

Australian Capital Territory

Road Transport (Road Rules) Amendment Regulation 2018 (No 1)

Subordinate law SL2018–19

made under the

Road Transport (Safety and Traffic Management) Act 1999, s 33 (General regulation-making power) and *Road Transport (General) Act 1999*, s 23 (Regulations about infringement notice offences)

EXPLANATORY STATEMENT

Introduction

This explanatory statement relates to the *Road Transport (Road Rules) Amendment Regulation 2018 (No 1)* (the regulation) as presented to the Legislative Assembly. It has been prepared in order to assist the reader of the regulation. It does not form part of the legislation and has not been endorsed by the Assembly.

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 amends the:

- *Road Transport (Road Rules) Regulation 2017* (the road rule regulation); and
- *Road Transport (Offences) Regulation 2005*.

The authority to make this regulation is contained in:

- section 33 of the *Road Transport (Safety and Traffic Management Act 1999*;
and
- section 23 of the *Road Transport (General) Act 1999*.

Section 33 of the *Road Transport (Safety and Traffic Management) Act 1999* gives the Executive the power to make regulations under that Act.

Section 23 of the *Road Transport (General) Act 1999* gives the power for a regulation to be made that prescribes an offence as an infringement notice offence and the

amount of the penalty payable, including different amounts payable for different offences and different amounts payable for the same offence committed by different people.

On-road commercial activities

This regulation prohibits a pedestrian standing on or moving onto a designated intersection to engage in on-road commercial activities. There are five designated intersections, all located along the light rail corridor.

The ACT currently permits a pedestrian to stand on, or move onto a road to:

- a) solicit contributions, employment or business from a person in a vehicle,
- b) hitchhike,
- c) display an advertisement,
- d) sell or offer articles for sale, or
- e) wash or clean, or offer to clean, the windscreen of a vehicle.

[section 236 of the road rules regulation]

The model Australian Road Rules (ARRs) include an offence provision that prohibits pedestrians from washing windscreens, hitchhiking, displaying advertisements, selling articles or soliciting contributions, employment or business from an occupant of a vehicle.

The model ARR was introduced in 2003 and aims to reduce the likelihood of a crash occurring by minimising the risk of a pedestrian being struck by a vehicle, or of a pedestrian causing a crash between vehicles.

The majority of jurisdictions have adopted the model ARR with some minor adjustments – for example, Tasmania permits hitchhiking.

In preparation for the introduction and commencement of light rail services expected to commence in the Territory later this year, road safety has been a constant consideration. It was determined that sufficient additional safety concerns arose for road users from these activities at the designated intersections due to the introduction of light rail. This is due to the longer effective stopping distance required by light rail vehicles, the less predictable nature of traffic light sequencing due to priority being given to light rail vehicles at intersections, and increased pedestrian traffic around light rail stops.

Motorcycle lane filtering

A trial of motorcycle lane filtering in the ACT commenced on 1 February 2015 through an exemption instrument. The exemption instrument for the trial was repealed as at 30 April 2018 and trial conditions were incorporated into section 151A of the road rules regulation that commenced on 30 April 2018.

This regulation places an additional condition on when a motorcycle rider can lane filter in the ACT. This regulation provides that lane filtering is not permitted where the motorbike is travelling on a road on which the speed limit is 40km/h or less.

Motorcycle riders are recognised as a vulnerable road user and the Government is committed to improving road safety outcomes for vulnerable road users. One of the benefits of lane filtering is that it allows motorcyclists an opportunity to have the front position in a lane; away from the other traffic.

Human rights implications

During the development of this regulation due regard was given to its compatibility with human rights as set out in the *Human Rights Act 2004* (HRA).

This regulation engages the following rights under the HRA:

- section 8 – recognition and equality before the law
- section 22 – rights in criminal proceedings

Section 28 of the HRA provides that human rights may be 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
- e) any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve.

An assessment against section 28 of the HRA is provided below.

Any restrictions or impositions applied to individual rights have been chosen on the basis that they are necessary and that they represent the least restrictive approach possible in order to achieve a safe road environment for the Territory.

Recognition and equality before the law

Section 8 of the HRA provides that everyone is entitled to equal and effective protection against discrimination, and to enjoy their human rights without discrimination.

‘Equality before the law’ has been essentially held to mean that judges and administrative officials must not act arbitrarily in enforcing laws. The non-discrimination provisions in the HRA are founded on articles 2 (1) and 26 of the International Covenant on Civil and Political Rights (the ICCPR). ‘Discrimination’ as the term appears in the ICCPR is understood as meaning any ‘distinction, exclusion, restriction or preference which is based on any ground which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms’.

It is within community expectations that access to public facilities and services are regulated so that they are safe for everyone. To the maximum extent possible, in regulating the road environment, the approach has been to limit any disproportionate impacts on any particular groups. However, it is sometimes necessary to include provisions that could put some members of the community at a disadvantage.

Nature of the right affected

This regulation restricts where a pedestrian can carry on on-road commercial activities in the Territory. Currently the Territory does not restrict these activities.

