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**THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY**

MOTOR TRAFFIC (AMENDMENT) BILL 1999 (NO2)

EXPLANATORY MEMORANDUM

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**Brendan Michael Smyth MLA
Minister for Urban Services**

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Outline

The objective of the Bill is to amend the *Motor Traffic Act 1936* (the Act) to provide a legal framework to allow for the use of speed cameras and red light cameras in the ACT. The new Part 11C - Traffic Offence Detection Devices provides for regulations specifying the approval, testing, maintenance, and use of traffic offence detection devices. Detection devices include digital camera detection devices, radar speed measuring devices and laser speed measuring devices.

The Bill further creates a new infringements Part 11A of the Act, which is the major component of the amendment Bill. The new Part provides a cohesive and comprehensive framework for all types of infringements. The Bill introduces the concepts of 'administering authority' and 'authorised person'. The administering authority for traffic offences will be the Chief Police Officer. Authorised persons will be police officers (for all traffic offences) and persons authorised by the Chief Police Officer to issue infringements for particular offences.

The Bill provides that 'owner onus' applies to offences detected by cameras. Vehicle owners will be liable for these offences as it will not be possible to identify the actual offender.

Financial Implications

Additional Government Payment for Outputs funding of \$0.6 million is provided in 1999-2000 for the costs of operating the cameras. A further \$0.6 million is provided for capital works to treat intersections prior to the installation of red light cameras in 2000. This will be offset by increased revenue of \$2.50 million in 1999-2000, decreasing to \$2.0 million in future years. Overall, a net improvement to the Government's Operating Result of \$1.3 million is expected in 1999-2000 and \$1.4 million per annum in the forward years.

Commencement and Citation

Clause 1 cites the Act as the *Motor Traffic (Amendment) Act (No.) 1999*

Clause 2 provides the formal commencement provisions and notification of commencement provisions for the Act.

Clause 3 provides that the "Principal Act" is the *Motor Traffic Act 1936*

Clause 4 amends the interpretation provisions of the Principal Act. The amendments address issues such as vehicles having more than one owner, vehicle registration kept under Commonwealth laws, and the consequential effects of transferring the use of radar detectors to the Motor Traffic Regulations.

Clause 5 - Section 9 (Refusal of licence to certain persons) is consequentially amended as a result of the new traffic infringement provisions.

Clause 6 consequentially amends section 11 to allow for the changed location of the provisions for enforcement action following non-payment of fines.

Clause 7 consequentially amends section 107 to allow for the changed location of the provisions for enforcement action following non-payment of fines.

Clause 8 amends section 140 by omitting the definitions of various devices. Amphometers are omitted as they are obsolete and no longer used.

Clause 9 amends section 142 to increase the penalty level for exceeding the speed limit for individuals, and to provide a higher penalty for corporate owners.

Clause 10 repeals section 147B to 147D as they are relocated into the Motor Traffic Regulations.

Clause 11 inserts a new section 164FA, definitions of a "radar detecting device" and a "radar jamming device" into the offence provisions in Part XI.

Clause 12 repeals Part XIA (TRAFFIC INFRINGEMENTS) and substitutes a new Part 11A (INFRINGEMENT NOTICES FOR CERTAIN OFFENCES).

Division 1 inserts the interpretation provisions for the purposes of the Part.

Included are the definitions of "administering authority" and "authorised person", as noted under 'Outline'. The Division also defines camera detected offences and the various declarations which may be used where owner onus applies.

Division 2 provides for the method of service of infringement notices and the rules applied to the time when the notice is served, if it is served by post, for the purposes of the Part.

Division 3 creates a system of infringement notices and infringement reminder notices for certain offences as an alternative to prosecution.

Section 180C ensures that offences for which infringement notices are served, are not excluded from being dealt with by the Court or otherwise affect any penalty which may be imposed by the Court.

Sections 180D and 180E provide that an infringement notice may be served on a person believed to have committed an offence, or on the owner or owners of a vehicle believed to have been involved in an offence. Section 180E describes how the infringement notice may be served, and also imposes a penalty on persons (other than the vehicle owner, or the person who was in charge of the vehicle at the time the offence was committed) for detaching or interfering with an infringement notice placed on a vehicle.

Section 180F provides the level of detail required in an infringement notice. The detail required is generally similar to the provisions of the former section 180A, but now ensures that more comprehensive information is contained in a notice.

Section 180G sets out further detail required on the infringement notice in relation to the payment of the penalty, and the effect of payment or non payment within the specified 28 days. The notice must also state how to lodge a dispute and the effects of that lodgment, and the number of demerit points applied as part of a penalty. Further information is also to be provided in relation to statutory declarations, and obtaining copies of images taken by cameras.

