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

ROAD TRANSPORT LEGISLATION AMENDMENT BILL 2015

REVISED EXPLANATORY STATEMENT

**Presented by
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ROAD TRANSPORT LEGISLATION AMENDMENT BILL 2015

Overview of the Bill

The Road Transport Legislation Amendment Bill 2015 (the Bill) makes a number of amendments to the ACT road transport legislation and the *Crimes Act 1900* to improve road safety and improve the administration and enforcement of the road transport legislation.

The Bill:

- creates a new offence of drinking alcohol while driving a vehicle – this supports road safety messaging about separating drinking and driving and brings ACT drink driving laws into alignment with most other jurisdictions including NSW;
- amends the offence relating to burnouts to include other similar anti-social or dangerous driving behaviours – this will enable a range of driving behaviours involving loss of traction of the driving wheels of a vehicle to be appropriately sanctioned;
- exempts police recruits undergoing driver training from having to comply with specified aspects of the road transport legislation – this will extend the existing exemption for sworn police officers to allow police recruits to receive necessary driver training which involves departures from the road rules as these drivers and riders develop their skills;
- allows for seizure of vehicles by notice to surrender – this will provide a more flexible and efficient means by which vehicles subject to existing seizure provisions can be surrendered to ACT Policing and will also enable the responsible person for such a vehicle an opportunity to remove personal items prior to the vehicle being surrendered;
- provides for an alternative verdict for the offence of culpable driving of a motor vehicle – this will enable a finding of guilt for a lesser driving offence, where the trier of fact is not satisfied the offence of culpable driving is made out;
- allows certificate evidence about whether an area is a road or road related area – this will support a more efficient criminal justice system, by avoiding the need for the owner or manager of land to attend the court in person to provide evidence that the land is or is not used for driving, riding or parking of vehicles; and
- bans the use of bicycles powered by an internal combustion engine on a road or road related area – this is in response to the risks posed by bicycles with an internal combustion engine, following the deaths of a number of users of these bicycles, including one in the ACT. The road safety hazards posed by these devices have also led to Queensland and, most recently, New South Wales banning these devices.

Human rights implications

A number of provisions in the Bill may be seen as engaging a number of rights in the *Human Rights Act 2004* (the HRA). These are:

- freedom of movement, section 13;
- right to a fair trial, section 21;
- rights in criminal proceedings (presumption of innocence until proven guilty); section 22(1); and
- right to privacy, section 12.

Section 28 of the HRA provides that human rights are subject only to reasonable limits set by laws that can be demonstrably justified in a free and democratic society. Section 28 (2) of the HRA provides that in deciding whether a limit on a human right is reasonable, all relevant factors must be considered, including:

- (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; and
- (e) any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve.

The provisions of the Bill seen as potentially engaging human rights are considered having regard to the provisions of section 28 of the HRA.

Although there is no statement of a right to property in the HRA, such a right is stated in article 17 of the *Universal Declaration of Human Rights*:

- (1) Everyone has the right to own property alone as well as in association with others; and
- (2) No one shall be arbitrarily deprived of his property.

The provision of the Bill seen as potentially engaging the right to property is therefore also considered.

New offence of drinking alcohol while driving a vehicle

The Bill (clause 7) amends the *Road Transport (Alcohol and Drugs) Act 1977* (the Alcohol and Drugs Act) to include a new strict liability offence of consuming alcohol while driving. Allowing drivers to drink alcohol while driving is inconsistent with the very clear ‘Drink or Drive’ road safety message which has been adopted in the ACT, and throughout Australia, to reduce the incidence of drink driving.

The new offence applies to all drivers or riders of vehicles on a road or road related area to whom the current drink driving laws already apply. This includes riders of motorcycles and bicycles. The offence is a strict liability offence, which means that no criminal intent or fault element is required to be proven. The penalty for the offence is a maximum of 20 penalty units or, if dealt with by an infringement notice, a penalty of \$300.

To support effective enforcement of the offence, the amendments include a provision creating a presumption that a substance is alcohol if it is in a container that has a label or advertising material indicating that it contains alcohol. Where this presumption is relied upon in a prosecution, the defendant will bear an evidential burden to demonstrate that the substance in the container was not alcohol. This mirrors a similar presumption as to a substance in a labelled container being alcohol, for sections 199 and 200 of the *Liquor Act 2010* dealing with the offence of drinking in a public place.

Nature of the right affected

Strict liability offences can be seen as engaging or limiting the right to the presumption of innocence (section 22(1) of the HRA), as strict liability offences do not require the establishment of a “mental element” for the physical act constituting the offence. Defences available in relation to strict liability offences are also limited, noting that the defence of mistake of fact is open to a person charged with a strict liability offence.

The inclusion of a provision creating a presumption that a substance in a container, marked or labelled as containing alcohol, is alcohol and placing an evidential burden on the defendant who wishes to rebut the presumption, may also be seen as engaging the right in section 22(1) of the HRA.

Insofar as the amendments in the Bill make it an offence to drive while consuming alcohol, the question may arise as to whether this engages the right in section 13 of the HRA to freedom of movement.

When considering a similar provision in Victoria, the Victorian Attorney-General noted that the provision was compatible with the Victorian *Charter of Human Rights and Responsibilities Act 2006*, and did not engage or limit any of the rights under the charter act.¹ The Victorian Scrutiny of Acts and Regulations Committee made no comment on the Victorian bill².

