



Australian Capital Territory

Road Transport Legislation Amendment Regulation 2008 (No 2)

Subordinate Law SL2008-47

The Australian Capital Territory Executive makes the following regulation under the *Road Transport (General) Act 1999*, the *Road Transport (Safety and Traffic Management) Act 1999* and the *Victims of Crime Act 1994*.

Dated 25 November 2008.

JON STANHOPE
Minister

JOHN HARGREAVES
Minister



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Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

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1 Name of regulation

This regulation is the *Road Transport Legislation Amendment Regulation 2008 (No 2)*.

2 Commencement

This regulation commences on the day after its notification day.

Note The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

3 Legislation amended—sch 1

This regulation amends the legislation mentioned in schedule 1.

4 Repeal

The *Motor Traffic (Code of Practice for Parking Heavy Vehicles) Determination 1997 (DI1997-194)* is repealed.

Schedule 1 Legislation amended
Part 1.1 Road Transport (General) Regulation 2000
Amendment [1.1]

Schedule 1 Legislation amended

(see s 3)

Part 1.1 Road Transport (General) Regulation 2000

[1.1] Schedule 1, part 1.9, items 5 to 10

omit

Part 1.2 Road Transport (Offences) Regulation 2005

[1.2] Schedule 1, part 1.13, new items 56A and 56B

insert

56A	85A	park more than 1 heavy vehicle/second heavy vehicle on residential land	20	133	
56B	85B	park heavy vehicle on residential land—any part of vehicle in front of setback line of front boundary/less than 1.5m from any other boundary	20	133	

Schedule 1 Legislation amended
Part 1.2 Road Transport (Offences) Regulation 2005

Amendment [1.3]

[1.3] Schedule 1, part 1.13, new items 58A to 58C

insert

58A	87B	run refrigeration unit of heavy vehicle parked on residential land	20	133	
58B	87C (1)	operating heavy vehicle parked on residential land between 10 pm and 6 am	20	133	
58C	87C (2)	existing operator operating heavy vehicle parked on residential land between midnight and 5.30 am	20	133	

Part 1.3

Road Transport (Safety and Traffic Management) Regulation 2000

[1.4] Section 82, definitions of *code of practice, exemption, existing operator* and *existing operator's certificate*

omit

[1.5] Section 85 (3)

omit

[1.6] New sections 85A and 85B

insert

85A No more than 1 heavy vehicle on residential land

- (1) A person commits an offence if—
- (a) the person parks 2 or more heavy vehicles on residential land;
or
 - (b) the person parks a heavy vehicle on residential land and there is already another heavy vehicle parked on the land.

Maximum penalty: 20 penalty units.

- (2) Subsection (1) does not apply if—
- (a) only 2 heavy vehicles are parked on the residential land; and
 - (b) 1 vehicle is plant that is parked on the other vehicle; and
 - (c) no part of either vehicle is higher than 3.6m from the ground.

(3) In this section:

plant means a motor vehicle that consists solely of—

- (a) a machine or implement that cannot carry a load, other than tools and accessories usually carried in or on the vehicle; or
- (b) a crane, forklift truck or bobcat; or
- (c) a bobcat and excavation equipment.

85B Heavy vehicles to be parked away from residential land boundaries

(1) A person commits an offence if—

- (a) the person parks a heavy vehicle on residential land; and
- (b) any part of the vehicle when parked is—
 - (i) in front of the setback line of the front boundary of the land; or
 - (ii) less than 1.5m from any other boundary.

Maximum penalty: 20 penalty units.

(2) In this section:

setback, in relation to land—see the territory plan, part 13 (Definitions).

[1.7] Section 86 (3)

omit

[1.8] Section 86 (4)

omit

also

[1.9] Section 87 (3)

omit

[1.10] New sections 87A to 87C

insert

87A No offence if reasonable necessity etc

A person does not commit an offence against section 85, section 85A, section 85B, section 86 or section 87 if—

- (a) either of the following applies:
 - (i) it was reasonably necessary to park the vehicle on the land to avoid contravening the Act or another territory law;
 - (ii) the vehicle was parked on the land to deliver or collect goods or passengers, or to provide services; and
- (b) the vehicle was on the land no longer than was reasonable.

87B Heavy vehicle refrigeration units not to be operated on residential land

A person commits an offence if—

- (a) the person parks a heavy vehicle that has a refrigeration unit on residential land; and
- (b) the refrigeration unit is running at any time while the vehicle is parked on the land.

Maximum penalty: 20 penalty units.

87C Prohibition on night operation of heavy vehicle

- (1) A person, other than an existing operator, commits an offence if the person operates a heavy vehicle parked on residential land at any time between 10 pm and 6 am.

Maximum penalty: 20 penalty units.

- (2) An existing operator commits an offence if the operator operates a heavy vehicle parked on residential land at any time between midnight and 5.30 am.

Maximum penalty: 20 penalty units.

- (3) In this section:

existing operator means the holder of an existing operator's certificate issued under the *Motor Traffic Act 1936*, section 150R that is still in force.

[1.11] Section 88

substitute

88 Daily infringement

A person who contravenes any of the following sections commits a separate offence for each day during any part of which the contravention continues:

- (a) section 85 (Parking of certain vehicles on residential land prohibited);
- (b) section 85A (No more than 1 heavy vehicle on residential land);
- (c) section 85B (Heavy vehicles to be parked away from residential land boundaries);
- (d) section 86 (Parking of certain vehicles on land adjoining residential land prohibited);

- (e) section 87 (Parking of certain commercial vehicles on land with multi-unit housing);
- (f) section 87B (Heavy vehicle refrigeration units not to be operated on residential land).

