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

**ROAD TRANSPORT (POLICE DRIVER AND RIDER EXEMPTIONS)
AMENDMENT REGULATION 2013 (No 1)**

SL2013-9

EXPLANATORY STATEMENT

**Presented by
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ROAD TRANSPORT (POLICE DRIVER AND RIDER EXEMPTIONS) AMENDMENT REGULATION 2013 (No 1)

Outline

This regulation is made under sections 26 and 28 (2) of the *Road Transport (Driver Licensing) Act 1999*, which provide for regulations about the driver licensing system, including exemptions from licence requirements. It is also made under sections 33 and 35 of the *Road Transport (Safety and Traffic Management) Act 1999*, which provide for regulations about safety and traffic management, including exemptions from provisions relating to safety and traffic management.

This regulation both consolidates and updates existing exemptions for police drivers and riders.

(Note: unless otherwise specified in the road transport legislation, the word “driver” includes “rider”. The converse does not apply – rider has a narrower meaning. This Explanatory Statement refers to both riders and drivers when the term “driver” is used in a provision, to assist readers who may not be familiar with the broader meaning of “driver”).

The amendments to the *Road Transport (Driver Licensing) Regulation 2000* have the effect of transferring into that Regulation the licensing exemption provisions for police motorcycle rider trainees that are contained in the *Road Transport (General) (Police Motorcycle Rider) Exemption 2013 (No 1)* DI 2013-31. That instrument will be revoked when the amending Regulation takes effect. These provisions will now be located in the part of the current Regulation that deals with exemptions, to assist people who use the road transport legislation to find provisions dealing with police motorcycle rider exemptions.

The amendments to the *Road Transport (Safety and Traffic Management) Regulation 2000* amend the existing exemption for police drivers and riders in section 69 of the Regulation, so that it also exempts police drivers and riders from certain provisions of the Regulation. Amended section 69 will also include the exemption from the Australian Road Rules, which will apply in place of the exemption that currently applies under Rule 305 of those Rules. The purpose of this amendment is to make it easier for users of the legislation to identify all the provisions relating to safety and traffic management from which police drivers are exempted.

The amendments also include a new section 69A, which deals with exemptions for police driver and motorcycle rider trainees. This provision is included to remove any doubt that police are exempt from the specified provisions while they are undergoing driver and rider training and assessment activities, as well as when driving or riding in the ordinary course of their duties as police officers.

Notes on clauses

Part 1 Preliminary

Clause 1 Name of regulation

This clause states the name of the regulation.

Clause 2 Commencement

This clause states that the regulation commences on the day after its notification day.

Clause 3 Legislation amended

This clause provides for this regulation to amend the *Road Transport (Driver Licensing) Regulation 2000* and the *Road Transport (Safety and Traffic Management) Regulation 2000*.

Part 2 Road Transport (Driver Licensing) Regulation 2000

Clause 4 Section 39, new note

This clause inserts a note into section 39, which deals with the eligibility requirements for applications for a full motorcycle licence. The note directs readers to new section 99A (1), which provides that a police officer is eligible for a full motorcycle licence when the officer has successfully completed police motorcycle rider training.

Clause 5 Part 6 heading

This clause replaces the heading to part 6, which deals with certain categories of drivers (and riders) who are exempted from provisions of the road transport legislation dealing with driver licensing. The new heading includes a reference to “other drivers”, which covers police drivers and riders.

Clause 6 New section 99A

This clause inserts new section 99A into part 6. New section 99A contains an exemption for police motorcycle riders from licence eligibility requirements that would otherwise apply to them when they commence their police rider training, if they do not already hold a full motorcycle licence. This provision will replace the exemption made under section 13 of the *Road Transport (General) Act 1999*, in DI 2013-31, which will be revoked by instrument when this amendment Regulation commences. That exemption instrument was made as an interim measure, pending the finalisation of this amendment Regulation.

New section 99A (1) explains that a police officer is eligible to apply for a full motorcycle licence after successfully completing police motorcycle rider training. The effect of this provision, together with new subsection (2) (b), is that police riders are not required to undergo the learner rider and provisional rider licensing stages before becoming eligible for a full licence.

