

Australian Capital Territory

# Road Transport (Approval to participate in an approved Community Work or Social Development Program) Guidelines 2019 (No 1)

Notifiable instrument NI2019–567

made under the

*Road Transport (General) Act 1999, s31C (5) (Approved community work or social development program—responsible director-general’s agreement)*

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## 1 Name of instrument

This instrument is the *Road Transport (Approval to participate in an approved Community Work or Social Development Program) Guidelines 2019 (No 1)*

## 2 Commencement

This instrument commences on the day after it is notified.

## 3 Guidelines

I issue the guidelines for approving an application to participate in an approved community work or social development program contained at schedule 1 to this instrument.

## 5 Revocation

This instrument revokes the *Road Transport (Approval of Community Work or Social Development Program) Guidelines 2013 (No 1)* NI2013-232.

Richard Glenn

Acting Director General of the Justice and Community Safety Directorate as the responsible director-general

29 August 2019

Note: The responsible-director general is the Director-General of the Justice and Community Safety Directorate as the Directorate responsible for part 6.2 (Good behaviour-community service work) of the *Crimes (Sentence Administration) Act 2005* under the *Administrative Arrangements 2019 (No 1)*.

## Schedule 1

### OVERVIEW

The infringement notice management scheme for road transport offences in the ACT is established by Part 3 of the *Road Transport (General) Act 1999* and the *Road Transport (Offences) Regulation 2005*. Part 3 applies to all road transport infringement notice offences, for example, speeding, parking and conduct on public passenger services.

A person who receives an infringement notice can apply to participate in an approved community work or social development program as a means to pay the infringement notice penalty.

### APPLICATIONS TO UNDERTAKE A COMMUNITY WORK OR SOCIAL DEVELOPMENT PROGRAM

An application for participation in a community work or social development program notice must be made in accordance with section 16E of the *Road Transport (Offences) Regulation 2005*. Applications must be in writing and set out the person's financial circumstances and/or the person's relevant circumstances and include supporting documentation.

The application may be approved if satisfied on reasonable grounds that the applicant is suitable to participate in the program and it is justified because of:

- the financial circumstances of the applicant; and/or
- any relevant circumstances of the applicant.

#### *Suitable person to participate*

In determining whether an applicant is a suitable person to participate in the program, consideration is given to each applicant's individual circumstances and personal history, the appropriateness of the program applied to participate in and the likelihood of successful participation in that program.

#### *Financial Circumstances*

An applicant is considered to have relevant financial circumstances if they are unlikely to have the financial ability to pay the infringement notice penalty by entering into a payment by instalments infringement notice management plan. That is, they are unable to make the required minimum fortnightly instalment of \$10 (section 14EB of the *Road Transport (Offences) Regulation 2005*).

Evidence to support an application includes that the person is in receipt of a Centrelink benefit (statement from Centrelink), does not possess substantial assets, their household income per fortnight is not sufficient to meet the minimum instalment management plan payment (payslips, bank statements), the person has significant and unavoidable expenses, for example, large medical bills (invoices, Medicare

statements). Any amount a person is required to pay in child support (Child Support Agency statement) should be deducted from his or her pre-tax income.

Income includes but is not limited to, wages, pensions or benefits, allowances, interest on investment or other financial support (for example, support from a family member).

The Law and Justice Foundation undertook a survey in 2012 to assess the legal needs of Australia and found that sixty-seven (67) per cent of people with a disability aged 15 years or over are financially disadvantaged. Applying this to the ACT it means that 41,500 people with a disability in the ACT are financially disadvantaged<sup>1</sup>. Decision makers should factor this into decisions for applications to participate in a community work or social development program when the person has identified as someone with a disability and the evidence they require the person to provide to support their application.

### ***Relevant circumstances***

Relevant circumstances are defined in section 21A of the *Road Transport (General) Act 1999* and means any of the following circumstances that relate to the person and contribute to the person's ability to pay an infringement notice penalty:

1. mental illness and/or mental disorder
2. physical or intellectual disability, disease or illness
3. addiction to drugs, alcohol or another substance
4. family violence
5. homelessness, or living in crisis, transitional or supported accommodation.

