

Road Transport (General) (COVID-19 Emergency Response) Application Order 2022 (No 2)

Disallowable instrument DI2022-37

made under the

Road Transport (General) Act 1999, section 14 (Application orders and emergency orders)

EXPLANATORY STATEMENT

This instrument is made under section 14 of the *Road Transport (General) Act 1999* (the Act).

Section 14 (1) allows the Minister to order that the operation of regulations made under the road transport legislation, or a provision of such regulations, is suspended for a stated period or varied in the way stated in the order.

An order under subsection (1) is a disallowable instrument.

Road transport legislation is defined in section 6 of the Act and includes any other Act or any regulation prescribed by regulation.

The *Road Transport (Driver Licensing) Regulation 2000* forms part of the road transport legislation.

This instrument orders that sections of the *Road Transport (Driver Licensing) Regulation 2000* are varied to support the decisions agreed by the Infrastructure and Transport National Cabinet Reform Committee on 25 January 2022 as well as alleviate ongoing operational impacts arising from the ACT August 2021 COVID-19 lockdown.

BACKGROUND

On 30 January 2020, the Director-General of the World Health Organisation (WHO) declared the outbreak of COVID-19 a Public Health Emergency of International Concern. On 11 March 2020, the Director-General of the WHO declared COVID-19 a global pandemic. The WHO requested that every country urgently take necessary measures to ready emergency response systems.

On 16 March 2020, the Minister for Health declared a public health emergency under section 119 of the *Public Health Act 1997* (the Public Health Act) due to the public health risk to the ACT community posed by COVID-19. The emergency declaration has since been extended a number of times.

On 12 August 2021 the ACT went into lockdown to contain the spread of COVID-19 and reduce its risk to the health of Canberrans. To ensure members of the community were not disadvantaged as a result of the lockdown due to the necessary suspension of Government and other Services, the *Road Transport (General) (COVID-19 Emergency Response) Application Order 2021 (No 1)* and *Road Transport (General) (COVID-19 Emergency Response) Application Order 2022 (No 1)* temporarily varied certain road legislation, expiring on 31 March 2022 and 2 April 2022 respectively. Although the ACT lockdown has ended, businesses and various Government services continue to be impacted while managing the current health emergency and it is necessary for certain driver licencing arrangements to be extended.

Separately, at the Infrastructure and Transport National Cabinet Reform Committee (Committee) on 25 January 2022, Ministers agreed to progress temporary measures to enable holders of interstate and New Zealand heavy vehicle driver licences to drive in their jurisdiction for a period of 12 months in response to ongoing COVID-19 impacts. This decision was endorsed by National Cabinet on 27 January 2022.

Comparable arrangements are already in place in the ACT under the *Road Transport (General) (COVID-19 Emergency Response) Application Order 2021 (No 1)* and the *Road Transport (General) (COVID-19 Emergency Response) Application Order 2022 (No 1)*, which extends the period a person can drive on ACT roads on their interstate, external territory, New Zealand or foreign driver licence from 3 months to 6 months until 31 March 2022.

To give effect to the Committee's decision of 25 January 2022 and ensure members of the community are not disadvantaged due to the ongoing effect of COVID-19, this instrument orders that various sections of the *Road Transport (Driver Licensing) Regulation 2000* are varied.

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.

Rights engaged

Broadly, this instrument engages with, and limits the right to recognition and equality before the law (section 8).

Recognition and equality before the law

Section 8 of the HRA provides that everyone is entitled to equal and effective protection against discrimination, and to enjoy their human rights without discrimination.

‘Equality before the law’ has been essentially held to mean that judges and administrative officials must not act arbitrarily in enforcing laws.¹ The non-discrimination provisions in the HRA are founded on articles 2(1) and 26 of the International Covenant on Civil and Political Rights (the ICCPR). ‘Discrimination’ as the term appears in article 26 of the ICCPR is that laws should guarantee ‘all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status’.²

1. Nature of the right and the limitation (ss 28(2)(a) and (c))

In a national agreement initiated by Austroads, all Australian State and Territory driver licensing agencies may recognise certain overseas countries and jurisdictions as having comparable licensing standards to Australia. Austroads separates overseas licence holders into three categories, being recognised countries and jurisdictions, experienced driver countries and non-recognised countries. Countries with the ‘recognised’ status from Austroads are considered to have comparable licensing standards to Australia. New Zealand is a recognised country.

