

Australian Capital Territory

# Road Transport (Offences) Amendment Regulation 2021 (No 1)

Subordinate law SL2021-10

made under the

*Road Transport (Driver Licensing) Act 1999*, section 26 (Regulation-making power) and 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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### Purpose of the Regulation

The purpose of this Regulation is to increase infringement notice penalty amounts for most offences under the road transport legislation and make other minor technical amendments to road transport regulations.

### Overview

This Regulation amends the following road transport legislation:

- *Road Transport (Offences) Regulation 2005* (the offences regulation)
- *Road Transport (Driver Licensing) Regulation 2000* (the driver licensing regulation)
- *Road Transport (General) Regulation 2000* (the general regulation)

The authority to make this Regulation is contained in:

- section 26 of the *Road Transport (Driver Licensing) Act 1999*; and
- sections 23 and 233 of the *Road Transport (General) Act 1999*.

Section 26 of the *Road Transport (Driver Licensing) Act 1999* provides the Executive the power to make regulations for the *Road Transport (Driver Licensing) 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 Act 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). Budget Memo 2021/08 identifies that the WPI to be used for 2021/22 is 1.75%.

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 1.75% 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 1.75%, 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 the VSL amounts.

For offences against the Heavy Vehicle National Law (HVNL) the Transport and Infrastructure Council (now the Infrastructure and Transport Minister's Meeting (ITMM)) agreed that where it was decided that an offence could be dealt with by infringement notice, the infringement notice penalty would be set at 10% of the maximum penalty as indexed from time to time.

The National Heavy Vehicle Regulator (NHVR) issues as schedule each year identifying the level of the maximum penalty and the infringement notice penalty where the offence can be dealt with by infringement notice. Where an offence against

the HVNL can be dealt with by infringement notice, the letters (HVINO) have been inserted in the infringement penalty column and a note at the beginning of the part directs readers to the NHVR's website where the infringement penalty amounts are accessible as has been the case for maximum court-imposed penalties under the HVNL since 18 September 2017. No additional offences, apart from offences against sections 567A and 567B, are identified as being infringeable and no offences identified as infringeable in the schedule provided by the NHVR has had the infringement penalty amount omitted.

Sections 567A and 567B of the HVNL are ACT specific provisions relating to the requirement for a driver of a vehicle to produce their driver licence on request and for the responsible person for a vehicle alleged to have been involved in the commission of an offence to give information about the name and address of the driver at the time of the alleged offence. The infringement notice penalty amounts for these provisions have been increased in the same manner as other infringement penalty amounts not under the HVNL.

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

The child rate infringement notice penalty amounts of \$75 for public passenger ticketing and conduct offences have not being increased. This amount continues to represent an appropriate deterrence for these offences.

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. This amount continues to represent an appropriate deterrence for these offences.

An item, short description, offence penalty and infringement notice penalty amount of \$75 (child rate) and \$183 (adult rate) has been inserted in relation to section 70AAI of the *Road Transport (Public Passenger Services) Regulation 2002*. The child rate infringement penalty is the same as other infringement penalty amounts applicable to children for offences against the *Road Transport (Public Passenger Services) Regulation 2002* and the adult rate is the same as that for some other similar offences of not complying with the direction of a police officer or authorised person and is within the 20% limit for infringement penalty amounts.

Items, short descriptions, offence penalties and infringement penalty amounts of \$168 have been inserted in relation to sections 179(2)(d)(i) and 179(2)(d)(ii) of the *Road Transport (Road Rules) Regulation 2017*. The infringement penalty amount is the same as the infringement penalty for similar stopping offences and is within the 20% limit for infringement penalty amounts.

An infringement notice penalty amount of \$685 has been inserted in relation to section 26 of the *Road Transport (Vehicle Registration) Act 1999* about the registered operator of a vehicle not complying with a direction or condition imposed on the vehicle by the road transport authority. The infringement penalty amount is the same as the infringement notice penalty for using an unregistered vehicle or using vehicle with suspended registration and is within the 20% limit for infringement penalty amounts.

A number of other technical and drafting amendments have been made to the offences regulation, including the Dictionary and various notes as a result of omissions and insertions to various road transport laws, and other amendments made by this amendment regulation aligning the descriptions of offence provisions, short descriptions and the Dictionary with current drafting practice and numbering and wording of the relevant provisions. The amendments are detailed in the notes on clauses below.

The amendment regulation also makes a technical amendment to section 15 (5) (c) of the driver licensing regulation to correct the provision and align it with the defined term “required driving hours” in section 15 (8) and section 22 (3) (c).

The amendment regulation also makes technical amendments to Schedule 1, Part 1.4 of the general regulation to correct references to internally reviewable decisions about sections of the driver licensing regulation about the refusal to approve pre-learner, learner and heavy vehicle driver and rider training courses.

### **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).

The offences regulation does not, of itself, impose restrictions or limitations on a person’s human rights. 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.

The amendments to the driver licensing regulation and the general regulation are technical amendments to better align internal provisions and to correct references in those regulations. They do not alter how a person would be treated under those regulations.

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 2021 (No 1)*.

