

2009

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**ROAD TRANSPORT LEGISLATION AMENDMENT REGULATION 2009
(No. 1)**

SUBORDINATE LAW SL2009-6

EXPLANATORY STATEMENT

Presented by
Mr Jon Stanhope MLA
Minister for Transport

OVERVIEW

This regulation is made under section 26 of the *Road Transport (Driver Licensing) Act 1999*, section 233 of the *Road Transport (General) Act 1999*, sections 24 and 33 of the *Road Transport (Safety and Traffic Management) Act 1999* and sections 12, 14 and 15 of the *Road Transport (Vehicle Registration) Act 1999*.

The amendments in this regulation are miscellaneous technical amendments that clarify ambiguities, correct errors or otherwise improve the operation of the road transport legislation.

CLAUSE NOTES

Part 1

Clause 1 **Name of Regulation**

This clause is a formal provision to set out the name of the regulation.

Clause 2 **Commencement**

This clause is a formal provision that sets the commencement of the regulation, which will be on a date fixed by the Minister by written notice.

Part 2 **Road Transport (Driver Licensing) Regulation 2000**

Clause 3 **Legislation amended**

This clause explains that part 2 amends provisions in the *Road Transport (Driver Licensing) Regulation 2000* (the Regulation, for the purposes of the clause notes for clauses 3 to 17).

Clause 4 **Table 9, subitem 2.3**

This clause makes a technical amendment that has the effect of omitting the phrase “other than a semitrailer” from this item. The amendment will align the item with the description of corresponding driver licence classes in other Australian jurisdictions, as part of the ongoing project of national harmonisation of transport legislation and will have no substantive impact on driver licensing practice or policy in the ACT.

Clause 5 **Table 9, subitem 3.3**

This clause makes a technical amendment that has the effect of omitting the phrase “other than a semitrailer” from this item. The amendment will align the item with the description of corresponding driver licence classes in other Australian jurisdictions, as part of the ongoing project of national harmonisation of transport legislation and will have no substantive impact on driver licensing practice or policy in the ACT.

Clause 6 **Table 9, subitem 4.2**

This clause makes a technical amendment that has the effect of omitting the phrase “other than a semitrailer” from this item. The amendment will align the item with the description of corresponding driver licence classes in other Australian jurisdictions, as part of the ongoing project of national harmonisation of transport legislation and will have no substantive impact on driver licensing practice or policy in the ACT.

Clause 7 Table 9, subitem 5.3

This clause makes a technical amendment “other than a semitrailer” from this item. The amendment will align the item with the description of corresponding driver licence classes in other Australian jurisdictions, as part of the ongoing project of national harmonisation of transport legislation and will have no substantive impact on driver licensing practice or policy in the ACT.

Clause 8 Section 12 (1) (c)

This amendment to section 12 deals with the requirement for a drivers licence to display a photograph of the holder. Replacement paragraph (c) requires a driver licence photograph to comply with the standards for photographs under new section 12 (7), which is inserted by clause 9.

Clause 9 New section 12 (7) and (8)

This clause inserts new provisions into section 12, and is linked to the amendment in clause 8. New section 12 (7) allows the road transport authority to make standards for photographs on driver licences, while new section 12 (8) explains that these standards are a notifiable instrument. The purpose of these amendments is to enable the road transport authority to set appropriate standards for photographs used for driver licences to ensure such photographs are clear enough to enable the police and other authorities to identify the holder of the licence readily.

Clause 10 Division 3.1 heading

This amendment replaces the heading to division 3.1. The new heading includes a reference to “authorised medical reviewers”, to reflect the insertion by clause 11 of new section 15A, which deals with the appointment of authorised medical reviewers.

