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**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

ROAD TRANSPORT (DRIVER LICENSING) AMENDMENT

REGULATION 2017 (No 1)

SL2017-28

EXPLANATORY STATEMENT

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ROAD TRANSPORT (DRIVER LICENSING) AMENDMENT REGULATION 2017 (No 1)

Introduction

This explanatory statement relates to the *Road Transport (Driver Licensing) Amendment Regulation 2017 (No 1)* (the regulation). It has been prepared in order to assist the reader of the regulation. This explanatory statement must be read in conjunction with the regulation. It is not, and is not meant to be, a comprehensive description of the regulation. What is said about a provision is not taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

Outline

This regulation amends the *Road Transport (Driver Licensing) Regulation 2000* (the principal regulation), made under the *Road Transport (Driver Licensing) Act 1999* (the Act). This regulation increases the maximum period of a full driver licence to give driver licence holders the option of having their licence issued or renewed for a longer period.

The regulation also allows for driver licence photographs to be used for other ACT Government registration cards and licence types. This initiative will improve customer service by allowing people to apply for certain registration cards and licenses online – without having to attend an Access Canberra Service Centre to get their photograph taken.

Human rights implications

The disclosure of photographs permitted under this regulation engages the right to privacy under section 12 (a) of the *Human Rights Act 2004* (HRA). Section 12 (a) provides that an individual has the right not to have his or her privacy, family, home or correspondence interfered with unlawfully or arbitrarily.

Section 28 of the HRA provides that human rights are subject only to reasonable limits set by laws that can be demonstrably justified in a free and democratic society. Section 28 (2) of the HRA provides that in deciding whether a limit on a human right is reasonable, all relevant factors must be considered, including:

- a) the nature of the right affected;
- b) the importance of the purpose of the limitation;
- c) the nature and extent of the limitation;
- d) the relationship between the limitation and its purpose; and

- e) any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve.

This amendment constitutes a reasonable limitation on the right to privacy for the following reasons.

Nature of right affected

This amendment will allow for disclosure of photographs by the RTA to Access Canberra for inclusion on other government licences and registration cards. The RTA currently holds photographs taken or provided for the purposes of issuing driver licences and/or proof of age cards. Access Canberra provides frontline services for the RTA and is the one-stop-shop that brings together ACT Government customer services, approvals and regulatory compliance activities.

This amendment will allow for lawful interference with a person's privacy by permitting the disclosure of personal information provided to one part of government (the RTA) for a particular purpose (issuing driver licences or proof of identity cards) to another part of government for other purposes (the issuing of other types of licences or registration cards).

The right to privacy extends to arbitrary interference relating to an individual, an individual's family, home or correspondence, even when authorised by law. Such interference should be in accordance with the provisions, aims and objectives of the HRA and be reasonable in the particular circumstances.

A legislative amendment constitutes an arbitrary interference with the right to privacy when it is unreasonable, unnecessary and the degree of interference is not proportionate to the need. This amendment is considered to be reasonable, necessary and proportionate as set out below.

Importance and purpose of limitation

The purpose of the limitation is to enable efficiencies in service delivery through delivery of faster and simpler processes for obtaining ACT government licences and registration cards. The community will also benefit from a reduction in the personal information collected and stored by the ACT Government. Currently a separate photograph is taken for each licence or registration card.

Nature and extent of the limitation

The following limitations apply to the disclosures under this amendment:

- Photographs will only be disclosed so that Access Canberra can reproduce the likeness of a person on the specified government licences and registration cards.
- Photographs will only be disclosed when people are successful in obtaining the applied for licence or registration card.
- Access Canberra is not authorised to disclose the photograph or use it for any other

purpose, unless authorised or required by law.

- A person's photograph will only be used where the image at the time of expiry of the issued licence or registration card will not be older than 11 years. This ensures that the photo continues to represent a reasonable likeness.
- The RTA and Access Canberra are subject to the *Information Privacy Act 2014* and must ensure compliance with it in dealing with the photographs. As part of ensuring this compliance Access Canberra will notify applicants, at the time personal information is collected (that is when the photo is taken) for the purpose of their driver licence application or renewal that it may be used for other government licences and registration cards.
- At the time of processing an application for another government licence or registration card, Access Canberra will advise if it intends to use the applicant's driver licence photograph on the licence or registration card.

The relationship between the limitation and its purpose

There is a direct correlation between this amendment and the ACT Government's commitment to reducing regulatory burden, improving transactions with government and efficient digital services. The amendment will improve customer experiences to support a seamless transition to online transactions. The overall burden on people to attend Access Canberra Service Centres and provide personal information will decrease.

