

## **Replacement Explanatory Statement**

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

*National Land (Road Transport) Ordinance 2014*

### **National Land (Road Transport) (Parking) Rules 2024**

#### **Authority**

The *National Land (Road Transport) (Parking) Rules 2024* are made under section 11 of the *National Land (Road Transport) Ordinance 2014* (the Ordinance). This section provides that the Minister may make rules prescribing matters that are required or permitted by the Ordinance or necessary or convenient for carrying out or giving effect to the Ordinance.

#### **Purpose**

The purpose of the instrument is to remake various rules made under the Ordinance relating to paid parking on National Land (that is land that is National Land under the *Australian Capital Territory (Planning and Land Management) Act 1988*). These rules sunsetted on 1 October 2024.

#### **Background**

The *National Land (Road Transport) Ordinance 2014* (the Ordinance) provides the legislative framework for the management of paid parking on National Land.

The Ordinance modifies the application of the Australian Capital Territory (ACT) road transport and parking laws to permit the National Capital Authority (NCA) chief executive to be exclusively responsible for the administration of paid parking on National Land.

The Ordinance is currently in the process of being redrafted ahead of its sunset date of 1 April 2025. This instrument is made under section 11 to replace the rules made under that section, which sunsetted on 1 October 2024. If this instrument is not made, there would be a gap in the legislative framework for the management of paid parking on National Land between the sunset of the old rules and the making of the new Ordinance. When the new Ordinance is made, a new set of rules will be made under the rule-making power in the new Ordinance and this instrument will be repealed.

### **Summary of the National Land (Road Transport) (Parking) Rules 2024**

The instrument sets out arrangements for the management of paid parking on National Land and supports the legislative framework established by the Ordinance. This includes providing for modifications of the ACT paid parking legislation, or the ACT paid parking support legislation, as it applies to National Land.

Division 1 of the instrument provides for the NCA chief executive to delegate their functions or powers under the Ordinance to appropriate persons or to enter into arrangements for the services of other persons to be made available for the purposes of the Ordinance.

Division 2 of the instrument provides that the NCA chief executive (as the administering authority or road transport authority) is not required to serve suspension notices or to suspend vehicle registration and driver licences when a parking infringement notice is not paid.

Division 3 of the instrument specifies the way applications for extensions of time in relation to parking infringement notices can be made, including by means other than in writing (if approved by the NCA chief executive as the administering authority).

The instrument is a legislative instrument for the purposes of the *Legislation Act 2003* and is subject to sunseting under Part 4 of Chapter 3 of that Act. The instrument is also subject to disallowance under section 42 of the *Legislation Act 2003* and under section 12AD of the *Seat of Government (Administration) Act 1910* (the Act).

The instrument commences on 1 October 2024.

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

### **Consultation**

The Department of Infrastructure, Transport, Regional Development, Communications and the Arts consulted with the NCA on the making of this instrument. Public consultation was not deemed necessary due to the amendments simply continuing the current state of the law for a short period while the Ordinance is redrafted. Public consultation will be conducted on the new Ordinance and accompanying Rules to be made under that Ordinance, which together will remake much of the content of this instrument (in an updated or fit for purpose form).

### **Impact analysis**

The Office of Impact Analysis (OIA) advised that the instrument is unlikely to have more than a minor regulatory impact and therefore the preparation of an Impact Analysis is not required (OIA24-07863).

### **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](#).

## **Details of the *National Land (Road Transport) (Parking) Rules 2024***

### **Part 1 – Preliminary**

#### Section 1 – Name

This section provides that the name of the instrument is the *National Land (Road Transport) (Parking) Rules 2024*.

#### Section 2 – Commencement

This section provides for the instrument to commence on 1 October 2024.

#### Section 3 – Authority

This section provides that the instrument is made under the *National Land (Road Transport) Ordinance 2014*.

#### Section 4 – Definitions

This section provides definitions of ‘Ordinance’ (as meaning the *National Land (Road Transport) Ordinance 2014* (the Ordinance)) and ‘old instruments’, as well as notes definitions in the Ordinance which have the same meaning in this instrument, such as ‘ACT road transport legislation’.