ACT road transport legislation provides a general exemption for interstate, external territory and foreign licence holders from requiring an ACT driver licence to drive on an ACT road a vehicle of the class to which the vehicle being driven applies until the person has resided in the ACT for a continuous period of longer than 3 months. Under temporary COVID-19 measures, this legislated period has been extended to 6 months until 31 March 2022.

This application order may be seen to engage and limit a person’s right to recognition and equality before the law in that the instrument affords holders of interstate, external territory and foreign driver licence licences issued under the law of a recognised country with 12 months after they begin residing in the ACT in which they can drive on ACT roads on their non-ACT licence. This is an additional 9 months.

For foreign driver licence issued under the law of an experienced or non-recognised country, the general exemption will not be extended by this instrument, and from 1 April 2022, the general exemption for these licence holders will revert back from 6 months to 3 months.

2. Legitimate purpose (s 28(2)(b))

¹ Nowak, M., *UN Covenant on Civil and Political Rights: CCPR Commentary*, (N.P. Engel, Publisher, 2nd revised edition, 2005) 606.

² International Covenant on Civil and Political Rights, opened for signature 19 December 1966, 999 UNTS 171 (entered into force 23 March 1976), art 2(1), 26

The ACT Government is committed to the realisation of Vision Zero – a strategy outlined in the *ACT Road Safety Strategy 2020-25* (Road Safety Strategy) and the *ACT Road Safety Action Plan 2020-23* (Road Safety Action Plan), which aims to achieve zero road fatalities and serious injuries.

The exemption extension made by the instrument is necessary to give effect to the recent decision of National Cabinet, which aims to alleviate the ongoing pressures faced by essential transport workers as a result of previous isolation requirements and to improve the number of other skilled drivers in Australia.

3. *Rational connection between the limitation and the purpose (s 28(2)(d))*

The amendments contained in this instrument reflect that interstate and recognised countries have comparable standards to Australia. The extension will improve the pressures transport workers are facing in Australia while aligning with the ACT's driver licensing framework.

Countries that have obtained experienced driver status are those whose licence testing standards meet the stringent assessment criteria relating to evidence of identity, security features of the card and licence examiner training and assessment standards, but do not meet all of the licence testing requirements. Non-recognised countries are countries that either have not applied to Austroads for licence recognition in Australia, or whose licence testing standards do not meet assessment criteria to a satisfactory level to obtain experienced driver status.

The amendments aim to strike a balance between the recent National Cabinet decision while remaining consistent with previous COVID-19 exemption arrangements by applying the extended exemption arrangements to all licence classes as well as interstate, external territory and foreign licence holders from all recognised countries.

4. *Proportionality (s 28(2)(e))*

The amendments support the ACT Government's commitment to the realisation of Vision Zero and is proportionate to protect the public health and safety on the ACT road network by supporting the recent decisions of National Cabinet while implementing similar arrangements to previous COVID-19 exemptions.

While applying the extended exemption arrangements to all foreign licence holders would be a less restrictive means, this is not reasonable to achieve the legitimate purpose of alleviating the ongoing pressures faced by essential transport workers without compromising the ACT's driver licensing framework during the Government's commitment to the realisation of Vision Zero. As experienced and non-recognised country licensing standards are not comparable to Australia, it is in the interests of our driver licensing framework to ensure these licence holders undergo the appropriate tests to support the integrity of the driver licensing framework within a sufficient amount of time. Access Canberra shopfronts remain open for these foreign driver licence holders to apply for an ACT driver licence.

The limitation is not exhaustive and only applies to foreign licence holders residing in the ACT. For non-ACT and foreign licence holders temporarily visiting the ACT, the road transport legislation permits these licence holders to drive on ACT roads on their non-ACT or foreign licence indefinitely.

CLIMATE CHANGE IMPLICATIONS

There are no climate change implications associated with this instrument.

CLAUSE NOTES

Part 1 Preliminary

Clause 1 Name of instrument

This clause specifies the name of the instrument. This clause provides that the instrument may be cited as the *Road Transport (General) (COVID-19 Emergency Response) Application Order 2022 (No 2)*.

Clause 2 Commencement

This clause provides that the instrument commences on 1 April 2022.

Clause 3 Expiry

This clause states that this instrument expires on 25 January 2024, or if revoked earlier, when it is revoked.

