

2011

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

**ROAD TRANSPORT (DRIVER LICENSING) AMENDMENT REGULATION
2011 (No 1)**

SUBORDINATE LAW SL2011-31

EXPLANATORY STATEMENT

**Presented by
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OVERVIEW

This Regulation is made under section 26 of the *Road Transport (Driver Licensing) Act 1999* and section 233 of the *Road Transport (General) Act 1999*.

It amends uncommenced provisions of the *Road Transport (Driver Licensing) Regulation 2000* that require persons who commit drink or drug driving offences to undertake alcohol or drug awareness courses in order to regain or retain their driver licence. The purpose of the amendments is to ensure the effective operation of those provisions when they commence on 25 November 2011. The amendments are technical amendments that do not significantly alter the policy or effect of the scheme for mandatory alcohol and drug awareness courses.

In summary, the amendments to the *Road Transport (Driver Licensing) Regulation 2000*:

- allow different types of courses to be approved by the road transport authority for offenders in different circumstances;
- ensure that the road transport authority can specify the course that an offender must complete;
- ensure that a person who is granted an exemption from completing an alcohol and drug awareness course is subsequently issued with a restricted or probationary licence; and
- ensure that the road transport authority is required to give a person notice before the existing mandatory licence suspension provisions (for failing to enrol in, or complete, an awareness course) operate to suspend that person's driver licence.

The Regulation also makes a consequential amendment to schedule 1 of the *Road Transport (General) Regulation 2000*, which lists the decisions of the road transport authority that are subject to internal review. The amendment ensures that refusals to issue a probationary licence under sections 73D (4) (b) or 73M (4) (b) are internally reviewable.

Notes on clauses

Clause 1 Name of Act

This is a formal provision that sets out the name of the Regulation.

Clause 2 Commencement

This is a formal provision that provides for the commencement of the Regulation. The amendments will commence when the provisions they amend commence, that is, on 25 November 2011.

Clause 3 Legislation amended

This clause lists the legislation to be amended by the Regulation.

Clause 4 Section 73C (2)

This amendment makes it clear that the road transport authority can specify the particular course that the person must complete. It is related to the amendments in clause 22, which amends section 73I by inserting new section (1A) to permit the road transport authority to specify different courses for offenders in different circumstances.

Clause 5 Section 73C (3)

This clause is consequential on the change made to section 73C (2). It replaces a reference to ‘an alcohol awareness course’ with a reference to ‘the alcohol awareness course’, meaning the course that has been specified for the person by the road transport authority.

Clause 6 Section 73C (3), new note

This clause is consequential on the insertion of new section 73HA by clause 21. It inserts a new note in section 73C (3). The note explains the interrelationship between section 73C and section 73H, and in particular that section 73C (2) and (3) do not apply if an exemption is granted under the latter section.

Clause 7 Section 73C (4)

This clause is consequential on the change made to section 73C (2). It replaces a reference to ‘an alcohol awareness course’ with a reference to ‘the alcohol awareness course’.

Clause 8 Section 73D (2)

This amendment is similar to the amendment in clause 4, and makes it clear that the road transport authority can specify the particular course that the person must complete.

Clause 9 Section 73D (3)

This clause is consequential on the amendment to section 73D (2). It replaces a reference to ‘an alcohol awareness course’ with a reference to ‘the alcohol awareness course’.

Clause 10 Section 73D (3), new note

This clause is consequential on the insertion of new section 73HA by clause 21. It inserts a new note in section 73D (3). The note explains the interrelationship between section 73D and section 73H, and in particular that section 73D (3) does not apply if an exemption is granted under the latter section.

Clause 11 Section 73D (4)

This clause is consequential on the amendment to section 73D (2). It replaces a reference to ‘an alcohol awareness course’ with a reference to ‘the alcohol awareness course’.

Clause 12 Section 73D (4), examples 1 and 2

This clause is consequential on the amendment to section 73D (2).

Clause 13 Section 73D (6)

This clause is consequential on the amendment to section 73D (2). It replaces a reference to ‘an alcohol awareness course’ with a reference to ‘the alcohol awareness course’.

Clause 14 Section 73E (2)

This clause amends section 73E (2). It ensures that an offender is not issued with a restricted licence until the person has attended the course specified for the person by the road transport authority and has given the authority evidence to that effect. This amendment is consequential on the amendments to section 73I made by clause 22.

Clause 15 Section 73E (2), new note

This clause is consequential on the insertion of new section 73HA by clause 21. It inserts a new note in section 73E (2). The note explains the interrelationship between section 73E and section 73H, and in particular that section 73E (2) does not apply if an exemption is granted under the latter section.

Clause 16 Section 73F (2)

This clause amends section 73F (2). It ensures that an offender is not issued with a probationary licence until the person has attended the course specified for the person by the road transport authority and has given the authority evidence to that effect. This amendment is consequential on the amendments to section 73I made by clause 22.

