

Road Transport (Driver Licensing) Amendment Regulation 2024 (No 1)

Subordinate Legislation SL2024–30

made under the

Road Transport (Driver Licensing) Act 1999 and the Road Transport (General) Act 1999

EXPLANATORY STATEMENT

The purpose of the *Road Transport (Driver Licensing) Amendment Regulation 2024 (No 1)* (the Regulation) is to improve road safety by strengthening the reporting and monitoring of heavy vehicle licence holders' fitness to drive and to improve the administration and efficiency of the Territory's road transport legislation.

There is a delayed commencement for the Regulation, which allows for a date set by the Minister by commencement notice at any point within nine months from notification. This may be applied to part or all of the Regulation. If no date is set, the amendments will commence the day after the nine month period. This supports targeted consultation on the anticipated development of supporting guidelines and to give adequate notice prior to implementation.

The reporting of fitness to drive requirements introduced by the Regulation respond to a recommendation in the Coroner's Report – Inquest into the death of Blake Andrew Corney, released in May 2022.

The amendments in this Regulation:

- a. introduce a requirement for certain health practitioners to report to the Road Transport Authority (RTA) where a patient is applying for, or holds, a heavy vehicle class of licence and is considered to have a medical condition that is likely to impair their ability to drive a heavy vehicle safely;
- b. allow for the release of a person's driver licence information to a health practitioner upon their request to assist with their reporting requirements;
- c. introduce 'authorised occupational therapists' to assist in the fitness to drive medical review process;
- d. allow for the release of reports or other relevant information for the purposes of assessing a person's fitness to drive to authorised occupational therapists or authorised medical reviewers;
- e. allow for the release of reports relating to an interstate licence holder's fitness to drive to be disclosed to the driver licence issuing interstate authority;

- f. update the definition of allied professional practitioner to align with registration requirements of the *Health Practitioner Regulation National Law* (ACT); and
- g. makes minor technical amendments to improve the administration and efficiency of the legislation relating to fitness to drive.

The road transport legislation being amended by this Regulation is the *Road Transport (Driver Licensing) Regulation 2000*. This regulation also amends the *Road Transport (General) Regulation 2000*.

A Regulatory Impact Statement has not been developed as part of this Regulation as the proposed law does not pose an appreciable cost to the community. The requirements for health practitioners complement the existing framework for fitness to drive. Drivers are already required to self-report any medical condition affecting their fitness to drive and medical practitioners are already able to report on their behalf. The proposed mandatory reporting requirements are not intended to be overly burdensome to health practitioners and will support health practitioners in making reports where they have road safety concerns for patients who drive heavy vehicles.

Human rights considerations

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

An assessment against section 28 of the HRA is provided below.

The limitations on human rights in the Regulation are proportionate and justified in the circumstances because they are the least restrictive means available to achieve road safety. The achievement of road safety is an important objective for the ACT community.

Rights Promoted

Section 9 of the HRA provides that everyone has the right to life and to not have their life taken. The right to life includes a duty on government to take appropriate steps to protect individuals from risks to life.

The RTA has in place a well-established fitness to drive framework, which adopts the nationally implemented medical standards for drivers as set out in the publication *Assessing Fitness to Drive*, published by Austroads. *Assessing Fitness to Drive* assists the RTA to minimise the road safety risk associated with drivers with medical conditions affecting their ability to drive safely.

Heavy vehicles can have devastating consequences if involved in a collision with another vehicle. The Regulation requires certain health practitioners to report to the RTA heavy vehicle drivers with medical conditions likely to impair their ability to drive a heavy vehicle safely. Reported drivers are assessed by the RTA against the fitness to drive framework. The Regulation promotes the right to life as it assists the RTA to identify and manage any heightened risk that heavy vehicle drivers with medical conditions may have affecting the safety of other road users.

Rights Limited

Requirement for certain health practitioners to report to the RTA relating to a person's fitness to drive heavy vehicles

The [Road Safety Legislation Amendment Bill 2022](#) (the Bill), which introduced the regulation making power to require health practitioners to report to the RTA relating to a person's fitness to drive, considered its compatibility with human rights as set out in the HRA. Broadly, the head of power detailed in clause 5 of the Bill engaged and limited the following human rights:

- 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.
- Section 12 of the HRA provides that everyone has the right to not have their privacy interfered with unlawfully or arbitrarily; and not have their reputation unlawfully attacked.
- Section 21 of the HRA provides that everyone has the right to a fair trial.
- Section 27B of the HRA provides that everyone has the right to work and choose their occupation or profession freely, without discrimination.

The human rights assessment concluded that the rights engaged and limited were proportionate and justified in the circumstances.

