

EXPOSURE DRAFT

Explanatory Statement

Issued by the Authority of the Minister for Regional Development, Local Government and Territories

Seat of Government (Administration) Act 1910

Australian Capital Territory National Land (Road Transport) Ordinance 2025

Australian Capital Territory National Land (Road Transport) Rules 2025

Authority

The *Australian Capital Territory National Land (Road Transport) Rules 2025* (Rules) is made under subsection 14(1) of the *Australian Capital Territory (Road Transport) Ordinance 2025* (Ordinance). This subsection provides that the Minister administering the *Seat of Government (Administration) Act 1910* (SOG Administration Act) may, by legislative instrument, make rules prescribing matters required or permitted by the Ordinance to be prescribed by the rules, or necessary or convenient to be prescribed for carrying out or giving effect to the Ordinance.

Purpose

The purpose of the Rules is to apply, with and without modifications, laws of the Australian Capital Territory (ACT) relating to road transport or parking to specified areas of National Land for the purposes of subsection 8(1) of the Ordinance to provide a legislative framework for the management of paid parking on the National Land. The Rules also prescribe other matters necessary or convenient to be prescribed for carrying out or giving effect to the Ordinance.

The Ordinance and the Rules remake the *National Land (Road Transport) Ordinance 2014*, which is due to sunset on 1 April 2025 in accordance with the *Legislation (Deferral of Sunsetting—National Land (Road Transport) Ordinance) Certificate 2024*. The Rules also incorporate other matters contained in instruments made under the *National Land (Road Transport) Ordinance 2014*.

Background

The Ordinance enables a legislative framework for the management of paid parking on National Land to be provided for by enabling the application, with or without modification, of laws of the ACT relating to road transport and parking to National Land.

National Land is defined by section 27 of the *Australian Capital Territory (Planning and Land Management) Act 1988*. National Land is land within the ACT that the Commonwealth continues to manage following the establishment of ACT self-government. The National Capital Authority (NCA) is established by that Act and one of its functions is, with the approval of the Minister administering Part II of that Act, on behalf of the Commonwealth, to manage National Land designated as land required for the special purposes of Canberra as the National Capital (see section 5 and paragraph 6(1)(g) of that Act) (also referred to as the National Capital Estate).

EXPOSURE DRAFT

Pay parking was introduced to the National Capital Estate in 2014 and applies to around 9,000 car parks on National Land in Parkes, Barton, Acton, and the Russell precinct. Prior to its introduction, an Intergovernmental Committee on Parking was established in 2009 and public consultation commenced in 2010. The Intergovernmental Committee on Parking explored the issues surrounding parking management in central Canberra, including parking supply and demand. The work of the Intergovernmental Committee revealed that, while planning policies used to guide development of the National Capital Estate provided enough car parking spaces to meet commuter demand, restrictions on access to the available parking resulted in an undersupply of publicly available car parks. Consequently, paid parking was introduced as a parking management practice.

Subsection 8(1) of the Ordinance provides that the Rules may apply to National Land, or to a specified area of National Land, specified ACT road transport laws, with or without modification, including any offences created by those laws and any provisions of those a contravention of which is punishable by a pecuniary penalty (however described).

Applied ACT road transport laws apply to National Land, or to specified areas of National Land, as laws of the Commonwealth (see subsection 10(1) of the Ordinance). However, applied ACT road transport laws (with or without modifications) are to be interpreted in the same way as the laws of the ACT (section 6 of the Ordinance), and Chapter 2 of the *Criminal Code 2002* (ACT), as in force at the time specified in the Rules (see section 20), applies to all offences against applied ACT road transport laws (section 7 of the Ordinance).

Summary of the Rules

Part 1 sets out preliminary provisions, including commencement and definitions. Part 2 specifies ACT road transport laws, with and without modifications, that apply to specified areas of National Land for the purposes of subsection 8(1) of the Ordinance. Part 3 prescribes miscellaneous matters, such as the approved manner for applications made for the purposes of applied ACT road transport law. Schedule 1 to the Rules prescribes, for illustrative purposes, a map of the specified areas of National Land to which applied ACT road transport laws apply for the purposes of subsection 8(1) of the Ordinance.

The Rules are a legislative instrument for the purposes of the *Legislation Act 2003* and are subject to sunset and disallowance under that Act.

The Rules commence immediately after the commencement of the Ordinance, which is 1 April 2025.

Details of the Rules are set out in [Attachment A](#).

Consultation

[*Summary of consultation process to be added after public consultation.*]

Impact analysis

EXPOSURE DRAFT

The Office of Impact Analysis (OIA) advised that detailed analysis is not required (OIA reference number OIA24-08526).

Statement of Compatibility with Human Rights

A statement of compatibility with human rights for the purposes of Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* is set out at Attachment B.

EXPOSURE DRAFT

Attachment A

Details of the *Australian Capital Territory National Land (Road Transport) Rules 2025*

Part 1 – Preliminary

Section 1 – Name

This section provides that the name of the instrument is the *Australian Capital Territory National Land (Road Transport) Rules 2025* (Rules).

Section 2 – Commencement

This section provides for the Rules to commence immediately after the commencement of the *Australian Capital Territory National Land (Road Transport) Ordinance 2025* (Ordinance).

Section 3 – Authority

This section provides that the Rules are made under the Ordinance.

Section 4 – Simplified outline of this instrument

This section provides for a simplified outline of the Rules and is an aid for reading the Rules. However, this outline does not form part of the operative text of the Rules and is not intended to be comprehensive. Instead, it is intended that readers rely on the substantive provisions of the Rules.

Section 5 – Definitions

The explanatory note to this section provides a non-exhaustive list of expressions used in the Rules that are defined in the Ordinance to aid reading the Rules, including ‘ACT road transport law’, ‘applied ACT road transport law’ and ‘National Land’.

The term ‘administrating authority’, in relation to an applied ACT road transport law, or a provision of such a law, is defined as meaning the Minister administering the *Seat of Government (Administration) Act 1910* (SOG Administration Act).

The term ‘NCA’ is defined as meaning the National Capital Authority established by the *Australian Capital Territory (Planning and Land Management) Act 1988*.