Clause 11 New section 15A

This clause inserts new section 15A, which allows the road transport authority to appoint an entity to be an authorised medical reviewer. This provision is linked to amendments to sections 69 and 78 dealing with reviews of a person’s medical fitness to drive a motor vehicle. The purpose of the new provisions is to enable complex medical issues to be assessed by medical reviewers with appropriate expertise in assessing the impact of particular medical conditions on a person’s ability to operate a motor vehicle safely and reliably. While doctors and specialists are skilled at diagnosing medical conditions, the majority do not have the forensic experience required to assess the level of impact of unusual or complex medical conditions on the various skills and body functions that are involved in driving particular classes of motor vehicle safely, or to recommend specialist aids or other treatments or licence conditions that would enable a person to meet the required medical standards for driving. The amendments will provide a clear legislative basis for referring complex or unusual cases to medical experts with considerable experience in assessing the impact of medical conditions on driving ability so that decisions about issuing or cancelling driver licences are based on expert evidence and any risks posed by a driver’s medical condition, whether to the driver or to other road users, can be properly assessed.

The authority has used experts in traffic medicine from the Division of Clinical Forensic Medicine in the Victorian Institute of Forensic Medicine (established under the Victorian *Coroners Act 1985*) in a number of recent matters with the active co-operation of the applicants concerned, and has found this to be an effective and efficient means of resolving issues relating to medical fitness to drive. Within the ACT, a clinical forensics teams with capability in traffic medicine has recently been established at the Canberra Hospital. It is anticipated that the Victorian Institute of Forensic Medicine and staff from the clinical forensics team at the Canberra Hospital will be appointed as authorised medical reviewers under new section 15A.

Clause 12 New section 66 (5)

This clause inserts new section 66 (5), to explain when a person’s interstate driver licence is taken to be suspended for the purposes of section 66. That section explains that a person is not eligible to apply for an ACT driver licence if the person holds a licence from another Australian jurisdiction that is suspended or the person is disqualified from holding a licence under the law of any jurisdiction.

New section 66 (5) makes it clear that a person’s licence is taken to be suspended if the road transport authority has been notified formally by court or other authority in another jurisdiction that the person’s licence is about to be suspended (for example, because the person has recently exceeded the demerit points limit or has defaulted on a fine), or if the road transport authority has reasonable grounds to believe that the person’s licence is about to be suspended. The new provision includes two examples of “reasonable grounds”, which cover the situation where the authority initiates an interstate driver licence check for the person and is told about the impending suspension by the licensing authority of the other jurisdiction, or a search by the authority of the national driver information database shows that a suspension is pending.

Clause 13 New section 69 (7A)

This clause is related to the amendments in clauses 10, 11 and 14 dealing with authorised medical reviewers, as part of the new system for resolving complex issues of medical fitness to drive.

Section 69 deals with applications for the issue or variation of a driver licence. Section 69 (6) deals with the various types of information or evidence that the authority may require from an applicant before deciding whether to grant or vary the licence. New section 69 (7A) builds on section 69 (6) and allows the road transport authority to require a person to undergo an examination by an authorised medical reviewer, or refer a report or other medical evidence provided under section 69 (6) to an authorised medical reviewer, for the purpose of assessing the person’s medical fitness to hold a licence or drive a particular class of vehicle in accordance with the required medical standards. The road transport authority may require the person to pay for the assessment, although the authority will have the option of paying for the assessment itself.

Clause 14 New section 78 (3A)

This clause also deals with authorised medical reviewers and includes new subsection (3A) in section 78. Section 78 is located in Part 4 of the Regulation, which deals with the obligations of driver licence holders and exempt drivers, and recognises that a person's health and driving ability may change or even deteriorate over time. It gives the road transport authority the power to require a driver to undergo tests or provide other information or evidence about the driver's driving ability, knowledge of safe driving practices or medical fitness to drive.

New section 78 (3A) mirrors new section 69 (7A) and allows the road transport authority to require a person to undergo an examination by an authorised medical reviewer, or refer a report or other medical evidence provided under section 69 (6) to an authorised medical reviewer, for the purpose of assessing the person's medical fitness to hold a licence or drive a particular class of vehicle in accordance with the required medical standards. The road transport authority may require the person to pay for the assessment, although the authority will have the option of paying for the assessment itself.