Clause 10 of this Regulation introduces the reporting requirement in the ACT. The human rights assessment undertaken to the Bill is relevant to the Regulation and is reflected in the below human rights assessment. The assessment in the Bill is also expanded in the below human rights assessment for the rights engaged and limited under:

- section 8 (right to equality) and section 27B (right to work), as the Regulation limits the reporting requirement by certain health practitioners to heavy vehicle drivers or applicants for a heavy vehicle licence, as distinct from all drivers; and
- section 12 (privacy and reputation), as the Regulation defines the content required in a report made by the health practitioner to the RTA and allows the RTA to provide to a health practitioner driver licence details held by a person.

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

The Regulation requires health practitioners registered in the medical, occupational therapy, optometry, physiotherapy, or psychology profession to report to the RTA relating to the person's fitness drive heavy vehicles.

The Regulation could be considered to limit a person's right to equality and non-discrimination because only those people reasonably believed by the health practitioner to hold or applying for a heavy vehicle driver licence that are considered to have long term or permanent illness, injury or incapacity likely to impair the

person's ability to drive a heavy vehicle safely are required to be reported to the RTA. This may result in:

- the scrutiny of a heavy vehicle drivers' fitness to drive disproportionately to other licence holders in an assessment by the health practitioner and/or the RTA against national driver licensing medical standards; and
- impacts heavy vehicle drivers unequally, as only those people in the opinion of the health practitioner that may have a long term or permanent illness, injury or incapacity likely to affect their ability to drive heavy vehicles will be reported to the RTA.

The Regulation introduces provisions that require the production of personal information and health information by certain health practitioners to the RTA relating to a person's fitness to drive a motor vehicle. The health practitioner must include the person's name, address and date of birth in their report. The health practitioner must also include the grounds for forming their opinion that the person has a permanent or long-term illness, injury or incapacity that is likely to impair the person's ability to drive a heavy vehicle safely. Releasing personal and personal health information about a person limits their right to privacy under the HRA.

The Regulation could be considered to limit a person's right to a fair trial and/or right to work. Upon receiving a report from the health practitioner, the RTA commences an administrative process to determine a person's fitness to drive and whether the person can hold, or continue to hold, a class or type of driver licence, which may include referring the person to a health practitioner for assessment. The RTA may make no changes, impose conditions on the person's licence, or vary, suspend, or cancel the licence in the most serious cases.

Heavy vehicle licence classes must be held by those people engaged in work driving vehicles over 4.5 tonnes on ACT roads. Where a person's fitness to drive is assessed and the person is not considered fit to drive, fit only to drive in certain circumstances, or limited to driving vehicles not over 4.5 tonnes, there is likely to be an impact on the person's livelihood.

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

The ACT Government is committed to the realisation of Vision Zero – a strategy outlined in the *ACT Road Safety Strategy 2020-25* and the *ACT Road Safety Action Plan 2024-25*, which aims to achieve zero road fatalities and serious injuries. Reporting by health practitioners of conditions affecting heavy vehicle drivers' fitness to drive is an action in the *ACT Road Safety Action Plan 2024-25*.

The Human Rights Assessment to the Bill recognised that medical conditions, or a combination of medical conditions, can affect a person's ability to drive safely. It also recognised the heightened road safety risk of heavy vehicles, which:

- can have devastating consequences if involved in a collision with another vehicle;
- in the case of commercial heavy vehicles, generally spend a significant amount of time on the road elevating their crash risk; and
- can require the driver to complete additional driving tasks that affect their ability to drive safely.

Heavy vehicle safety is one of nine priorities towards Vision Zero in the *National Road Safety Strategy 2021-30*¹, with around 18 per cent of all road crash deaths involving a heavy vehicle. The *National Road Safety Strategy 2021-30* recognises that heavy vehicle crashes are more likely to result in a death or serious injury than other vehicles.

The RTA has a responsibility to the ACT community to ensure heavy vehicle drivers are fit and competent and take action to address an elevated crash risk.

The RTA has in place a well-established fitness to drive framework. Once the RTA receives a report concerning a person's fitness to drive, the person is assessed against nationally consistent medical standards in Austroads' *Assessing Fitness to Drive*. Relying on expert advice and fitness to drive assessments from health professionals, the RTA makes a decision about a person's driver licence that responds to any heightened road safety risk.

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

Reporting by health practitioners on a person's condition that is likely to impair their ability to drive heavy vehicles safely strengthens the ability for the RTA to manage risks appropriate to heavy vehicles and to uphold national fitness to drive standards. Compliance with national medical standards in the driver licensing system protects all road users.

