

Australian Capital Territory

Road Transport (Public Passenger Services) Amendment Regulation 2019 (No 1)

Subordinate law SL2019–15

made under the

Road Transport (Public Passenger Services) Act 2001, s126 (Regulation-making power)

EXPLANATORY STATEMENT

This Regulation amends the *Road Transport (Public Passenger Services) Regulation 2002*. The authority to make this regulation is contained in section 126 of the *Road Transport (Public Passenger Services) Act 2001*.

Rideshare services in the ACT are recognised through accreditation and licensing requirements of rideshare vehicles and rideshare drivers. This regulation amends the types of vehicles that can be used for rideshare services and vehicle identification requirements for vehicles providing rideshare services.

This Regulation removes an unnecessary restriction on the types of vehicles that may be used to provide rideshare services and as a result expands the types of vehicles that can be used for rideshare. There are no additional safety risks associated with this expansion.

Rideshare vehicles may undertake both private and commercial activity and as such it is necessary to be able to identify when a vehicle is being used for rideshare purposes. The default position currently is that a rideshare vehicle licensee is issued with a label by the road transport authority for this purpose. The road transport authority may agree to other means of identification of a rideshare vehicle.

This Regulation establishes the process by which the road transport authority may agree to other means and ensures that existing offences relating to identification of rideshare vehicles apply to both scenarios.

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).

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; and
- (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 safe and accessible public passenger services for the Territory.

Strict liability offences

This Regulation may be seen as engaging the presumption of innocence until proven guilty (rights in criminal proceedings – section 22 (1) of the HRA).

This regulation amends three existing strict liability offences and creates one new strict liability offence. The amended offences are currently strict liability offences and the new strict liability offence mirrors an existing strict liability offence.

The strict liability offences created or amended by this regulation cover obligations on the road transport authority, transport booking services, rideshare vehicle licensees and rideshare drivers.

Nature of the right affected

The rights under section 22 of the HRA are 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 amends three existing offences: sections 164O (Rideshare vehicle licensee—must make label available to rideshare driver), 164S (Rideshare driver—must display label) and 164T (Rideshare driver—must produce rideshare vehicle licence and label for inspection).

Section 164O provides that it is an offence for a rideshare licensee to not make a rideshare vehicle label available to a rideshare driver before the rideshare begins. This offence does not currently apply if the road transport authority has agreed to the

vehicle being identified in another way and the rideshare vehicle is identified in that other way.

Section 164S provides that it is an offence for a rideshare driver not to display a rideshare vehicle label. This offence does not currently apply if the road transport authority has agreed to the vehicle being identified in another way and the rideshare vehicle is identified in that other way.

Section 164T provides that it is an offence for a rideshare driver to fail to produce to a police officer or authorised person a rideshare vehicle label if required by a police officer or authorised person. This offence does not apply if the person has a reasonable excuse for failing to produce the label when required to do so and within 3 days after being required to produce the label, produces the label at the place directed by the police officer or authorised person.

A detailed human rights assessment of these offences was undertaken when the offences were created in 2016 (see the Explanatory Statement for the Road Transport (Taxi Industry Innovation) Legislation Amendment Regulation 2016 (No 1)). That assessment remains applicable for the amendments to the offences made by this regulation.

The only changes to these offences are amendments to reflect the approval by the road transport authority of vehicle identifiers.

This Regulation introduces a new strict liability offence for transport booking services who do not give an approved identifier to an affiliated rideshare driver before a rideshare begins. This new strict liability offence is regulatory in nature and targets regulatory requirements that are necessary for establishing and maintaining safe, efficient, effective and affordable public passenger services. It is reasonable to expect that those providing rideshare services, know or ought to know, their legal obligations. Further, the changes made by this Regulation were requested by industry.

The importance of the purpose of the limitation

It is considered appropriate for these offences to be strict liability offences as the requirements to which the offences apply are not burdensome in nature and relate to ensuring public passenger services are operated in a manner that is safe, efficient, effective and affordable. It is incumbent on public passenger operators, who are providing direct services to the public, to know and understand the regulatory settings in which they are operating.

The nature and extent of the limitation

Any limitation is not extensive, and it is in the wider public interest that businesses be properly regulated. When using a rideshare service, members of the public are engaging in transactions that require the effective identification of vehicles to support their safety.