The restriction only applies at the following intersections along the light rail corridor:

- Northbourne Avenue with Barry Drive and Cooyong Street
- Northbourne Avenue with MacArthur Avenue and Wakefield Avenue
- Northbourne Avenue with Mouat Street and Antill Street
- Northbourne Avenue with Barton Highway and Federal Highway
- Federal Highway with Flemington Road

The proposed prohibition could be seen as targeting activities that are generally carried out as a subsistence or income strategy by people who are living in disadvantaged circumstances or to raise money for charitable causes; thus impacting on certain segments of the community in a discriminatory or unequal manner. However, the offence has been drafted so that the emphasis is on the risk the behaviour poses to public safety rather than a particular character trait or aspect of an individual.

Importance of the purpose of the limitation

The purpose of prohibiting on-road commercial activities at the nominated intersections is to ensure the safety of the public.

Drivers have limited or no options to remove themselves from the behaviour and this will be increased due to changes in how the traffic signals at these intersections behave with commencement of light rail operations.

Intersection signals will be coordinated with light rail vehicle movements to enable priority for light rail vehicles, and this will change the predictability of signal order and wait time.

Light rail vehicles will often be approaching intersections at speed with traffic signals changed to 'green' to give them priority passage through the intersection without stopping. This light rail vehicle priority is a key part of the method of operation of light rail vehicles at road traffic signals.

Nature and extent of the limitation

The amendments contained in this regulation are necessary to protect the safety of the community when engaging with the Territory's road environment. This government is committed to encouraging road users to obey road rules when sharing the road with others and developing a community that shares responsibility for road safety. People are generally on notice concerning what behaviour is permitted on our roads and road related areas.

Australia adopts a safe system approach to road safety which requires responsible road user behaviour. The Australian Road Rules play an important role in establishing safe people and safe behaviours on our roads.

The designated intersections are considered to present the highest risk due to high traffic volumes and intersection geometry (road angles, widths and number of different traffic movements).

Relationship between the limitation and its purpose

It is important that any risk to public safety can be appropriately addressed.

Only police will have the power to enforce this offence. This includes using their discretion as to whether to issue an infringement notice or provide a warning. This minimises the risks of unreasonable force being applied to a person or a person being unreasonably or illegally detained as the persons exercising the powers are suitably qualified and know the legal concepts surrounding reasonable force and what constitutes lawful detention.

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 available to achieve the purpose of reducing the risk to public safety at the nominated intersections.

Consideration was giving to placing time restrictions on when the prohibition operates or limiting the prohibition to the road with the light rail track not the entire intersection.

A time restraint was not considered sufficient to address the safety concerns. While there may be less frequent activity at off-peak times, these periods are at differing intervals and could lead to confusion in the community. It would also make enforcement more difficult.

Prohibiting these activities just on the road with the light rail track does not take into account that the introduction of the light rail has effects on the light sequences at all components of the designated intersections.

Given that traffic signals will be coordinated with light rail movements to enable priority for light rail, the predictability of signal order, as well as signal wait and green/red operation times, will change for both pedestrian and road traffic movements. Pedestrians rely on this predictability to undertake on-road commercial activities.

Strict liability offences

This regulation introduces a strict liability offence and may be seen as engaging the presumption of innocence until proven guilty (rights in criminal proceedings section 22 (1) of the HRA).

Nature of the right affected

The rights under section 22 of the HRA are very important rights that have long been recognised in the common law and are now codified in the ACT through the HRA. These rights may be subject to limits, particularly when those who are subject to the offence would be expected to be aware of its existence.

This regulation introduces a new strict liability offence for pedestrians who stand on or move onto a designated intersection to engage in on-road commercial activities.

The proposed strict liability offence is regulatory in nature, and targets regulatory requirements that are essential to establishing and maintaining a safe road environment. It is reasonable to expect the public to know their legal obligations when engaging with the Territory's road environment.

Importance of the purpose of the limitation

It is considered paramount that this offence be one of strict liability to discourage certain behaviour that presents a significant public safety risk. The maximum penalty and infringement penalty for this offence reflect the safety risk associated with this behaviour balanced with the fact that these activities are generally carried out as a subsistence or income strategy or to raise money for charitable causes.

People are generally aware of what behaviour is considered appropriate on the road or road environment. For a person to commit an offence under this regulation they would be required to be actively involved in the behaviour resulting in the offence.

Prohibiting these activities at the designated intersections is important to ensure the safety of the public and benefits the broader community.

Nature and extent of the limitation

The prohibition in this regulation is limited to designated intersections along the light rail corridor.

The introduction of light rail will impact the sequencing of light signals at all components of the intersections in question and intersection signals will be coordinated with light rail vehicle movements to enable priority for light rail.

The safety concerns with permitting these activities to continue at the designated intersections are based on the longer effective stopping distance required by light rail vehicles, the less predictable nature of traffic light sequencing due to priority being given to light rail at intersections and increased pedestrian traffic.