### ***Mental illness/es and/ or disorder/s***

Mental illness means a condition that seriously impairs, either temporarily or permanently, the mental functioning of a person<sup>2</sup>. Examples include schizophrenia, psychosis, bipolar disorder, and serious depression or anxiety and personality and other addictive conditions.

Evidence to support an application includes a letter or other documentation, describing the applicant's disability, illness or condition, from one of the following:

- The applicant's general practitioner, treating doctor, psychiatrist, registered psychologist or mental health nurse or other medical practitioner involved in the healthcare of the applicant that the administering authority considers relevant.

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<sup>1</sup> *Towards Disability Justice for the ACT Summary of Research and Consultations, 2019*  
[https://www.communityservices.act.gov.au/disability\\_act/towards-disability-justice-in-the-act](https://www.communityservices.act.gov.au/disability_act/towards-disability-justice-in-the-act)

<sup>2</sup> This is based on the definition of mental disorder (section 9) and mental illness (section 10) in the *Mental Health Act 2015*.

- Centrelink, if the applicant is in receipt of a full or partial disability pension (e.g. a job capacity assessment or other report which describes the applicant's disability or impairment).
- The applicant's school teacher or principal, or an employee in the Education Directorate.
- A government agency or non-government organisation with experience working with people with mental illness, intellectual disability or cognitive impairments.
- A government agency or non-government organisation with professionals qualified to make mental health assessments.

The letter or documentation must not be older than 6 months from the date of the application and must provide sufficient information to explain the applicant's mental illness and/or disorder and its duration.

*Physical or intellectual disability, disease or illness*

A person has a disability where that disability:

- is attributable to an intellectual, psychiatric, sensory or physical impairment or a combination of those impairments, and
- is permanent or likely to be permanent, and
- results in a substantially reduced capacity of the person for communication, learning or mobility and the need for continuing support services, and
- may or may not be of a chronic episodic nature<sup>3</sup>.

When determining an application on these grounds, the decision maker must have regard to Schedule 1 of the *Disability Services Act 1991 (ACT)* (Human rights principles to be furthered in relation to people with disabilities).

Evidence to support an application includes a letter or other documentation, describing the applicant's disability, disease or illness, from one of the following:

- The applicant's general practitioner, treating doctor, psychologist, speech pathologist or other medical practitioner involved in the healthcare of the applicant that the decision maker considers relevant.
- Centrelink, if the applicant is in receipt of a full or partial disability pension (e.g. a job capacity assessment or other report which described the applicant's disability or impairment).
- A government agency or non-government organisation with experience working with people with physical, sensory, cognitive or intellectual disabilities.

The letter or documentation must not be older than 6 months from the date of the application and must provide sufficient information to explain the applicant's disability, disease or illness and its duration.

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<sup>3</sup> This definition is taken from the definition of disability in the *Disability Services Act 1991 (ACT)*.

Decision makers should also consider whether written evidence is required and the level of written evidence based on the person's circumstances.

The *Towards Disability Justice for the ACT Summary of Research and Consultations, 2019*<sup>4</sup> noted that the heavy reliance on written material when assessing a person's needs or engaging with a person with a disability on legal matters, put them at a disadvantage.

*Substance dependence (e.g. drugs, alcohol or other substance)*

A person is considered to have a substance dependence if he or she has a pattern of substance use, as manifested by two (or more) of the following:

- Tolerance, as defined by either of the following:
  - a need for markedly increased amounts of the substance to achieve intoxication or the desired effect, or
  - markedly diminished effect with continued use of the same amount of the substance.
- Withdrawal, as manifested by either of the following:
  - the characteristic withdrawal syndrome for the substance, or
  - the same (or closely related) substance is taken to relieve or avoid withdrawal symptoms.
- The substance is often taken in larger amounts or over a longer period than intended.
- There is a persistent desire or unsuccessful efforts to cut down or control substance use.
- A great deal of time is spent in activities necessary to obtain the substance, use the substance, or recover from its effects.
- Important social, occupational, or recreational activities are given up or reduced because of substance use.
- The substance use is continued despite knowledge of having a persistent physical or psychological problem that is likely to have been caused or exacerbated by the substance (for example, current cocaine use despite recognition of cocaine-induced depression or continued drinking despite recognition that an ulcer was made worse by alcohol consumption).