#### **Clause 2 Commencement**

This clause provides that the regulation will commence on 1 July 2021.

#### **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*. This section also notes that the *Road Transport (Driver Licensing) Regulation 2000* and the *Road Transport (General) Regulation 2000* are also being amended.

#### **Clause 4 Section 5**

This is a technical amendment that is required as a consequence to amendments made to Schedule 1 of the *Road Transport (Offences) Regulation 2005*. Section 5 has been amended to identify that an infringement notice offence is one that has an infringement penalty amount in column 5 or the text “HVINO”. A signpost definition of HVINO has been added pointing to section 1.1 in Schedule 1.

#### **Clause 5 Section 6 (1)**

This is a technical amendment that is required as a consequence to amendments made to Schedule 1 of the *Road Transport (Offences) Regulation 2005*. Subsection 6 (1) has been amended to prescribe that the infringement notice penalty payable by a person for an infringement notice offence in schedule 1 is the single amount in column 5, the amount applying to the person if there is more than one amount in column 5, or 10% of the maximum penalty for the person for the offence if the text “HVINO” appears in column 5. A signpost definition of HVINO has been added pointing to section 1.1 in Schedule 1;

#### **Clause 6 Schedule 1**

This clause substitutes Schedule 1 of the *Road Transport (Offences) Regulation 2005*.

The amendments made by this substitution are:

A signpost definition of HVINO pointing to s 21A of the *Road Transport (General) Act 1999* has been inserted in the definitions for Schedule 1. A definition of HVOP (or heavy vehicle offence penalty) has also been inserted along with a note explaining that although maximum penalties for offences under the Heavy Vehicle National Law (HVNL) appear in the HVNL, those penalties are increased each year in line with sections 737 of the HVNL and section 70 of the *Heavy Vehicle (General) National Regulation* (NSW) and that current penalty must be published on the NHVR website and infringement penalty amounts are also published there.

Minor formatting changes to align with current drafting practices have also been made in relation to the definitions of “≤”, “>”, “≥”, and the notes about national schedule offences and non-national schedule offences:

Amendments have been made to Parts 1.2A, 1.2B and 1.2C of Schedule 1 to omit infringement notice penalty amounts from column 5, other than for offences against section 567A and 567B at items 274 and 275, and insert the text “HVINO” against item numbers for which Ministers have determined an infringement notice penalty can be applied. Infringement penalty amounts for offences against the HVNL and HVNL regulations are 10% of the maximum court-penalty applying to the person for that offence. Similar changes in relation to maximum court-imposed penalties were made in a previous amendment regulation.

Changes have been made to the notes at the beginning of Parts 1.2A, 1.2B and 1.2C to reflect the above changes and to direct people to the National Heavy Vehicle Regulator website that has details of current maximum court-imposed penalties and infringement notice penalty amounts. Minor editorial changes have also been made to the notes to improve clarity, consistency and to align with current drafting practices.

A dash “-” has been inserted throughout the Schedule in columns 5 and 6 where there is no infringement penalty amount (the offence is not an offence for which an infringement notice can be issued) or no demerit points are attached to the offence to make it clear that there is no infringement notice amount or there are no demerit points attached to the offence.

The Column 2 descriptions of the offence provision at item 9.1 and 9.2, items 34.1, 34.2 and 34.3, items 37.1, 37.2 and 37.3, items 77.1 to 77.4, items 78.1 to 78.4, items 79.1 to 79.4, items 80.1 to 80.4, items 81.1 to 81.4, items 82.1 to 82.4, and items 276.1 and 276.2 in Part 1.2A have been amended to better align with current drafting practices and the wording of the provision in the HVNL.

The column 2 descriptions of the offence provisions and the column 3 short descriptions of the offence provisions at items 35.1 to 35.4 and items 261.1 to 261.3 in Part 1.2A have been amended to better align with current drafting practices and the wording of the provision in the HVNL.

The column 2 description of the offence provision at item 2 in Part 1.2D has been amended to correct the reference to the provision in the *Motor Accident Injuries Act 2019*.

Item 2 of Part 1.3 has been omitted due to recent amendments to the *Road Transport (Alcohol and Drugs) Act 1977* with the rest of Part 1.3 being renumbered.

The column 3 short descriptions in items 2 and 3 have been amended to better align with current drafting practices and the wording of the provision in the *Road Transport (Alcohol and Drugs) Act 1977*.

The column 2 description of the offence provision at item 14 and 15 in Part 1.3 has been amended to correct the reference to the provision in the *Road Transport (Alcohol and Drugs) Act 1977*.

Items 60 to 63 of Part 1.6 have been omitted from Part 1.6 due to recent amendments to the *Road Transport (Driver Licensing) Regulation 2000* with the rest of Part 1.6 being renumbered.

Item 61 in Part 1.6 has been inserted to identify the offence provision, short description and offence penalty to reflect the offence against section 138C of the *Road Transport (Driver Licensing) Regulation 2000*.

The column 2 descriptions of the offence provisions at items 10.1 and 10.2 in Part 1.7 have been amended to better align with current drafting practices and the wording of the provision in the *Road Transport (General) Act 1999*.