The penalty for the new strict liability offence is within the normal range for strict liability offences and is comparable to existing offences. It reflects the significance of

the offence, the effects on the community of non-compliance and provides effective deterrence.

The inclusion of this new offence as a strict liability offence supports the application of an infringement notice penalty. Effective infringement notice schemes minimise the costs 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 new offence due regard was given to the guidance provided in the *Guide of Framing Offences*.

The relationship between the limitation and its purpose

A robust regulatory framework is essential to establishing public transport services that are appropriately regulated. Compliance with the regulatory framework is important to ensure the safety and access to the community of public transport and the integrity of licensing and accreditation requirements. This amendment supports the policy objectives of the regulatory framework for the on-demand transport industry in the ACT by reducing regulatory barriers.

The new strict liability offence is aimed at ensuring transport booking services are providing approved identifiers to affiliated drivers, thus ensuring affiliated drivers can commence operations and comply with their relevant regulatory requirements.

Less restrictive means reasonably available to achieve this purpose

It is not considered that there are any less restrictive means available to deliver safe and accessible public passenger services in the Territory.

This regulation does not significantly change the existing regulatory settings. The amendments clarify the process by which alternative identifiers can be issued for rideshare vehicles. The power to approve alternative identifiers currently exists.

It also provides customers with a broader scope of choice in the vehicles that are available to provide rideshare services.

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).

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 (Public Passenger Services) Amendment Regulation 2019 (No 1)*.

Clause 2 **Commencement**

This clause provides for the commencement of the regulation. This regulation (other than sections 5 to 7) will commence on the day after it is notified. Sections 5 to 7 will commence on 18 September 2019.

Clause 3 **Legislation amended**

This clause names the regulation that is being amended by this regulation. This regulation amends the *Road Transport (Public Passenger Services) Regulation 2002*.

It also makes consequential amendments to the *Road Transport (Offences) Regulation 2005* to incorporate the new offence and changes to existing offences.

Clause 4 **New division 3A.3.1A**

This clause inserts a new division into Part 3A.3 to include a definitions section for the provisions relating to rideshare vehicle identifiers. It inserts a definition of *approved identifier*, *rideshare vehicle identifier* and *rideshare vehicle label*. The inclusion of this clause is consequential on the changes made at clause 8.

Clause 5 **Section 164B (4), new definition of *heavy vehicle***

This clause is a minor and technical amendment. This clause inserts a new definition of heavy vehicle, a term used in this section, by reference to the definition of this term in the *Road Transport (Vehicle Registration) Act 1999*, dictionary.

Clause 6 **Section 164B (4), definition of *motorcycle***

This clause omits the definition of *motorcycle* from section 164B. This clause is a minor and technical amendment consequential on changes made by clause 7.

Clause 7 **Section 164B (4), definitions of *police vehicle* and *suitable vehicle***

This clause substitutes the existing definition of *police vehicle* by including a signpost reference to the definition in the *Road Transport (Vehicle Registration) Act 1999*, dictionary.

This clause substitutes the existing definition of *suitable vehicle*. A rideshare service can only operate with vehicles that meet the definition of *suitable vehicle*. This

amendment requires a vehicle that is proposed to be used to provide rideshare services must meet the minimum requirements of having 4 or more doors and seats for 4 or more adults and not be an excluded vehicle. This expansion of the definition of suitable vehicle fulfils recommendation 25 of Report to the ACT Government on the evaluation of the 2015 reforms to the on-demand transport industry. These vehicles now represent a significant proportion of passenger transport for the general public.

Some vehicles are excluded from rideshare activity, such as ambulances and motorcycles, as the nature of these vehicles is not consistent with the practical provision of rideshare services and this exclusion remains.

Clause 8 Section 164C

This clause substitutes the existing section 164C. Section 164C currently requires the road transport authority to issue a rideshare vehicle licence label to a holder of a rideshare vehicle licence.

This amendment establishes a process whereby the road transport authority can issue a rideshare vehicle label to a holder of a rideshare vehicle licence or approve an identifier for a rideshare vehicle, including any requirements for displaying the approved identifier. An approval will be via a notifiable instrument.

This amendment is a red-tape reduction measure.

