

Australian Capital Territory

Road Transport (Road Rules) Amendment Regulation 2023 (No 1)

Subordinate Legislation SL2023–40

made under the

Road Transport (Safety and Traffic Management) Act 1999, s 33

EXPLANATORY STATEMENT

Purpose of the Regulation

The purpose of the Regulation is to improve road safety and provide for traffic management in the ACT by amending the *Road Transport (Road Rules) Regulation 2017*, relating to the use of a mobile device while driving and the operation of a mobile device detection system.

Overview

The amendments in this Regulation:

- introduce a permanent exemption under Part 19 to allow vehicles being used as part of a mobile device detection system to contravene certain road rules relating to parking and manoeuvring when it is reasonable to do so;
- clarify that holding a mobile phone while driving a vehicle includes resting the device, or keeping it in place by, the driver's body, an item on the driver's lap, or the driver's clothing (other than in a pocket or pouch). This change will also apply to a person travelling in or on a personal mobility device;
- provide a singular offence for all drivers that illegally use a mobile device while the vehicle is moving, or is stationary but not parked; and
- administrative amendments, including supporting the definition of mobile device to be relocated into the dictionary.

Section 33 of the *Road Transport (Safety and Traffic Management) Act 1999* gives the Executive the power to make regulations under that Act.

Section 35 of the *Road Transport (Safety and Traffic Management) Act 1999* gives the Executive the power to make regulations that exempt a vehicle, person or animal prescribed by regulation from this Act (or a stated provision of this Act).

Human Rights considerations

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).

There are no human rights engaged with the introduction of the exemption to certain parking and manoeuvring related road rules for vehicles operating as part of the mobile device detection system.

There are also no human rights engaged with amendments that will combine the current offences to one singular offence provision for any driver using a mobile device illegally. The amendment does not change the current permitted mobile device interactions for drivers, or the maximum penalties prescribed.

The Regulation as it relates to a mobile device being held while driving, could be seen to engage with, and place limitations on, the right to the presumption of innocence until proven guilty under section 22 (1) of the HRA.

Nature of the right affected (ss 28(2)(a) and (c))

This Regulation amends the following three existing strict liability offences in the *Road Transport (Road Rules) Regulation 2017*:

- section 244GA Use of mobile device in or on personal mobility device;
- section 300 Use of mobile device; and
- section 300AA Use of mobile device—learner and provisional licence holders.

Under sections 300 (and 300AA prior to the Regulation), it is an offence for a driver to use a mobile device while the vehicle is moving, or is stationary but not parked, unless it is being used in a manner that is permitted for certain functions. Similarly, section 244GA makes it an offence for a person to use a mobile device while travelling in or on a personal mobility device, unless it is being used in a manner that is permitted for certain functions.

The driver of a vehicle, or person on a personal mobility device, is not permitted to hold a mobile device when streaming or playing music, for example. The existing framework provides that holding the mobile device includes held by or resting on any part of the driver's body, other than in a person's pocket or pouch.

The Regulation will clarify that a mobile device, other than a wearable device, cannot be resting on or be kept in place by a part of the driver's body, clothing worn by the driver or something else on the driver's lap, other than in a pocket or pouch. Similarly, a person on a personal mobility device cannot rest their device or keep the device in place by a part of their body in this manner while travelling on the personal mobility device.

The Regulation also clarifies that resting the device on the driver or person's body in this manner is an offence whether or not they are operating the phone.

Section 8 of the *Road Transport (Road Rules) Regulation 2017* provides that an offence against that regulation is a strict liability offence.

A strict liability offence means that there are no fault elements for the physical elements of the offence to which strict liability applies. Essentially this means that the conduct alone is sufficient to make the defendant culpable. There is a specific defence of mistake of fact for strict liability offences (section 23, *Criminal Code 2002*).

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

The purpose of the Regulation is to support public safety by addressing driver distractions and their impact on road trauma. Driver distraction is a major road safety issue, recognised as a key focus area in the *ACT Road Safety Action Plan 2020-2023* and a high priority for the ACT Government.

Any kind of distraction can result in inappropriate speeds, lane deviations and a delay in reaction time. Taking your eyes off the road for longer than two seconds doubles the risk of a crash. The *National Road Safety Action Plan 2023-25*¹ recognises that 16% of serious casualty road crashes resulting in hospital attendance in Australia occur as a result of distracted driving.