Clause 17 Section 73F (2), new note

This clause corresponds with the amendment of section 73HA, to ensure that a person can be issued with a probationary licence where the authority has granted the person an exemption under section 73H.

Clause 18 Section 73G (1)

This clause substitutes a new section 73G (1) to clarify that section 73G is the provision under which applications for exemption from the requirement to complete an alcohol awareness course are made, while section 73H is the provision under which applications for exemption are decided. The wording in new section 73G more clearly reflects this intention.

Clause 19 Section 73H (1)

This clause is similar to the amendment in clause 4 and is related to the amendment to section 73I made by clause 22. It includes in this provision a reference to the ‘course specified for the person by the road transport authority’.

Clause 20 New section 73H (3)

This clause clarifies the interrelationship between section 73G (3), which allows the authority to refuse to consider an application for exemption if the applicant does not comply with a written request requiring the person to provide additional information or documents, and section 73H (1), which requires the authority to refuse or grant an application for an exemption. The amendment clarifies that the authority is taken to have refused an application for an exemption if an applicant fails to provide additional information or documents as requested by the authority.

Clause 21 New section 73HA

This clause inserts new section 73HA, which requires the road transport authority to issue a person a restricted or probationary licence where the authority has granted the person an exemption under section 73H and all other criteria for the grant of the licence are met. This amendment is necessary because the existing provisions do not provide for the issue of probationary or restricted licences to persons who are granted an exemption. The issue of a restricted or probationary licence is necessary to give effect to the purpose of the exemption provisions.

Clause 22 New section 73I (1A)

This clause amends section 73I to insert new section (1A), which permits the road transport authority to approve a course for low range first time offenders and a different course for mid range, high range and repeat offenders. Related amendments (see for example, clauses 4, 8, 14 and 16) require that offenders must complete the course specified for them by the road transport authority, in recognition of their different circumstances and rehabilitation needs. Although different courses are prescribed for offenders in different circumstances, this is not ‘discrimination’ within the meaning of the *Discrimination Act 1991* as the criteria for allocating an offender to a particular course are not attributes within section 7 of that Act.

In terms of the right to equality before the law under section 8 of the *Human Rights Act 2004*, to the extent that prescribing different courses for offenders with different offending profiles and different needs engages that right, the proposed amendments are a reasonable limitation for section 28 of the *Human Rights Act 2004*. This is because offenders who are considered to be at higher risk of re-offending (and who may pose a higher road-safety risk for that reason) will be required to undertake a longer course with a particular emphasis on personal behavioural change strategies around substance use and driving, while offenders considered to have a lower risk of re-offending (lower road-safety risk) will undertake a shorter course.

Clause 23 Section 73I (3)

This clause sets out the definitions of *first offender*, *level* and *repeat offender*. These terms are defined in full in the *Road Transport (Alcohol and Drugs) Act 1977*.

Clause 24 Section 73L (2)

This clause makes it clear that the road transport authority can specify the particular drug awareness course that a person must complete. It is related to the amendments in clause 42, which amends section 73R by inserting new section (1A) to permit the road transport authority to specify different courses for offenders in different circumstances.

Clause 25 Section 73L (3)

This clause is consequential on the change made to section 73L (2). It replaces a reference to ‘a drug awareness course’ with a reference to ‘the drug awareness course’, meaning the course that has been specified for the person by the road transport authority.

Clause 26 Section 73L (3), new note

This clause is consequential on the insertion of new section 73QA by clause 41. It inserts a new note in section 73L (3). The note explains the interrelationship between section 73L and section 73Q, and in particular that section 73L (2) and (3) do not apply if an exemption is granted under the latter section.

Clause 27 Section 73L (4)

This clause is consequential on the change made to section 73L (2). It replaces a reference to ‘a drug awareness course’ with a reference to ‘the drug awareness course’.

Clause 28 Section 73M (2)

This amendment is consequential on the amendment in clause 42, and makes it clear that the road transport authority can specify the particular drug awareness course that the person must complete.

Clause 29 Section 73M (3)

This clause is consequential on the amendment to section 73M (2). It replaces a reference to ‘a drug awareness course’ with a reference to ‘the drug awareness course’.

Clause 30 Section 73M (3), new note

This clause is consequential on the insertion of new section 73QA by clause 41. It inserts a new note in section 73M (3). The note explains the interrelationship between section 73M and section 73Q, and in particular that section 73M (3) does not apply if an exemption is granted under the latter section.

Clause 31 Section 73M (4)

This clause is consequential on the amendment to section 73M (2). It replaces a reference to ‘a drug awareness course’ with a reference to ‘the drug awareness course’.

Clause 32 Section 73M (4), examples 1 and 2

This clause is consequential on the amendment to section 73M (2).

Clause 33 Section 73M (6)

This clause is consequential on the amendment to section 73M (2). It replaces a reference to ‘a drug awareness course’ with a reference to ‘the drug awareness course’.

