

Australian Capital Territory

# Road Transport (Offences) Amendment Regulation 2019 (No 2)

Subordinate law SL2019–27

made under the

*Road Transport (General) Act 1999*, section 23 (Regulations about infringement notice offences) and section 233 (General regulation-making power)

## EXPLANATORY STATEMENT

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The purpose of this Regulation is to increase infringement notice penalty amounts for most offences under road transport legislation.

This Regulation amends the following road transport legislation:

- *Road Transport (Offences) Regulation 2005* (the offences regulation)

The authority to make this Regulation is contained in:

- sections 23 and 233 of the *Road Transport (General) Act 1999*.

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.

Section 233 of the *Road Transport (General) Act 1999* gives the Executive the power to make regulations for the *Road Transport (General) Act 1999*. Regulations issued can prescribe matters that are necessary or convenient for the carrying out or giving effect to the *Road Transport (General) Act 1999* or other road transport law and prescribe offences for contravention of a regulation.

Schedule 1 of the *Road Transport (Offences) Regulation 2005* (the offences regulation), lists the offences contained in each Act and Regulation that form part of the road transport legislation. If an offence may be dealt with by infringement notice, the schedule prescribes the infringement notice penalty amount that is payable. Most road transport infringement notice penalties other than those relating to parking offences and most offences against the *Heavy Vehicle National Law (ACT)* (HVNL) include a component, not identified separately, accounting for the Victim Services Levy (VSL) applicable to the offence. The VSL is currently set at \$60.

Most infringement notice penalties, excluding the amount of the VSL, are being increased by the Wage Price Index (WPI) of 2.5%. Budget Memo 2019/09 identifies that the WPI to be used for 2019/20 is 2.5%.

The reason for indexation of infringement penalty amounts is to maintain the value of those penalties in real terms in order to preserve their deterrent effect. Any variation to that indexation is outlined below.

Government policy is that, in general, the infringement notice penalty for an offence should not exceed 20% of the maximum fine that may be imposed by a court for that offence (the 20% limit). The 20% limit is based on the existing penalty unit amount of \$160 for an offence committed by an individual.

Where an existing infringement notice penalty is not approaching the 20% limit the indexation has been undertaken by deducting \$60 from the existing infringement penalty amount, indexing that amount by 2.5% and then adding \$60.

Where an existing infringement notice penalty amount is near the 20% limit the indexation has been undertaken by deducting \$60 from the existing infringement penalty amount, indexing that amount by 2.5%, applying the 20% limit and then adding the VSL amount of \$60.

Where the existing infringement notice penalty for an offence is already at or above the 20% limit, the infringement notice penalty has not been increased.

For offences to which the VSL does not apply the infringement penalty amounts are indexed as above except for ignoring the VSL amounts.

Most penalties under the HVNL are determined through a national process and were increased on 1 July 2019 and have not been increased. Two offences in the HVNL relating to sections 567A and 567B about producing a driver licence and disclosing the identity of a driver are ACT specific offences and have been increased.

All infringement notice penalty amounts are rounded down to the nearest dollar.

Infringement penalty amounts relating to sections 47 to 66C, 70AL to 70AAN, 144B(1) and 144B(2), 147 and 148, 221D and 221E, 226 to 229, 281 to 301, and 304(1) and 304(2) of the *Road Transport (Public Passenger Services) Regulation 2002* about public passenger ticketing and conduct offences are not being increased at this time due to recent commencement of passenger services. Also, the new child rate infringement notice penalty amount of \$75 introduced at that time for public passenger ticketing and conduct offences is not being increased.

Infringement penalty amounts relating to section 300AA of the *Road Transport (Road Rules) Regulation 2017* about learner and provisional licence holders using mobile devices have not been increased. The infringement penalty amounts for these offences were based on the infringement penalty amount for full licence holders indexed by 2.5% when these offences were introduced on 1 July this year.

The infringement penalty amount relating to section 236 (4A) about pedestrians engaging in commercial activities, such as window washing, at designated intersections has not been increased. The provision was introduced on 29 October 2018 and set at \$75. This amount is considered appropriate and has not been increased as these activities are generally undertaken as a subsistence or income generating strategy by individuals living in disadvantaged circumstances or to raise money for charitable causes.

A number of item numbers in Part 1.12A of Schedule 1 of the Offences Regulation identified demerit points being applicable to offences specifically applicable to cyclists. Following advice from the ACT Government Solicitor (ACTGS) that demerit points can only be applied to a driver licence where the offence relates to the use of a motor vehicle, any demerit points identified as applying to offences that are not related to the use of a motor vehicle have been omitted from the Schedule. Demerit points relating to sections 27, 28, 31 and 32 of the *Road Transport (Road Rules) Regulation 2017* have been omitted as these offences are not related to the use of a motor vehicle. Access Canberra has removed demerit points relating to offences committed while riding a bicycle from affected driver licence records.

## **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 13 of the HRA provides that everyone has the right to move freely within the ACT and to enter and leave it, and the freedom to choose his or her residence in the ACT. This is relevant in the ACT today, in respect to circumstances involving people's access to public places.

Section 22 (1) of the HRA provides that everyone has the presumption of innocence until proven guilty. 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.

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 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.

The offences regulation does not, of itself, impose restrictions or limitations on a person's human rights or rights to move freely in the ACT. The proposed amendments to the offences regulation increase most infringement notice penalty amounts under the road transport legislation to maintain the value of those penalties in real terms and preserve their deterrence effect. The amendments do not change the infringement notice arrangements under the road transport legislation that offers people a choice of accepting a lesser penalty without admitting the offence or remaining liable for prosecution and diverts people away from the criminal justice system.

As such the amendments are not considered to be limiting any human rights.

### **Climate change implications**

There are not considered to be any climate change implications arising from these amendments.

## **CLAUSE NOTES**

### **Part 1 Preliminary**

#### **Clause 1 Name of regulation**

This is a technical clause that states the name of the regulation as the *Road Transport (Offences) Amendment Regulation 2019 (No 2)*.

#### **Clause 2 Commencement**

This clause provides that the regulation will commence on 1 November 2019.

#### **Clause 3 Legislation amended**

This clause lists the regulations that are being amended by this Regulation. This Regulation amends the *Road Transport (Offences) Regulation 2005*.

#### **Clause 4 Schedule 1**

This clause substitutes the existing parts with revised parts that incorporate all the adjusted infringement notice penalties for offences under the road transport legislation. The adjusted amounts are set out in column 5.

Some offences under the road transport legislation cannot be dealt with by infringement notice. For these offences, there is no amount prescribed in column 5 of the table.