

Australian Capital Territory

Road Transport Legislation (Accreditation and Licensing) Amendment Regulation 2006 (No 1)

Subordinate Law SL2006-59

made under the

Road Transport (Driver Licensing) Act 1999, Road Transport (General) Act 1999, the Road Transport (Public Passenger Services) Act 2001, and Road Transport (Vehicle Registration) Act 1999.

EXPLANATORY STATEMENT

Overview

The *Road Transport Legislation (Accreditation and Licensing) Amendment Regulation 2006 (No 1)* (the Amendment Regulation) amends:

- the *Road Transport (Driver Licensing) Regulation 2000* (the Driver Licensing Regulation),
- the *Road Transport (Public Passenger Services) Regulation 2002* (the Public Passenger Services Regulation),
- the *Road Transport (General) Regulation 2000*, and
- the *Road Transport (Vehicle Registration) Regulation 2000*.

The main features of the Amendment Regulation are:

- the deletion of the mandatory disqualifying offence provisions from the Public Passenger Services Regulation, and
- the inclusion of provisions enabling the Road Transport Authority (the Authority), in considering an applicant's suitability, to have regard to any conviction the Authority considers relevant to the applicant's holding:
 - a public vehicle licence,
 - an accreditation as a public passenger service operator,
 - an accreditation as a driving instructor,
 - an authorisation as an examiner of vehicles, or
 - an approval of premises for the inspection of certain classes of vehicles.

Detail

1 Name of regulation

Clause 1 provides the name of the regulation, the *Road Transport Legislation (Accreditation and Licensing) Amendment Regulation 2006 (No 1)*.

2 Commencement

Clause 2 specifies that the regulation commences on a day fixed by the Minister.

Part 2

3 Legislation amended – pt 2

Clause 3 notes that the part amends the Driver Licensing Regulation.

4 Division 3.1

Clause 4 substitutes a new Division 3.1 dealing with Required Medical Standards.

Currently Division 3.1 provides the interpretation for the part, providing definitions of ‘disqualifying offence’ and ‘required medical standards’. The ‘disqualifying offence’ definition is deleted, leaving only the definition of ‘required medical standards’.

Two additional notes are included in the ‘required medical standards’ definition indicating that the text of an applied, adopted or incorporated law or instrument is taken to be a notifiable instrument if the operation of s47(5) or (6) of the Legislation Act is not disapplied and must be notified under the Legislation Act.

5 Section 70(3) and (4)

Clause 5 amends section 70(3) which deals with assessing whether applicants for public vehicle licences are suitable persons to hold public vehicle licences. Existing section 70(3)(a), which refers to a person being convicted or found guilty of a disqualifying offence, is replaced with a provision allowing the Authority to refuse an application if the person has been convicted or found guilty of an offence that the authority considers is relevant to the application. The authority must comply with any guidelines approved by the Minister for this purpose.

Existing section 70(3)(b) and (c) substantially become section 70(3)(b)(i) and (ii). New section 70(4) notes that an application may not be refused if the applicant’s driver licence has been suspended or cancelled due to the non-payment of an infringement penalty. Existing section 70(4) is renumbered as section 70(5).

6 Section 87(3)

Clause 6 amends section 87(3) dealing with when the Authority may suspend or cancel a person's public vehicle licence on the basis that the person is not a suitable person to hold such a licence.

The reference to a person's being convicted or found guilty of a disqualifying offence is changed to refer to a person's being convicted or found guilty of an offence that the Authority considers relevant to the person's suitability to hold the licence. In making such a decision, the Authority must comply with any guidelines approved by the Minister for this purpose.

7 New section 90A

Clause 7 provides new section 90A which deals with the approval of guidelines to be applied by the Authority in making decisions under section 70(3)(a) about when an application for a public vehicle licence is to be refused and section 87(3)(a) about when a person is no longer suitable to continue to hold a public vehicle licence and the licence is to be suspended or cancelled.

Approved guidelines are to be a disallowable instrument.

8 Section 104(1)(c)

Clause 8 amends section 104(1)(c) dealing with eligibility to apply for accreditation as a driving instructor. The current provision refers to the person having 'the skills to provide driver instruction'. The clause expands on 'the skills' specifying the person must have sufficient driving ability and knowledge of safe driving practices, whilst still referring to the other skills needed to provide driver instruction and assessment (in new section 104(1)(ca)).

