**2011**

# THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

# ROAD TRANSPORT (SAFETY AND TRAFFIC MANAGEMENT) AMENDMENT BILL 2011

# EXPLANATORY STATEMENT

**Circulated by authority of**
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# ROAD TRANSPORT (SAFETY AND TRAFFIC MANAGEMENT) AMENDMENT BILL 2011

## Outline

This Bill amends the *Road Transport (Safety and Traffic Management) Act 1999* (the Act) and makes consequential amendments to the *Road Transport (General) Act 1999* (the General Act) to establish a legislative basis for the use of average speed detection systems in the ACT. These systems are commonly referred to as point-to-point camera systems.

The National Road Safety Strategy 2011-2020 (the Strategy)[1] emphasises the importance of actions to reduce death or injury resulting from excessive speed. The Strategy was endorsed by all jurisdictions through the Australian Transport Council and publicly released in May 2011. The Strategy contains the following actions in relation to speed enforcement, at page 68:

> *"8. Improve compliance with speed limits across the road network:*
> *a. Adopt best practice enforcement, including a combination of on-road policing and speed camera technologies, with a mix of covert and overt strategies.*
> *b. Install where appropriate point-to-point cameras to improve speed compliance among all vehicles.*
> *c. Examine options for improved enforcement of motorcycle speeding.*
>
> *9. Improve the use of sanctions to more effectively deter people from speeding."*

In relation to point-to-point camera systems, the Strategy states[2]:

> "*Point-to- point speed camera technology allows continuous automated speed enforcement to be applied over an extended length of road. While fixed speed cameras are an effective mechanism for dealing with a specific location with known crash history, point-to-point cameras extend this over a much longer length of road and hence have a greater influence on drivers. Instead of checking the spot speed of vehicles at a fixed point on the road, the cameras measure the average speed of vehicles over a substantial distance. In this way, point-to-point enforcement targets sustained speeding behaviour and can be more acceptable to the public than single-camera enforcement.*
>
> *Point-to-point systems are used widely in Europe including in the UK (20 fixed systems and 20 temporary systems at road works), Italy (44*

[1] The Strategy can be found at http://www.atcouncil.gov.au/documents/files/NRSS_2011_2020_20May11.pdf
[2] At page 62 of the Strategy.

*systems), Austria (2 fixed and 2 mobile systems) and the Netherlands (16 systems). Other European countries are trialling point-to-point systems.*

*Evaluations have demonstrated that point-to-point enforcement reduces speeding, resulting in a low infringement rate and significant reductions in deaths and serious injuries. In the UK, reductions in the number of people killed or seriously injured typically exceed 50 per cent. In Northamptonshire, fatal and serious injuries reduced by 78 per cent in the first five years of operation on the A43 and by 85 per cent in the first four years of operation on the A428. Point-to-point enforcement has a high level of public support. It has been described as fairer than spot speed enforcement because speeding is detected over a greater distance, demonstrating the behaviour was intentional and not due to a momentary lapse of concentration*."

The *Forward Design Study: Introduction of Point to Point Speed Cameras in the ACT* by AECOM examined interstate and international experience with point-to-point systems and concluded (at page 19)[3]:

"*The experience of P2P [point-to-point] systems in Australia and overseas shows that:*

- *The systems are effective at reducing both the number and severity of crashes.*
- *The systems are able to improve speed compliance within the enforced area and often reduce both average and 85th percentile speeds to the posted speed limit or below.*
- *The systems produce smoother traffic flows and reduce speed differentials between vehicles.*
- *Infringement rates are typically low.*
- *Careful site selection is required.*
- *Use of P2P for network speed management is in its infancy.*
- *Appropriate legislation is imperative.*
- *P2P systems will become operational in most Australian jurisdictions over the next few years.*"