The term ‘Ordinance’ is defined as meaning the *Australian Capital Territory National Land (Road Transport) Ordinance 2025*.

The terms ‘road’ and ‘road related area’, in relation to an applied ACT road transport law, or a provision of such a law, are defined as having the same meaning as in section 9 of the Ordinance. The definition of these terms in the Ordinance replicate the definitions of these terms in the Dictionary to the *Road Transport (General) Act 1999* (ACT), but modify these definitions to ensure that these terms are appropriately adapted to the management of paid parking on specified areas of National Land under applied ACT road transport laws. For example, a ‘road’ is defined, in relation to an applied ACT road transport law or a provision of such a law, as meaning an area of National Land that is open to or used by the public and

EXPOSURE DRAFT

is developed for, or has as one of its main uses, the driving or riding of motor vehicles, but does not include areas of National Land to which a declaration under section 9 of the Ordinance declares that such laws or provisions of such laws do not apply.

Section 6 – Schedules

This section provides that each instrument specified in a Schedule to the Rules is amended or repealed as set out in the applicable item in the Schedule concerned, and that any other item in a Schedule to the Rules has effect according to its terms.

Part 2 – Applied ACT road transport law

Division 1 – Application of ACT road transport law to National Land

Section 7 – Application of ACT road transport law to National Land

The application of certain specified ACT road transport laws to certain specified areas of National Land

This section applies certain specified laws of the Australian Capital Territory (ACT) relating to road transport or parking (ACT road transport laws) in force on 1 April 2025 to certain specified areas of National Land to provide a legislative framework for the management of paid parking on the National Land.

Subsection (1) provides, for the purposes of subsection 8(1) of the Ordinance, that the ACT road transport laws specified in the table in subsection (4) are applied to the areas of National Land specified in section 8 of the Rules (see the definition of ‘ACT road transport laws’ in section 5 of the Ordinance).

Subsection (2) provides that the ACT road transport laws specified in the table in subsection (4) apply as in force at the time this section commences, which is 1 April 2025. The version of ACT road transport laws specified in the table in subsection (4) that are in force on 1 April 2025 are freely accessible on the ACT Legislation Register at www.legislation.act.gov.au.

Subsection (3) provides that the application of the ACT road transport laws specified in the table in subsection (4) to National Land is modified as set out in Division 2 of this Part of the Rules. These modifications are explained in the notes on the relevant provisions.

Subsection (4) specifies that the following provisions of the following ACT road transport laws are applied ACT road transport laws:

- provisions of the *Road Transport (General) Act 1999* (ACT) relating to:
 - identity cards for authorised persons
 - infringement notices, reminder notices and liability for infringement notice offences, including infringement notice management plans and applications for waiver of an infringement notice penalty
 - evidentiary certificates
 - the powers of authorised officers to require the production of licences or

EXPOSURE DRAFT

- identification or the disclosure of the identity of the driver and direct the removal of a thing covering a person's face
- the review of reviewable decisions
- the determination of fees, charges and other amounts payable under ACT road transport laws
- the approval of forms for ACT road transport laws
- the offence for hindering or obstructing an authorised person in the exercise of a function under an ACT road transport law, and
- the offence for making a false or misleading statement to the road transport authority or an authorised person
- provisions of the *Road Transport (General) Regulation 2005* (ACT) relating to:
 - responsible persons for a vehicle under ACT road transport laws
 - prescribed matters for evidentiary certificates
 - the remission and refund of fees, charges and other amounts payable under ACT road transport laws, and
 - prescribed reviewable decisions under the *Road Transport (General) Act 1999* (ACT), the *Road Transport (Offences) Regulation 2005* (ACT) and the *Road Transport (Safety and Traffic Management) Regulation 2017* (ACT)
- provisions of the *Road Transport (Offences) Regulation 2005* (ACT) relating to:
 - the meaning of certain terms for infringement notice offences, including 'identifying particulars' and 'discharge action'
 - requirements for the service of infringement notices, including prescribed matters for infringement notices
 - prescribed matters for reminder notices
 - requirements for applications for extensions of time to do something under the *Road Transport (General) Act 1999* (ACT)
 - prescribed matters for sold vehicle declarations
 - requirements for infringement notice management plans, and
 - the quantum of offence penalties and infringement penalties for offences under the *Road Transport (Road Rules) Regulation 2017* (ACT) and the *Road Transport (General) Act 1999* (ACT)
- the following offences and other provisions of the *Road Transport (Road Rules) Regulation 2017* (ACT):
 - stopping on a road or in an area to which a no stopping sign or a no parking

EXPOSURE DRAFT

sign applies

- stopping in a loading zone, a taxi zone, a bus zone or a permit zone, or on a path, dividing strip, nature strip, painted island or traffic island
- obstructing access to and from a path or driveway
- stopping on a road to which a motorbike parking sign applies
- stopping in a parking area for people with disability without a current mobility parking scheme authority or for electric-powered vehicles
- provisions relating to permissive parking signs and parking fees
- provisions relating to parking in a parking bay
- provisions relating to metered parking and ticket parking
- the unauthorised use of or interference with a parking permit or a mobility parking scheme authority
- stopping and parking exemptions for stopping in an emergency, etc., or to comply with another law
- stopping and parking exemptions for police and emergency vehicles or authorised persons, and
- preventing prescribed traffic control devices from being clearly visible
- provisions of the *Road Transport (Safety and Traffic Management) Regulation 2017* (ACT) relating to:
 - the establishment and operation of metered parking schemes for roads and areas, including the setting aside and designation of metered parking areas
 - the establishment and operation of ticket parking schemes for roads and areas, including parking authorities for areas, the approval of e-payment methods and parking tickets
 - parking permits and mobility parking scheme authorities, and
 - the power of authorised officers to mark tyres.

Certain specified enforcement powers of authorised persons

Subsection 58(1) of the *Road Transport (General) Act 1999* (ACT)(Cth) authorises an authorised person to require the driver of a vehicle to produce their driver licence or state their name, date of birth or home address. If the driver fails to comply with a request in respect of any of those things, they commit a strict liability offence subject to a maximum penalty of 20 penalty units (see subsections 58(2) and (3)).