Part 2 Road Transport (Driver Licensing) Regulation 2000

This part contains orders that the operation of the *Road Transport (Driver Licensing Regulation) 2000* or provisions of the *Road Transport (Driver Licensing) Regulation 2000* are varied in the way stated in the order.

Clause 4 Extension of renewal time for learner motorcycle licence—s 85A

Under the *Road Transport (Driver Licensing) Amendment Regulation 2020 (No 1)*, section 5 of the *Road Transport (General) (COVID-19 Emergency Response) Application Order 2021 (No 1)* and section 4 of the *Road Transport (General) (COVID-19 Emergency Response) Application Order 2022 (No 1)*, certain learner motorcycle licence holders received an 18-month extension to their licence due to the impact of COVID-19 on Government services.

This clause inserts a new section 85A into the regulation that provides for a person who has had their learner motorcycle licence period extended under these COVID arrangements to have the knowledge component of an approved road ready training course recognised for an additional 18 months, from 2 years to 3 years and 6 months, while their learner licence remains extended.

Clause 5 Extension of period for automatic disqualifying circumstance for certain non-ACT licence holders—new s 91A

Section 91 (a) and (b) of the Regulation provides that an automatic disqualifying circumstance applies to a holder of an interstate or foreign driver licence who resides in the ACT for a continuous period of longer than 3 months.

This clause inserts new section 91A into the Regulation consequential on the changes at clause 6 and provides that, for section 91 (a) and (b), an automatic disqualifying circumstance applies to a non-ACT driver licence holder (e.g. interstate licence holders, holders of an external territory licence, New Zealand citizens) or foreign driver licence holders issued under the law of a recognised country who resides in the ACT for a continuous period of longer than 12 months.

A recognised country, in relation to a foreign driver licence, is defined by section 141 and means a country listed as a recognised country by Austroads and published on its website from time to time.

These changes only apply to non-ACT and recognised foreign driver licence holders who start residing in the ACT between 1 April 2022 and 25 January 2023. For holders of a foreign driver licence issued under the law of a country that is not a recognised country, or a non-ACT or recognised foreign licence holder who starts residing in the ACT outside of the period of 1 April 2022 and 25 January 2023, new section 91A does not apply and an automatic disqualification circumstance will apply to a person who resides in the ACT for a continuous period of longer than 3 months in accordance with section 91 (a) and (b).

Clause 6 Extension of period under s 92 for certain non-ACT licence holders—new s 92A

Section 92 of the *Road Transport (Driver Licensing) Regulation 2000* provides that the period for which holders of a non-ACT driver licence (e.g. interstate licence holders, holders of an external territory licence, New Zealand citizens) and foreign driver licence holders can drive on ACT roads on their non-ACT or foreign driver licence is 3 months.

Under temporary COVID-19 arrangements, this timeframe is extended to 6 months until 31 March 2022.

Section 94 of this Regulation exempts a holder of a foreign driver licence from holding an Australian driver licence while driving on a road or road related area in the ACT, a motor vehicle of the kind that the licence held by the person authorises the person to drive. A person ceases to be exempted under section 94 (2) of this Regulation if an automatic disqualification circumstance applies (set out under section 91).

This clause inserts new section 92A into the regulation and provides that, for section 92 (2) and (3), the timeframe a person can drive on ACT roads on their interstate, external territory driver licence, New Zealand licence or foreign driver licence issued under the law of a recognised country is 12 months. A recognised country, in relation to a foreign driver licence, is defined by section 141.

These changes only apply to non-ACT and recognised foreign driver licence holders who start residing in the ACT between 1 April 2022 and 25 January 2023. For holders of a foreign driver licence issued under the law of a country that is not a recognised country, or a non-ACT or recognised foreign licence holder who starts residing in the ACT outside of the period of 1 April 2022 and 25 January 2023, new section 92A does not apply and the period in which these people can drive on ACT roads on their licence remains as 3 months.

Clause 7 Renewal of learner licence—s 179 (2)

This clause makes an amendment to support the operation of section 10 of the *Road Transport (General) (COVID-19 Emergency Response) Application Order 2021 (No 1)* and section 5 of the *Road Transport (General) (COVID-19 Emergency Response) Application Order 2022 (No 1)* by varying section 179 (2) to provide that a person who has had their learner car licence period extended either of these instruments also has the requirement in relation to when they must have completed the knowledge component of an approved road ready training course extended from 2 years to 3 years and 6 months.