The Bill amends part 6 of the Act, which deals with traffic offence detection devices. These devices include the existing speed and red-light cameras in use in the ACT, in addition to the laser and radar speed measuring devices used by ACT Policing. The amendments insert new definitions of terms relevant to average speed detection systems, and provides for the use of these systems. A range of technical amendments are made in relation to regulations for traffic offence detection devices, evidence and forms of proof using average speed, evidentiary certificates, inspection and purchase of images and notices of challenge. New provisions restricting the use and disclosure of images from traffic offence detection devices are included to

[3] Copy available at http://www.tams.act.gov.au/move/roads/road_safety/speedandspeeding/act_government_safety_camera_program/point_to_point_speed_cameras

prevent these images being used inappropriately. Consequential amendments are made to the Dictionary to encompass new terms, and consequential amendments are made to the General Act to include references to matters related to average speed detection systems.

The Bill contains limits on the way that information from traffic offence detection devices can be used or disclosed: new clauses 29 and 29A. The permitted purposes for use or disclosure are proceedings for speeding offences, proceeding for other offences against the road transport legislation and purposes authorised by another law in force in the ACT. In this context, it should be noted that fixed cameras are already used for both speeding and red light offences when installed at intersections. The use of information from traffic offence detection devices for other road transport offences is expected to be facilitated by the presence of Automatic Number Plate Recognition (ANPR) technology in modern traffic camera systems. The existing fixed and mobile cameras are not ANPR enabled, so the identification of unregistered/unlicensed/stolen vehicles from images taken by the cameras can only occur through human scrutiny of images. By contrast, ANPR cameras, such as those used in point-to-point systems, can be linked to road transport authority and police databases so that they automate the process of identifying vehicles of interest.

ANPR technology is already successfully used by ACT Policing in the RAPID (**R**ecognition and **A**nalysis of **P**lates **ID**entified) system for identifying and taking action in relation to unlicensed drivers and unregistered, uninsured or stolen vehicles – noting that unlicensed drivers and unregistered or uninsured vehicles continue to be significantly over-represented in fatal and serious injury crashes.[4] ANPR cameras provide the opportunity to establish a 24 hour/7day RAPID-style capability at the sites where they are installed, so that the road safety benefits for the community from the investment in the technology can be maximised. Their use in this way would substantially enhance existing police capabilities to detect and remove unsafe drivers and unsafe vehicles from the road transport network. For this reason, the point-to-point speed camera system selected by the Government, and the supporting legislation, have been designed to accommodate this future use.

**Human Rights implications**

The use of traffic offence detection devices such as traffic cameras and ANPR technology may engage the right to privacy under section 12 of the *Human Rights Act 2004*. That section provides"

> **12 Privacy and reputation**
>
> Everyone has the right—
>
> (a) not to have his or her privacy, family, home or correspondence interfered with unlawfully or arbitrarily; and

[4] For further information relating to the crash involvement of unlicensed drivers and unregistered vehicles, refer to the Explanatory Statement for the Road Transport Legislation Amendment Bill 2011 at pages 2-3.

(b) not to have his or her reputation unlawfully attacked.

The engagement with the right to privacy may arise because these systems depend on access to personal information (specifically, names and addresses) held on vehicle registration databases, such as the Territory's rego.ACT database. The systems access this type of information through records relating to number plates, in order to identify the people who are responsible for vehicles involved in traffic offences. One of the main reasons for establishing registers of vehicle owners/operators and requiring vehicles to display number plates is so that enforcement action can be taken as required for breaches of the road transport legislation.

A consideration of the possible impacts on the right to privacy by point-to-point cameras requires an understanding of how such systems operate. The system that has been selected for the ACT involves the capture of vehicle images, specifically images showing the number-plate region of vehicles, by cameras with an ANPR capability. The cameras will photograph the rear of the vehicle: this will enable the capture of images of motorcycle number plates, which are only mounted in the rear to protect riders in the event of an accident. The ANPR system is based on optical character recognition technology; it scans vehicle images to locate text, particularly in the numberplate area. Images without any text cannot be processed by the system.