#### Section 5 – Schedules

This section provides that each instrument specified in the Schedule 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 instrument has effect according to its terms.

### **Part 2 – Modifications relating to parking on National Land**

#### **Division 1 – Staffing and delegations**

#### Section 6 – Staff

This section provides that the Chief Executive of the National Capital Authority (the NCA) (the NCA chief executive) may make arrangements with a person for the services of the person’s officers or employees to be made available for the purposes of the Ordinance. The NCA chief executive may delegate all or any of the NCA chief executive’s functions or powers under the Ordinance to an officer or employee whose services have been made available under this section (see paragraph 7(b) of this instrument).

Subsection 2C(1) of the *Acts Interpretation Act 1901* provides that the reference to ‘person’ includes a body politic or corporate and an individual. This means that the NCA chief executive may make such arrangements with another Commonwealth entity, an ACT authority or instrumentality, or a third party.

Parking management services are undertaken by a contracted third-party service provider, whose personnel are made available for the purposes of the NCA under this section. This section restates the ability of the NCA to arrange with a person for the services of officers or

employees of the person to be made available for the purposes of the Ordinance as implemented by NCA under paragraph 47(3)(a) of the *Australian Capital Territory (Planning and Land Management) Act 1988* (the PALM Act). The PALM Act is the enabling legislation for both the NCA and management of National Land.

The contracted third-party service provider engages parking management professionals that service the NCA's parking estate and other facilities with parking estates. The NCA's contract with the service provider requires that its personnel act with due skill and care, and that its personnel have the necessary experience, skill, knowledge and competence to perform services. The NCA retains a contractual capability to remove personnel from the services contract where their competence or performance falls below the standards required under the contract. The NCA also retains a contractual capability to require specific individuals for the performance of specific roles.

### Section 7 - Delegation of NCA chief executive's functions and powers

This section states that the NCA chief executive may delegate all or any of their functions or powers under the Ordinance to officers or employees of the NCA and other persons whose services have been made available for the purposes of the Ordinance under section 6 of this instrument.

The NCA chief executive's functions and powers are set out in sections 8 and 9 of the Ordinance. The NCA chief executive is responsible for administering 'ACT paid parking legislation' (as defined in section 5) in its application to National Land (see subsection 8(1)), and is essentially vested with the functions and powers of the road transport authority as referred to in the 'ACT paid parking legislation' (as defined in section 5) and of the road transport authority or administering authority as referred to in the 'ACT paid parking support legislation' (as defined in section 5) (see subparagraphs 8(2)(a)(i) and (b)(i)).

Section 7 of this instrument provides that the NCA chief executive may delegate all or any of their functions or powers, which have been vested in them, under the applied ACT paid parking legislation, the applied ACT paid parking support legislation or this instrument. (See, for example, section 8 of this instrument, in which the NCA chief executive may, but is not required to, take suspension action in certain circumstances.)

The source of legislative authority for this section is paragraph 11(1)(b) of the Ordinance, which permits the Minister to make rules prescribing matters necessary or convenient for carrying out or giving effect to the Ordinance.

The delegation of the NCA chief executive's functions or powers to persons other than the NCA chief executive is necessary and convenient for giving effect to the Ordinance's purpose of providing for the effective management of paid parking on National Land. This is particularly given the operational context of managing paid parking on National Land where the NCA chief executive may not have the capacity to personally carry out each and every one of the functions provided for under the Ordinance.