Clause 15 New section 125 (3A)

This clause inserts a new subsection into section 125, which deals with demerit points suspensions for learner and provisional drivers. New section 125 (3A) corrects a drafting omission and makes it clear that a learner or provisional driver whose licence is suspended because of excessive demerit points cannot be issued a restricted licence. A similar provision already applies to full licence holders and to persons whose restricted licence has been cancelled because of excessive demerit points (see section 18 (4) of the *Road Transport (Driver Licensing) Act 1999* and section 130 (4) (b) of the Regulation).

Clause 16 Dictionary, note 3, new dot point

This clause inserts a reference to the term 'licensing authority' in the list of terms that have the same meaning in the Regulation as they do in the *Road Transport (Driver Licensing) Act 1999*. This amendment is linked to the amendment to section 66 in clause 12, which mentions the licensing authority of another jurisdiction.

Clause 17 Dictionary, new definition of authorised medical reviewer

This clause inserts a definition of the term *authorised medical reviewer* into the Dictionary. The amendment is linked to the amendments in clauses 10, 11, 12 and 14 which provide for the appointment of authorised medical reviewers and referring people to authorised medical reviewers for assessment of their medical fitness to drive.

Part 3 Road Transport (General) Regulation 2000

Clause 18 Legislation amended

This clause explains that part 3 amends provisions in the *Road Transport (General) Regulation 2000* (the Regulation, for the purposes of the clause notes for clauses 19 to 31).

Clause 19 Section 13 heading

This clause amends the heading to section 13 of the regulation, to make it clear that it deals with the remission of fees by the Minister. This amendment is linked to the amendment in clause 20, dealing with remissions by the road transport authority.

Clause 20 New section 13A

This clause inserts new section 13A, which gives the road transport authority the power to remit fees, charges or other amounts payment under the road transport legislation. To ensure that the power to remit fees is subject to appropriate limitations and is exercised accountably, the Minister is given the power under new section 13A (2) to approve guidelines for the exercise of the remission function. These guidelines are disallowable instruments.

Clause 21 Section 14 (1) (ab)

This amendment inserts a reference to new section 13A in section 14 (1), which sets out the circumstances in which the road transport authority is obliged to refund an amount already paid to it. The effect is to make it clear that if the authority decides to remit an amount that it has already received as payment under the road transport legislation, it must refund that amount to the payer.

Clause 22 Section 14 (1) (f)

This clause is a technical drafting change, to replace a reference to surrendering an accreditation with a reference to surrendering a certificate of accreditation.

Clause 23 Section 14 (1) (j)

This clause is a technical drafting change, to replace a reference to surrendering an approval with a reference to surrendering a certificate of approval

Clause 24 Section 14 (1) (n) and (o)

This clause inserts new provisions in section 14 (1) to make it clear that the road transport authority must refund the fee for a driving test or assessment to be conducted by an authorised person, where the test or assessment is cancelled by the authorised person, or if the test or assessment is cancelled by the person to be tested more than 48 hours before it is due. These provisions were previously included as sections 14 (3) (b) and (c) and are being moved to improve the drafting of section 14.

Clause 25 Section 14 (2)

This clause omits section 14 (2), which is redrafted and relocated to section 14 (3A) to improve the drafting of the section.

Clause 26 Section 14 (3)(b) and (c)

This clause omits sections 14 (3)(b) and (c), which are relocated to section 14 (1) by clause 24 to improve the drafting of the section.

Clause 27 Section 14 (3) (d)

This clause is a technical drafting change, to replace a reference to surrendering an accreditation with a reference to surrendering a certificate of accreditation.

Clause 28 Section 14 (3) (f)

This clause is a technical drafting change, to replace a reference to surrendering an registration with a reference to surrendering a certificate of registration and numberplates. There is no requirement to surrender the registration label.

