to the process for cancelling UVPs.

There are no human rights engaged with the administrative amendment to delegations for National Heavy Vehicle Regulator officers.

The Regulation as it relates to speeds 45km/hr in excess of the posted speed limit, could be seen to engage with, and promote, the right to life.

The Regulation as it relates to speeds 45km/hr in excess of the posted speed limit, could be seen to engage with, and place limitations on, the right to a fair trial under section 21 and rights in criminal proceedings under section 22 (1) of the HRA.

Rights Promoted

The rights promoted by the Bill include:

- Section 9 – Right to life

Right to life

Section 9 of the HRA provides that everyone has the right to life and to not have their life taken. The right to life includes a duty on government to take appropriate steps to protect the right to life.

The Government has a responsibility to maintain a robust regulatory framework which supports safe people and safe behaviours on ACT roads to protect the lives of road users. This includes pedestrians, motorcycle riders, cyclists and other vulnerable road users. The Bill promotes this right to life by improving the legal framework for dangerous driving offences, namely excessive speeding. The Bill ensures that penalties for excessive speeding in the ACT are commensurate with the road safety risk associated with this unsafe behaviour, act as a strong deterrent to dangerous driving, encourage safer decisions by drivers, and support behavioural change for offenders.

Rights Limited

The rights limited by the Bill include:

- Section 21- Right to a fair trial
- Section 22 – Rights in criminal proceedings

1. Nature of the right and the limitation (s28(a) and (c))

Right to a fair trial and Right to criminal proceedings

The amendments in the Bill further incorporate excessive speeding offences into the immediate suspension notice (ISN) framework. ISNs are issued where the RTA identifies, through images captured by a road safety camera, that a person has committed an immediate suspension offence and can lead to a person having their licence suspended for a set period without a court order.

ISNs limit the right to fair trial and rights in criminal proceedings as they are issued based on speed in excess of 45km/hr above the posted speed limit being captured by road safety cameras, and the driver accepts the penalty without a criminal charge being determined by a court. Therefore, the right to be presumed innocent until proven guilty is limited. As the offence is captured by road safety camera, the identity of the driver may not be ascertained and the ISN is issued to the registered operator of the vehicle. Where the registered operator of the vehicle was not the driver for the purposes of the offence, a declaration can be made to transfer liability to the offender.

2. Legitimate purpose (s28(b))

The purpose of the Regulation is to support public safety by addressing dangerous driving in the form of excessive speeding and its impact on road trauma.

High range speeding continues to be prevalent on ACT roads. From 2017-18 to 2021-22 a total of 455 drivers were charged with speeding in excess of 45km/hr by ACT Policing (an average of 91 per year). In 2021-22, 318 drivers were issued a traffic infringement notice for speeding in excess of 45km/hr by Access Canberra.

Speeding is also overrepresented in repeat road transport law offenders. People who have committed two or more high-range speeding offences (more than 30km/hr

above the speed limit) are more likely to have committed other driving offences and to have a criminal history.¹

There are significant public interest benefits that arise from ensuring that roads are safe for all road users. Appropriate enforcement actions against a person's driver licence are essential to ensuring that drivers who pose a risk are removed from ACT roads to minimise community harm.

3. Rational connection between the limitation and the purpose (s28(d))

Introducing ISNs for excessive speeding captured by road safety cameras acts as a tool to limit the capacity for a person to engage in further risky behaviour and endanger other road users by removing their right to drive on ACT roads. This supports the legitimate purpose of minimising risk to the community by ensuring that drivers who pose a risk are removed from ACT roads as soon as practicable.

Licence suspensions are designed to encourage safe and responsible driving. The stronger penalties that apply support the seriousness of the consequences of these behaviours.

Strengthening sanctions for high range speeding will protect all road users from the dangers posed by this behaviour, support a robust regulatory framework with penalties that are commensurate with the associated road safety risks, support behavioural change, and assist in educating offenders of the serious nature of the conduct.

4. Proportionality (s28 (e))

It is not considered that there are any less restrictive means reasonably available to achieve the purpose of this Regulation. A 90 day suspension notice is applied when offenders are caught by police at speeds in excess of 45km/hr over the speed limit. It is reasonable then that the same sanction (a 90 day ISN) also be applied to offenders caught committing such an offence by a fixed or mobile speed camera.