Any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve

It is considered that there are no less restrictive means reasonably available to achieve the purpose. One alternative would be to retain the current system where people are required to provide or have their photograph taken multiple times. However, this negates the red tape benefits of having a single point of contact for ACT Government services. The amendment does not expand the types of information currently being collected and people will have the choice of whether to use the photograph held by the RTA for other licences and registration cards or attend an Access Canberra Service Centre to have a photograph taken. When the photograph would be older than 11 years at the time the licence or registration card being issued expires, a new photograph will be required to be taken.

Climate change considerations

There are no climate change implications associated with this regulation.

Notes on clauses

Clause 1 Name of regulation

This formal provision sets out the name of the regulation.

Clause 2 Commencement

This formal provision provides for the commencement of the regulation. This regulation will commence on 1 September 2017.

Clause 3 Legislation amended

This clause lists the legislation to be amended by the regulation. This regulation will amend the principal regulation.

Clause 4 Section 41

This clause amends the maximum period for which a full licence can be issued. This amendment increases the maximum period for a full licence from six years to 11 years.

Clause 5 Section 64 (2) (a), note

This clause makes a technical amendment to the referenced provision and is consequential on the changes made by clause 8.

Clause 6 Section 86 (2) (c)

This clause amends the maximum period for which a full driver licence can be renewed. This amendment increases the maximum period for the renewal of a full licence from five years to 10 years.

Clause 7 Section 107 (2), new note

This clause includes a note on the use of a person's photograph on a driving instructor or heavy vehicle driver assessor certificate of accreditation and is consequential on the changes made by clause 8. This note replicates the position for public driver authority cards.

Clause 8 Part 8A

This clause remakes Part 8A which consists of two sections relating to the use and disclosure of photographs and signatures held by the road transport authority. Part 4 of the Act specifies how the road transport authority can use and disclose photographs and signatures collected as part of applications for the issue, replacement, renewal or variation of a driver licence or proof of identity card. This includes uses and disclosures that are prescribed by regulation.

New section 138A replaces section 138AB regarding the use of photographs by the road transport authority. It retains the ability for the road transport authority to use a photograph it holds for producing a public vehicle driver authority card.

New section 138A authorises the road transport authority to use a photograph it holds for inclusion on a driving instructor or heavy vehicle driver assessor certificate of accreditation issued under section 107 of the principal regulation.

New section 138B, which authorises the disclosure of photographs and signatures by the road transport authority retains the current ability of the road transport authority to disclose photographs or signatures to the commissioner of fair trading for the proper administration or enforcement of the *Liquor Act 2010*. This remains applicable as the *Liquor Act 2010* contains offences relating to the purchase, supply and consumption of liquor by a child or young person and using false identification to obtain a proof of identity card.

It expands the circumstances in which the road transport authority can disclose photographs to include for the purpose of reproducing the likeness of the person on the following licences, registration certificates or registration cards:

- a. a licence or registration certificate issued under the *Agents Act 2003*;
- b. a licence issued under the *Security Industry Act 2003*;
- c. a high risk work licence issued under the *Work Health and Safety Regulation 2011*; and
- d. a registration card issued under the *Working with Vulnerable People (Background Checking) Act 2011*.

Without this amendment it would be an offence for the road transport authority to disclose photographs to Access Canberra, even if it had the consent of the individual.

Redundant provisions in the existing section 138B have been removed. The removed provisions related to the disclosure of photographs and signatures to the commissioner for fair trading for the purposes of issuing proof of identity cards. Proof of identity cards are no longer issued by the commissioner for fair trading. Section 210 of the *Liquor Act 2010* provides for the issuing of proof of identity cards by the road transport authority.

Disclosure of a photograph will be permitted either at the time the photograph was taken or provided or at any later time, under section 37 (1) of the Act. This ensures that photographs can be used in situations where the licence or registration card is issued after the photograph was taken or provided and achieves the red tape benefits of this amendment.

Clause 9 Dictionary, note 3

This clause amends note 3 to the dictionary to point to *signature* as a term defined in the *Road Transport (Driver Licensing) Act 1999*, dictionary.

Clause 10 Dictionary, definitions of *photograph*, *signature* and *the Act*

This clause removes the definition of *photograph* which is defined in the *Road Transport (Driver Licensing) Act 1999* dictionary and signposted in note 3 of the *Road Transport (Driver Licensing) Regulation 2000*, dictionary.

This clause removes the definition of *signature* which is defined in the *Road Transport (Driver Licensing) Act 1999* dictionary and is consequential on the changes made by clause 9.

This clause removes the definition of *the Act* as it is outdated and not in accordance with current drafting practice.