9 Section 104(1)(f)

Clause 9 consequentially amends section 104(1)(f) which deals with the required training for accreditation as a driving instructor. The provision now refers to a person having complied with the required training under section 104A (see clause 10).

10 Section 104(3), (4) and (5)

Clause 10 replaces existing section 104(3), (4) and (5), which deal with exempting a person from the training requirement, with new section 104A 'Required training for driving instructors'.

A person complies with the required training if the person has completed an approved driving instructors training course in the 1 year prior to applying for accreditation or if the person has been accredited within the previous 5 years. Consistent with the existing provision, a person may be exempted from the training requirement, but only if the Authority considers the person has appropriate training or experience for accreditation.

11 Section 106(1)(b) and (c)

Clause 11 omits section 106(1)(b) and (c) about an application for accreditation as a driving instructor being refused because the applicant does not have sufficient driving, knowledge or skills. These provisions are dealt

with under section 106(1)(a) which provides that an application may be refused if the applicant is not eligible for accreditation.

12 Section 106(2)

Clause 12 amends section 106(2) which deals with suitable persons to hold accreditation. The existing provision referring to a person who has been convicted or found guilty of a disqualifying offence is substituted with a provision about a person convicted or found guilty of an offence that the Authority considers is relevant to the application.

Existing section 106(2)(b) and (c), about licence disqualification and suspension, are substantially combined in section 106(2)(b), with new section 106(3) highlighting that a person's suitability is not affected by their licence being suspended due to non-payment of an infringement penalty.

13 Section 107(3)

Clause 13 amends section 107(3) which provides a 1 year term for accreditations. The accreditation period is increased to a maximum of 5 years similar to other forms of accreditation under the Road Transport legislation. For example, a taxi operator accreditation is valid for a maximum of 6 years. Accredited driving instructors will continue to be required to provide criminal history checks and medical assessment reports every year.

14 Section 111(a) to (f)

Clause 14 amends section 111 dealing with when the Authority may take action in relation to an accreditation.

Existing section 111(a), referring to a person who has been convicted or found guilty of a disqualifying offence, is amended to refer to an offence that the Authority considers is relevant to the person's suitability to hold an accreditation, and is renumbered as section 111(b).

Existing section 111(b), which deals with a person not holding a full licence, is replaced with a provision referring to a person who is not eligible to apply for accreditation, and is renumbered as section 111(a).

Existing section 111(c) is amended to clarify that if a person obtains an accreditation, or a renewal of an accreditation, by making false or misleading statements, the Authority may take action in relation to the accreditation.

15 Section 111, note

Clause 15 omits the note in section 111 consequentially. The note, which points to the meaning of 'disqualifying offence', is no longer necessary as this term is omitted under Clause 4.

16 New section 122A

Clause 16 provides new section 122A which deals with the approval of guidelines to be applied by the Authority in making decisions under section 106 (2)(a), about when an application for an accreditation can be refused, and

section 111(b), about when a person is no longer suitable to continue to hold an accreditation and the accreditation is to be suspended or cancelled.

Approved guidelines are to be a disallowable instrument.

17 Dictionary, definition of ‘disqualifying offence’

Clause 17 omits the definition of ‘disqualifying offence’ as a consequence of Clause 4.

18 Dictionary, definition of ‘required medical standards’

Clause 18 amends the definition of ‘required medical standards’ by replacing the reference to section 15(2) with a reference to section 15. This is consequential to clause 4.

19 Further amendments, mentions of s15(2)

Clause 19 substitutes s15 for s15(2) in several other provisions consequentially.

Part 3 Road Transport (General) Regulation 2000

20 Legislation amended – pt 3

Clause 20 notes that the part amends the *Road Transport (General) Regulation 2000*.

21 Schedule 1, part 1.4, items 34 to 36

Clause 21 amends the reviewable decision details listed in Part 1.4 of Schedule 1. Items 34 and 35 are amended consequentially by substituting new references to the relevant provisions of the legislation. A new item, 36A is added providing a reviewable decision in relation to the maximum period of issue of an accreditation as a driving instructor.