Clause 34 Section 73N (2)

This clause amends section 73N (2). It ensures that an offender is not issued with a restricted licence until the person has attended the course specified for the person by the road transport authority and has given the authority evidence to that effect. This amendment is consequential on the amendments to section 73R made by clause 42.

Clause 35 Section 73N (2), new note

This clause is consequential on the insertion of new section 73QA by clause 41. It inserts a new note in section 73N(2). The note explains the interrelationship between section 73N and section 73Q, and in particular that section 73N (2) does not apply if an exemption is granted under the latter section.

Clause 36 Section 73O (2)

This clause amends section 73O (2). It ensures that an offender is not issued with a probationary licence until the person has attended the course specified for the person by the road transport authority and has given the authority evidence to that effect. This amendment is consequential on the amendments to section 73R made by clause 42.

Clause 37 Section 73O (2), new note

This clause corresponds with the amendment of section 73QA, to ensure that a person can be issued with a probationary licence where the authority has granted the person an exemption under section 73Q.

Clause 38 Section 73P (1)

This clause substitutes new section 73P (1) to clarify that section 73P is the provision under which applications for exemption from the requirement to complete a drug awareness course are made, while section 73Q is the provision under which applications for exemption are decided. The wording in new section 73P more clearly reflects this intention.

Clause 39 Section 73Q (1)

This clause is similar to the amendment to section 73R made by clause 42. It includes in this provision a reference to the ‘course specified for the person by the road transport authority’.

Clause 40 New section 73Q (3)

This clause clarifies the interrelationship between section 73P (3), which allows the authority to refuse to consider an application for exemption if the applicant does not comply with a written request requiring the person to provide additional information or documents, and section 73Q (1), which requires the authority to refuse or grant an application for an exemption. The amendment clarifies that the authority is taken to have refused an application for an exemption if an applicant fails to provide additional information or documents as requested by the authority.

Clause 41 New section 73QA

This clause inserts new section 73QA, which requires the road transport authority to issue a person a restricted or probationary licence where the authority has granted the

person an exemption under section 73Q and all other criteria for the grant of the licence are met. This amendment is necessary because the existing provisions do not provide for the issue of probationary or restricted licences to persons who are granted an exemption. The issue of a restricted or probationary licence is necessary to give effect to the purpose of the exemption provisions.

Clause 42 New section 73R (1A)

This clause amends section 73R to insert new section (1A), which permits the road transport authority to approve a course for first time offenders and a different course for repeat offenders. Related amendments require that offenders must complete the course specified for them by the road transport authority, in recognition of their different circumstances and rehabilitation needs. As previously explained (see the clause notes for clause 22) it is not considered that this amendment amounts to unlawful discrimination, and it is also considered to be a reasonable limitation of rights for the purposes of section 28 of the *Human Rights Act 2004*.

Clause 43 Section 73R (3)

This clause sets out the definitions of *first offender* and *repeat offender*. These terms are defined in full in the *Road Transport (Alcohol and Drugs) Act 1977*.

Clause 44 Section 87 (1) (p)

This clause omits section 87 (1) (p). Section 87 (1) deals with the grounds on which the road transport authority may vary, cancel or suspend driver licences on its own initiative. Section 87 (1) (p) is related to a failure by a person to complete an alcohol awareness course or a drug awareness course. This discretionary power is both unnecessary and inconsistent with the provisions in the Regulation that compel the road transport authority to suspend a person's licence where the person does not undertake or complete the specified course.

Clause 45 New section 88AA

This clause inserts new section 88AA, which is a notice provision. It ensures that where the authority is required by law to suspend a person's licence for failing to complete a mandatory alcohol or drug education course, the authority must give the licence holder written notice of the suspension before that suspension takes effect. This notice requirement will assist drivers to avoid committing the offence of driving while suspended and to make arrangements to complete the course as soon as practicable in order to remove the suspension. There are other licence suspension provisions in the road transport legislation that require the authority to notify a person of a licence suspension and to provide relevant details about the suspension. Examples include sections 44 (Suspension for non payment of infringement notice penalties) and 85 (Notification and duration of suspension of driver licence, registration etc.) of the *Road Transport (General) Act 1999*.

Clause 46 *Road Transport (General) Regulation 2000, schedule 1, part 1.4, new item 24AA*

This clause amends the list of decisions subject to internal review to include a decision by the road transport authority to refuse to issue a probationary licence under section 73D (4) (b). The absence of a provision allowing a person to request an internal review of a decision by the road transport authority to refuse to issue a probationary licence under section 73D (4) (b) was an omission during initial drafting.

Clause 47 *Road Transport (General) Regulation 2000, schedule 1, part 1.4, new item 24AB*

This clause corresponds with the changes made to the *Road Transport (General) Regulation 2000*, schedule 1, part 1.4, new item 24AA. This clause amends the list of decisions subject to internal review to include decisions by the road transport authority to refuse to issue a probationary licence under section 73M (4) (b).