Many people who attend alcohol or other drug treatment services also have co-occurring mental health disorders and poorer physical health.

The ACT Government through its Drug Strategy Action Plan is committed to increasing diversions from the criminal justice system for people who are involved in or at risk of being involved in it as a result of them experiencing drug related issues.

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<sup>4</sup> [https://www.communityservices.act.gov.au/disability\\_act/towards-disability-justice-in-the-act](https://www.communityservices.act.gov.au/disability_act/towards-disability-justice-in-the-act)

Evidence to support an application includes a letter or other documentation from one of the following:

- the applicant's treating doctor, psychiatrist, registered psychologist, nurse working in the field of drug and alcohol addiction or social worker or other medical practitioner involved in the healthcare of the applicant that the administering authority considers relevant
- the applicant's drug and alcohol case worker or counsellor
- the applicant's youth service case worker or counsellor
- the applicant's residential (or outpatient) rehabilitation service provider
- a government or non-government organisation with expertise in working with people with serious addictions to alcohol or other drugs or substances.

The letter or documentation must not be older than 6 months from the date of the application and must provide sufficient information to explain the nature, severity and effects of the addiction and how long the applicant has had the addiction.

### Family violence

Family violence is any of the following behaviours by a person against a family member<sup>5</sup>:

- physical violence or abuse
- sexual violence or abuse
- emotional or psychological abuse
- economic abuse
- threatening behaviour
- coercion
- any other behaviour that:
  - controls or dominates the family member and causes them to feel fear for their safety or the safety of another family member
  - causes a child to hear, witness or otherwise be exposed to the above behaviours<sup>6</sup>.

Family violence is a broad term that refers to violence between family members, as well as violence between intimate partners. Family violence includes physical, sexual, emotional and psychological abuse. While there is no single definition, the central element of family violence is an ongoing pattern of behaviour aimed at controlling a victim through fear, for example by using behaviour which is violent and threatening. In most cases, the violent behaviour is part of a range of tactics to exercise power and control over women and their children, and can be both criminal and non-criminal.

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<sup>5</sup> Family member is defined in section 9 of the *Family Violence Act 2016*.

<sup>6</sup> This is based on the definition of family violence in the *Family Violence Act 2016*.

It does not have to occur within the home or between people who are living together. It is when someone intentionally uses violence, threats, force or intimidation to control or manipulate a partner, former partner or family member. There are many different types of violence including physical, verbal, emotional, financial, sexual and psychological abuse<sup>7</sup>.

Documentation that can be used to identify the applicant as having been subjected to family violence includes one or more of the following documents:

- Emergency protection order
- Family / Domestic violence order
- Personal protection order
- Transcript of hearing or orders made after a hearing
- Record of court proceedings
- Police report
- Letter from legal aid office (ACT) Domestic Violence and Protection Order Unit
- Letter from a counsellor
- Letter or record of sessions from Victims Services
- Letter or record of session from Domestic Violence Crisis Service
- Letter from a lawyer who has been consulted regarding safe exit strategy
- Letter from a refuge

#### *Homelessness or living in crisis, transitional or supported accommodation*

Homelessness includes people who are sleeping rough, as well as people staying in temporary, unstable or substandard accommodation. Homelessness has many drivers and causes, including the shortage of affordable housing, long term unemployment, mental health issues, substance abuse and family and relationship breakdown.

A person is considered to be homeless if they:

- have no shelter, sleep rough, live on the streets, in cars, under bridges or in improvised dwellings
- frequently move from various forms of temporary accommodation such as emergency accommodation, or short-term accommodation with friends and relatives
- are staying in unstable or substandard accommodation
- staying in a refuge, temporary accommodation or rooming / boarding houses
- couch surfing
- living in a caravan park due to their inability to access other accommodation.

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<sup>7</sup> The Domestic Violence Crisis Service provides examples of family violence [www.dvcs.org.au](http://www.dvcs.org.au).

Issuing and/or enforcing infringement notices in these circumstances does not support the overall objective of the infringement notice management scheme as a method of deterrence and preventing further offending.

Evidence to support an application includes a letter or other documentation from the applicant's lawyers, specialist service provider or case worker, or a government agency or non-government organisation with experience working with people experiencing homelessness which provides details of the type of homelessness, its duration and current living arrangements.