The penalty for this offence is within the normal range for strict liability offences and is comparable to existing safety related offences associated with the introduction of light rail into the Territory's road environment. The penalties for this offence are not considered to be unduly harsh due to the safety risks associated with this behaviour at the designated intersections.

The inclusion of this offence as a strict liability offence supports the application of an infringement penalty. Effective infringement notice schemes minimise the cost of litigation for the Territory while offering people a choice concerning whether to accept a lesser penalty without admitting the offence or remaining liable to prosecution.

In developing this offence due regard was given to the guidance provided in the *Guide for Framing Offences*.

Relationship between the limitation and its purpose

A robust regulatory framework is essential to establishing safe people and safe behaviours on our roads, with benefits for both the community and individuals.

This new strict liability offence is aimed at removing circumstances where a person conducting on-road commercial activities may be involved in, or cause an accident or incident as a result of conducting the activities.

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 available to achieve the purpose of reducing the risk to public safety at the nominated intersections.

Section 23 (1) (b) of the *Criminal Code 2002* (the Code) provides a specific defence of mistake of fact for strict liability offences. Section 23 (3) of the *Code* provides that other defences may also be available for strict liability offences, including the defence of intervening conduct or event (section 39), duress (section 40), sudden or extraordinary emergency (section 41), self-defence (section 42) or lawful authority (section 43).

The road rule regulation also includes defences to an offence under that regulation where the defendant can prove that the offence was the result of accident or the reasonable efforts of the defendant could not have resulted in avoidance of the commission of the offence.

A public education campaign for the light rail is being run by the light rail service operator and the ACT Government to inform the community of its obligations when using the light rail service. Targeted awareness will be undertaken with those in the community who will be most affected by this change in law.

Climate change implications

There are no climate change implications associated with this regulation.

CLAUSE NOTES

Clause 1 **Name of regulation**

This clause specifies the name of the regulation. This clause provides that the regulation may be cited as the *Road Transport (Road Rules) Amendment Regulation 2018 (No 1)*.

Clause 2 **Commencement**

This clause provides for the commencement of the regulation. This regulation will commence on 29 October 2018, except sections 3 and 4 which commence the day after this regulation is notified.

This two phase commencement enables sufficient community awareness activities to be undertaken prior to commencement of the prohibition on on-road commercial activities introduced in this regulation.

Clause 3 **Legislation amended**

This clause names the regulation that is being amended by this Regulation. This regulation amends the *Road Transport (Road Rules) Regulation 2017*. It is also makes a consequential amendment to the *Road Transport (Offences) Regulation 2005* to incorporate the new offence.

Clause 4 **New section 151A (2) (ca)**

A trial of motorcycle lane filtering in the ACT commenced on 1 February 2015 through an exemption instrument. The exemption instrument for the trial was repealed as at 30 April 2018 and trial conditions were incorporated into section 151A of the *Road Transport (Road Rules) Regulation 2017* that commenced on 30 April 2018.

The clause adds a condition to when motorcycle riders are permitted to lane filter. This clause provides that lane filtering is not permitted where the motorbike is travelling on a road on which the speed limit is 40km/h or less.

Clause 5 **Section 236 (4)**

This clause is a minor and technical amendment consequential on the changes made by clause 6.

Clause 6 **New section 236 (4A)**

This clause creates a new strict liability offence for a pedestrian who stands on, or moves onto, a designated intersection; and engages in any of the following activities:

- solicits contributions, employment or business from a person in a vehicle;
- hitchhikes;
- displays an advertisement;

- sells or offers articles for sale;
- washes or cleans , or offers to clean the windscreen of a vehicle.

Section 8 of the *Road Transport (Road Rules) Regulation 2017* makes all offences under that regulation strict liability offences.

The maximum penalty for this offence is 10 penalty units. This is consistent with other offences associated with the light rail that present a significant safety risk.

Clause 7 Section 236 (5)

This clause is a minor and technical amendment consequential on changes made by clause 6. It clarifies that a driver, or a passenger, in or on a vehicle cannot buy, or offer to buy, an article or service from a person at a designated intersection.

Clause 8 Section 236 (6), new definition of *designated intersection*

This clause provides a definition for designated intersection which consists of the following five intersections along the light rail corridor that were identified as high risk should on-road commercial activities continue to be permitted once light rail operations commence:

- Northbourne Avenue with Barry Drive and Cooyong Street
- Northbourne Avenue with MacArthur Avenue and Wakefield Avenue
- Northbourne Avenue with Mouat Street and Antill Street
- Northbourne Avenue with Barton Highway and Federal Highway
- Federal Highway with Flemington Road

**Clause 9 Road Transport (Offences) Regulation 2005
Schedule 1, part 1.12A, new item 371A**

This clause inserts the new offence created in clause 6. It sets an infringement penalty of \$75 for this offence. This amount is considered to be at a level that offers a sufficient deterrent but does not cause undue financial stress. It is also consistent with that introduced for ticketing and passenger conduct offences committed by persons 14 years old and under 18 years of age for light rail and bus services.