

# Road Transport (General) Application of Road Transport Legislation Declaration 2019 (No 12)

Disallowable instrument DI2019—258

made under the

*Road Transport (General) Act 1999*, s 13 (Power to exclude vehicles, persons or animals from road transport legislation)

## EXPLANATORY STATEMENT

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Section 13 (1) of the *Road Transport (General) Act 1999* (the Act) empowers the Minister to declare that the road transport legislation does not apply to a vehicle, person or animal in a place or circumstance stated in the declaration. Section 13 (3) of the Act requires a declaration to be made by a disallowable instrument.

This instrument sets out declarations to the effect that certain parts of the road transport legislation do not apply to an entrant vehicle or the driver of an entrant vehicle, while participating in a special stage of the Damesa Industries Rallye Des Femmes (the rally) commencing at 7am on 7 December 2019.

The declaration is a disallowable instrument and must be presented to the Legislative Assembly within 6 sitting days after its notification pursuant to Section 61 of the *Legislation Act 2001*.

## Human rights implications

During the development of this Instrument, due regard was given to its effect and the operation of the rally in relation to the 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 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.

Section 13 of the HRA provides a right for people to move freely within the ACT.

The declarations in this instrument do not of itself restrict a person's freedom of movement within the Territory, however the operation of the rally in closing parts of the forest in which the rally will be conducted to members of the public will restrict the free movement of people in that area of the Territory during the event. As parts of the road transport law are being disapplied for the event to operate as intended, vehicles will be travelling in parts of the forest in excess of the usual speed limits and in a manner not consistent with the road rules. As such, the restriction on the free movement of people in those parts of the forest at those times is considered reasonable and proportionate to ensure safety of non-participants and represents the least restrictive approach that enables the event to proceed.

## **Climate change implications**

There are not considered to be any climate change implications arising from the instrument or the event it supports.

## **Clause notes**

Clauses 1 and 2 of the instrument are formal provisions dealing with the name and commencement of the instrument.

Clause 3 is to the effect that the *Road Transport (Third-Party Insurance) Act 2008* does not apply to vehicles being used to participate in the rally.

The rally is held under the auspices of the Confederation of Australian Motor Sport (CAMS). The CAMS Motor Sport Policy provides up to \$100 million of general liability cover for any one occurrence, subject to the terms, conditions and limitations of the policy. In particular, the CAMS policy excludes participant-to-participant claims for drivers, entrants or crew in competing vehicles. However, this policy does not operate where Compulsory Third Party (CTP) insurance is in force, except where specifically excluded by law. The CAMS liability insurance will take over responsibility for any motor accident injury claims that may arise during the special stages of the event. At any other time, the *Road Transport (Third-Party Insurance) Act 2008* applies.

Clause 4 disapplies certain road transport legislation, to an entrant vehicle or the driver of an entrant vehicle while participating in a 'special stage' of the rally. The definition of entrant vehicle extends to official and promotional vehicles being used for official purposes during the rally.

The declaration has effect in relation to a special stage for the event commencing on 7 December 2019, beginning when an event official declares that a special stage is ‘active’ and ending when the event official declares the special stage is ‘inactive’. In practice an event official may ‘declare’ an event special stage to be active in a variety of ways, for example by waving a flag, or making a hand signal, or using signal lights.

Clause 5 contains definitions for the instrument.

Clause 6 explains that the declaration expires at 6:30pm on 7 December 2019.