This power to require the name and home address of the driver of a vehicle is necessary and appropriate to enable the authorised person who made the request to:

- for the purposes of subsection 14A(1) of the *Road Transport (Offences) Regulation*

EXPOSURE DRAFT

2005 (ACT)(Cth), determine the name and home address of the driver, which is information that is required to be set out in the infringement notice for any infringement notice offence so that the notice may be served on them (see paragraph 14A(1)(c)), and

- for the purposes of section 10 of the *Road Transport (Offences) Regulation 2005* (ACT) identify the ‘responsible person’ for the vehicle (that is, the registered operator of the vehicle).
 - Subsection 6(1) of the Ordinance states that an applied ACT road transport law is to be interpreted in the same way as it would be interpreted as a law of the ACT. Therefore, any references to ‘responsible person’ in the applied ACT road transport law should be read in conjunction with the definition in section 10 of the ACT law.

The responsible person for a vehicle involved in an infringement notice offence must take all reasonable steps to give the Minister (as the administering authority) sufficient information to identify and locate the individual who was in possession or control of the vehicle at the time of any infringement notice offence and, if the responsible person is served with an infringement notice for the offence, it is presumed in any proceeding against the person for the offence, unless the contrary is proved, that the responsible person was the individual in possession or control of the vehicle at the time of the offence (see sections 33 and 53AA of that Act).

However, it is a defence to a prosecution for an offence against subsection 58(2) of that Act if the person, as the defendant, proves that they had a reasonable excuse for failing to produce the licence when required to do so and, within 3 days after being required to produce the licence, produces the licence at a place directed by the authorised person (see subsection 58(4)).

Subsection 58B(1) of that Act authorises an authorised person to direct a person (referred to as the ‘directed person’) to remove anything that covers all or part of their face to allow the authorised person to identify them in the execution of the authorised person’s functions under the applied ACT road transport laws. If the directed person fails to comply with a direction given under subsection 58B(1), the directed person commits an offence subject to a maximum penalty of 30 penalty units (see subsection 58B(6)). Strict liability applies to a failure to comply with a direction given under subsection 58B(1) (see subsection 58B(7)).

This power to require the removal of a thing covering the directed person’s face, such as a face mask or a full-face motorcycle helmet, is necessary and appropriate to verify the identity of the directed person against their driver licence or other identification. However, while authorised persons are authorised to require the directed person to produce their licence and state their name, date of birth or home address under subsection 58(1) of that Act, authorised persons are not authorised to remove the thing covering the directed person’s face or carry out any personal search powers.

There is a constraint on the exercise of this power relating to the removal of things worn for religious, cultural or medical reasons. If the thing the directed person is directed to remove is worn by the person for genuine religious or cultural reasons, such as a full-face headscarf as

EXPOSURE DRAFT

an expression of the person's faith, the directed person may ask the authorised person to allow the directed person to remove the thing either in front of an authorised person who is the same sex as the directed person, at a place or in a way (or both) that gives the directed person reasonable privacy to remove the thing, or both (see subsections 58B(2) and (3)). If such a request is made, the authorised person must take reasonable steps to comply with the request, however subsection 58B(5) clarifies that a failure to take these steps does not affect the validity of a thing done or not done by the authorised person under subsection 58B or the liability of the directed person.

Additionally, it is a defence to a prosecution for an offence against subsection 58B(6) if the directed person, as the defendant, proves that the directed person had a medical reason for not removing the thing covering all or part of the directed person's face (see subsection 58B(8)).

Before an authorised person is able to lawfully exercise the power in subsection 58(1) or 58B(1), or any other power under an applied ACT road transport law, the authorised person must first show the identity card, with which they have been issued that states they are an authorised person for the purposes of the applied ACT road transport laws, to the person in relation to whom the authorised person will exercise the power (see sections 20 and 21).

Strict liability

For the strict liability elements of the offences in subsection 58(2), paragraph 58B(6)(b) and the other applied ACT road transport laws (principally the strict liability offences relating to stopping under the *Road Transport (Road Rules) Regulation 2017 (ACT)(Cth)*), section 23 of the *Criminal Code 2002 (ACT) (ACT Criminal Code)* applies. This section provides that, if an offence is a strict liability offence, there are no fault elements for any of the physical elements of the offence, but the defence of mistake of fact under section 36 is available. (Subsection 23(3) also provides that the existence of strict liability does not make any other defence unavailable.) This means that the physical elements of the relevant offences in applied ACT road transport laws will be made out if the prosecution simply proves that those physical elements were engaged in or existed (for example, a person stopped a vehicle in an area of National Land where stopping is not permitted or parking a vehicle in a ticket parking area or space without a valid ticket properly displayed). The prosecution is not required to prove fault (for example, that the person intentionally, knowingly, recklessly or negligently did or did not do something, such as intentionally or knowingly stopping a vehicle in an area of National Land where stopping is not permitted).

Consistent with the *Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers*, the reasons for applying strict liability to the physical elements of these offences are because requiring proof of fault of those physical elements would undermine deterrence for engaging in the prohibited acts or omissions (such as stopping a vehicle in an area of National Land where stopping not permitted or parking a vehicle in a ticket parking area or space without a valid ticket properly displayed) and there are legitimate grounds for penalising persons lacking fault in respect of those physical elements. These include that it is necessary to ensure the integrity of the regulatory regime for the management of areas of National Land required for the special purposes of Canberra as the National Capital under the PALM Act, particularly those areas for the management of

EXPOSURE DRAFT

metered or ticket parking, and that users of roads on National Land will be put on notice by notices or signs erected in or near those areas indicating designated locations where parking a vehicle in or near those areas is permitted (such as marked parking spaces), or indicating locations where parking a vehicle is subject to a parking fee, to guard against possible contraventions.

It is also important that the rules for the users of roads on and road related areas in National Land are substantially uniform with the rules for road users elsewhere in Australia, including in the ACT.