The NCA chief executive, at the time of publication of this Replacement Explanatory Statement, has or is likely to delegate the following functions and duties to the following people or roles for the administration of paid parking on National Land:

<b>Delegated Function</b>	<b>Position</b>
Issue identity cards to authorised people for the road transport legislation or a provision of the road transport legislation	Chief Operating Officer, NCA Director (EL2), Estate Management, NCA Manager (EL1), Parking Services, NCA
Issue reminder notice	Chief Operating Officer, NCA Director (EL2), Estate Management, NCA Manager (EL1), Parking Services, NCA Supervisor, Contracted service provider Operator, Contracted service provider
Allow or refuse an application for extension of time to do a thing	Chief Operating Officer, NCA Director (EL2), Estate Management, NCA Manager (EL1), Parking Services, NCA Supervisor, Contracted service provider Operator, Contracted service provider
Allow or refuse an application for an infringement notice management plan	Chief Operating Officer, NCA Director (EL2), Estate Management, NCA Manager (EL1), Parking Services, NCA Supervisor, Contracted service provider Operator, Contracted service provider
Ask an applicant for an infringement notice management plan or a person mentioned in the application for more information	Chief Operating Officer, NCA Director (EL2), Estate Management, NCA Manager (EL1), Parking Services, NCA Supervisor, Contracted service provider Operator, Contracted service provider
Allow payment by instalments	Chief Operating Officer, NCA Director (EL2), Estate Management, NCA Manager (EL1), Parking Services, NCA Supervisor, Contracted service provider Operator, Contracted service provider
Decide the amount of the instalments that must be paid	Chief Operating Officer, NCA Director (EL2), Estate Management, NCA Manager (EL1), Parking Services, NCA Supervisor, Contracted service provider Operator, Contracted service provider
Tell an applicant for an infringement notice management plan about the arrangements for paying the infringement notice penalty by instalments	Chief Operating Officer, NCA Director (EL2), Estate Management, NCA Manager (EL1), Parking Services, NCA Supervisor, Contracted service provider Operator, Contracted service provider

<b>Delegated Function</b>	<b>Position</b>
Tell the applicant for an infringement notice management plan about a refusal and reasons for refusal in writing	Chief Operating Officer, NCA Director (EL2), Estate Management, NCA Manager (EL1), Parking Services, NCA Supervisor, Contracted service provider Operator, Contracted service provider
Allow or refuse application for waiver of penalty	Chief Operating Officer, NCA Director (EL2), Estate Management, NCA Manager (EL1), Parking Services, NCA Supervisor, Contracted service provider Operator, Contracted service provider
Ask for additional information from an applicant for waiver	Chief Operating Officer, NCA Director (EL2), Estate Management, NCA Manager (EL1), Parking Services, NCA Supervisor, Contracted service provider Operator, Contracted service provider
Tell an applicant for waiver in writing if application allowed. If application is refused – tell the applicant in writing about the refusal and the reasons for the refusal.	Chief Operating Officer, NCA Director (EL2), Estate Management, NCA Manager (EL1), Parking Services, NCA Supervisor, Contracted service provider Operator, Contracted service provider
Take action in response to an application for withdrawal of an infringement notice	Chief Operating Officer, NCA Director (EL2), Estate Management, NCA Manager (EL1), Parking Services, NCA Supervisor, Contracted service provider Operator, Contracted service provider
Withdraw infringement notice	Chief Operating Officer, NCA Director (EL2), Estate Management, NCA Manager (EL1), Parking Services, NCA Supervisor, Contracted service provider Operator, Contracted service provider
Take action where a person disputes liability for an infringement notice offence	Chief Operating Officer, NCA Director (EL2), Estate Management, NCA Manager (EL1), Parking Services, NCA Supervisor, Contracted service provider Operator, Contracted service provider
Establish and operate a ticket parking scheme for any length of road or area	Chief Operating Officer, NCA Director (EL2), Estate Management, NCA Manager (EL1), Parking Services, NCA

<b>Delegated Function</b>	<b>Position</b>
Temporarily close ticket parking space and area	Chief Operating Officer, NCA Director (EL2), Estate Management, NCA Manager (EL1), Parking Services, NCA
Issue parking permits	Chief Operating Officer, NCA Director (EL2), Estate Management, NCA Manager (EL1), Parking Services, NCA

The required skills, qualifications and experience of delegates are noted in the explanation for section 6.