As discussed in the human rights assessment to the Bill, the Regulation:

- builds on the existing requirement for all drivers to self-report medical conditions affecting their ability to drive safely and for any concerned person to voluntarily report a driver to the RTA;
- utilises the expertise of relevant health practitioners who professionally assess a person's health in the community and is likely to be aware of medical conditions, including changes in the condition, and the impact it may have on a person's fitness to safely drive heavy vehicles; and
- strengthens the established fitness to drive assessment framework to address road safety risks of heavy vehicle drivers in the ACT.

There is no expectation on health practitioners to conduct extensive fitness to drive assessments or actively ask their patients or the RTA for information for the sole purpose of making a report under clause 10. Generally, reports by health practitioners would be made where reporting thresholds are subsequently met while delivering their usual health care service to the patient. This includes health care services unrelated to a driving matter.

The Regulation allows for the RTA to release heavy vehicle driver licence related information of a patient to health practitioners upon request by the health practitioner. While there is no obligation on the health practitioner to make these enquiries under

¹ Commonwealth of Australia 2021. *National Road Safety Strategy 2021–30*. Available at www.roadsafety.gov.au/nrss

the Regulation, it will enable the RTA to support health practitioners when considering their reporting requirements under the Regulation.

The health practitioner will need to examine or assess the person before being required to report. This may include a physical examination, asking the person questions about their health or reviewing a specialist report. This ensures a professional opinion can be made about the person. Health practitioners have been selected because of their existing role assessing drivers under the ACT fitness to drive legislative framework or under a similar reporting scheme in the Northern Territory (NT) or South Australia (SA).

It is not a requirement that the opinion formed by the health practitioner, that the person has a permanent or long-term illness, injury or incapacity that is likely to impair the person's ability to drive a heavy vehicle safely, is based on a firm diagnosis. For example, considering all individuals' circumstances, the health practitioner may form an opinion about sleep apnoea while the person is on a waiting list for a sleep study if there are no other differential diagnoses.

The amendment will result in the RTA being informed of heavy vehicle drivers that are believed to have a medical condition affecting road safety. The report must be made within seven days, reflecting the importance of the report to inform the RTA of a potential risk to public safety. The report will enable the RTA to commence a fitness to drive assessment of the person in accordance with existing standards and processes legislated by the *Road Transport (Driver Licensing) Regulation 2000*. The RTA relies on the advice of health practitioners when conducting fitness to drive assessments against the nationally approved medical standards in Austroads' *Assessing Fitness to Drive*. The Austroads publication provides evidence-based guidelines on how medical conditions can affect a person's ability to drive and identifies suitable and nationally consistent measures to control the risk.

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

The amendments are proportionate in their purpose to protect public safety by introducing a number of human rights safeguards.

Any person, including any health practitioner, can already report a driver to the RTA if they are concerned about the person's safe driving ability. The mandatory reporting requirement will apply to those health practitioners selected as most likely to have a clinical understanding of the medical condition and its effect on a person's ability to drive heavy vehicles safely.

Reporting is limited to relevant medical conditions that the health practitioner believes are likely to impair a person's ability to drive heavy vehicles safely, where this belief is established from an examination or assessment of the person. The health practitioner may consider the treatment or management of the condition when determining whether the person's ability to drive heavy vehicles is impaired. The health practitioner may also refer to Austroads' *Assessing Fitness to Drive* for guidance, which is publicly available on the Austroads website. Additionally, reporting is only required where the illness, injury or incapacity is considered permanent or long-term. As noted in the Bill, this is in accordance with Austroads'

Assessing Fitness to Drive where temporary conditions are not usually a matter for the licensing authority².

Supporting guidelines will assist health practitioners in considering when a report might be necessary. That is, when the health practitioner considers the person's long term or permanent medical condition is likely to impair their ability to drive heavy vehicles safely. Guidelines will be publicly available on the ACT Legislation Register as a notifiable instrument. Within the parameters of the medical standards in *Assessing Fitness to Drive*, the guidelines provide the opportunity to further assist health practitioners with the reporting requirements under the Regulation and to guide reporting so that it supports road safety. Health practitioners are not required to refer to these guidelines to meet their obligations under the Regulation.

If the health practitioner chooses to request licence details from the RTA prior to making a report, the scope of information that may be shared is limited only to the kind, class, conditions and status of a heavy vehicle licence held or applied for. This is the minimum information required to allow a practitioner to know whether a person holds or is applying for a heavy vehicle licence. It is not necessary for the RTA to share all of these details; only the information necessary to assist the practitioner in knowing whether to make a report or not will be shared. This allows for a health practitioner to confirm that a person does not hold and is not applying for a heavy vehicle licence, which would mean a report does not need to be made.