Part 4 Road Transport (Public Passenger Services) Regulation 2002

22 Legislation amended – pt 4

Clause 22 notes that the part amends the Public Passenger Services Regulation.

23 Section 6, definition of ‘mandatory disqualifying offence’

Clause 23 omits the definition of ‘mandatory disqualifying offence’ as a consequence of clause 26.

24 New section 8(2)(aa)

Clause 24 amends section 8, which deals with the mandatory refusal of accreditation, by inserting a new section 8(2)(aa). This provision is included to allow the Authority to refuse an application for accreditation if the applicant has been convicted or found guilty of an offence that the authority considers is relevant to the application. The authority must comply with any guidelines approved by the Minister for this purpose.

25 Section 8(2)(a) to (c)

Section 8(2)(a) to (c) is renumbered as a consequence of clause 24.

26 Section 8(3)(a)

Clause 26 omits existing section 8(3)(a) which deals with a person convicted or found guilty of a mandatory disqualifying offence.

27 Section 14(1), example 2

The reference to a mandatory disqualifying offence is also deleted from example 2 in section 14(1).

28 New section 19A

Clause 28 provides new section 19A which deals with the approval of guidelines to be applied by the Authority in making decisions under section 8(2)(b), about when an application for an accreditation may be refused.

Approved guidelines are to be a disallowable instrument.

29 Section 500(4)

Clause 29 amends an error in the expiry provision for a transitional arrangement for certain small buses. Section 500(4) currently provides that the chapter expires on 1 July 2010. It is the part that expires on that date.

30 Dictionary, definition of 'mandatory disqualifying offence'

The definition of 'mandatory disqualifying offence' is omitted as a consequence of clause 26.

Part 5 Road Transport (Vehicle Registration) Regulation 2000

31 Legislation amended – pt 5

Clause 31 notes that the part amends the *Road Transport (Vehicle Registration) Regulation 2000*.

32 Section 116(1)(b)

Clause 32 amends section 116(1) which deals with assessing whether persons are eligible to apply for authorisation as an examiner of vehicles. Existing section 116(1)(b), which refers to a person being convicted or found guilty of an offence that involves fraud or dishonesty, is replaced with a provision allowing the Authority to refuse an application if the person has been convicted or found guilty of an offence that the authority considers is relevant to the application.

The authority must comply with any guidelines approved by the Minister for this purpose.

33 Section 124

Clause 33 amends section 124 dealing with when the authority may take action in relation to authorisation as an examiner.

Existing section 124(b) which refers to a person convicted or found guilty of an offence that involves fraud or dishonesty, is amended to refer to an offence that the Authority considers relevant to the authorisation and is renumbered as section 124(b)(ii). Existing section 124(d) is renumbered as section 124(b)(i).

34 Section 127 heading

Clause 34 amends the heading for section 127 by adding 'of premises' to 'Eligibility for approval', for completeness.

35 Section 127(1)(b)

Section 127 deals with eligibility for the approval of premises for inspecting vehicles. Existing section 127(1)(b) provides that premises are eligible if the proprietor has not been convicted or found guilty of an offence that involves fraud or dishonesty. This is replaced with a clause referring to offences that the Authority considers relevant to the approval.

The Authority must comply with any guidelines approved by the Minister for this purpose.

36 Section 135

Clause 36 amends section 135 dealing with when the authority may take action in relation to the approval of premises.

Existing section 135(b), which refers to a proprietor convicted or found guilty of an offence that involves fraud or dishonesty, is amended to refer to an offence that the Authority considers relevant to the approval and is renumbered as section 135(c)(ii). Existing section 135(d)(1) is renumbered as section 135(c)(i).

37 New section 153A

Clause 37 provides new section 153A which deals with the approval of guidelines to be applied by the Authority in making decisions under:

- section 116(1)(b), about when an application for authorisation as an examiner may or must be refused;
- section 124(b), about when an authorisation as an examiner may or must be suspended or cancelled;
- section 127(1)(b), about when an application for the approval of premises may or must be refused; and
- section 135(c)(ii), about when an approval of premises may or must be suspended or cancelled.

Approved guidelines are to be a disallowable instrument.