Clause 29 Section 14 (3) (g)

This clause is a technical drafting change, to replace a reference to surrendering an authorisation with a reference to surrendering a certificate of authorisation.

Clause 30 Section 14 (3) (h)

This clause is a technical drafting change, to replace a reference to surrendering an approval with a reference to surrendering a certificate of approval

Clause 31 Section 14 (3A)

This clause inserts new section 14 (3A), which is a redrafted and relocated version of former section 14 (2). It explains that an item required to be surrendered under section 14 (1) or 14 (3) need not be surrendered if the road transport authority is satisfied that it has been lost, stolen or destroyed.

Part 4 Road Transport (Safety and Traffic Management) Regulation 2000

Clause 32 Legislation amended

This clause explains that part 4 amends provisions in the *Road Transport (Safety and Traffic Management) Regulation 2000* (the Regulation, for the purposes of the clause notes for clause 33).

Clause 33 Section 102, definition of *testing authority*, paragraph (c)

This clause is a technical amendment to clarify that “testing authority” includes an entity accredited by the National Association of Testing Authorities (NATA) to test traffic offence detection devices. Previously, this paragraph referred only to entities that are accredited to test laser speed measuring devices. The amendment reflects that NATA now accredits entities that test a wide range of traffic offence detection devices utilising various technologies. For information, section 23 of the *Road Safety (Safety and Traffic Management) Act 1999* defines *traffic offence detection device*.

Part 5 Road Transport (Vehicle Registration) Regulation 2000

Clause 34 Legislation amended

This clause explains that part 5 amends provisions in the *Road Transport (Vehicle Registration) Regulation 2000* (the Regulation, for the purposes of the clause notes for clauses 35 to 41).

Clause 35 New section 85 (5) (d)

This clause allows the road transport authority to take action to suspend or cancel the registration of a public passenger vehicle with effect from the time of notification, in situations where the vehicle is no longer licensed as a public passenger vehicle, there

is no accredited operator for the vehicle or the vehicle is no longer operated as a public passenger vehicle. This amendment will ensure that vehicles that cannot lawfully provide public passenger services are not registered or used for that purpose.

Clause 36 Section 96 (1A)

This clause amends section 96, which deals with the authorised use of trader's plates. The amendment disapplies section 96 (1) (a) to motorcycles. The effect is that a dealer or the dealer's representative does not have to sit on a motorcycle with a prospective buyer when the buyer takes that vehicle for a test ride under section 96 (1) (b) (i).

Clause 37 Section 98 (a) (v)

This clause amends section 98 (a), which deals with records to be kept about journeys by vehicles fitted with traders' plates. These records are held within dealerships. The amendment omits the obligation to record each driver's home address and replaces it with an obligation to record the driver's driver licence number. This change will provide better privacy protection for people who drive test vehicles and enter their details on the dealer's records.

Clause 38 Section 107 (6), note and section 108 (11), note

These technical amendments replace references to Road User Services, Department of Urban Services, with references to the road transport authority.

Clause 39 Section 145 (d)

This amendment improves the drafting of section 145 (d) to remove any doubt that an authorised vehicle examiner must not certify that a vehicle, or any part or equipment of a vehicle, complies with the relevant standard unless the examiner has inspected or tested that vehicle, part or equipment, and the relevant vehicle, part or equipment does in fact comply with the standard. The provision previously referred to an inspector "knowing" that a vehicle did not comply, which allowed examiners to evade responsibility where they failed to conduct an adequate inspection or test, or otherwise overlooked a defect.

Clause 40 Schedule 1, part 1.1, note 2

This technical amendment replaces a reference to Road User Services, Department of Urban Services, with a reference to the road transport authority.

Clause 41 Part 1.12, section 1.164 (3), note

This technical amendment updates information about the Vehicle Standards Bulletin and how copies of the Bulletin may be accessed.