[1.12] Sections 89 to 97

omit

[1.13] New division 3.1.3A

insert

Division 3.1.3A Heavy vehicle parking—enforcement

89 Meaning of *occupier*—div 3.1.3A

In this division:

occupier, of premises, includes—

- (a) a person believed on reasonable grounds to be an occupier of the premises; and
- (b) a person apparently in charge of the premises.

90 Power to enter premises

- (1) For division 3.1.3 (Heavy vehicle parking), an authorised person may—
 - (a) enter premises with the occupier’s consent; or
 - (b) enter premises if the authorised person believes on reasonable grounds that—
 - (i) a heavy vehicle is parked on the premises in contravention of that division; and

- (ii) it is necessary to enter the premises to inspect, take measurements, or record identification particulars about the vehicle.
- (2) An authorised person may, without the consent of the occupier of premises, enter land around the premises to ask for consent to enter the premises.
- (3) An authorised person may enter premises under this section—
 - (a) for a contravention of section 87B or section 87C—at any time; and
 - (b) in any other case—between 8 am and 8 pm.

91 Production of identity card

An authorised person must not remain at premises entered under this division if the authorised person does not produce his or her identity card when asked by the occupier.

Note Identity cards for authorised people are provided for in the *Road Transport (General) Act 1999*, s 20.

92 Consent to entry

- (1) When seeking the consent of an occupier of premises to enter premises under section 90 (1) (a), an authorised person must—
 - (a) produce his or her identity card; and
 - (b) tell the occupier—
 - (i) the purpose of the entry; and
 - (ii) that consent may be refused.

- (2) If the occupier consents, the authorised person must ask the occupier to sign a written acknowledgment (an *acknowledgement of consent*)—
 - (a) that the occupier was told—
 - (i) the purpose of the entry; and
 - (ii) that consent may be refused; and
 - (b) that the occupier consented to the entry; and
 - (c) stating the time and date when consent was given.
- (3) If the occupier signs an acknowledgment of consent, the authorised person must immediately give a copy to the occupier.
- (4) A court must find that the occupier did not consent to entry to the premises by the authorised person under this division if—
 - (a) the question arises in a proceeding in the court whether the occupier consented to the entry; and
 - (b) an acknowledgment of consent is not produced in evidence; and
 - (c) it is not proved that the occupier consented to the entry.

93 General powers on entry to premises

- (1) An authorised person who enters premises under this division may, for division 3.1.3 (Heavy vehicle parking) and this division, do 1 or more of the following in relation to a heavy vehicle on the premises:
 - (a) inspect the vehicle (including for its identification particulars);
 - (b) take measurements;
 - (c) take photographs, films, or audio, video or other recordings;

- (d) require the occupier, or anyone at the premises to—
- (i) give the authorised person information; or
 - (ii) produce documents to the authorised person; or
 - (iii) give the authorised person reasonable help to exercise a power under this division.

Note The Legislation Act, s 170 and s 171 deal with the application of the privilege against self incrimination and client legal privilege.

- (2) A person must take all reasonable steps to comply with a requirement made of the person under subsection (1) (d).

Maximum penalty: 20 penalty units.

94 Damage etc to be minimised

- (1) In the exercise, or purported exercise, of a function under this division, an authorised person must take all reasonable steps to ensure that the authorised person, and any person assisting the authorised person, causes as little inconvenience, detriment and damage as practicable.
- (2) If an authorised person, or a person assisting an authorised person, damages anything in the exercise or purported exercise of a function under this division, the authorised person must give written notice of the particulars of the damage to the person the authorised person believes on reasonable grounds is the owner of the thing.
- (3) If the damage happens at premises entered under this division in the absence of the occupier, the notice may be given by leaving it, secured conspicuously, at the premises.

95 Compensation for exercise of enforcement powers

- (1) A person may claim compensation from the Territory if the person suffers loss or expense because of the exercise, or purported exercise, of a function under this division by an authorised person or a person assisting an authorised person.
- (2) Compensation may be claimed and ordered in a proceeding for—
 - (a) compensation brought in a court of competent jurisdiction; or
 - (b) an offence against this regulation brought against the person making the claim for compensation.
- (3) A court may order the payment of reasonable compensation for the loss or expense only if satisfied that it is just to make the order in the circumstances of the particular case.
- (4) A regulation may prescribe matters that may, must or must not be taken into account by the court in considering whether it is just to make the order.

[1.14] Dictionary, note 3

insert

- authorised person

[1.15] Dictionary, definitions of *code of practice*, *exemption* and *existing operator's certificate*

omit

[1.16] Dictionary, new definition of *premises*

insert

premises includes land.

Part 1.4 Victims of Crime Regulation 2000

[1.17] Schedule 1, part 1.2, new items 19A and 19B

insert

19A	85A	park more than 1 heavy vehicle/second heavy vehicle on residential land
19B	85B	park heavy vehicle on residential land—any part of vehicle in front of setback line of front boundary/less than 1.5m from any other boundary

Endnotes

1 Notification

Notified under the Legislation Act on 1 December 2008.

2 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.
