

2018

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

**ROAD TRANSPORT (SAFETY AND TRAFFIC
MANAGEMENT) AMENDMENT REGULATION 2018
(No 1)
SL2018–3**

EXPLANATORY STATEMENT

**Circulated by authority of
Shane Rattenbury MLA
Minister for Justice, Consumer Affairs and Road Safety**

Introduction

This explanatory statement relates to the *Road Transport (Safety and Traffic Management) Amendment Regulation 2018 (No)* (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.

Overview

This regulation creates a new requirement for drivers approaching and passing stationary or slow moving police or emergency vehicles in attendance at a roadside incident displaying flashing red or blue lights.

This requirement to slow down while passing police / emergency vehicles recognises that responding to incidents on our roads place first responders at a high risk of being struck by passing vehicles or debris. High vehicle speeds greatly increase the risk of injury and death to pedestrians. The speed at which a vehicle is travelling when it hits a pedestrian (the impact speed) determines the severity of the injury and the chances of survival. The new requirement means improved safety for emergency and police officers who are performing work on the road or roadside, as well as others who are present at the scene.

This regulation imposes this requirement by creating a new offence through inserting a new section 59 in the *Road Transport (Safety & Traffic Management) Regulation 2000* (the Principal Regulation).

New section 59 provides that drivers will be required to slow down upon approaching the police or emergency vehicle at a speed at which the driver can, if necessary, stop safely before reaching the vehicle, and then pass the police or emergency vehicle at a speed of not more than 40km/h. Drivers must give way to police officers or emergency workers on foot near the vehicle, and must not increase their speed until they are at a sufficient distance past the vehicle so as to not risk the safety of any worker on foot.

The requirement to slow down does not apply if the police officer or emergency vehicle is stopped on the other side of a road divided by a median strip.

Human rights implications

Section 28 of the *Human Rights Act 2004* (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.

The regulation creates a new offence of failing to slow down while passing an emergency or police vehicle. While the regulation itself does not prescribe the offence to be a strict liability offence, section 4B of the Principal Regulation provides that all offences in the Principal Regulation are strict liability offences. This results in the offence in new section 59 being a strict liability offence. An assessment of the regulation against section 28 is provided below.

The nature of the right affected

The use of strict liability elements in offences may be seen in some contexts as engaging rights in criminal proceeding under section 22 of the HRA, in particular the right in section 22 (1) (the right to be presumed innocent).

The importance of the purpose of the limitation

The creation of this offence as a strict liability offence reflects the offence being regulatory in nature and of a type which is suitable for construction as a strict liability offence. The purpose of mandating the offence to be a strict liability offence is to ensure the effective enforcement of and compliance with the proposed law. Making this offence a strict liability will also ensure consistency with other offences under the Principal Regulation, which are all strict liability offences. The use of strict liability offences is also common through the broader road transport legislation. The policy rationale for the amendments in this regulation (to protect the safety of police and emergency workers attending roadside incidents) is considered to be of high importance.

The nature and extent of the limitation

Any limitation is not considered to be extensive, and applies only to drivers who pass a stationary or slow moving police or emergency vehicle in the circumstances provided for in the regulation. Making the offence a strict liability offence means that no criminal intent or fault element is required to be proven. The penalties applying to the proposed offence are consistent with Government policy as expressed through the Guide for Framing Offences, with a maximum penalty of 20 penalty units and no option for a term of imprisonment to be applied.

As this offence is a strict liability offence, drivers are able to rely on section 36 of the *Criminal Code 2002*, which provides that a person is not criminally responsible for a strict liability offence if the person was under a mistaken but reasonable belief about the facts, and, had the facts existed as believed, the conduct would not have been an offence.

Drivers are also entitled to the protections provided in section 4C of the Principal Regulation, which provides that a defendant has a defence to an offence if they can

prove that the offence was the result of an accident or that the offence could not have been avoided by any reasonable efforts of the defendant.

The relationship between the limitation and its purpose

The limitation is not extensive, and is directly relevant to the purpose of promoting road safety.

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

It is not considered that there are any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve.

While the inclusion of strict liability limits the range of defences that may be available for a person accused of this offence, a number of defences including mistake of fact remain open to the accused, depending on the particular facts of each case. There are other defences in the *Criminal Code 2002* (e.g. extraordinary emergency, duress) that may theoretically be available, but again this would depend on the facts of each case.

To the extent that there is any limitation on rights this is reasonable and proportionate, noting the public interest benefit in ensuring the safety of police and emergency service workers attending to roadside incidents.

There are no climate change implications associated with this regulation.

Notes on clauses

Clause 1 Name of regulation

This clause specifies the name of the regulation as the *Road Transport (Safety and Traffic Management) Amendment Regulation 2018 (No)*.

Clause 2 Commencement

This clause provides that the regulation will commence in two parts. This two phase commencement process is a consequence of the impending commencement of the *Road Transport (Road Rules) Regulation 2017* (the Road Rules Regulation), which is scheduled to commence on 30 April 2018. The commencement of the Road Rules Regulation will see the Principal Regulation repealed, as the ACT moves to adopt a single regulation of road rules applying to vehicles and road users on ACT roads.