If a report is made, the health practitioner is not required to conduct any further detailed assessment of the medical condition or provide a detailed report to the RTA at that time. For example, health practitioners are not required to complete a *Commercial Driver's Health Assessment* to meet their reporting requirement. It is not a requirement that health practitioners are knowledgeable or experienced in assessing a person against the required medical standards in *Assessing Fitness to Drive*. Once notified, the RTA may require the person, by notification in writing, to complete any medical examinations or driving assessments as required to enable a comprehensive fitness to drive assessment against national standards.

The person's name, address, date of birth and nature of the illness, injury or incapacity is the minimum detail that will enable the person to be identified by the RTA and supports the commencement of a fitness to drive assessment by the RTA in the interests of road safety.

The Regulation introduces the human rights safeguard that the person to whom the report relates is aware of the report made by their health practitioner. Specifically, the Regulation requires that the health practitioner, as soon as practicable, takes all reasonable steps to tell the person to whom the information relates about the contents of a report to the RTA. The Regulation recognises that the health practitioner may advise the person that they intend to make a written report before it is made (for example, during a consultation) or after a report has been made.

Access Canberra has the delegated function from the RTA to maintain the driver licensing register and to issue, renew, cancel, suspend, or impose conditions on a

² Austroads. *Assessing Fitness to Drive*. Page 11. Available at https://austroads.com.au/data/assets/pdf_file/0037/498691/AP-G56-22_Assessing_Fitness_Drive.pdf

licence. This includes the ability to impose eligibility requirements as well as require and assess evidence of compliance with the medical standards. Access Canberra is a business unit of the Chief Minister, Treasury and Economic Development Directorate and must comply with the Directorate's Privacy Policy. Access Canberra must also comply with the privacy and information management requirements prescribed in the *Information Privacy Act 2014*, the *Territory Records Act 2002*, and the *Health Records (Privacy and Access) Act 1997*

The Bill's human rights assessment is relevant in considering the Regulation's proportionality to a heavy vehicle driver's right to work and right to a fair trial.

As intended by the Bill, the Regulation integrates into the existing fitness to drive framework and the existing protections for people to obtain or hold a driver licence, together with the need to consider implications on the safety of all ACT road users. The RTA will uphold the national medical standards in Austroads' *Assessing Fitness to Drive*, including the more stringent commercial medical standards for heavy vehicle drivers of class MR and above. The RTA will continue to undertake assessments of a person's fitness to drive in accordance with existing standards and processes legislated by the *Road Transport (Driver Licensing) Regulation 2000*.

Drivers applying for a heavy vehicle class MR and above must currently meet the commercial medical standards to be issued the licence class, as well as complete a medical assessment every five years against these standards. Drivers of class MR and above would therefore be aware that there are required medical standards to safely drive these vehicles. Section 11 of the *Road Transport (General) Regulation 2000* prescribes decisions made by the RTA as internally reviewable decisions. Detailed in the Bill, reviewable decisions include requiring a person to provide evidence of compliance with the medical standards, or to refuse to renew, issue or vary a licence, or a decision to cancel, suspend or impose a condition on a licence. A person also has a right to apply to the ACT Civil and Administrative Tribunal to request a review on an internal reviewer's decision.

The amendments are the least restrictive means to prevent serious injury and deaths on the ACT road network.

Sharing personal and health information

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

Section 12 of the HRA protects individuals from unlawful or arbitrary interference with privacy, family, home, or correspondence. The amendments in the Regulation limit the right to privacy as they allow the RTA to share a person's personal information and personal health information with authorised occupational therapists and authorised medical reviewers when conducting a fitness to drive assessment. The Regulation also requires health practitioners to make a report to the RTA that includes the personal information of a patient when certain circumstances are met.

The RTA has required medical standards of drivers. The RTA assess drivers, or applicants for a driver licence, against the required medical standards to determine whether they are fit to hold the licence or class.

For complex cases, the RTA may need to refer a report of an examination or other evidence of compliance with the required medical standards to authorised medical reviewers and/or authorised occupational therapists.

The Regulation allows the RTA to share the following personal information with an authorised occupational therapist and/or authorised medical reviewer so they can assess the person's medical fitness to hold a driver licence or to drive a particular class or kind of motor vehicle in accordance with the required medical standards:

- a report or other evidence relevant to the person's medical fitness to drive a motor vehicle;
- personal information relating to the person that is reasonably necessary for the examination or assessment to be carried out; and
- details of any Australian or external driver licence held, or applied for, by the person.

The Regulation expands the provisions for sharing reports or evidence with authorised medical reviewers and also permits sharing the reports or evidence with authorised occupational therapists. Reports or evidence may include, for example, police incident reports, specialist reports and reports made by health practitioners including those made under new section 90B.