The column 2 description of the offence provision at item 11.10 and 11.11 and item 15 in Part 1.11 have been amended to correct the reference to the provision in the *Road Transport (Public Passenger Services) Regulation 2002*.

Item 72 in Part 1.11 has been inserted to reflect the offence provision, short description and offence penalty to reflect the offence against section 52 (3) of the *Road Transport (Public Passenger Services) Regulation 2002* with the rest of Part 1.11 being renumbered.

Items 175.10 and 175.11 in Part 1.11 have been inserted to reflect the offence provision, short description and offence penalty against section 70AAI of the *Road Transport (Public Passenger Services) Regulation 2002*. A child rate infringement penalty amount of \$75 and an adult rate infringement penalty amount of \$183 have also been inserted. The child rate infringement penalty is the same as other infringement penalty amounts applicable to children for offences against the *Road Transport (Public Passenger Services) Regulation 2002* and the adult rate is the same as that for some other similar offences of not complying with the direction of a police officer or authorised person and is within the 20% limit for infringement penalties. The rest of item 175 is renumbered.

The column 2 descriptions of the offence provisions and the column 3 short descriptions of the offence provisions at items 6.1 and 6.2 in Part 1.12 have been amended to better align with current drafting practices and the wording of the provision in the *Road Transport (Safety and Traffic Management) Act 1999*.

Item 17 has been inserted in Part 1.12 to reflect the offence provision, short description and offence penalty against section 10BA (5) of the *Road Transport (Safety and Traffic Management) Act 1999*. The rest of Part 1.12 has been renumbered.

Items 241 and 242 in Part 1.12A have been inserted to reflect the offence provision, short description and offence penalty against sections 179 (2) (d) (i) and 179 (2) (d) (ii) of the *Road Transport (Road Rules) Regulation 2017*. An infringement penalty amount of \$168 has been inserted which is the same as the infringement penalty for similar stopping offences and is within the 20% limit for infringement penalties.

The column 2 description of the offence provision at item 430 and items 507 to 509 in Part 1.12A have been amended to correct the reference to the provision in the *Road Transport (Road Rules) Regulation 2017*. The rest of Part 1.12A has been renumbered.

The column 2 description of the offence provision at items 517.3.1 to 517.3.3 in Part 1.12A have been reformatted and the Column 3 short descriptions have been amended to better align with current drafting practices and the wording of the provision in the *Road Transport (Road Rules) Regulation 2017*.

An infringement penalty amount of \$685 has been inserted at item 11 Part 1.14 in relation to an offence of not complying with a direction/condition of the road transport authority about registration. This infringement penalty amount is the same as the infringement penalty for using an unregistered vehicle or using vehicle with suspended registration and is within the 20% limit for infringement penalty amounts.

The column 2 descriptions of the offence provisions and the column 3 short descriptions of the offence provisions at items 35 and 36 in Part 1.12 have been amended to better align with current drafting practices and the wording of the provision in the *Road Transport (Vehicle Registration) Regulation 2000*.

**Clause 7                      Dictionary, note 3**

“administering authority”, “authorised person”, “heavy vehicle infringement notice offence (see s 21 A)”, “infringement notice offence” and “infringement notice penalty” have been added to the list of terms that have the same meaning as they have in the *Road Transport (General) Act 1999* as defined in the dictionary to that Act.

**Clause 8                      Dictionary, definitions of administering authority and authorised person**

Dictionary definitions of “administering authority” and “authorised person” have been omitted. They have been added to the list of terms in note 3 as they are defined in the *Road Transport (General) Act 1999* (see Clause 7 above).

**Clause 9                      Dictionary, new definitions**

New definitions of “HVINO (or heavy vehicle infringement notice offence)” and “HVOP (or heavy vehicle offence penalty)” have been inserted into the dictionary, pointing to the definitions for Schedule 1 in section 1.1 of the Schedule.

**Clause 10                     Dictionary, definitions of infringement notice offence and infringement notice penalty**

Dictionary definitions of “infringement notice offence” and “infringement notice penalty” have been omitted. They have been added to the list of terms in note 3 as they are defined in the *Road Transport (General) Act 1999* (see Clause 7 above).



**Clause 11**                    **Road Transport (Driver Licensing) Regulation 2000,  
Section 15 (5) (c)**

This clause makes a technical amendment to the *Road Transport (Driver Licensing) Regulation 2000* by inserting the word “driving” after “required” in section 15 (5) (c) to correct the provision and align it with the defined term “required driving hours” in section 15 (8) and section 22 (3) (c).

**Clause 12**                    **Road Transport (General) Regulation, Schedule 1, part 1.4,  
items 1 to 5**

This clause makes a technical amendment to the *Road Transport (General) Regulation 2000* by substituting items 1 to 5 in part 1.4 to correct references to sections of the *Road Transport (Driver Licensing) Regulation 2000* for internally reviewable decisions about refusing to approve pre-learner, learner and heavy vehicle driver and rider courses. These changes are consequential on amendments made to the *Road Transport (Driver Licensing) Regulation 2000* by the *Road Transport (Driver Licensing) Amendment Regulation 2019* (No 1).