

2013

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

**ROAD TRANSPORT LEGISLATION AMENDMENT REGULATION 2013
(NO 1)**

SL2013-11

EXPLANATORY STATEMENT

**Presented by
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ROAD TRANSPORT LEGISLATION AMENDMENT REGULATION 2013 (NO 1)

Outline

This regulation, made under the *Road Transport (Driver Licensing) Act 1999* and the *Road Transport (General) Act 1999*, provides for a number of administrative matters required to support the implementation of flexible options for paying or discharging traffic and parking infringement notice penalties. The options of payment by instalment, discharge of a penalty by participating in a community work or social development program or waiver of a penalty were introduced in the *Road Transport (General) (Infringement Notices) Amendment Act 2012* and further modified by the *Road Transport Legislation Amendment Act 2013*.

This regulation deals with administrative processes in relation to applications for infringement notice management plans allowing either payment by instalments or participation in approved programs.

The regulation amends the *Road Transport (Offences) Regulation 2005*, to include provisions about the following:

- obligations of people paying penalties by instalments to advise of a change in financial circumstances;
- requests for deferral of instalment payment arrangements;
- when the administering authority for an infringement penalty can take action for non-compliance with an infringement notice management plan;
- the types of programs that can be approved as community work or social development programs;
- the information required in an application from an entity seeking approval of a program as a community work or social development program;
- the “cut out” rate that applies to community work or participation in a program;
- the requirement that an application by a person to participate in a community work or social development program be supported in writing by the provider of the approved program the person wishes to participate in;
- an obligation on a participant in an approved community work or social development program to advise the administering authority if the person ceases participation in the program;
- an obligation on the provider of a program to advise the administering authority where a person has failed to commence the program or has permanently ceased participation in the program;
- information required to be included in a notice advising a person that their driver licence will be suspended due to non-compliance with their infringement notice management plan.

The regulation also provides for a decision by an administering authority to refuse an application for deferral of a payment under an infringement notice management plan to be internally reviewable.

Notes on clauses

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 commencement of the *Road Transport (General Infringement Notices) Amendment Act 2012*, section 3.

Clause 3 Legislation amended

This clause states that this regulation amends the *Road Transport (Driver Licensing) Regulation 2000*, *Road Transport (General) Regulation 2000* and *Road Transport (Offences) Regulation 2005*.

Part 2 Road Transport (Driver Licensing) Regulation 2000

Clause 4 Demerit points—effect of withdrawal of infringement notice Section 137A (1) (b)

This clause inserts a reference to section 13A (1) (ca) of the *Road Transport (Driver Licensing) Act 1999* to the effect that when a person's requirement to pay an infringement notice for a demerit points offence is waived by the administering authority, and the infringement notice is subsequently withdrawn, the demerit points are taken never to have been recorded against the person. This is a consequential amendment reflecting the amendments made by the *Road Transport (General) (Infringement Notices) Amendment Act 2012* to provide for applications for waiver of road transport infringement notice penalties.

Part 3 Road Transport (General) Regulation 2000

Clause 5 Internally reviewable decisions Schedule 1, new part 1.6C

This clause prescribes a decision by the administering authority, under section 16B of the *Road Transport (Offences) Regulation 2005*, to refuse to defer a payment under an infringement notice management plan, as an internally reviewable decision under section 90A of the *Road Transport (General) Act 1999*.

Part 4 Road Transport (Offences) Regulation 2005

Clause 6 New part 2A

This clause inserts new part 2A in the *Road Transport (Offences) Regulation 2005*, relating to infringement notice management plans.

Division 2A.1 – Payment by instalments

Section 16 – Application—div 2A.1

This section states that division 2.A1 applies if a person has an infringement notice management plan that allows payment by instalments.

Section 16A – Condition applying to plan allowing instalment payments—Act, s 31B (7) (b)

This section states that an infringement notice management plan is subject to the condition that the person must tell the administering authority in writing if the person is unable to make a payment under the plan because of a change in their financial circumstances. A note explains that the person must tell the authority as soon as possible (see section 151B of the *Legislation Act 2001*).

Section 16B – Payment of amounts under plan—Act, s 31B (7) (c)

This section states that a person may ask the administering authority to defer a payment under their infringement notice management plan, including a payment that has been dishonoured. The administering authority has the discretion to defer the payment if satisfied on reasonable grounds it is justified because of the person's financial circumstances.

Section 16C – Non-compliance with plan allowing payment by instalments—Act, s 44A (9) (a)

This section sets out what constitutes non-compliance with an infringement notice management plan that allows payment by instalments. The administering authority becomes satisfied that a person has failed to comply with their plan if the person fails to make 2 or more *consecutive* payments, or 5 or more payments *in any 12 month period*, in accordance with the plan. The compliance requirements for a plan will be clearly set out in writing when a person is advised that their application for a plan has been allowed.

Division 2A.2 – Community work and social development programs

Section 16D – Kinds of community work or social development programs that may be approved

This section describes the kinds of programs that may be approved as a community work or social development program.

Section 16E – Application for approval of community work or social development program

This section outlines how entities (individuals and organisations) may apply to the responsible director-general for approval of a community work or social development program, and the required contents of an application for approval.

The application for approval must state the details of the program, details of the entity and the arrangements for providing the program, as described in section 16E (2).

Section 16F – When participation in approved program is taken to be finished—Act, s 31B (7) (d)

This section states that a person's participation in an approved community work or social development program is taken to be finished when the person's penalty has been discharged, at a rate set out in section 16F (2) (the discharge rate). The discharge rate varies depending on the nature of the program undertaken. The discharge rate for community work is the same as the hourly rate for voluntary community work in accordance with a Voluntary Community Work Order made under the *Crimes (Sentence Administration) Act 2005*. The discharge rate for other programs is based on the rates applied for similar programs under the NSW Work and Development Order Scheme.

Section 16G – Application for plan allowing participation in approved program—Act, s 31A (4) (d)

This section provides that an application for an infringement notice management plan that allows participation in an approved community work or social development program must include a supporting statement from the provider. The provider must state that it is satisfied on reasonable grounds that the person is suitable to participate in the program, and that there is a place for the person in the program in the 3-month period after the day the statement is made.

Section 16H – Condition applying to plan allowing participation in approved program—Act, s 31B (7) (b)

This section provides that an infringement notice management plan allowing participation in an approved community work or social development program is subject to the condition that if a person permanently stops participating in the program, they must tell the authority in writing not later than 7 days after the day the person stops participating.

Section 16I – Information to be given to administering authority about participation in an approved program—Act, s 44A (9) (b)

This section applies if a person does not start participating in an approved community work or social development program for which they have been accepted, or if the person permanently stops participation – whether the course of their program has ended, or the provider has suspended or otherwise ended their participation.

The provider must tell the administering authority in writing that the person has not started or has stopped participating not later than 7 days after the day the provider becomes aware of the fact. The notice given to the authority must include the matters stated in section 16I (3).

Division 2A.3 – Infringement notice management plans—general

Section 16J – Content of suspension notice—Act, s 44A (3) (c)

This section prescribes the information to be included in a suspension notice issued under the General Act, section 44A (Suspension for non-compliance with infringement notice management plan).