Section 8 – Areas of National Land for applied ACT road transport laws

This section specifies the areas of National Land to which the ACT road transport laws specified in the table in subsection 7(4) apply, which are:

- under subsection (1), the areas of National Land designated in writing by the Minister administering Part II of the *Australian Capital Territory (Planning and Land Management) Act 1988* (PALM Act) as land required for the special purposes of Canberra as the National Capital, and
- under subsection (2), the areas of National Land subject to an agreement between the NCA and another Commonwealth entity for the management of parking.

These designated areas of National Land are specified in the National Capital Plan as areas that have the special characteristics of the National Capital to be Designated Areas for the purposes of subsection 10(1) of the PALM Act. The National Capital Plan is freely accessible on the Federal Register of Legislation at www.legislation.gov.au.

Subsection (3) provides that the map in Schedule 1 to the Rules is illustrative, but not determinative, of the areas of land specified in subsections (1) and (2). This map is explained in the note on clause 1 of this Schedule.

Division 2 – Modifications of ACT road transport law to National Land

Subdivision A – Purpose of this Division

Section 9 – Purpose of this Division

This section explains the purpose of this Division, which is to, for the purposes of subsection 8(1) of the Ordinance, specify modifications to the application of applied ACT road transport laws to National Land in accordance with section 7 of the Rules (see subsection (1)). Subsection (2) explains that each applied ACT road transport law that is specified in this Division is modified as set out in the applicable section or sections.

Subdivision B – Road Transport (General) Act 1999 (ACT)

Sections 10 to 12 – Sections 26, 28 and 31A of the *Road Transport (General) Act 1999* (ACT)

Sections 10 and 11 modify paragraph 26(2)(b) and subparagraph 28(2)(b)(ii) of the *Road Transport (General) Act 1999* (ACT)(Cth) respectively by substituting that paragraph and that subparagraph with text that provides that, if a person has an infringement notice

EXPOSURE DRAFT

management plan with the Minister administering the SOG Administration Act (as the administering authority), the person may apply to the administering authority to add the infringement notice penalty for the infringement notice offence to that plan.

Similarly, section 12 modifies paragraphs 31A(2)(a) and (b), (3)(b) and (4)(c) of that Act by:

- substituting the text in paragraphs 31A(2)(b) and (3)(b) with text that provides that, if a person has an infringement notice management plan with the Minister administering the SOG Administration Act (as the administering authority), the person may apply to the administering authority to add the infringement notice penalty for the infringement notice offence to that plan; and
- repealing subparagraph 31A(2)(b)(ii) and paragraph 31A(4)(c), which would have enabled the penalty for the offence to be discharged by the person's participation in an approved community work or social development program.

There are two reasons for these modifications. The first is to simply clarify that, as infringement notice management plans in relation to offences under the applied ACT road transport law are entered into with the Minister as the administering authority, a person can only apply to add further infringement notice penalties for additional offences under the applied ACT road transport law to infringement notice management plans with the Minister as the administering authority (and not a different infringement notice management plan the person may have with a different administering authority, such as the ACT Road Transport Authority). The second is to ensure that persons served with an infringement notice for an infringement notice offence are only able to apply for an infringement notice management plan that authorises the person to discharge the penalty for the offence by payment by instalment, not by participating in an approved community work or social development program, because the Ordinance does not vest powers of directors-general of the ACT in the Minister or another person.

Section 26 deals with the payment of an infringement notice penalty in relation to an infringement notice for an infringement notice offence, which applies if an infringement notice for an infringement notice offence is served on a person under section 24 and the infringement notice has not been withdrawn (see subsection 26(1)).

Section 28 deals with the payment of an infringement notice penalty in relation to a reminder notice for an infringement notice offence, which applies if a reminder notice for an infringement notice offence is served on a person under section 27 and the infringement notice to which the reminder notice relates has not been withdrawn (see subsection 28(1)).

An 'infringement notice management plan' is an arrangement entered into between a person who has been served with an infringement notice or reminder notice for an infringement notice offence with the Minister (as the administering authority) for discharge of the penalty for the offence (see subsections 31A(1) and (2)).

An 'infringement notice offence' is defined in the Dictionary to the *Road Transport (General) Act 1999* (ACT)(Cth) as meaning an offence prescribed by regulation as infringement notice offence (see section 5 of the *Road Transport (Offence) Regulation 2005*

EXPOSURE DRAFT

(ACT)(Cth)).

An ‘infringement notice penalty’, for a person for an infringement notice offence, is defined in the Dictionary to that Act as meaning:

- the amount prescribed by regulation as the penalty payable by the person for the offence under an infringement notice for the offence, or
- if a reminder notice has also been served on the person for the offence, the total of the penalty payable by the person for the offence under the infringement notice for the offence and the amount prescribe by regulation as the amount payable by the person for the cost of serving the reminder notice.

Community work or social development programs are approved by the responsible director-general of the ACT under section 31D of that Act and, as stated above, are not available as alternatives to infringement notice management plans under the applied ACT road transport law.

Section 13 – Section 96 of the *Road Transport (General) Act 1999* (ACT)

This section modifies subsection 96(3) of the *Road Transport (General) Act 1999* (ACT)(Cth) by substituting that subsection with text that provides that a determination of fees, charges or other amounts payable under applied ACT road transport laws under subsection 96(1) is a legislative instrument (within the meaning of the *Legislation Act 2003* (Cth) (Cth Legislation Act)).

The purpose of this modification is to ensure that such a determination is taken to be a legislative instrument for the purposes of the Cth Legislation Act and therefore subject to the provisions of that Act, including sunseting and disallowance. This modification also ensures that this section operates as intended as a law of the Commonwealth (see subsection 10(1) of the Ordinance).

Subsection 96(1) of the *Road Transport (General) Act 1999* (ACT)(Cth) authorises the Minister administering the SOG Administration Act to determine fees, charges and other amounts payable under applied ACT road transport laws (for example, an amount in relation to the issue or cancellation of a parking permit under *Road Transport (Safety and Traffic Management) Regulation 2017* (ACT)(Cth)).

Under the ACT equivalent of subsection 96(3) of that Act, such a determination is a disallowable instrument (within the meaning of the *Legislation Act 2001* (ACT) (ACT Legislation Act)).

