

Australian Capital Territory

Road Transport (Road Rules) Advertising Declaration 2024 (No 2)

Disallowable Instrument DI2024–288

made under the

Road Transport (Road Rules) Regulation 2017, s 213SA (3) (b) (Vehicle parked in designated place must not have sign attached)

EXPLANATORY STATEMENT

This instrument declares matter that is or is not advertising as required by section 213SA(3)(b) of the *Road Transport (Road Rules) Regulation 2017* (the Regulation). Section 213SA commenced 6 months after notification of the *Electoral and Road Safety Legislation Amendment Act 2023* (Amendment Act).

Section 213SA provides that it is an offence for a driver to park in a designated place if a sign displaying advertising or electoral matter is attached to the vehicle.

The Minister may declare matter that is or is not advertising for the purpose of this offence. The declaration is to be a disallowable instrument and will have effect until revoked.

This instrument declares that advertising matter is any matter displayed from a sign attached to a vehicle that is greater in area than 1.5m². This applies to both commercial and community advertising. Under the Regulation, a sign is a board, device, plate, or screen.

Designated places are set out under the Regulation in a separate instrument.

Human Rights considerations

During the development of this instrument, due regard was given to its compatibility with human rights as set out in the *Human Rights Act 2004* (HRA).

Nature of the right and the limitation (s28(a) and(c))

This instrument engages and limits the right to freedom of expression (section 16 of the HRA).

As outlined in the Explanatory Statement to the Amendment Act, prohibiting vehicles from parking on designated roads, road-related areas, and public unleased land where

the vehicle has a sign attached that displays advertising could be considered to limit a person's right to freedom of expression by restricting the opportunity to receive and impart information and ideas displayed on parked vehicles.

The declaration on what is or is not advertising matter details the extent that the rights to freedom of expression are limited. A sign attached to a vehicle cannot display advertising that is greater in area than 1.5m². Designated places are defined by notifiable instrument under section 213SA(3)(a).

The ability to impart information in this manner is therefore prohibited where the elements of the offence are met.

This instrument also engages and limits the rights in criminal proceedings (section 22 of the HRA). The offence under section 213SA is a strict liability offence and this instrument forms an element of that offence. Strict liability is applied to determine if the advertisement is greater than 1.5m². There are no fault elements and therefore the conduct alone is sufficient to determine that this component of the offence has been met.

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

The primary purpose is to support road safety. It aims to reduce driver distraction, a key focus area of the ACT Road Safety Action Plan 2024-25.

A driver can not only be distracted from activity inside the vehicle, such as from passengers and mobile phones, but also from the road environment. As outlined by NSW¹, distraction is anything that takes your eyes off the road, your hands off the wheel, or your mind off driving. Distraction takes the driver's attention away from driving.

A driver that takes their eyes off the road for just two seconds when driving at 60km/hr will travel 33 metres while being distracted. At 100km/hr this increases to 55m.² These are distances that the vehicle travels while the driver is not focused on the task at hand.

A driver that takes their eyes off the road for longer than two seconds doubles the risk of a crash.

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

Roadside advertising is a distraction outside the vehicle that can take the driver's attention away from the driving task. It is recognised as an example of inattention on

¹ NSW Government. Driving Distractions. Website. <<https://www.nsw.gov.au/driving-boating-and-transport/roads-safety-and-rules/warnings-and-hazards/driving-distractions>>

² Government of Western Australia. Road Safety Commission. Distractions – Facts at a glance. Website <https://www.wa.gov.au/system/files/2021-07/Distance-of-distraction-facts-at-a-glance_1.pdf>

the SA website³. Roadside advertising can be a visual distraction as well as cognitive distraction by affecting the driver's thoughts.

One of the factors that may affect whether a sign is distracting is its size. The sign must be large enough to be a visual distraction to passing drivers. The instrument determines that the parked vehicle cannot have a sign attached that has advertising greater than 1.5m².

Proportionality (s 28(2)(e))

The instrument defines advertising matter to an extent that is necessary to support the offence under section 213SA of the road rules to reduce driver distraction and improve road safety.

Alternative measures that are less restrictive are not considered equally effective in achieving these objectives. Increasing the permitted size of the advertising matter will increase the ability for the roadside advertisement to be distracting to passing drivers.

A defined area of 1.5m² is proportionate as it recognises that there is an extensive range of advertising and information on vehicles in the ACT. The defined area will exclude smaller advertising that may not have the sole purpose of distracting drivers.

The offence is limited in the road rules to require the vehicle to be parked in a designated place and have a sign attached. A sign is defined as board, device, plate or screen. The offence therefore allows for advertising to be conducted by other means. For example, by vehicles that advertise without a sign attached to the vehicle, such as wrapped vehicles, or vehicles that do not park in designated places.

The need for some vehicles to display safety related information is recognised from a compliance and enforcement perspective. Imparting this type of information in a predominant position on the vehicle can be important for the safety of all road users. Examples include cautionary signs to warn of a driver unloading or a vehicle frequently stopping.

ACT drivers will be informed of the offence and its application prior to its commencement. Sufficient time will be given to ensure that those businesses that are affected can adopt appropriate changes to any current roadside advertising practices.

Climate Change Implications

There are no climate change implications from the instrument.

³ Government of South Australia. Department of Infrastructure and Transport. Towards Zero Together. Website. <https://www.dit.sa.gov.au/towardszerotogether/Safer_behaviours/inattention>

CLAUSE NOTES

Clause 1 Name of instrument

This is a technical clause that states the name of the instrument is the *Road Transport (Road Rules) Advertising Declaration 2024 (No 2)*.

Clause 2 Commencement

This clause provides that the instrument will commence on 13 September 2024.

Clause 3 Declaration

Section 213SA in the *Road Transport (Road Rules) Regulation 2017* provides an offence for a vehicle parked in a designated place if a sign displaying advertising or electoral matter is attached to the vehicle.

Section 213SA (3)(b) allows for the Minister to declare matter that is or is not advertising for the offence under 213SA.

This clause declares that advertising matter is any matter displayed from a sign attached to a vehicle that is greater in area than 1.5m².

A note is also included to state that terms used in this instrument have the same meaning as in the *Road Transport (Road Rules) Regulation 2017*, such as how a *sign* means a board, device, plate or screen.

Clause 4 Revocation

This clause revokes the *Road Transport (Road Rules) Advertising Declaration 2024 (No 1)*, which is replaced by this instrument to make minor typographical amendments.