The exercise of these delegated powers will be safeguarded or limited variously by law and policy. The exercise of delegated powers by NCA officers is subject to internal guidelines on the use of these powers. The exercise of delegated powers by officers of the contracted third-party service provider whose services are made available to NCA will be subject to contractual requirements to comply with the NCA's internal guidelines. Each of the delegated powers arise from legislated functions and are subject to relevant safeguards prescribed in the applied ACT parking law.

For the avoidance of any doubt, the rule-making power is only able to be exercised by the Minister. This Ministerial responsibility cannot be delegated and is not within scope of those powers delegable under this section.

## **Division 2 – Suspension for non-payment of infringement notices**

### Section 8 – Suspension action not mandatory

This section provides that the administering authority or the road transport authority may, but are not required to, take any action in relation to Division 3.4 of Part 3 of the *Road Transport (General) Act 1999* (ACT), or other relevant provisions of the ACT road transport legislation as it applies to National Land, that require the administering authority or road transport authority to serve suspension notices or take other action in relation to the suspension of vehicle registration and driver licences in respect of infringement notices or reminder notices issued for infringement notice offences under the Ordinance. This means that suspension action could be taken in relation to an unpaid infringement notice, but that it is not mandatory to do so. This modifies the applied law where it would, but for this section, be mandatory to do so.

The unmodified operation of section 44 of the *Road Transport (General) Act 1999* (ACT) would require that the NCA as road transport authority do one of the following: suspend a person's driver licence; suspend that person's right to drive the relevant vehicle in the ACT; suspend that person's right to drive any vehicle in the ACT; or suspend the right of everyone to drive the relevant vehicle in the ACT. The modification from a mandatory to optional requirement is considered appropriate because the NCA does not have the same integrated capabilities of the Australian Capital Territory's Transport Canberra and City Services Directorate (ACT-TCCSD). ACT-TCCSD manages the ACT's road transport laws, including the ACT's vehicle registration and driver licence schemes, in the ACT. The NCA does not

manage equivalent vehicle registration or driver licence schemes on National Land and therefore does not serve suspension notices as a routine practice, but instead reserves the ability to do so in the event of a person's repeated and serious contraventions of the paid parking scheme on National Land. In this situation, the discretionary decision to take action in relation to Division 3.4 of Part 3 the *Road Transport (General) Act 1999* (ACT) or other relevant provisions of the ACT road transport legislation as it applies to National Land, would be made by the NCA chief executive personally. The discretionary decision would be informed by the nature of the infringements and those infringements' impact on authorised uses of National Land. Division 3.4 of Part 3 of the *Road Transport (General) Act 1999* (ACT), or other relevant provisions of the ACT road transport legislation as it applies to National Land, contains procedural safeguards for the imposition and review of suspension notices.

### **Division 3 – Extension of time**

#### Section 9 – Modified application of section 14C of the *Road Transport (Offences) Regulation 2005* (ACT) to National Land

This section provides for the modification of subsection 14C(2) of the *Road Transport (Offences) Regulation 2005* (ACT), as it applies to National Land, to permit an application for an extension of time to do things relating to an infringement notice offence issued under the Ordinance to be made in a manner approved by the NCA chief executive (as the administering authority). This is broader than the ACT law, which only allows for applications to be made in writing. It also confirms the existing requirements under the applied ACT law: that an application must be made before the end of the allowed time and include any information required by the NCA chief executive (as the administering authority). Further detail on the nature or scope of information required by the NCA chief executive, and why this information is considered necessary, is set out in the explanation for section 11.

#### Section 10 – Modified application of section 14D of the *Road Transport (Offences) Regulation 2005* (ACT) to National Land

This section provides for the modification of subsection 14D(2) of the *Road Transport (Offences) Regulation 2005* (ACT), as it applies to National Land, to permit an application for an extension of time to do things relating to an infringement notice offence issued under the Ordinance to be made in a manner approved by the NCA chief executive (as the administering authority). This is broader than the ACT law, which only allows for applications to be made in writing. It also confirms the existing requirements under the applied ACT law: that an application must state the special circumstances relied on and include any information required by the NCA chief executive (as the administering authority). Further detail on the nature or scope of information required by the NCA chief executive, and why this information is considered necessary, is set out in the explanation for section 11.

