

Australian Capital Territory

Road Transport (General) Application of Road Transport Legislation Declaration 2020 (No 5)

Disallowable instrument DI2020—47

made under the

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

EXPLANATORY STATEMENT

Section 13 (1) of the *Road Transport (General) Act 1999* (the Act) provides that the Minister may declare that the road transport legislation, or a provision of the road transport legislation, does not apply to a vehicle, person or animal in a place or circumstance stated in the declaration. Subsection 13 (3) of the Act makes such a declaration a disallowable instrument.

This instrument provides that certain parts of the road transport legislation do not apply to a designated vehicle or the driver of a designated vehicle, while participating in a special stage of the National Capital Rally 2021 (the event) taking place from 23 March 2021 to 28 March 2021.

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 event in closing parts of the forest in which the event 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 legislation 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 provides that the *Motor Accident Injuries Act 2019* does not apply to designated vehicles being used to participate in the event.

The event is held under the auspices of Motorsport Australia. The Motorsport Australia insurance policy provides up to \$100 million of general liability cover for any one occurrence, subject to the terms, conditions and limitations of their insurance policy. In particular, the Motorsport Australia policy excludes participant-to-participant claims for drivers, entrants or crew in participating vehicles. However, this policy does not operate where *Motor Accident Injuries Act 2019* insurance is in force, except where specifically excluded by law. The Motorsport Australia liability insurance will assume responsibility for most motor accident injury claims that may arise during the special stages of the event. If a vehicle that has a valid compulsory third party insurance policy in place is involved in an accident with a designated vehicle when the abovementioned road transport legislation is applied, then it is possible that a claim may be made under the Lifetime Care and Support Scheme. This eventuality is considered to be unlikely. At any other time, the *Motor Accident Injuries Act 2019* applies.

Clause 4 provides that various road transport legislation dealing with vehicle registration and vehicle standards, driver licensing and road rules, do not apply to a

participating vehicle or the driver of a participating vehicle while participating in a 'special stage' of the event beginning on an event official declaring that a special stage is 'active' and ending on an event official declaring the stage 'inactive'. In practice an event official may 'declare' an event stage to be active in a variety of ways, for example by waving a flag, or making a hand signal, or using signal lights. The definition of participating vehicle extends to official and promotional vehicles being used for official purposes during the event.

Clause 5 contains definitions for the instrument.

Clause 6 explains that the declaration expires at 8:00 pm 28 March 2021.

The Schedule provides maps that defines the road or road related areas where the instrument has effect.