

2012

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

ROAD TRANSPORT (OFFENCES) AMENDMENT REGULATION 2012 (No 1)

SUBORDINATE LAW SL2012-2

EXPLANATORY STATEMENT

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Overview

This Regulation is made under section 233 of the *Road Transport (General) Act 1999* (the Act), which provides for regulations to be made for that Act and for road transport Acts.

This Regulation makes a series of technical amendments to the Schedule to the *Road Transport (Offences) Regulation 2005* (the Offences Regulation). The Schedule lists various offences contained in each Act and Regulation that comprise the road transport legislation. For those offences that may be dealt with by way of infringement notice, it prescribes the infringement notice penalty amount that is payable. It also specifies the demerit points (if any) that apply in relation to any offence.

As the road transport legislation is amended frequently, it is desirable to review the Offences Regulation periodically to ensure that all necessary consequential amendments have been made. A review of the Offences Regulation in October 2011 identified a number of matters that require attention.

The amendments made by this Regulation:

- correct inadvertent errors and omissions in the Schedule;
- ensure better alignment between the short description of certain offences and the elements of those offences;
- repeal items that are no longer required as the offences to which they relate no longer exist.

The amendments do not increase the amounts of any infringement penalties that are payable. None of the inadvertent errors or omissions corrected by this Regulation are known to have materially affected any action pursuant to the Offences Regulation.

Notes on Clauses

Clause 1 Name of Regulation

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

Clause 2 Commencement

This is a formal provision that explains when the regulation commences. The regulation will commence on 15 February 2012.

Clause 3 Legislation amended

This provision explains that the legislation amended by these amendments is the *Road Transport (Offences) Regulation 2005*, which is referred to as the Offences Regulation in this Explanatory Statement.

Clause 4 Schedule 1 heading

This amendment to the heading substitutes a new heading. The new heading removes a reference to section 29 from the text in parentheses located under the heading. The amendment is necessary because section 29 of the Offences Regulation no longer exists.

Clause 5 Schedule 1, part 1.2, new item 4A

Part 1.2 of the Schedule deals with offences contained in the Australian Road Rules. This clause inserts new item 4A in part 1.2 of the Schedule. This item relates to the offence in Rule 28 (2A). That sub-rule provides:

“If there is a bicycle storage area before an intersection that extends across one or more marked lanes of a multi-lane road, a rider of a bicycle turning left must approach and enter the intersection from within the part of the bicycle storage area that is directly in front of the left marked lane or of a bicycle lane that is on the left side of the road.

The term ‘bicycle storage area’ is defined in the dictionary to the Australian Road Rules. The Schedule should have been consequentially amended when Rule 28 (2A) was inserted. This amendment corrects that omission.

Clause 6 Schedule 1, part 1.2, item 11

This amendment corrects an incorrect reference within the short description for item 11 in part 1.2, which relates to the offence in Rule 35 of the Australian Road Rules (hook turns). This offence provision is not used in the ACT currently as our roads are not configured for hook turns. For that reason, that no infringement penalty amount or demerit points have been prescribed for this offence. However, the offence forms part of the Australian Road Rules and it is listed for reasons relating to interstate enforcement of the Rules.

Clause 7 Schedule 1, part 1.2, items 43 and 44

This amendment applies to part 1.2 of the Schedule, and amends the short descriptions for the offences in Rules 59 (1) and 60 of the Australian Road Rules. Those Rules deal with entering an intersection or marked foot crossing when a traffic signal is red. The current short descriptions for these offences do not accurately reflect the elements of these offences. In particular, the use of “proceed” appears to have resulted in confusion for motorists and, at times, the courts. The word “proceed” is not used in the text of either of these offences, which instead refer to a vehicle “entering” the intersection or foot crossing when a traffic light or traffic arrow shows red.