The Regulation also supports national consistency. The Australian Road Rules recognise that reaching for a device and interacting with a handheld device can significantly increase the risk of a crash.² The Australian Road Rules prohibit drivers touching portable devices, such as mobile phones, that are not mounted or affixed to the vehicle. This includes a mobile phone resting on the driver's body (other than in a pocket or pouch worn by the driver).

The amendment upholds an established position on mobile phone use while driving. When the exemption which allowed a driver to pass their mobile device to a passenger was removed in 2021, it was noted in the Explanatory Statement³, that the amendment was considered to be consistent with the ACT Government's commitment to addressing driver distraction and national reforms on driver distraction which are designed to encourage people to place their devices elsewhere in the car when driving.

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

The Regulation builds upon the existing regulatory framework restricting mobile device use while driving by clarifying that resting a mobile phone on any part of the driver's body, or keeping the device in place by the driver's body, is dangerous at all times while driving. The amendment supports the established and community recognised standards of unsafe driving behaviours associated with mobile phone use.

Roadside cameras detect illegal use of a mobile devices while driving. In the ACT, the cameras are issuing warning notices to drivers prior to their use to enforce the road

¹ Commonwealth of Australia 2023, National Road Safety Action Plan 2023-25.

² National Transport Commission 2020, Developing technology neutral road rules for driver distraction: decision regulation impact statement, NTC, Melbourne

³ Road Transport (Safety and Traffic Management) Amendment Bill 2021. Explanatory Statement and Human Rights Compatibility Statement, published 13 May 2021.

rules with an infringement for illegal mobile phone use. This, in addition to road safety campaigns educating Canberrans about the cameras and encouraging safe driving, provides the opportunity to remind drivers of the laws associated with safe mobile device use.

Amending the definition of held for people travelling on a personal mobility device maintains consistency with the definition that applies to drivers of vehicles.

The Regulation supports the effective infringement regime already in place under section 244GA, 300 and 300AA of the *Road Transport (Road Rules) Regulation 2017*.

Proportionality (s 28(2)(e))

It is not considered that there are any less restrictive means reasonably available to achieve the purpose of this Regulation. The existing strict liability offences within sections 244GA, 300 and 300AA of the *Road Transport (Road Rules) Regulation 2017* are relevant to ensuring the safety of the public and to protect public revenue.

The Regulation maintains the balance between limiting a device being held by or resting on the driver's body for the purposes of addressing driver distraction and recognising the need for a mobile device to be resting in a pocket of the driver's clothing or in a pouch worn by the driver. Similarly, a mobile device that is a wearable device may be worn by the driver in a manner intended by the manufacturer.

A comprehensive awareness and education campaign is rolling out with the introduction of mobile device detection cameras in the ACT. This campaign reminds drivers to not use their phone while driving.

Climate Change Implications

There are no climate change implications from the Regulation.

CLAUSE NOTES

Clause 1 Name of regulation

This is a technical clause that states the name of the Regulation as the Road Transport (Road Rules) Amendment Regulation 2023 (No 1).

Clause 2 Commencement

This clause provides that the Regulation, other than schedule 1, part 1.2, will commence 3 days after its notification day.

Schedule 1, part 1.2 will commence upon the commencement of the *Road Transport Legislation Amendment Act 2024*, part 7.

Clause 3 Legislation amended

This clause provides that the *Road Transport (Road Rules) Regulation 2017* is being amended by this Regulation.

Clause 4 Section 244GA (4)

Section 244GA of the *Road Transport (Road Rules) Regulation 2017* relates to the use of mobile devices by a person travelling in or on a personal mobility device.

Clause 4 substitutes subsection 244GA (4). In doing so, the definition of held is amended. The previous definition includes a device held by, or resting on, any part of the person's body. This part of the definition is replaced, so that the definition of held includes a device rested on, or kept in place by, a part of the person's body, clothing worn by the person or something else on the person's lap.

It also replaces the word 'held' in paragraph (b) (i) with 'kept' addressing any unintended complexity in the definition.

The amendment made in Clause 4 provides consistency with Clause 7 relating to the definition of held for drivers of vehicles.

Other amendments to subsection 244GA (4) are minor in nature and do not affect the overall definitions. References in definitions and inserting the definition of use are consequential to changes made in Clause 7.

Clause 5 Section 299 (2) (bb)

Section 299 of the *Road Transport (Road Rules) Regulation 2017* relates to the use of a television receiver or visual display unit by a driver of a vehicle.