Section 180H provides for applications to be made seeking additional time to pay an traffic infringement notice penalty and the rules applying if such an extension is granted. It includes a new provision specifying the time in which a penalty must be paid after receiving notice that an application has been refused.

Section 180I provides the requirements applying to the administering authority in relation to an application for an extension of time to pay a penalty.

Section 180J imposes liability on the vehicle owner for an offence for which an infringement notice was issued under section 180E. This addresses the problem associated with an offence detected where the driver who actually committed the offence is unknown, thus differentiating from an "on the spot" infringement offence where the infringement is issued directly to the person who committed the offence. The provision allows for various declarations to be given to the administering authority for defence purposes, in situations where the owner may not be the actual offender.

Section 180K provides for an owner to give the administering authority an "illegal user declaration" within 28 days of receipt of the infringement notice, or infringement reminder notice, stating facts establishing that the vehicle was stolen or illegally used at the time the offence was committed. The provision allows service of an infringement notice for the offence, on a named offender. Further provisions address issues if the offence is prosecuted in Court.

Section 180L provides for an owner to give the administering authority a "known user declaration". The provision allows for an individual or corporate owner of a vehicle to name the actual offender, and allows that the infringement notice can then be served on the "named offender".

Section 180M provides for an owner to give the administering authority a "sold vehicle declaration", and allows that the infringement notice may be served on the buyer of the vehicle.

Section 180MA provides for an owner, corporate or individual, to give the administering authority an "unknown user declaration," providing detail of the efforts made to establish the identity of the actual driver at the time the offence was committed.

Section 180MB specifies the effects of payment of an infringement notice penalty, and addresses circumstances where a infringement notices for an offence have been served on a vehicle having two or more owners.

Section 180MC allows a person on whom an infringement notice has been served, to apply for the withdrawal of the notice. It also requires that a decision made under the section must be notified to the applicant in writing.

Section 180MD allows for the withdrawal of an infringement notice whether or not an application for withdrawal of the notice has been made or the penalty has been paid. A notice about the effect of the withdrawal must be provided to the person.

Section 180ME allows for the serving of a reminder notice for a traffic infringement offence and **section 180MF** specifies the information to be provided in the notice.

Section 180MG describes the further information to be provided on a reminder notice, including the new time for payment and the additional cost incurred for service of the reminder notice.

Division 4 creates the enforcement procedures for infringement notice offences involving vehicles. These are consistent with existing processes for traffic and parking infringements which have not been paid.

Section 180MH provides the right for the Registrar to take action in relation to the persons driving rights, or vehicle registration in the Territory, if an infringement penalty is not paid and the person has not given the administering authority any declaration, nor lodged a notice of dispute for the offence. It also specifies enforcement procedures when the person is not licensed in the Territory, and is not the owner of a vehicle registered in the Territory.

Section 180MI provides that the registrar shall not issue a driver licence or register a vehicle (as the case may be) while the relevant matter is under suspension for failure to pay an infringement penalty. **Section 180MJ** further provides the circumstances where the Registrar may transfer the registration of a vehicle that has had its registration suspended for failure by the owner to pay a penalty.

Section 180MK provides that if a suspension is in force for non-payment of a penalty and the person pays the penalty, the registrar must revoke the suspension, except in the case where similar action is required in relation to another penalty.

Section 180ML provides for a person to apply to the Court for a declaration that he/she did not commit the offence, whether or not a suspension is in force. It further provides that the Registrar must not take action under a declaration made by the Court if he/she believes that reasonable grounds exist to suspend or cancel the licence or registration, or the right to drive in the Territory. The registrar must immediately give notice of such a decision in writing.

Section 180MM provides that if the Registrar revokes a suspension because of a declaration of the Court, the suspended licence, registration and right to drive shall be taken to have never been suspended.

Section 180MN provides that if the Registrar does not take action in relation to a declaration made by the Court under section 180ML, the person may apply to the Court for an order setting aside the decision.

Division 5 sets out the procedures for situations when liability for an infringement is disputed.

Section 180MO allows a person to dispute liability upon written notice to the administering authority. The notice must contain the grounds on which the person relies and must be provided within 28 days of receiving the infringement or infringement reminder notice.

Section 180MP provides for the administering authority to allow additional time to dispute the notice.

Section 180MQ allows the administering authority to lay an information in the Magistrates Court within 60 days, if a dispute notice under section 180MO is given. It further provides that if the penalty is fully paid before the proceeding is begun, the proceeding must be discontinued. The section also provides the detail of the action to be taken by the administering authority if an information is not laid within 60 days.

Division 6 provides the miscellaneous detail related to the infringement notice provisions.

Sections 180MR provides the delegation powers of the administering authority and persons prescribed under the regulations. **Section 180MS** provides that a statutory declaration made by a corporation must be made by an executive officer of the corporation.

Section 180MT provides the information relating to evidentiary provisions required for a proceeding for an infringement notice offence.