While section 75 (1) of the *Road Transport (General) Act 1999* provides that:

- “ An offence against the road transport legislation is sufficiently stated or described in an information, summons, subpoena, warrant, notice, order or other document, if it is stated or described using—
- (a) the short description prescribed by regulation for the offence; or
 - (b) an expression substantially the same as the short description...”

it is nevertheless desirable to ensure that any confusion as to the substance of the charges concerned is resolved, by amending the short descriptions so they accurately summarise the content of the offences to which they relate.

Clause 8 Schedule 1, part 1.2, item 47

This amendment is similar in purpose and effect to the amendment in clause 8. It amends item 47 in part 1.2, which relates to Rule 61 of the Australian Road Rules (enter intersection when lights/arrow yellow/red), to ensure the short description of the offence accurately summarises its content. Specifically, it omits any use of “proceed”.

Clause 9 Schedule 1, part 1.2, item 241

This amendment divides existing item 241 of part 1.2 into three items, to differentiate more clearly between the various offences contained in Rule 187 (1), (2) and (3) of the Australian Road Rules. This change will enable a person who is given an infringement notice for an offence against one of these three provisions to have a clearer indication of which of the offences the person stands accused, consistent with section 22 (2) (a) of the *Human Rights Act 2004*. That section provides that an accused person has the right to be told promptly and in detail, in a language that he or she understands, about the nature and reason for the charge.

Clause 10 Schedule 1, part 1.2, items 393 and 394

This clause amends the short description for items 393 and 394 in part 1.2 of the Schedule. These items relate to Rule 268 (3) and (4) respectively of the Australian Road Rules. Those sub-rules relate to the way that people travel in vehicles, and make it an offence to travel in a vehicle with a part of a person’s body outside a window or door of the vehicle. The offence in sub-rule 268 (3) applies to any person in a vehicle (including the driver or a passenger), while the offence in sub-rule 268 (4) applies to the driver of a vehicle with a passenger who has a body part outside a window or a door. The new short descriptions align more closely with the content of the relevant offences than the descriptions that they replace.

Clause 11

This clause amends item 452 of part 1.2, which relates to Rule 300 of the Australian Road Rules. It corrects the entry in column 6 of this item, to make it clear that the demerit points listed for this offence are national schedule demerit points. This concept is explained in section 19 of the Offences Regulation and is further defined in the dictionary to the *Road Transport (Driver Licensing) Act 1999*.

Clause 12 Schedule 1, part 1.3

This clause substitutes replacement part 1.3, which deals with offences under the Road Transport (Alcohol and Drugs) Act 1977. By way of background, part 1.3 of Schedule 1 was significantly amended last year by the *Road Transport (Alcohol and Drugs) Legislation Amendment Act 2011*, which came into effect on 13 May 2011. However, those amendments were inadvertently overwritten by subsequent amendments to the *Schedule Road Transport (Offences) Regulation 2005* that adjusted infringement penalty amounts by the 2011 wage price index. The infringement penalty amendments were developed based on a pre-13 May 2011 version of the Schedule to the Offences Regulation. That version was inadvertently not

updated when the *Road Transport (Alcohol and Drugs) Legislation Amendment Act 2011* commenced. As there are no infringement penalties prescribed for offences under the *Road Transport (Alcohol and Drugs) Act 1977*, the reversion to the pre-13 May version of the Schedule was not identified during the finalisation of the amendments to increase infringement penalty amounts.

This amendment restores the amendments that were made by the *Road Transport (Alcohol and Drugs) Legislation Amendment Act 2011*. In addition, the opportunity has been taken to provide additional clarity by providing separate sub-items to distinguish between offences committed by drivers and driver trainers, where applicable.