A visual display unit can be used as a driver's aid in certain circumstances, including when it is part of a mobile device. The amendment recognises that a visual display

unit that is part of a mobile device can be used as a driver's aid in accordance with subsection 300 (2) (b) and (c).

Clause 6 New section 299 (4)

This amendment inserts the definition of mobile device, providing consistency with the drafting of other mobile device related offences.

Clause 7 Sections 300 and 300AA

This Clause substitutes section 300 and 300AA with a singular offence for any driver using a mobile device illegally while driving. Previously, the road rules for mobile phone use by a driver of a vehicle were prescribed by section 300AA for a driver who holds a learner licence or provisional licence, and section 300 for all other drivers.

Clause 7 also amends the definition of use. Prior to the commencement of the Regulation, sections 300 and 300AA prohibited a driver from using a mobile device while the vehicle is moving, or is stationary but not parked, unless it was used in accordance with a permitted function and in the prescribed manner. Use was defined to include, among other actions, a driver holding the body of the device in their hand (whether not engaged in a phone call).

However, the Regulation removes the text 'in the driver's hand', so that this example of holding a mobile device is not limited to being in the driver's hand.

Clause 7 also amends the definition of held. The previous definition applicable to all drivers included a device held by, or resting on, any part of the person's body. This part of the definition is replaced, so that the definition of held includes a device rested on, or kept in place by, a part of the driver's body, clothing worn by the driver or something else on the driver's lap.

The effect of these amendments is that the definition of held no longer applies only when the device was being used to make or receive an audio call, stream, play or listen to music or audio files. This clarifies the policy intent that holding or resting a mobile device on any part of the driver's body is unsafe at all times.

Similar to Clause 4, Clause 7 replaces the word 'held' in paragraph (b) (i) with 'kept', to simplify the definition. The amendment is minor in nature and does not impact the overall definition of held.

Clause 8 New section 307A

This Clause introduces new section 307A Stopping and parking exemption—mobile device detection system.

Drivers and vehicles operating a mobile device detection system may need to manoeuvre or park a vehicle on the ACT road network in manner that contravenes certain parts of the *Road Transport (Road Rules) Regulation 2017*.

It is a requirement for the exemption of the legislation in Clause 8, that the person is taking reasonable care, and the legislation will only be disapplied if it is reasonable considering the circumstances. Vehicles should not be parked where parts protrude onto the road.

Subsection 307A (2) outlines the provisions that may be disapplied under the *Road Transport (Road Rules) Regulation 2017*. The provisions include driving or stopping on dividing strips and nature strips, as well as compliance with parking signs.

Subsection 307A (3) provides the definition of mobile device detection system for section 307A. A mobile device detection system must be approved under the *Road Transport (Safety and Traffic Management) Regulation 2017*, section 13 (1).

Clause 9 Dictionary, definition of *affixed to*

This Clause is minor in nature. Consequential to Clause 7, it updates the section reference in the definition of ‘affixed to’.

Schedule 1 Consequential amendments

Part 1.1 Road Transport (Offences) Regulation 2005

Clause [1.1] Section 21 (2) (a) (viii)

The Clause removes reference to section 300AA (2) (Use of mobile device—learner and provisional licence holders) as an offence that is subject to double demerits during a holiday period. This amendment is consequential to Clause 7.

Clause [1.2] Schedule 1, part 1.12A, item 537

The Clause is consequential to the amendments in Clause 7.

Part 1.2 Road Transport (Road Rules) Regulation 2017

Clause [1.3] Section 244GA (4), definition of *mobile device*

If passed, the *Road Transport Legislation Amendment Act 2024*, part 7, will relocate the definition of mobile device into the dictionary of the *Road Transport (Road Rules) Regulation 2017*.

The amendment in Clause [1.3] will support the relocation of the definition, omitting the definition from 244 GA (4) in the *Road Transport (Road Rules) Regulation 2017* upon commencement of the *Road Transport Legislation Amendment Act 2024*, part 7.

Clause [1.4] Section 299 (4)

For reasons provided in Clause [1.3], this amendment will remove the definition of mobile device from section 299 (4), which was inserted under Clause 6 of this Regulation.

Clause [1.5] Section 300 (8), definition of *mobile device*

For reasons provided in Clause [1.3], this amendment will remove the definition of mobile device from section 300 (8) upon commencement of the *Road Transport Legislation Amendment Act 2024*, part 7.