The suspension notice for offences captured through speed cameras will not be immediate, coming into effect only 28 days after the RTA issue the notice. This is to align with the payment, declaration of other driver, dispute, and withdrawal processes currently available to traffic infringements issued by the RTA. Offenders who successfully have the speeding infringement transferred to another driver, disputed, or withdrawn will not receive the corresponding suspension notice.

Where an ISN is applied, a person may then apply to the Courts for a stay of the suspension notice (refer section 61F of the RT (General) Act, noting that the court

¹Watson, B., Watson, A., Siskind, V., Fleiter, J., & Soole, D. (2015). Profiling high-range speeding offenders: Investigating criminal history, personal characteristics, traffic offences, and crash history. *Accident Analysis & Prevention*, 74, 87-96.

must not make an order staying the notice unless satisfied that exceptional circumstances justify doing so (refer to section 61F of the RT (General) Act).

Additional safeguards are provided under section 61B of the RT (General) Act, including that a notice ceases to have effect if stayed, or where the relevant proceedings are withdrawn, discontinued or otherwise finalised and, in any case, once 90 days have elapsed. However, where a police officer issues an immediate licence suspension, the existing regulatory framework allows for a person to seek a stay of the notice through the Courts. This framework promotes the right to a fair trial by allowing a person to seek a stay of the ISN.

Furthermore, an immediate suspension of a person's licence is considered reasonable and justified to achieve its legitimate purpose, given the significant risk to public safety associated with the relevant offences. Any lesser penalty would not sufficiently address the need for preventing further unsafe driving, providing a greater deterrence to prevent harms arising from offender behaviour and supporting behavioural change.

CLAUSE NOTES

Clause 1 Name of regulation

This regulation is the *Road Safety Legislation Amendment Regulation 2024 (No 1)*.

Clause 2 Commencement

Parts 1 and 5 of this regulation commence on the day after its notification day.

Part 2 commences on 1 January 2025.

Part 3, 4 and 6 commence on 1 July 2024.

Clause 3 Legislation amended

This regulation amends the *Road Transport (Driver Licensing) Regulation 2000*, *Road Transport (General) Regulation 2000*, *Road Transport (Offences) Regulation 2005*, *Road Transport (Road Rules) Regulation 2017* and the *Road Transport (Vehicle Registration) Regulation 2000*.

Clause 4 New section 87 (2A)

This clause introduces section 87 (2A) to the *Road Transport (Driver Licensing) Regulation 2000*. This section is in response to the amendment of Division 4.2 of the *Road Transport (General) Act 1999* in the *Road Safety Legislation Amendment Bill 2022* which sought to expand the offences that are subject to an immediate suspension offence issued by a police officer to include a driver speeding more than 45km/hr over the speed limit. This clause amends the road transport legislation to allow the immediate suspension offence to also be captured and issued by the RTA. The requirement for a driver to not drive at a speed over the speed limit is contained at section 20 of the *Road Transport (Road Rules) Regulation 2017*.

The intent of this amendment is to incorporate a stronger deterrent to address the prevalence of excessive speeding in the ACT, as ACT Policing continue to detect a high number of drivers travelling more than 45km/hr over the speed limit.

Clause 5 New section 88 (5A) and (5B)

This clause provides a mechanism to automatically revoke an immediate suspension notice issued under section 87 (2A) when the infringement notice for the infringement notice offence is withdrawn under section 35 or section 36 of the *Road Transport (General) Act 1999*. New section 88 (5B) provides that the road transport authority informs a person, in writing, where a notice is revoked under section 88 (5A).

Clause 6 Dictionary, note 4

This clause is an administrative amendment to include the term ‘infringement notice offence’ in the list of terms that are relevant to the *Road Transport (Road Rules) Regulation 2017* but are defined in the *Road Transport (General) Act 1999*.