Clause 13 Schedule 1, part 1.5

This clause substitutes replacement part 1.5, which deals with offences in the *Road Transport (Driver Licensing) Act 1999*. Replacement part 1.5 contains the following revisions:

- item 4, which has a revised short description that uses the word ‘changed’ instead of ‘altered’, to align more closely with the offence to which it relates;
- former item 6 is now split into new items 6 and 7; new item 6 deals with the offence in section 30 (2) (a), and new item 7 deals with the offence in section 30 (2) (b) of the *Road Transport (Driver Licensing) Act 1999*;
- all items from item 6 onwards are consequentially renumbered; and
- the insertion of new item 12 to accommodate the offence in section 31A of the *Road Transport (Driver Licensing) Act 1999*. This item had been inserted by the *Road Transport Legislation Amendment Act 2011*, which came into effect on 3 June 2011. The insertion was inadvertently overwritten by the amendments in the *Road Transport (Offences) Amendment Regulation 2011* that were under development at the same time.

Clause 14 Schedule 1, part 1.6, new item 13A

This clause inserts new item 13A into part 1.6, which deals with offences under the *Road Transport (Driver Licensing) Regulation 2000*. Item 13A relates to the offence in section 36 (2) of that Regulation (provisional rider not display P-plate as required). The amendment corrects an inadvertent omission from the Schedule.

Clause 15 Schedule 1, part 1.6, new item 14A

This clause inserts new item 14A into part 1.6. Item 14A relates to the offence in section 37(2) of that Regulation (provisional driver not display P-plates as required). The amendment corrects an inadvertent omission from the Schedule.

Clause 16 Schedule 1, part 1.7

This clause substitutes a replacement part 1.7 of the Schedule. Part 1.7 deals with offences under the *Road Transport (General) Act 1999*. Replacement part 1.7 contains the following revisions:

- amended short description for item 2, to align more closely with the offence to which it relates; and
- omission of items that relate to offences in provisions that no longer exist (former items 4, 5 and 17) and consequential renumbering.

Clause 17 Schedule 1, part 1.8, items 2 and 3

This clause amends part 1.8 of the Schedule, which deals with offences under the *Road Transport (General) Regulation 2000*. It replaces items 2 and 3 with new items 2 to 3A. These items correct errors in references to offence provisions and improve the short descriptions for the relevant offences, which relate to statutory write-off notices placed on written-off vehicles.

Clause 18 Schedule 1, part 1.11, items 187.1 to 187.3

This clause amends part 1.11 of the Schedule, which deals with offences under the *Road Transport (Public Passenger Services) Regulation 2002*. This amendment removes items that relate to offences that no longer exist.

Clause 19 Schedule 1, part 1.11, item 197

This clause also amends part 1.11 of the Schedule. This amendment improves the short description for the offence in section 140 (4) of the Regulation to align it more closely with the elements of that offence.

Clause 20 Schedule 1, part 1.11, new item 301A

This clause also amends part 1.11 of the Schedule, to insert new item 301A. This amendment relates to the offence in section 214 (2) of the *Road Transport (Public Passenger Services) Regulation 2002*, which applies to a person who fails to comply with a direction about getting into or out of a hire car. The amendment corrects an inadvertent omission from the Schedule.

Clause 21 Schedule 1, part 1.13, item 46

This clause amends part 1.13, which deals with offences under the *Road Transport (Safety and Traffic Management) Regulation 2000*. It omits an item that relates to an offence provision that no longer exists.

Clause 22 Schedule 1, part 1.13, items 63 and 64

This clause also amends part 1.13. It replaces existing items 63 and 64, which relate to provisions that no longer exist, with a new item that relates to the offence in section 93 (2) of the *Road Transport (Safety and Traffic Management) Regulation 2000*. That offence relates to the heavy vehicle parking scheme established under Division 3.1.3 of the Regulation, and is committed where a person fails to take reasonable steps to comply with a requirement made by an authorised person under section 93 (1) (d). This aspect of the amendment corrects an inadvertent omission from the Schedule.

Clause 23 Schedule 1, part 1.15, item 30

This clause amends part 1.15 of Schedule 1, which deals with offences under the *Road Transport (Vehicle Registration) Regulation 2000*. It omits an item that relates to an offence provision that no longer exists.