The cameras are triggered to record images only when vehicles pass the detection point – they do not operate as continuous scene cameras. The processor component is programmed to match images with the same numberplate passing 2 detection points and to apply calculations to the date stamps on those images to determine whether a particular vehicle has travelled between those points more quickly than permitted by law. Images relating to speeding offences are automatically sent for adjudication by the Traffic Camera Office and if offences are confirmed by that Office, an infringement notice will be issued. Images related to infringement notices must be held under the *Territory Records Act 2002* for seven years (this retention period applies equally to images from single fixed or mobile traffic cameras). As the system includes an ANPR camera, there is potential for this component to be used to confirm whether vehicles with specific number plates (such as unregistered or stolen vehicles on the police's RAPID hot-list) have been driven past one or more detection points.

When assessing the extent to which the systems engage the right to privacy it is relevant to understand what the system does not do. Images of vehicles that the system does not identify as exceeding the average speed limit will not be referred to the Traffic Camera Office for adjudication. Instead, these images are temporarily held within the camera system's electronic storage and (if not accessed for another lawful purpose in that time) are automatically deleted after 30 days. The images taken by the system are not used to generate logs of peoples' movements or otherwise track vehicles or people. The images do not capture drivers' faces and the system is not programmed to capture, match or store images of other people on roads.

In this context, the issue that arises is whether point-to-point systems operate to limit the right to privacy and if so, where this is limit is reasonable for section 28 of the *Human Rights Act 2004*. Section 28 (2) of the Human Rights Act 2004 provides:

> "(2) In deciding whether a limit is reasonable, all relevant factors must be considered, including the following:
>
> (a) the nature of the right affected;
>
> (b) the importance of the purpose of the limitation;
>
> (c) the nature and extent of the limitation;
>
> (d) the relationship between the limitation and its purpose;
>
> (e) any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve."

In the context of sections 28 (2) (a), (c) and (d), the system captures images of vehicles travelling on public roads. The information that comprises these images is not inherently personal or private in nature – a vehicle on a public road can be seen by anyone on or near that road. Numberplates are not private information – they are issued by registration authorities, and vehicles used on public road must display a numberplate so that the numbers on it are clearly visible at 20 metres (see *Road Transport (Vehicle Registration) Regulation 2000*, sections 59 and 60).

The private or personal component of information used in the point-to-point camera systems is the vehicle ownership information that is linked to numberplates. This information is recorded by registration authorities as an essential element of vehicle registration systems in Australia. The point-to-point camera system accesses this information only after the image matching software forwards images of speeding vehicles to the Traffic Camera Office for adjudication. The cameras are not directly linked to the registration database; vehicle ownership data will not be accessed for images of vehicles that are neither forwarded to the Traffic Camera Office for adjudication nor used by ACT Policing.

In relation to section 28 (2) ( b) and (d), the use of ownership/registered operator information for detecting offences is essential for the enforcement of the road transport legislation. This use is not unique to point-to-point cameras. This use occurs whenever enforcement authorities access information about a vehicle's owner or registered operator using the vehicle's numberplate, after they become aware of evidence that the vehicle may have been involved in an offence. To put it simply, the police and road transport authority use numberplates to interrogate the registration databases so they can identify the persons responsible for vehicles involved in offences. In so doing they may rely on direct visual identification of a numberplate by a police officer or another witness, by using an image from a fixed or mobile traffic camera, or by using the RAPID system.

Point-to-point cameras using ANPR technology do not change the nature of the information held on vehicle registration systems, or the nature of information held in other official records for offences involving vehicles such as police records or court files. These systems do not make personal information about owners or registered operators accessible to a wider range of people. They do not make personal information accessible for a wider range of purposes than is currently allowed by law, including under the Information Privacy Principles in the *Privacy Act 1988*.