Section 180MU provides the cost allocations for declarations made under proceedings in the Magistrates Court.

Clause 13 inserts a new Part 11C - TRAFFIC OFFENCE DETECTION DEVICES.

Section 180ZD provides a series of definitions for various traffic offence detection devices for the purposes of the Part.

Section 180ZE describes what a camera detection device is designed to do, and the information an image produced by the device must contain.

Section 180ZF provides that the regulations may make provisions relating to the testing, sealing, maintenance and use of traffic offence detection devices and the meaning of codes or other information indicated on images produced by approved camera detection devices.

Section 180ZG provides for the production of a certificate, signed by the police or the registrar, stating matters relevant for evidentiary purposes in a proceeding against a person for an offence detected by a traffic offence detection device.

Section 180ZH provides an offence provision and penalty for any person who, without lawful authority, interferes with a traffic offence detection device.

Section 180ZI provides that upon payment of the determined fee, certain people may obtain a copy of an image produced by a traffic offence detection device. The image may be viewed free of charge.

Section 180ZJ provides the detail to be provided and when it must be provided, in situations where a defendant intends to challenge the maintenance, testing, sealing and use of a traffic offence detection device, in a court.

Clause 14 consequentially amends Section 191NB as a result of the new Part 11A.

Clause 15 removes the refund provision in section 191R for people whose licence is suspended for fine default.

Clause 16 amends the general offence provisions contained in section 192, to allow for different penalty levels to be applied to individuals, and a body corporate.

Clause 17 inserts a new Part 15 - TRANSITIONAL PROVISIONS ABOUT TRAFFIC INFRINGEMENT NOTICES.

Section 219 provides definitions of “amended Act” and “unamended Act”, and new section 220 specifies that an infringement notice served under section 180A prior to the commencement of the new provisions, is to be taken as an infringement notice served under section 180D after commencement of the new provisions.

Section 221 establishes the circumstances under which an information may be laid with the Court for an infringement notice served under section 180A (the unamended Act), or withdrawn under the amended Act.

Section 222 provides that a final notice served on a person under the unamended Act is to be taken as a reminder notice served under the amended Act.

Section 223 provides that a dispute notice lodged under the former provisions shall be taken to be a dispute notice lodged under the new provisions, after they have commenced.

Section 224 provides that a notice of suspension served under the former provisions, shall be taken to be a notice served under the new provisions, after they have commenced.

Section 225 provides that decisions or declarations made or not made by the Court or Registrar based on applications under section 180H of the former Act, will be taken to have occurred under section 180ML, after commencement of the amended Act.

Section 226 provides that an application made under subsection 180H (8) that has not been dealt with by the Court before the commencement of the amended Act, is to be taken as an application made by the person under section 180MN of the amended Act.

Section 227 allows that the evidentiary provisions of the amended Act, apply to all things done or not done, as if they were the evidentiary provisions of the unamended Act.

Section 228 allows that Regulations may be made to modify the operation of Part 15 to make provision for any matter not already, or adequately dealt with. A regulation intended to modify the operation of the Part may take the form of a change to the text (by omission, insertion, addition or substitution), but not amend the substance of the intention of the amended Regulation. The effect of a regulation made under this section is limited to a 6

month period after the day it commences. The purpose of this is to make provision with respect to any matter that is not already, or not adequately dealt with in this Part.

Section 229 limits the effect of this Part to a 6 month period after it commences.

Clause 18 amends Schedule 7 (Reviewable Decisions) of the Principal Act is amended to omit item 7A from Part 1 (refusing to approve a device designed for use in measuring the speed of motor vehicles). These devices will now be approved by regulation.

Clause 19 notes the Acts specified in the Schedule are amended as set out in the Schedule

Schedule - Consequential amendments

Paragraph 354 of the Crimes Act 1900 (Provision of interpreters in the investigation of summary offences.)

Paragraph 354 (4) (b) is amended by omitting reference to the former section 180A (repealed) and substituting reference to the new sections 180E or 180F.

Paragraph 354 (4) (b) (i) omits reference to “a traffic infringement notice under that section in relation to” and substitutes “an infringement notice for”.

Paragraph 34B of the Criminal Injuries Compensation Act 1983 (Application of Part 34C. Extended meaning of conviction)

Paragraph 34B (3) (a) omits the paragraph as it lists Acts under which traffic infringement notices are issued and which are no longer applicable.

Paragraph 34B (3) (d) inserts reference to the Motor Traffic Act 1936, as an Act “infringement notices” are issued under, being a generic term rather than Act specific.

Traffic Act 1936

Section 6D is repealed as the offence of failing to wear a bicycle helmet will be listed in the Motor Traffic Regulations as an “infringement notice offence” to which the new Part 11A of the Motor Traffic Act 1936 applies.