It may also be necessary to release personal information to the authorised medical reviewer or authorised occupational therapist carrying out the assessment or examination. Personal information might include, for example, the person's name and contact details.

It may also be necessary to release information relating to an Australian or external driver licence held, or applied for, by the person. This may include the driver licence number, the kind of licence, the class of licence, the conditions imposed on the licence and whether the licence is expired, suspended, or cancelled.

Releasing personal and personal health information by the RTA to authorised medical reviewers and authorised occupational therapists will limit a person's right to privacy.

The Regulation also introduces the ability for the RTA to disclose information relevant to an interstate licence holder's medical fitness to drive a vehicle to the issuing interstate licensing authority. This may limit a person's right to privacy under section 12 of the HRA. The information disclosed can be personal health information, such a report received from a health practitioner under the requirements of section 90B. The issuing road transport authority can then, if they consider it appropriate, commence a fitness to drive assessment of the interstate licence holder under their legislative framework.

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

The ACT Government is committed through the *ACT Road Safety Strategy 2020-2025* to Vision Zero, which aims to achieve zero road fatalities. The purpose of the limitation is to protect all ACT road users by ensuring an authorisation to drive on ACT roads is reflective of the person's safe driving ability.

As discussed in the Bill, medical conditions, or a combination of medical conditions, can affect a person's ability to drive safely. The ACT applies national medical standards from Austroads' *Assessing Fitness to Drive*, which are based on available evidence on crash risk and the effects of medical conditions.

It is not possible for Austroads' *Assessing Fitness to Drive* to cover all medical circumstances of drivers. The role of independent experts to inform borderline or otherwise difficult licensing decisions is recognised in Austroads' *Assessing Fitness to Drive*³. The amendments enable authorised medical reviewers and authorised occupational therapists to provide relevant and comprehensive advice to the RTA on a person's fitness to drive.

The amendments also support RTA's ability to respond to a heightened risk in road safety on ACT roads as a result of an interstate visiting driver's fitness to drive.

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

The RTA administers a driver licensing system that requires drivers to meet required medical standards of drivers to uphold public safety. Health practitioners must report a person they have examined or assessed if they believe the person holds or is applying for a heavy vehicle licence and forms an opinion that the person has a condition likely to impair their ability to drive a heavy vehicle safely. The RTA may require a person to complete assessments or examinations relating to their fitness to drive and provide to the RTA reports or evidence of compliance with the required medical standards.

The RTA may require a person to provide evidence of compliance with the medical standards when applying for a driver licence, seeking a licence variation or to comply with regular medical assessment requirements related to the person's medical condition or the class or kind of licence held. It could also be required where the RTA is informed that a licence holder may not meet the required medical standards and may present an elevated road safety risk when driving. For example, the RTA may receive advice from ACT Policing in an incident report, from concerned family or friends of the driver or from health practitioners.

The RTA gathers the required evidence to conduct an assessment against the required medical standards. For example, the RTA may require a person to undertake a medical examination with their general practitioner (GP) or specialist or complete a driving assessment with an occupational therapy driving assessor. The ability for the RTA to seek the required evidence is prescribed under section 69(6) for a person applying for the issue or variation (other than a condition variation) of a licence and section 78(2) for existing drivers.

³ Austroads. *Assessing Fitness to Drive*. Page 33. Available at <https://austroads.com.au/drivers-and-vehicles/assessing-fitness-to-drive>

It is imperative that any decision made by the RTA that affects a person's driver licence is based on a robust decision-making process that considers expert advice. This is important to protect all road users, ensuring drivers are authorised to drive only those classes or kinds of licence they can drive safely. In some cases, the national fitness to drive medical standards in Austroads' *Assessing Fitness to Drive* can be applied based on the facts presented to the RTA. However, in other cases, the RTA may need to consult authorised medical reviewers and/or authorised occupational therapists where there is uncertainty with the impact on driving ability, such as where a driver has multiple medical conditions.

Authorised medical reviewers are appointed under section 78B. Authorised occupational therapists will be introduced under section 78C of the Regulation. The role of occupational therapists in assessing how a condition or disability may affect driving and to offer advice to enable driving to continue, such as with vehicle modifications, is recognised in Austroads' *Assessing Fitness to Drive*.

When an assessment is required by an authorised medical reviewer and/or authorised occupational therapist, relevant personal and driver licence information may need to be shared by the RTA. This allows for the authorised medical reviewer and/or authorised occupational therapist to conduct a holistic review of the person's driving ability, ensuring all relevant matters are taken into consideration in the assessment to determine their fitness to drive.