Subdivision C – Road Transport (Offences) Regulation 2005 (ACT)

Sections 14 and 15 – Sections 14C and 14D of the *Road Transport (Offences) Regulation 2005* (ACT)

Section 14 modifies subsection 14C(2) of the *Road Transport (Offences) Regulation 2005* (ACT)(Cth) by substituting that subsection with text that provides that, if a person applies to the Minister administering the SOG Administration Act (as the administering authority) for

EXPOSURE DRAFT

an extension of time to do something mentioned in subsection 26(2) or 28(2) of the *Road Transport (General) Act 1999 (ACT)(Cth)*, the application must:

- be made to the Minister in an approved manner
- include any information required by the Minister (as the administering authority), and
- be made before the end of the allowed time.

Similarly, section 15 modifies subsection 14D(2) of that Regulation by substituting that subsection with text that provides that, if a person applies to the Minister administering the SOG Administration Act (as the administering authority) for an extension of time to do something mentioned in subsection 26(2) or 28(2) of that Act, but the application is out of time, the application must:

- be made to the Minister in an approved manner
- state the special circumstances relied on, and
- include any information required by the administering authority.

The purpose of these modifications is to clarify that applications for an extension of time to do something mentioned in subsection 26(2) or 28(2) of the *Road Transport (General) Act 1999 (ACT)(Cth)* (for example, pay the infringement notice penalty stated in an infringement notice for an infringement notice offence), which are made under section 29 of that Act, are to be made in the approved manner. Section 22 of the Rules prescribes, for the purposes of the relevant applied ACT road transport law, the approved manner in which applications are to be made to the Minister (as the administering authority) are to be made under that law (for example, in writing).

The approved manner of application contains fields for the following information:

- Details of the parking infringement
- First and last name
- Address
- Contact email address
- Where an infringement should be directed to an employer - company name and ABN
- Ground of appeal from an existing list (e.g. special circumstances)
- Where another person operated the motor vehicle and incurred the infringement - details of a nominated alternative driver (including full name, date of birth, driver licence details)
- Free text field to provide details supporting ground of appeal (which could include details of personal circumstances)
- Where applicable, supporting documentation such as copies of doctor's certificate or Australian disability parking permit.

Most of these fields constitute personal information. The collection and use of this personal information is necessary to allow the Minister and their delegates (such as the NCA) to assess requests for an extension of time, to communicate with the applicant the outcome of that

EXPOSURE DRAFT

request and to do whatever steps are necessary to implement that outcome. Personal information collected by the NCA is handled in accordance with the NCA's Privacy Policy, which is freely available on the NCA website at www.nca.gov.au.

The *Privacy Act 1988* (Cth) applies to information collected by the NCA under sections 14C and 14D of the *Road Transport (Offences) Regulation 2005* (ACT)(Cth) (as modified by sections 14 and 15 of the Rules), as the NCA (including any staff made available to it, such as through arrangements entered into under section 12 of the Ordinance) is an 'agency' for the purposes of that Act. Further legislative safeguards also apply including the Australian Privacy Principles. The *Privacy Act 1988* (Cth), and the Australian Privacy Principles, are freely available on the Federal Register of Legislation at www.legislation.gov.au.

For paragraph 14(2)(c) of that Regulation, the 'allowed time' is the time for doing something under subsection 26(2) or 28(2) of the *Road Transport (General) Act 1999* (ACT)(Cth) (that is, 28 days to pay either the infringement notice penalty under either subsection), including an extension of time previously given by the Minister (as the administering authority) under section 29 of that Act.

Subdivision D – Road Transport (Safety and Traffic Management) Regulation 2017 (ACT)

Section 16 – Section 33 of the *Road Transport (Safety and Traffic Management) Regulation 2017* (ACT)

This section modifies subsection 33(3) of the *Road Transport (Safety and Traffic Management) Regulation 2017* (ACT)(Cth) by substituting that subsection with text that provides that a declaration that a person is to be a parking authority for a stated area (referred to as the 'area of operations') under subsection 33(2) is a legislative instrument (within the meaning of the Cth Legislation Act).

The purpose of this modification is to ensure that such a declaration is taken to be a legislative instrument for the purposes of the Cth Legislation Act and therefore subject to the provisions of that Act, including sunseting and disallowance. This modification also ensures that section 33 of that Regulation operates as intended as a law of the Commonwealth (see subsection 10(1) of the Ordinance).

Subsection 33(2) of that Regulation authorises the Minister administering the SOG Administration Act (as the road transport authority) to declare a person who has applied to be a parking authority for area of operations. Subsection 11(2) of the Ordinance provides that powers vested in a person referred to in an applied ACT road transport law as the road transport authority are vested in the Minister.

Under section 37 of that Regulation, a parking authority is authorised to, in accordance with the parking authority guidelines made by the Minister (as the road transport authority) under subsection 34, establish and operate a ticket parking scheme for any length of road or area, in which the parking authority may, in accordance with the guidelines, set aside that area as a ticket parking area, adopt the ways of, and scheme for, payment of the fees the parking authority considers appropriate, and install parking meters and parking ticket machines.

Under the ACT equivalent of subsection 33(3) of that Regulation, such a declaration is a

EXPOSURE DRAFT

disallowable instrument (within the meaning of the ACT Legislation Act).

Section 17 – Section 34 of the *Road Transport (Safety and Traffic Management) Regulation 2017 (ACT)*

This section modifies subsection 34(2) of the *Road Transport (Safety and Traffic Management) Regulation 2017 (ACT)*(Cth) by substituting that subsection with text that provides that parking authority guidelines under subsection 34(1) is a legislative instrument (within the meaning of the Cth Legislation Act).

The purpose of this modification is to ensure that the guidelines are taken to be a legislative instrument for the purposes of the Cth Legislation Act and therefore subject to the provisions of that Act, including sunseting and disallowance. This modification also ensures that section 34 of that Regulation operates as intended as a law of the Commonwealth (see subsection 10(1) of the Ordinance).

Subsection 34(1) of that Regulation requires the Minister administering the SOG Administration ACT (as the road transport authority) to establish guidelines (referred to as the ‘parking authority guidelines’) for the purposes of section 37 of that Regulation.