#### Section 11 – Approved manner of application

This section provides, for the purposes of Division 3 of Part 2 of the instrument, when an application is made in the approved manner, including by telephone, in writing or other manner of application acceptable to the NCA chief executive (as the administering authority)



from time to time. This has the effect of permitting applications for the extension of time to be made by means other than in writing (which was all that was allowed under the ACT law), provided that the applications are made in a manner approved by the NCA chief executive (as the administering authority).

At the time of the publication of this Replacement Explanatory Statement, the approved form of the application to do something mentioned in subsection 26(2) or 28(2) of the *Road Transport (General) Act 1999* (ACT), including applications for extension of time, requires the applicant to provide the following information:

- details of the parking infringement
- the applicant's full name, address and email address
- if an infringement is to be directed to an employer of the applicant, the employer's name and ABN
- the ground of appeal (for example, special circumstances)
- if another person operated the motor vehicle and incurred the infringement, details of a nominated alternative driver (including full name, date of birth and driver licence details)
- a free text field to provide details supporting the ground of appeal (which could include details of personal circumstances)
- where applicable, supporting documentation such as copies of a doctor's certificate or an Australian disability parking permit.

Except for the details of the infringement that are generated by the NCA, all of these fields constitute personal information. The collection and use of this personal information is necessary to allow the NCA and its agents to assess such requests, communicate with the applicant the outcome of that request and take whatever steps are necessary to implement that outcome (for example, withdraw a ticket or enter into a payment arrangement). Personal information is handled in accordance with the NCA's privacy policy, which is available on the NCA's website at [www.nca.gov.au/about-us/corporate-documents/corporate-policies/privacy-policy](http://www.nca.gov.au/about-us/corporate-documents/corporate-policies/privacy-policy) (internet address correct at time of publishing of this Revised Explanatory Statement).

The *Privacy Act 1988* applies to personal information collected under section 9 and section 10 of the instrument, as the NCA (including any staff made available to it) is an 'agency' for the purposes of that Act. Additionally, under that Act, the NCA is required to comply with the Australian Privacy Principles and the *Privacy (Australian Government Agencies — Governance) APP Code 2017*.

### **Part 3 – Transitional provisions**

#### **Section 12 – Things done under the old instruments**

This section provides for a transition between the old instruments and this instrument. It ensures that things done under the old instruments, as in force immediately before their repeal, are taken to be things done under the new instrument, if those things could be done for

the same purpose under both instruments. This includes, for example, a delegation under the *Staffing and Delegations Rule 2014* being considered a delegation under section 7 of this instrument. This allows the current law relating to paid parking on National Land to continue in force in the same form until the Ordinance is remade.

### **Schedule 1 – Repeals**

Schedule 1 sets out the repeals of the sunseting legislative instruments to provide transparency through explicit repeal.

Item 1 in Schedule 1 repeals the *Extension of Time Rule 2014*.

Item 2 in Schedule 1 repeals the *Open Areas Parking Rule 2014*.

Item 3 in Schedule 1 repeals the *Parking Authority Declaration – 2014 High Court of Australia*.

Item 4 in Schedule 1 repeals the *Staffing and Delegations Rule 2014*.

Item 5 in Schedule 1 repeals the *Suspension for Non-payment of Infringement Notices Rule 2014*.

**Statement of Compatibility with Human Rights**

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

**National Land (Road Transport) (Parking) Rules 2024**

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**

This Disallowable Legislative Instrument sets out arrangements for the management of paid parking on National Land. It includes arrangements ensuring the NCA chief executive can delegate powers to appropriate persons, permits the administering authority to not be required (where it otherwise would be required) to serve suspension notices or to suspend vehicle registration and driver licences when a parking infringement notice is not paid, and specifies the way applications for extensions of time in relation to parking infringement notices can be made.

**Human rights implications**

This rule does not engage any of the applicable rights or freedoms.

**Conclusion**

The instrument is compatible with human rights as it does not raise any human rights issues.