The offence in section 59 of the Principal Regulation will commence on 14 April 2018. As the Principal Regulation will be repealed on 30 April 2018 when the Road Rules Regulation commences, this regulation also provides for the new offence to be inserted into the Road Rules Regulation following the commencement of that regulation.

There is no difference between the offence inserted in the Principal Regulation and the Road Rules Regulation.

Clause 3 Legislation amended

This clause is a formal provision that specifies the regulation will amend the Principal Regulation. As mentioned above, this regulation will also amend the Road Rules Regulation when that regulation has commenced. This regulation also makes consequential amendments to the *Road Transport (Offences) Regulation 2005*.

Clause 4 New section 59

This clause inserts a new section 59 into the Principal Regulation.

New section 59 applies if a police vehicle or an emergency vehicle is: on a road; stationary or slow moving; and displaying flashing red or blue lights (whether or not it is also displaying other lights or sounding an alarm).

New section 59 (2) provides that a driver of a vehicle on a road must:

- (a) Approach the police / emergency vehicle at a speed at which the driver can, if necessary, stop safely before reaching the vehicle; and
- (b) Give way to any police officer or emergency worker on foot near the police / emergency vehicle; and
- (c) Pass the police / emergency vehicle at a speed of not more than 40km/h; or the applicable speed limit if that is less than 40km/h. An example of where this would occur is if the police / emergency vehicle was stopped in a shareway with speed limit of 20km/h; and
- (d) After passing the police / emergency vehicle, drive at a speed at which the driver can, if necessary, stop safely, until the driver is a sufficient distance past the vehicle that the increase in speed does not risk the safety of any police officer or emergency worker on foot near the vehicle.

This requirement is designed to protect police officers and emergency workers responding to an incident on the roadside. The obligation to slow down and potentially give way to police officers or emergency workers on foot reflects the reality that the nature of incidents requires these workers to leave their vehicle and operate on foot around the vehicle, whether to speak to a driver of a vehicle, provide first aid to an injured road user or to conduct firefighting operations. Requiring drivers to slow down to 40km/h while passing police / emergency vehicles provides emergency workers or police officers the same protections to other vulnerable road users in higher risk environments such as school zones or road works zones, which are also subject to a 40km.h speed limit.

New section 59 (3) provides that the new offence does not apply if the driver is driving on a road that is divided by a median strip and the police / emergency vehicle is on the other side of the road and beyond the median strip.

This recognises that there is little risk posed to police officers or emergency workers when they are on a road separated by a median strip. Vehicles on the same side of the road will be required to comply with section 59 (2), whereas drivers driving on the other side of the road will not as they are physically removed from the police /

emergency vehicle and so pose little risk to the safety of police officers or emergency workers.

Clause 5 **Approvals etc by road transport authority**
Section 66 (1), new note

This clause inserts a new note for section 66 of the Principal Regulation. Section 66 confers a wide range of powers on the road transport authority, including the power to declare – through a disallowable instrument – a person to be an emergency worker.

The insertion of this note reflects modern drafting practice, and explains that the power to make a statutory instrument includes the power to make different provision to different matters, and that the instrument may apply differently to stated exceptions or factors. Section 66 itself is not amended by this clause.

For the purposes of this regulation, this note clarifies that the road transport authority may declare a person to be an emergency worker for certain provisions only. The road transport legislation confers a wide variety of privileges and exemptions on emergency workers, and this note clarifies that the road transport authority can declare a person to be an emergency worker for the purposes of new section 59 without necessarily extending all of the privileges and immunities to that person.

Schedule 1 **Consequential amendments**

Part 1.1 **Road Transport (Offences)**
Regulation 2005

Section 1.1 **Schedule 1, part 1.13, new items 64A to 64D**

This clause is consequential on the creation of the new offence in section 59 of the Principal Regulation. It inserts a reference to the new offence in section 59 in the list of offences in the road transport legislation for which an infringement notice may be issued.

This clause specifies the new offence is subject to a 20 penalty unit maximum penalty, an infringement notice penalty amount of \$257, and two demerit points.

Section 1.2 **Schedule 1, part 1.12A, new items 520A to 520D**

This clause has the same effect as section 1.1 above, but will apply on the commencement of the Road Rules Regulation. This will ensure that infringement notices will continue to be able to be issued once the Principal Regulation is revoked and replaced by the Road Rules Regulation.

There is no change or difference in the penalty units, infringement notice penalty amount or demerit points applying to the offence following the repeal of the Principal Regulation and the offence transferring to the Road Rules Regulation.

Part 1.2 **Road Transport (Road Rules)
Regulation 2017**

Section 1.3 **New section 300C**

This clause inserts a new section 300C into the Road Rules Regulation. Section 300C mirrors section 59C as created by clause 4, and there are no differences between the two provisions.

This clause is necessary as the Principal Regulation will be repealed upon the commencement of the Road Rules Regulation. Without this clause the new offence would disappear upon the repeal of the Principal Regulation.