A person declared to be a parking authority for a stated area under subsection 33(1) may only do things relating to a ticket parking scheme for that area in accordance with the guidelines, such as fixing fees for the parking of vehicles in that area (see subsections 37(1) and (2)).

Under the ACT equivalent of subsection 34(2) of that Regulation, such a declaration is a disallowable instrument (within the meaning of the ACT Legislation Act).

Section 18 – Section 36 of the *Road Transport (Safety and Traffic Management) Regulation 2017 (ACT)*

This section modifies subsection 36(3) of the *Road Transport (Safety and Traffic Management) Regulation 2017 (ACT)*(Cth) by substituting that subsection with text that provides that the approval of an e-payment method (referred to as an ‘approved e-payment method’) under subsection 36(1) is a notifiable instrument (within the meaning of the Cth Legislation Act).

The purpose of this modification is to ensure that such an approval is taken to be a notifiable instrument for the purposes of the Cth Legislation Act and therefore subject to the provisions of that Act. This modification also ensures that section 36 of that Regulation operates as intended as a law of the Commonwealth (see subsection 10(1) of the Ordinance).

Subsection 36(1) of that Regulation authorises the Minister administering the SOG Administration Act (as the road transport authority) to approve an e-payment method (referred to as an ‘approved e-payment method’) for the driver of a vehicle to pay for the use of a parking space in a ticket parking area. Subsection 36(4) defines ‘e-payment method’ in this section as meaning a method for payment using an electronic device. This would include, for example, payment using an electronic funds transfer system.

EXPOSURE DRAFT

The approval of an e-payment method under subsection 36(4) would not deal with a matter that is of a legislative character. For example, such an approval would not determine or alter the content of the law, or directly or indirectly affect a privilege or interest, impose an obligation or create a right (for example, impose an obligation to pay a fee). Rather, such an approval would simply determine the kinds of approved method by which a driver of a vehicle may pay the fee for using a parking space in a ticket parking area electronically. It is necessary and appropriate for such an approval to be made as a notifiable instrument to ensure that these kinds of approved method are made publicly available.

Under the ACT equivalent of subsection 36(3) of that Regulation, such a declaration is a disallowable instrument (within the meaning of the ACT Legislation Act).

Section 19 – Section 64 of the *Road Transport (Safety and Traffic Management) Regulation 2017 (ACT)*

This section modifies paragraph 64(2)(f) of the *Road Transport (Safety and Traffic Management) Regulation 2017 (ACT)*(Cth) by substituting that paragraph with text that provides that a parking permit issued under subsection (1) may be for a construction zone permit or national institution volunteer permit, in addition to the existing paragraph (f) special event parking permit.

Subsection 64(1) of that Regulation authorises the Minister (as the road transport authority) to issue a permit (referred to as a ‘parking permit’) of a kind mentioned in subsection 64(2) authorising the parking of a vehicle, without charge, on a length of road or in an area designated by a permit zone sign for use by holders of that kind of permit. Parking permits may be issued subject to conditions, must state when the permit expires and may state anything else that the Minister (as the road transport authority) considers appropriate (see subsections 64(3) and (4)).

This modification allows permits to be provided for parking in support of, or related to, certain activities on National Land. A special event parking permit may be issued for events organised by the National Capital Authority on National Land, or issued to event organiser personnel for authorised events on National Land. A construction zone permit may be issued to support construction works on National Land. A national institution volunteer permit may be issued to volunteers of Canberra national institutions, for example, volunteers at the National Gallery of Australia.

Part 3 – Miscellaneous

Section 20 – Application of ACT Criminal Code

This section applies, for the purposes of subsection 7(2) of the Ordinance, the version of Chapter 2 of the ACT Criminal Code that is in force as at the time this section commences. This section is important to ensure that the version of Chapter 2 of the ACT Criminal Code that applies to offences under the applied ACT road transport law can be specified to be the same as, or as close in time as possible to, the version of the ACT road transport law that is specified as the applied ACT road transport law in section 7 of the Rules. This is to ensure as much consistency between the offences under the applied ACT road transport law on National Land and the offences under the ACT road transport law on the rest of ACT land,

EXPOSURE DRAFT

and the principles of criminal responsibility that underpin them, as is possible. This means that, no matter where a person commits a parking offence in the ACT, there are commensurate offence provisions and principles of criminal responsibility that apply to that person.

Section 21 – Penalty unit amount

This section prescribes, for the purposes of subsection 14(2) of the Ordinance, that the amount of a penalty unit for an offence in an ACT road transport law that is applied or modified by Part 2 of this instrument is the amount specified as a penalty unit in section 133 of the *Legislation Act 2001* (ACT). The amount of the penalty unit is the amount specified in that section at the time this section of the Rules commences.

This section of the Rules displaces the penalty unit amount specified in section 4AA of the *Crimes Act 1914* (Cth) (Crimes Act), which ordinarily applies to Commonwealth offences (which offences against the applied ACT road transport law are – see subsection 10(1) of the Ordinance), and instead specifies the amount specified in the ACT legislation. At the time the Rules commenced, this amount was \$160 for an individual and \$810 for a corporation. This is significantly lower than the amount specified in section 4AA of the Crimes Act at the time the Rules commenced, which was \$330 (for an individual; for a body corporate, a court may impose a pecuniary penalty 5 times the amount of the maximum pecuniary penalty that could be imposed on an individual for the same offence - see subsection 4B(3) of the Crimes Act).

The application of the ACT penalty unit amount, instead of the Commonwealth penalty unit amount, is to ensure as much consistency between the offences under the applied ACT road transport law on National Land and the offences under the ACT road transport law on the rest of ACT land as is possible. This means that, no matter where a person commits a parking offence in the ACT, there are commensurate offence provisions and penalty amounts that apply to that person.

Section 22 – Approved manner for applications

This section prescribes, for the purposes of the relevant applied ACT road transport law, the approved manner in which applications made to the Minister administering the SOG Administration Act (as the administering authority) are to be made under that law, which may be done in writing or by any other manner of application to the administering authority.