In relation to an interstate licence holder, the RTA can commence a fitness to drive assessment and in certain circumstances where a person is unfit to drive, may disqualify the person's ability to drive in the ACT. However, as discussed in the Bill when the head of power was introduced, it may be more appropriate, depending on the circumstances, to refer the information to the issuing licensing authority, particularly as the ACT's approved medical standards are adopted nationally and the ACT may have difficulty contacting visiting drivers while located in the ACT.

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

The limitation on the right to privacy by health practitioners sharing personal information with the RTA and by the RTA sharing personal and health information with authorised occupational therapists, authorised medical reviewers, and interstate authorities is considered proportionate to the legitimate purpose.

The requirement for health practitioners to report a person to the RTA is not introducing a new limitation on the right to privacy as voluntarily reports are already possible.

The Regulation introduces the human rights safeguard that the person to whom the report relates is aware of the report made by their health practitioner. Specifically, the Regulation requires that the health practitioner, as soon as practicable, takes all reasonable steps to tell the person to whom the information relates about the contents of a report to the RTA. The Regulation recognises that the health practitioner may advise the person that they intend to make a written report before it is made (for example, during a consultation) or after a report has been made.

Authorised occupational therapists and authorised medical reviewers must be appointed by the RTA under section 78B and 78C of the *Road Transport (Driver Licensing) Regulation 2000*. This ensures only those necessary, who offer expertise with assessing a person's fitness to drive, can be provided personal and personal health information under section 69, 78 and 103AA.

The report or evidence that is shared with an authorised occupational therapist or authorised medical reviewer must be relevant to a person's medical fitness to drive a motor vehicle. Similarly, personal information can only be shared if it is reasonably necessary for the examination or assessment to be carried out.

Authorised occupational therapists and authorised medical reviewers provide advice to the RTA. The decision that affects a person's licence remains with the RTA. The RTA will maintain the existing fitness to drive assessment processes set out in the *Road Transport (Driver Licensing) Regulation 2000*.

As outlined previously, Access Canberra must uphold the privacy policy and legislation requirements in the Chief Minister, Treasury and Economic Development Directorate's Privacy Policy, *Information Privacy Act 2014*, the *Territory Records Act 2002*, and the *Health Records (Privacy and Access) Act 1997*.

A decision to refer a report or other medical information relevant to a person's fitness to hold a licence to an authorised medical reviewer or authorised occupational therapist in accordance with section 78(4)(b), 69(8)(b), or 103AA(4)(a), is a reviewable decision under Section 11 of the *Road Transport (General) Regulation 2000*. The person whose information is released can seek an internal review of the decision by the RTA. A person also has a right to apply to the ACT Civil and Administrative Tribunal to request a review on an internal reviewer's decision.

The limitation on the right to privacy by disclosing information relevant to an interstate licence holder's medical fitness to drive a vehicle to the issuing interstate licensing authority is considered proportionate to the legitimate purpose. As outlined in the Bill:

- the fitness to drive medical standards in *Austroads Assessing Fitness to Drive* are applied nationally;
- sharing information because there is a genuine road safety risk is in the interests of protecting public safety;
- the ACT RTA does not have the power to impose conditions on an interstate driver licence and therefore sharing the information will ensure that appropriate conditional licences can be issued and allow ACT Policing to enforce these conditions when driving on the ACT road network; and
- interstate licensing authorities are regulated by privacy legislation applicable to personal and health information in that jurisdiction.

Climate Change Implications

There are no climate change implications from the Regulation.

CLAUSE NOTES

Clause 1 Name of regulation

This clause states that the name of the Regulation is the Road Transport (Driver Licensing) Amendment Regulation 2024 (No 1).

Clause 2 Commencement

This clause commences the Regulation nine months after the day it is notified on the ACT Legislation Register, unless commencement occurs earlier on a day fixed by the Minister by written notice.

Clause 3 Legislation amended

This clause states that the Regulation amends the *Road Transport (Driver Licensing) Regulation 2000*. Minor consequential amendments are also made to the *Road Transport (General) Regulation 2000*.

Clause 4 Section 69(8)(b)

This clause substitutes a new section 69(8)(b) into the *Road Transport (Driver Licensing) Regulation 2000*. This section applies where a person is applying for the issue or variation (other than a condition variation) of a driver licence. Subsection 69(8)(b) allows the Road Transport Authority (RTA) to refer a report or other evidence of a person's fitness to drive to an authorised medical reviewer or authorised occupational therapist for an assessment of the person's medical fitness to hold a driver licence or to drive a particular class or kind of motor vehicle in accordance with the required medical standards.

This amendment expands the ability to refer reports or other evidence received under section 69(6)(e) to a report or other evidence relevant to the person's medical fitness to drive a motor vehicle that is received under any part of section 69 or otherwise. Other sources may include police incident reports or from health practitioners under section 90B or provided voluntarily. The report or evidence must be related to a person's fitness to drive in order for the RTA to refer it under this section.