Clause 9 Section 164M (2) (a)

This clause is a minor and technical amendment consequential on the changes at clauses 4 and 8. As a rideshare vehicle identifier can now be issued by the road transport authority or a transport booking service, this amendment clarifies that a rideshare vehicle licensee who surrenders their licence to the road transport authority only has to surrender with the licence a rideshare vehicle label issued by the road transport authority. It does not require the licence holder to surrender any approved vehicle identifier.

Clause 10 Section 164N (2)

This clause is a minor and technical amendment consequential on the changes at clause 4.

Clause 11 Section 164O

This clause substitutes existing section 164O. Section 164O currently makes it an offence for a rideshare vehicle licensee to not make a rideshare vehicle licence label available to the rideshare driver before a rideshare begins.

This clause makes it a strict liability offence for a rideshare vehicle licensee to not make available a rideshare vehicle licence label issued by the road transport authority available to the vehicle's rideshare driver before the driver carries out a rideshare in

the vehicle. The maximum penalty for this offence is 20 penalty units. This is consistent with the offence this amendment replaces. This offence does not apply if there is an approved identifier for the vehicle.

This provision makes it a strict liability offence for a transport booking service to not make available an approved identifier available to each of its affiliated rideshare drivers before the driver carries out a rideshare. All rideshare drivers are required to be affiliated with a transport booking service in order to provide rideshare services.

The maximum penalty for this offence remains 20 penalty units.

Clause 12 Section 164S

This clause substitutes existing section 164S. Section 164S makes it an offence for a rideshare driver to not display a rideshare vehicle licence label.

This clause extends that offence so that it applies to a rideshare vehicle identifier whether issued by the road transport authority or an approved identifier issued by a transport booking service and is consequential on the changes at clauses 4 and 8.

Failure to comply with these requirements remains a strict liability offence with a maximum penalty of 20 penalty units.

Clause 13 Section 164T heading

This clause is a minor and technical amendment to align the terminology in the provision with that used in the heading and is consequential on the changes at clause 4.

Clause 14 Section 164T (3) and (4)

It is currently an offence for a rideshare driver to not produce to a police officer or authorised person the rideshare vehicle label for the vehicle for inspection if required.

This clause is a minor and technical amendment consequential on the changes at clauses 4 and 8 to ensure that this offence applies whether the rideshare vehicle identifier is issued by the road transport authority or a transport booking service.

This offence does not apply if the person has a reasonable excuse for failing to produce the identifier when required to do so and within 3 days after being required to produce the identifier, produces the identifier at the place directed by the police officer or authorised person.

The existing penalties for this offence remain the same.

Clause 15 New Section 164V

This clause inserts a new requirement for a rideshare driver who has been given an approved identifier by their affiliated transport booking service, to provide a statement

to the road transport authority that the approved identifier has been returned to the transport booking service or has been otherwise destroyed, at the time their affiliated driver agreement ends.

Clause 16 Dictionary, new definitions

This clause inserts a definition of *approved identifier* in the dictionary and is consequential on the changes at clause 4.

This clause inserts a definition of *rideshare vehicle identifier* in the dictionary and is consequential on the changes at clause 4.

This clause inserts a definition of *rideshare vehicle label* in the dictionary and is consequential on the changes at clause 4.

Clause 17 Dictionary, definition of *rideshare vehicle licence label*

This clause removes the definition of *rideshare vehicle licence label* in the dictionary and is consequential on the changes at clause 4.

Schedule 1 Road Transport (Offences) Regulation 2005

Schedule 1 of the *Road Transport (Offences) Regulation 2005*, provides the short descriptions, penalty amounts and the number of demerit points that apply to the offences under the relevant road transport laws.

Section 1.1 Schedule 1, part 1.11, item 268

This clause amends the short description of the offence in section 164O (1) consequential on the changes at clause 11.

This clause also inserts the new offence in section 164O (3) consequential on changes at clause 11. It sets an infringement penalty amount of \$581. This amount is consistent with the similar offence for rideshare vehicle licensees.

Section 1.2 Schedule 1, part 1.11, item 272

This clause is a minor and technical amendment consequential on changes at clause 12. It amends the short description of the offence in section 164S (1).

Section 1.3 Schedule 1, part 1.11, item 274

This clause is a minor and technical amendment consequential on changes at clause 14. It amends the short description of the offence in section 164T (3).