Schedule 1 – Map of National Land

Clause 1 – Map of National Land

This clause prescribes, for illustrative purposes only, a map that indicates certain areas of National Land that are specified in the National Capital Plan as areas that have the special characteristics of the National Capital to be Designated Areas for the purposes of subsection 10(1) of the PALM Act, as well as areas subject to an agreement between the NCA and another Commonwealth for the management of parking, in the National Triangle and surrounding precincts.

The areas of National Land to which the ACT road transport laws specified in the table in

EXPOSURE DRAFT

subsection 7(4) of the Rules apply are specified in section 8.

Subsection (1) provides that the areas marked red on this map illustrate, but do not determine, the areas of National Land designated in writing by the Minister administering Part II of the PALM Act as land required for the special purposes of Canberra as the National Capital (see subsection 8(1) of the Rules).

Subsection (2) provides that the areas marked green and blue on the map illustrate, but do not determine, the areas of National Land to which agreements referred to in subsection 8(2) may relate, which are agreements between the NCA and another Commonwealth entity for the management of parking.

Schedule 2 – Repeals

Australian Capital Territory National Land (Road Transport) (Electronic Payment Method) Rules 2020

Australian Capital Territory National Land (Road Transport) (Infringement Notice Management Plans) Rules 2021

Australian Capital Territory National Land (Road Transport) (Parking Authority Guidelines) Rules 2021

Australian Capital Territory National Land (Road Transport) (Parking Legislation, Fees and Permits) Rules 2021

National Land (Road Transport) (Parking) Rules 2024

Clause 1 to 5 – The whole of the instrument

These clauses repeal rules made under the *National Land (Road Transport) Ordinance 2014*, which is repealed by [*name of consequential amendments Ordinance*] and replaced by the Ordinance and the Rules.

EXPOSURE DRAFT

Attachment B

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Australian Capital Territory National Land (Road Transport) Rules 2025

This Disallowable Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Disallowable Legislative Instrument

The *Australian Capital Territory National Land (Road Transport) Rules 2025* (Rules) is made under subsection 14(1) of the *Australian Capital Territory (Road Transport) Ordinance 2025* (Ordinance). This subsection provides that the Minister administering the *Seat of Government (Administration) Act 1910* (SOG Administration Act) may, by legislative instrument, make rules prescribing matters required or permitted by the Ordinance to be prescribed by the rules, or necessary or convenient to be prescribed for carrying out or giving effect to the Ordinance.

The purpose of the Rules is to apply, with and without modifications, laws of the Australian Capital Territory (ACT) relating to road transport or parking to specified areas of National Land for the purposes of subsection 8(1) of the Ordinance (referred to as ‘applied ACT road transport laws’) to provide a legislative framework for the management of paid parking on the National Land. The Rules also prescribe other matters necessary or convenient to be prescribed for carrying out or giving effect to the Ordinance.

The Ordinance and the Rules remake the *National Land (Road Transport) Ordinance 2014*, which is due to sunset on 1 April 2025 [in accordance with the *Legislation (Deferral of Sunsetting—National Land (Road Transport) Ordinance) Certificate 2024*].

Relevantly, applied ACT road transport laws apply to National Land, or to specified areas of National Land, as laws of the Commonwealth (see subsection 10(1) of the Ordinance). However, applied ACT road transport laws (with or without modifications) are to be interpreted in the same way as the laws of the ACT (sections 6 of the Ordinance), and Chapter 2 of the *Criminal Code 2002* (ACT) (ACT Criminal Code) applies to all offences against applied ACT road transport laws (section 7 of the Ordinance).

Human rights implications

The Rules engage, or has the potential to engage, the following rights:

- article 14(2) of the International Covenant on Civil and Political Rights (ICCPR) – the right to the presumption of innocence

EXPOSURE DRAFT

- article 17 of the ICCPR – the right to privacy and reputation, and
- article 18 of the ICCPR – the right to freedom of thought, conscience and religion or belief.

Strict liability – the right to the presumption of innocence (Article 14(2) of the ICCPR)

Article 14(2) of the ICCPR provides that an accused has the right to be presumed innocent until proved guilty according to law. The presumption of innocence is also a fundamental principle of Australian common law. It imposes on the prosecution the burden of proving a criminal charge and guarantees that no guilt can be presumed until the criminal charge has been proved beyond reasonable doubt. Additionally, Part 2.6 of the ACT Criminal Code, which is consistent with Part 2.6 of the *Criminal Code Act 1995*, contains provisions relating to proof of criminal responsibility in respect of offences under laws of the ACT, including that the prosecution bears a legal burden of proving every element of an offence relevant to the guilt of the accused (see section 56 of the ACT Criminal Code).

So-called reverse onus provisions may be considered a limitation on the presumption of innocence.

Strict liability offences engage and may limit the presumption of innocence because, for the accused to be found guilty of such an offence, the prosecution is not required to prove fault, such as intention, knowledge, recklessness or negligence, for any of the physical elements of the offence (see subsections 23(1) and (2) of the ACT Criminal Code). However, the defence of mistake of fact under subsection 23(3) is available.

Strict liability offences will not necessarily be inconsistent with the presumption of innocence where such an offence is reasonable, necessary and proportionate in pursuit of a legitimate objective.

The Rules apply certain specified offences of ACT road transport laws, but principally the offences relating to stopping under the *Road Transport (Road Rules) Regulation 2017* (ACT)(Cth), to certain specified areas of National Land to which strict liability applies to all or particular physical elements.

These offences pursue the legitimate objective of prohibiting the stopping of vehicles in certain areas of National Land, either conditionally or unconditionally, to ensure vehicles are parked in areas in which parking is permitted or to protect those areas from physical damage and ensure that those areas remain accessible to the public.

Applying strict liability to the physical elements of these offences is reasonable, necessary and proportionate in pursuit of these objectives because requiring proof of fault of those physical elements would undermine deterrence for parking in areas of National Land where stopping is prohibited or not permitted. Applying strict liability is also necessary to ensure the integrity of the regulatory regime for the management of areas of National Land required for the special purpose of Canberra as the National Capital, particularly those areas for the management of metered or ticket parking, and users of roads on National Land will be put on notice by notices or signs erected in or near those areas indicating designated locations where

EXPOSURE DRAFT

parking a vehicle in or near those areas is permitted, such as marked parking bays, to guard against possible contraventions.