In relation to section 28 (2) (b) and (e), point-to-point cameras are not the first or only measure used by governments to encourage compliance with speed limits. Speeding by motorists has long been recognised as a major road safety risk, and remains a major focus of government road safety strategies in Australia and overseas. In the ACT, fixed and mobile speed cameras and police radar checks have been in use for years, but as the research evidence shows, many vehicles speed up again after passing these cameras or police checks. The evidence[5] shows that point-to-point systems are more effective than other methods in terms of reducing average traffic speeds, and speed-related crashes over a sustained distance. These systems are also very cost effective. While revenue from point-to-point systems is lower than from single-point cameras, because their effect on improving speed compliance is greater, revenue is generally sufficient to offset costs. The Forward Design Study modelled a variety of scenarios and concluded that under each scenario the benefit cost ratio for the project made it worthwhile to pursue, with benefits being greater than costs by factors ranging from 6.5 to 14.4[6].

For these reasons, the Government believes that any impact on the right to privacy by the amendments in the Bill is demonstrably justifiable for section 28 of the *Human Rights Act 2004*.

[5] Refer to discussion of road safety effects at pages 1-2 of this Statement.
[6] At pages 59-60 of the Study.

## Notes on clauses

### Part 1 Preliminary

### Clause 1 Name of Act

This is a formal provision that sets out the name of the legislation on its enactment.

### Clause 2 Commencement

This clause provides for the Bill, once passed, to commence on a date to be fixed by the responsible Minister.

### Clause 3 Legislation amended

This clause lists the legislation amended by the Act.

### Clause 4 New division 6.1 heading and section 22AA

This clause inserts a new division heading and new section 22AA. New section 22AA defines technical terms or concepts that relate to average speed detection systems.

### Clause 5 Section 22A

This clause amends existing section 22A, which defines the concept of *relevant information* for images taken by camera detection devices. This amendment is a drafting amendment that is consequential on the insertion of new section 22A (2) by clause 9 of the Bill; it changes the existing provision so that it can accommodate subsections.

### Clause 6 Section 22A (c)

This clause is drafting amendment to replace a reference to “a regulation” with “a provision of the road transport legislation.” This amendment will ensure that if traffic light offences are included in other types of legislation that may form part of the road transport legislation, images from traffic cameras can be used for these offences. It is included to take account of moves towards national transport legislation; commencing in 2012, it is anticipated that the ACT will adopt the proposed national heavy vehicle law as part of the road transport legislation.

### Clause 7 Section 22A (c)

This clause is linked to the drafting amendment in clause 6 and replaces “the regulation” with “the provision.”

**Clause 8 Section 22A (d)**

This clause has the same purpose as the drafting amendment in clause 6, and ensures that section 22A applies to speeding offences that may be contained in other types of legislation that forms part of the road transport legislation. In particular, the proposed national heavy vehicle law is likely to contain special speeding provisions for certain heavy vehicles. As the national laws are still in development, it is not known whether the associated offence provisions will be in primary or secondary legislation.

**Clause 9 New section 22A (2)**

This clause inserts new section 22A (2), which lists the information that will be *relevant information* for images taken by an average speed detection system. *Relevant information* is linked to the concepts of *complying image* and *average speed detection system*. This is because, in order to be a complying image (see proposed new section 23A (2) to be inserted by clause 14), an image must contain the relevant information. By definition, an average speed detection system must be capable of taking *complying images*: see new section 23A (1).

The *relevant information* includes the date, time and place that the image was taken. This is the minimum requirement. The definition allows for other information to be prescribed or included if the road transport authority considers it appropriate. It is anticipated that in practice the images may include information about the lane in which a vehicle was travelling and direction; it may also be possible to include a code to identify the person responsible for the system at that time.