The amendment introduces the ability to refer the reports or other evidence of a person's fitness to drive to authorised occupational therapists in addition to authorised medical reviewers.

Clause 5 New section 69(8A)

This clause creates a new provision, section 69(8A), which follows on from the revised section 69(8)(b) in clause 4. It allows the RTA to provide authorised medical reviewers or authorised occupational therapists with certain personal information and driver licence details relating the licence holder or the licence applicant. The personal information must be reasonably necessary for the authorised medical reviewer or authorised occupational therapist to carry out the examination or assessment under subsection 69(8)(a) or (b);

Clause 6 Section 78(4)(b) and (c)

This clause substitutes a new section 78(4)(b) and essentially mirrors the requirements for people who apply for the issue or variation (other than a condition variation) of a driver licence under section 69, but instead applies to people who already hold an ACT, interstate, or overseas licence.

The amendment allows the RTA to refer a report or other evidence relevant to a person's fitness to drive to an authorised medical reviewer or authorised occupational therapist for assessment.

Section 78(4)(c) allows for information sharing by the RTA with interstate jurisdictions. The RTA may share a report or other evidence received by the RTA that is relevant to an interstate licence holder's medical fitness to drive a motor vehicle with the interstate jurisdiction that issued the licence.

New subsection 78(4)(d) is an existing requirement and replicates the previous provision 78(4)(c), which enables the RTA to require a person to pay for an assessment under paragraph 78(4)(a) or (b).

Clause 7 New section 78(4A)

This clause inserts a new section, section 78(4A), which states that where referrals are made under section 78(4)(a) or (b), the RTA can provide authorised medical reviewers or authorised occupational therapists with certain personal information and driver licence details relating to the licence holder. The information is shared to assist authorised medical reviewers or authorised occupational therapists to carry out an examination or assessment of the person's fitness to drive.

The amendment essentially reflects sharing of information permitted under new section 69(8A).

Clause 8 Section 78B

This clause amends the current section 78B and inserts a new section 78C into the *Road Transport (Driver Licensing) Regulation 2000*.

The previous section 78B confers power upon the road transport authority to appoint an entity as an authorised medical reviewer for the purposes of section 69(8) or section 78(4). This clause amends section 78B to allow the road transport authority to appoint an entity as an authorised medical reviewer for the purposes of section 69, section 78, or section 103AA.

The clause also creates a new section, section 78C, that allows the road transport authority to appoint an entity as an authorised occupational therapist for the purposes of section 69, section 78, or section 103AA.

The amendments expand the power of the road transport authority by covering the whole of the application procedure for issue and certain variations of driver licences (section 69), all of the elements of tests and medical examinations of drivers (section 78), and now includes the eligibility criteria for overseas drivers (section 103AA).

The new section 78C confers the same power upon the road transport authority as 78B but applies to “authorised occupational therapists”, ensuring that members of this profession can also be appointed by the road transport authority to consider the suitability of drivers.

Clause 9 Section 85(5) and (6)

This clause amends section 85(5) and (6) to ensure that it confers powers on the RTA regarding the application procedure for the renewal of a driver licence, as outlined in sections 69(6), 69(7), 69(8) and 69(9).

Essentially, these amendments expand the power of the RTA to apply section 69(8) to applications received to renew a driver licence.

Clause 10 New section 90B

This clause inserts a new section, section 90B, into Division 5.4 of the *Road Transport (Driver Licensing) Regulation 2000*.

Section 90B is made under the new section 28(2)(e) of the *Road Transport (Driver Licensing) Act 1999*, which was inserted by clause 5 of the Bill to allow for a regulation to be made that requires the production of information by health practitioners that relates to a person’s fitness to drive.

Section 90B places an obligation on health practitioners to report to the RTA a person’s impaired fitness to drive if the elements of section 90B(1) are satisfied – where the health practitioner has examined or assessed the person; and reasonably believes that the person holds or is applying for a heavy vehicle licence; and forms an opinion that the person has a long-term illness, injury or incapacity that is likely to impair their ability to safely drive a heavy vehicle.

Once the threshold in section 90B(1) has been reached, the health practitioner must give a written report to the RTA (no later than 7 days) as required by section 90B(3), and include in their report the person’s name, address and date of birth and grounds for their opinion. The health practitioner must also, as soon as practicable, tell the person about the report and that they are required to provide the report to the RTA.