These offences will also not be punishable by imprisonment, but is instead subject to a maximum criminal penalty of either 20 or 30 penalty units, depending on the offence, which relatively are low in quantum and consistent with the ACT equivalents of these offences.

Certain specified enforcement powers of authorised persons – the right to privacy and reputation and the right to freedom of thought, conscience and religion or belief (Articles 17 and 18 of the ICCPR)

Article 17 of the ICCPR provides for the right of every person to be protected against arbitrary or unlawful interference with their privacy, family, home or correspondence, as well as unlawful attacks on their honour and reputation. It also provides that a person has the right to the protection of the law against such interference or attacks.

The right to privacy and reputation may be limited, provided that the interference with the right is authorised by law and not arbitrary. In order for limitations not to be arbitrary, they must be aimed at a legitimate objective and be reasonable, necessary and proportionate to that objective.

Article 18 of the ICCPR provides for the right of everyone to freedom of thought, conscience and religion, including freedom to have or to adopt a religion or belief of their choice, and freedom, either individually or in community with others and in public or private, to manifest their religion or belief in worship, observance, practice and teaching. However, under article 18(3), the freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

The Rules apply subsection 58(1) of the *Road Transport (General) Act 1999* (ACT)(Cth), which authorises an authorised person to require the driver of a vehicle to produce their driver licence or state their name, date of birth or home address. If the driver fails to comply with a request in respect of any of those things, they commit a strict liability offence subject to a maximum penalty of 20 penalty units (see subsections 58(2) and (3)).

The Rules also apply subsection 58B(1) of that Act, which authorises an authorised person to direct a person (referred to as the 'directed person') to remove anything that covers all or part of their face to allow the authorised person to identify them in the execution of the authorised person's functions under the applied ACT road transport laws. If the directed person fails to comply with a direction given under subsection 58B(1), the directed person commits an offence subject to a maximum penalty see subsection 58B(6).

By requiring the driver to produce their driver licence, state their name, date of birth or home address or remove a thing covering their face, these powers will require the provision of personal information and may therefore limit the driver's right to privacy.

These powers, which are prescribed by law, pursue legitimate objectives of enabling the authorised person who made the request to:

- for the purposes of subsection 14A(1) of the *Road Transport (Offences) Regulation*

EXPOSURE DRAFT

2005 (ACT)(Cth), determine the name and home address of the driver, which is information that is required to be set out in the infringement notice for any infringement notice offence so that the notice may be served on them (see paragraph 14A(1)(c)), and

- for the purposes of section 10 of that Act, identify the ‘responsible person’ for the vehicle (that is, the registered operator of the vehicle).
- in requiring the removal of a thing covering a directed person’s face, such as a face mask or a full-face motorcycle helmet, verify the identity of the directed person against their driver licence or other identification.

The responsible person for a vehicle involved in an infringement notice offence must take all reasonable steps to give the Minister (as the administering authority) sufficient information to identify and locate the individual who was in possession or control of the vehicle at the time of any infringement notice offence and, if the responsible person is served with an infringement notice for the offence, it is presumed in any proceeding against the person for the offence, unless the contrary is proved, that the responsible person was the individual in possession or control of the vehicle at the time of the offence (see sections 33 and 53AA of that Act).

Authorising authorised persons to require the driver of a vehicle to produce their driver licence, state their name, date of birth or home address or remove a thing covering their face are reasonable, necessary and proportionate in pursuit of these objectives because not enabling authorised persons to identify, or verify the identity of, the driver of or the responsible person for the vehicle involved in an infringement notice offence would undermine deterrence for parking in areas of National Land where stopping is prohibited or not permitted. Holistically, these rules for road users in areas of National Land are consistent with, and form part of, the Australian road rules, which aim to specify behaviour for all road users that supports the safe and efficient use of roads in Australia.

Additionally, in holding a driver licence and driving into an area of National Land with notices or signs erected in or near those areas indicating designated locations where parking a vehicle in or near those areas is permitted, the driver of or responsible person for a vehicle involved in an infringement notice ‘opted in’ to the rules for road users in the part of Australia where they drive, including the areas of National Land to which applied ACT road transport laws apply. Guidance from the Parliamentary Joint Committee on Human Rights indicates that whether a person has a reasonable expectation of privacy in the circumstances is relevant to the issue of determining whether or not a legislative measure is permissible. A driver of or responsible person for a vehicle should expect a personal information relating to their identity will need to be provided to authorities administering the rules for road users in the part of Australia where they drive if they have contravened those rules.

In requiring the removal of a thing covering a directed person’s face under subsection 58B(1) of that Act, there is a constraint on the exercise of this power relating to the removal of things work for religious or cultural or medical reasons, which aims to preserve the freedom to manifest the person’s religion or beliefs to the extent to which it is necessary to protect public safety or order in the legislative framework for the management of paid

EXPOSURE DRAFT

parking on National Land. If the thing the directed person is directed to remove is worn by the person for genuine religious or cultural reasons, such as a full-face headscarf as an expression of the person's faith, the directed person may ask the authorised person to allow the directed person to remove the thing either in front of an authorised person who is the same sex as the directed person, at a place or in a way (or both) that gives the directed person reasonable privacy to remove the thing, or both (see subsections 58B(2) and (3)).

Additionally, it is a defence to a prosecution for an offence against subsection 58B(6) if the directed person, as the defendant, proves that the directed person had a medical reason for not removing the thing covering all or part of the directed person's face (see subsection 58B(8)).

Before an authorised person is able to lawfully exercise the power in subsection 58(1) or 58B(1) (or any other power under an applied ACT road transport law), the authorised person must first show the identity with which they have been issued that states they are an authorised person for the purposes of ACT road transport laws to the person to which the authorised person will exercise the power (see sections 20 and 21).

Conclusion

The Rules are compatible with human rights because, to the extent that the Rules may limit human rights, those limitations are reasonable, necessary and proportionate to the pursuit of legitimate objectives.