**Clause 10 New section 22B**

This clause inserts new section 22B, which explains the concept of *average speed*. It contains the formula that will be used by the average speed detection system to calculate the average speed of a vehicle travelling between detection points. In calculating the average speed of the vehicle between the points, the shortest practicable distance (this is based on travel by road) between those points is used. The definition is relevant to the evidentiary provisions in new section 24A (to be inserted by clause 16). That section explains that in a proceeding for a speeding offence, the vehicle's average speed may be used as evidence of the vehicle's actual speed as it travelled between those points.

**Clause 11 New division 6.2 heading**

This clause is a drafting amendment to create a new division heading within part 6.

**Clause 12 Use of camera detection devices**
**Section 23 (1) (a)**

This clause is linked to the amendments in clauses 6 to 8; it replaces "a regulation" with "a provision of the road transport legislation".

**Clause 13 Section 23 (1) (b)**

This clause is linked to the amendments in clauses 6 to 8; it changes "a provision of a regulation" to read "a provision of the road transport legislation".

**Clause 14 New section 23A**

This clause inserts new section 23A, which provides for the use of average speed detection systems. New section 23A (1) defines the concept of *average speed detection system*; it explains that this is a system for taking complying images of vehicles at detection points to calculate the average speed of vehicles between two poinst.

New sections 23A (2) and (3) are closely modelled on sections 23 (2) and (3) of the Act. Section 23A (2) explains when an image taken by an average speed detection system will be a complying image. Section 23A (3) explains that the section does not limit certain matters or information that may be included on images or electronic files of images, and that it is not essential for the system to be operated by a person (in other words, it allows for automated systems).

**Clause 15 Section 24 (2)**

This clause amends the existing regulation-making power in section 24 to make it clear that it authorises regulations dealing with approved average speed detection systems. This is essentially a consequential amendment.

**Clause 16 New sections 24A and 24B**

This clause inserts new sections 24A and 24B, which are essential evidentiary provisions that allow evidence about a vehicle's average speed to be used to establish the commission of a speeding offence.

New section 24A is similar to sections 43A (1) and (2) of the NSW *Road Transport (Safety and Traffic Management) Act 1999* (the NSW Act) which form part of that State's legislative scheme to combat heavy vehicle speeding as an adjunct to the Safe-T-Cam heavy vehicle monitoring program in that jurisdiction. New section 24A makes it explicit that for a speeding offence, evidence of the average speed by a vehicle between two detection points can be used by the prosecution as evidence of the vehicle's actual speed between those points, in order to prove a speeding offence. The offence is taken to have been committed when the vehicle passes the second point – clearly, the average speed cannot be determined until the second point is passed, so it is appropriate for this time to be specified as the time of the offence.

New section 24B is similar to sections 43A (7) and (8) of the NSW Act. It makes it clear that section 24A does not prevent other evidence of a vehicle's actual speed between detection points from being used to prove a speeding offence. It ensures that other ways to detect speeding offences (e.g. police radar or laser speed measurement devices, mobile camera vans) can also be used on roads where an average speed detection system is in place.

**Clause 17 Evidentiary certificates etc**
**Section 25 (2) (c)**

This clause makes consequential amendments to the evidentiary certificate provisions (in section 25) to include matters relevant to average speed detection systems. The changes made by this amendment are the writing of section 25 (2) (c) to include a reference to average speed detection systems and the addition of section 25 (2) (d) dealing with certificate evidence about a vehicle's average speed between detection points.

**Clause 18 Section 25 (3) (a)**

This amendment makes another consequential amendment to the evidentiary certificate provisions. The change made by this amendment is the rewriting of section 25 (3) (a) to include a reference to average speed detection systems.

**Clause 19 New Section 25 (3) (da)**

This amendment makes another consequential amendment to the evidentiary certificate provisions. The change made by this amendment is the inclusion of new section 25 (3) (da) to include provisions for certifying the accuracy of copies of images taken by an average speed detection system.

**Clause 20 Section 25 (4)**

This amendment makes another consequential amendment to the evidentiary certificate provisions. The change made by this amendment is the inclusion of references to an average speed detection system.