The Regulation also allows the RTA to give the health practitioner driver licence related details about the person’s heavy vehicle licence held or applied for, if any, for the purposes of making a report under section 90B(1). This is to allow for a situation where the health practitioner voluntarily contacts the RTA to determine whether a person holds a heavy vehicle licence when deciding whether they must make a report under section 90B(1).

The Minister may make guidelines to assist health practitioners in understanding the threshold at new section 90B(1)(c): forms an opinion that the person has a permanent or long-term illness, injury or incapacity **that is likely to impair** the person’s ability to drive a heavy vehicle safely. These guidelines would not be a requirement for health practitioners to refer to but would provide further explanatory material to assist

in forming an opinion if required. For example, explanatory material around the treatments and other circumstances that may reduce the likelihood of a medical condition impairing fitness to drive.

Finally, section 90B defines the terms ‘examine or assess’, ‘heavy vehicle licence’ and ‘relevant health practitioner’. This clarifies that an examination or assessment of a person under section 90B(1) includes by phone or other electronic audiovisual means. It also identifies those selected health practitioners subject to the mandatory reporting obligations as well as the licence class(es) that must be held by the person being examined in order for a report to be made under this section.

Clause 11 New section 103AA(4) and (5)

This clause inserts new sections 103AA(4) and (5). Section 103AA(4) allows the RTA to refer a report or other evidence to an authorised medical reviewer or authorised occupational therapist for an assessment of the person’s medical fitness to drive, as it relates to satisfying the RTA of their eligibility to apply for or be issued with an ACT probationary licence. It also allows for the RTA to require an overseas driver to pay for the assessment.

Section 103AA(5) essentially reflects section 69(8A) in that it allows the RTA to provide authorised medical reviewers or authorised occupational therapists with certain personal and driver licence information relating to the overseas licence holder.

Clause 12 New part 12

This clause inserts new part 12 of the *Road Transport (Driver Licensing) Regulation 2000* to provide transitional provisions.

New section 183 defines the term ‘commencement day’ for new part 12.

New section 184 ensures the appointment of authorised medical reviewers in force under 78B immediately before the commencement of the Regulation will continue to have effect under the new section 78B.

New section 185 refers to the application of section 90B in Clause 10. Each threshold under 90B(1) must be met after the commencement of the Regulation to require the health practitioner to report.

The transitional provisions of part 12 expire 12 months after the commencement day of the Regulation, as provided by new section 186.

Clause 13 Dictionary, note 2

This clause inserts the terms ‘doctor’ into note 2 of the Dictionary in the *Road Transport (Driver Licensing) Regulation 2000*.

Note 1 of the Dictionary provides that the *Legislation Act 2001* ‘contains definitions and other provisions relevant to’ the *Road Transport (Driver Licensing) Regulation*

2000. Note 2 then gives examples of terms that are defined under Part 1 of the Dictionary in the *Legislation Act 2001*.

Clause 13 therefore adds the terms ‘doctor’ to that list of terms in Note 2.

Clause 14 Dictionary, definition of *allied professional practitioner*

This clause replaces the definition of ‘allied professional practitioner’ in the Dictionary of the *Road Transport (Driver Licensing) Regulation 2000*.

The purpose of the new definition is to align it with registration requirements of the Health Practitioner Regulation National Law (ACT).

Clause 15 Dictionary, new definition of authorised occupational therapist

This clause inserts a new definition, ‘authorised occupational therapist,’ into the Dictionary in the *Road Transport (Driver Licensing) Regulation 2000*.

The definition is consequential to other amendments made as part of this Regulation, which have introduced authorised occupational therapists and their role in assisting the RTA to review and provide expert advice to the fitness to drive assessment process, similar to existing authorised medical reviewers.

Schedule 1 Road Transport (General) Regulation 2000—Consequential amendments

Schedule 1 of the Regulation sets out consequential amendments to the *Road Transport (General) Regulation 2000* and relate to internally reviewable decisions.

Clause [1.1] Schedule 1, part 1.4, item 19

The Clause substitutes item 19 in Schedule 1, part 1.4 of the *Road Transport (General) Regulation 2000* and is consequential to Clause 4.

Clause [1.2] Schedule 1, part 1.4, items 47 to 49

The Clause substitutes items 47 to 49 in Schedule 1, part 1.4 of the *Road Transport (General) Regulation 2000* and is consequential to Clause 6.

Clause [1.3] Schedule 1, part 1.4, items 54 to 56

The Clause substitutes items 54 to 56 in Schedule 1, part 1.4 of the *Road Transport (General) Regulation 2000* and is consequential to Clause 9.

Clause [1.4] Schedule 1, part 1.4, new items 62A and 62B

The Clause inserts new items 62A and 62B into Schedule 1, part 1.4 of the *Road Transport (General) Regulation 2000* and is consequential to Clause 11.