New section 99A (2) (a) exempts police riders who are undergoing training and or assessment from the requirement to hold a rider licence, while new paragraph (b) of that section exempts them from various conditions and eligibility requirements associated with learner and provisional rider licences. The Australian Federal Police

rider training and assessment program is an intensive course that equips police riders with high-level skills for a range of policing tasks including motorcade and pursuit riding.

New section 99A (3) contains definitions of terms used in section 99A, including *police motorcycle rider assessment* and *police motorcycle rider training*.

Clause 7 Dictionary, note 2

This clause makes a consequential amendment to note 2 in the dictionary, which refers readers to terms that are defined in the Legislation Act. The amendment includes the term *police officer* in the list of terms used in the regulation that are defined in the Legislation Act.

Part 3 Road Transport (Safety and Traffic Management) Regulation 2000

Clause 8 Section 69

This clause replaces existing section 69, which contains an exemption for police drivers from certain provisions of the *Road Transport (Safety and Traffic Management) Regulation 2000*, with a revised exemption provision.

At present, section 69 should be read together with Australian Road Rule 305 in order to give a comprehensive understanding of the range of safety and traffic management requirements from which police drivers are exempted. Replacement section 69:

- incorporates the effect of Rule 305, which is to exempt police drivers from the Australian Road Rules if certain conditions are satisfied;
- incorporates the effect of existing section 69, which is to exempt police drivers from other provisions of the Regulation, if certain conditions are satisfied; and
- exempts police drivers from certain provisions of the principal Act involving driving, again if certain conditions are satisfied.

New section 69 (1) provides that the *exemption provisions* do not apply to a police driver, if the driver is taking reasonable care and it is reasonable for the provisions not to apply having regard to the road and traffic conditions at the time. If the driver is in (or on) a moving vehicle, the vehicle must have flashing blue or red light, or be sounding an alarm.

The note to new section 69 (1) explains that *driver* includes *rider*.

New section 69 (2) provides that the requirement for flashing lights or alarms does not apply if it is reasonable not to display the lights or sound the alarm, or for the vehicle not to be fitted or equipped with flashing lights or an alarm. This provision is based on existing section 69 (2) and Australian Road Rule 305 (2).

New section 69 (3) defines the term *exemption provision*, which identifies the provisions from which police drivers (and riders) are exempted. As explained above, these include the Australian Road Rules, the additional ACT Road Rules and two provisions of the Act (section 5B, which deals with burnouts and other prohibited conduct and section 7, to the extent that section deals with dangerous or furious driving).

It should be noted that police are not exempted from provisions relating to reckless, negligent, culpable or menacing driving. That is because if the relevant fault element for those offences can be proved on the facts of a particular case, the existence of that fault element would not be consistent with the requirement in section 69 for the driver to be taking reasonable care. Conversely, if the relevant fault element cannot be proved, the offence as a whole cannot be proved and therefore there is no need for the exemption.

Clause 9 New section 69A

This clause inserts a new provision into the regulation, to provide an exemption for police driver (and riders) who are undergoing training and assessment. The purpose of new section 69A is provide certainty that the exemption for police drivers (and riders) extends to police officers while they are undertaking driver or rider training and assessment, as well as when driving or riding in the ordinary course of their policing duties.

New section 69A reflects the structure of new section 69, with the additional circumstance in section 69A (1) that the driver or rider is undertaking police driver or rider training or assessment. It is important for police drivers and riders to be trained and assessed in real “on road” driving conditions, as well as in more controlled track-based situations. On-road driving and riding training and assessment will necessarily involve departures from the road rules and other provisions as these drivers and riders develop their skills in high-speed driving, escort duty and pursuits.

Clause 10 Dictionary, note 2

This clause makes a consequential amendment to note 2 in the dictionary, which refers readers to terms that are defined in the Legislation Act. The amendment includes the term *police officer* in the list of terms used in the regulation that are defined in the Legislation Act.