Clause 7 New section 7A

This clause inserts new section 7A into the *Road Transport (General) Regulation 2000* to appoint NHVR authorised officers as authorised persons under the road transport legislation. Subsection 7A (2) limits the power of the NHVR authorised officer as an authorised person to circumstances involving a heavy vehicle and where the authorised officer first displays their heavy vehicle identity card issued under section 486 (1) of the *Heavy Vehicle National Law (ACT)* if it is reasonably practical in the circumstances.

NHVR authorised officers perform heavy vehicle on-road compliance and enforcement activities under the *Heavy Vehicle National Law (ACT)*. Appointing NHVR officers as authorised persons under the road transport legislation, enables the officer to also conduct heavy vehicle enforcement activities under ACT’s road transport legislation, such as driver licensing, registration and road rules enforcement.

This amendment supports NHVR’s flexible deployment strategy where authorised officers may move between participating Australian jurisdictions and addresses the administrative burden to appoint NHVR authorised officers as authorised persons in the ACT.

NHVR authorised officers have historically been appointed as authorised persons under the road transport legislation by the road transport authority and/or the chief police officer under section 19 (1) and 53A (1) of the *Road Transport (General) Act 1999*. This amendment removes the requirement for the ACT to appoint each NHVR authorised officer, as required, as an authorised person under the road transport legislation. This amendment also removes the requirement for the ACT to issue an identify card to the NHVR authorised officer.

This clause also defines the terms ‘authorised officer’, ‘heavy vehicle’ and ‘heavy vehicle identity card’ which apply to the new section 7A.

Clause 8 Section 4D, definition of identifying particulars, paragraph (a)

This clause amends the identifying particulars for police officers under section 4D of the *Road Transport (Offences) Regulation 2005*.

The amendment makes it clear that a police officer’s service number is an identifying particular for infringement notice offences and heavy vehicle infringement notice offences.

Clause 9 Section 4D, definition of identifying particulars, paragraph (c)

This clause amends the identifying particulars for NHVR authorised officers under section 4D of the *Road Transport (Offences) Regulation 2005*.

It supports the amendments in clause 7 to reduce the administrative burden to the ACT. The ACT will no longer issue an identification number to an authorised person who is an authorised officer under the *Heavy Vehicle National Law (ACT)*.

The amendment to section 4D provides that the NHVR authorised officer will use the identification number allocated to them under the *Heavy Vehicle National Law (ACT)*, section 486 (1), for infringement notice offences as well as heavy vehicle infringement notice offences.

Clause 10 Sections 9 and 10

This clause inserts NHVR authorised officers, who are appointed as authorised persons by clause 7, in section 9 and 10 of the *Road Transport (Offences) Regulation 2005*. In doing so, it authorises NHVR authorised officers to serve infringement notices and reminder notices (other than those relating to heavy vehicle infringement notices).

Clause 10 includes a clarifying note that NHVR authorised officers can only exercise a power of an authorised person if it involves a heavy vehicle, as prescribed by amendments in Clause 7.

Clause 11 Dictionary, new definition of *authorised officer*

This clause inserts the term ‘authorised officer’ in the dictionary to the *Road Transport (Offences) Regulation 2005*.

Clause 12 Section 203B (2), definition of *electric-powered vehicle parking sign*

This clause inserts an example electric-powered vehicle parking sign into section 203B (2) of the *Road Transport (Road Rules) Regulation 2017*.

Clause 13 Section 203C (2)

This clause amends the definitions relevant to electric-powered vehicle signage in section 203C (2) of the *Road Transport (Road Rules) Regulation 2017* to provide a clear visualisation to road users and to reflect the Electric Vehicle Charging Infrastructure Operational Policy.

Clause 14 Schedule 4

This clause amends the symbols and traffic-related items provided in Schedule 4 of the *Road Transport (Road Rules) Regulation 2017* relating to electric-powered vehicles for clarity of use, to reflect the Electric Vehicle Charging Infrastructure

Operational Policy, and to provide consistency with EV signage in other Australian jurisdictions.

Clause 15 Schedule 86 (3)

This clause amends section 86 (3) of the *Road Transport (Vehicle Registration) Regulation 2000* to provide for the expiration of an unregistered vehicle permit when the vehicle is registered or, if the vehicle is not registered, on the date stated on the permit.