**Clause 21 New section 25 (5) (ca)**

This amendment makes another consequential amendment to the evidentiary certificate provisions. The change made by this amendment is the inclusion of new section 25 (5) (ca) to explain that information indicated on or shown by an image is evidence that the driver of a vehicle was driving a vehicle at the average speed indicated on the image.

**Clause 22 Section 25 (5) (e)**

This amendment makes another consequential amendment to the evidentiary certificate provisions. The change made by this amendment is the

replacement of “a regulation” with “a provision of the road transport legislation.”

**Clause 23 Section 25 (6)**

This amendment makes another consequential amendment to the evidentiary certificate provisions. The change made by this amendment is the rewriting of section 25 (6) to include references to copies of images or series or sets of images taken by average speed detection systems. Average speed detection systems take simultaneous images at each detection point. The software sorts the images as they are taken to select the clearest images and then matches them to images from another detection point using the numberplate to form a set of images.

**Clause 24 Section 27 heading**

This clause makes a consequential amendment to the heading so that it refers generically to images taken by *traffic offence detection devices*. An average speed detection system is a traffic offence detection device, as is a camera detection device (see clause 32).

**Clause 25 Notice to challenge certain issues Section 28 (1)**

This clause makes a consequential amendment to section 28. It rewrites section 28 (1) to accommodate the addition of average speed detection systems in part 6. It also deals with challenges relating to the average speed of a vehicle - this ground of challenge does not arise in relation to other types of traffic offence detection devices.

**Clause 26 Section 28 (3) (c)**

This is a consequential amendment to reflect the addition of the ground for challenge in new section 28 (1) (b).

**Clause 27 New sections 29 and 29A**

This clause inserts new sections that deal with the use and disclosure of images taken by traffic offence detection devices. While the *Privacy Act 1988* already regulates the use and disclosure of personal information, these provisions regulate the use and disclosure of images to the extent that an image from these devices is not regarded as containing ‘personal information’ within the meaning of the *Privacy Act 1988.*

The permitted purposes for use (new section 29) include use of images in relation to speeding offences and other offences against the road transport legislation and any other purposes permitted by law. The permitted purposes for disclosure (new section 29A) include disclosure as permitted by section 27, disclosure to a police officer or other authorised person, disclosure in

relation to offences against the road transport legislation (this includes speeding offences); and disclosure in accordance with another law.

**Clause 28 Dictionary, new definitions**

This clause inserts definitions of the terms *approved average speed detection system*, *average speed*, *average speed detection system*, *average speed limit* and *detection points* into the Dictionary for the Act.

**Clause 29 Dictionary, definition of *indicated on***

This clause makes a consequential amendment to the definition of *indicated on* to insert a reference to an approved average speed detection system.

**Clause 30 Dictionary, definition of *relevant information***

This clause makes a consequential amendment to the definition of *relevant information* to insert a reference to an image taken by an average speed detection system.

**Clause 31 Dictionary, new definitions**

This clause inserts definitions of the terms *shortest practicable distance* and *speeding offence* into the Dictionary for the Act.

**Clause 32 Dictionary, definition of *traffic offence detection device***

This clause is a consequential amendment to the definition of *traffic offence detection device* to insert a reference to an average speed detection system.

**Schedule 1 Road Transport (General) Act 1999 - Consequential amendments**

This schedule contains consequential amendments to the General Act:

- Item 1.1 amends section 26 (2) (e) (i) by rewriting it to include a reference to a copy of an image taken by an approved average speed detection system in this provision;
- Item 1.2 amends section 35 (2) (3) to include a reference to *approved average speed detection system*;
- Item 1.3 amends the dictionary to insert a definition of *approved average speed detection system*
- Item 1.4 amends the dictionary to amend the definition of camera detected offence to include a reference to *approved average speed detection system.*

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