The importance of the purpose of the limitation

The creation of this offence as a strict liability offence reflects the offence being regulatory in nature and of a type which is suitable for construction as a strict liability offence, being an offence of a type such that those affected by the offence could be expected to be aware of it. The creation of this offence as a strict liability offence is also consistent with a number of other offences in the Alcohol and Drugs Act being strict liability offences.

Insofar as the offence could be said to engage the right to freedom of movement (section 13 of the HRA), the purpose of the limitation on driving while drinking alcohol is improving road safety. This is a matter of high importance to the community, given the known risks of death and injury associated with drink driving.

The nature and extent of the limitation

Any limitation in relation to section 13 of the HRA (freedom of movement), applies to drivers who consume alcohol while driving.

¹ Victorian Hansard , Tuesday 6 December 2011, pp 6066-6067

² Victorian Scrutiny of Acts and Regulations Committee, Alert Digest No 1 of 2012, p 21

Any limitation in relation to section 22 of the HRA (rights in criminal matters) is not extensive. A strict liability offence under section 23 of the Criminal Code means that there are no fault elements for any of the physical elements of the offence. This means that conduct alone is sufficient to make the defendant culpable. However, under the Criminal Code, the defence of mistake of fact is available for strict liability offences. Section 23 (3) of the Criminal Code makes it clear that other defences may also be available in relation to strict liability offences.

The provision establishing a presumption that a substance in a container marked as containing alcohol, is alcohol, results in an accused bearing an evidential burden to displace the presumption. The accused can do this by presenting, or pointing to, evidence that suggests a reasonable possibility that the substance was not alcohol. If the accused achieves this, the prosecution must refute the evidence beyond all reasonable doubt for a court to convict. The evidential burden in this offence applies where a person has been detected drinking from a container and a label or other mark on the container describes the contents as alcohol or containing alcohol. It is appropriate that the accused bears this burden as the contents of a container so marked are peculiarly in the knowledge of the accused.

The relationship between the limitation and its purpose

In relation to any limitation of the right in section 22 of the HRA, the use of a strict liability offence and the inclusion of a presumption as to the substance in a marked container being alcohol, provides an appropriate offence framework for the effective implementation of the new offence, consistent with the use of strict liability for other offences in the Alcohol and Drugs Act.

In relation to any engagement of section 13 of the HRA, the amendment seeks to reduce the incidence of drink driving in the ACT, by prohibiting the drinking of alcohol while driving. This is consistent with ACT and interstate road safety messaging relating to separating drinking and driving. The amendment also aligns the ACT's legislation regarding consuming alcohol while driving with other jurisdictions such as NSW, Victoria and Queensland. From a road safety perspective, this is relevant as it is important to support consistent messaging and reduce potential confusion for motorists through consistent drink driving laws across jurisdictions.

Less restrictive means reasonably available to achieve the purpose

It is not considered that there are any less restrictive means available to achieve the purpose of the amendment.

To the extent that there is any limitation on rights this is reasonable and proportionate, noting the public interest benefits from reducing the incidence of drink driving.

Allowing for seizure of vehicles by surrender notice

ACT police officers may currently, under vehicle seizure provisions in section 10C (1) (a) of the *Road Transport (Safety and Traffic Management) Act 1999* (Safety and Traffic Management Act), seize and impound a motor vehicle if an officer believes, on reasonable grounds, that the vehicle is being or has been used by a person in committing any of certain specified offences, including for example, menacing driving, races, burnouts and attempts to beat speed records. The seizure and impounding of the vehicle is in addition to any other

penalty imposed for the offence. Similar schemes exist in all Australian jurisdictions and in New Zealand.

The Bill (clause 28) provides a power for an ACT police officer, who believes on reasonable grounds that a vehicle is being or has been used by a person in committing a relevant offence, to issue a surrender notice to the responsible person for the vehicle. The surrender notice obliges the responsible operator for the vehicle to surrender the vehicle for impounding at the place and by the date and time stated in the notice.

A responsible person who fails to comply with a notice commits an offence, unless the operator had a reasonable excuse for failing to comply. The offence is a strict liability offence with a maximum penalty of 20 penalty units. This offence and penalty is included to promote compliance with a surrender notice.

There is no change to the underlying vehicle seizure provisions, such as the list of offences for which a motor vehicle may be seized. The existing rights of appeal from a decision of a police officer to seize a motor vehicle will also apply to responsible persons for a motor vehicle who have been issued with a surrender notice. The option to seize the vehicle immediately using the existing vehicle seizure powers remains available to the police officer in lieu of issuing a surrender notice.

The amendments will support greater efficiency for police as they will not be required to arrange towing of a seized vehicle, nor remain with a vehicle until it has been towed away. The issuing of a surrender notice will continue to deliver the immediate sanction that the current seizure process provides, which is an important aspect of behaviour modification underpinning the current scheme. It would also allow the driver to remove personal items from the vehicle, which would in turn reduce the administrative burden on police associated with maintaining an inventory of items in seized vehicles.

Providing a police officer the power to issue a surrender notice will align the ACT with similar powers available to police officers in NSW, Victoria and Queensland.

Nature of the right affected

Section 13 of the HRA provides that everyone has the right to move freely within the ACT. Impoundment of a vehicle restricts the use of that vehicle for transport purposes and therefore may be said to engage the freedom of movement of at least its owner.

Section 12 of the HRA provides that everyone has the right not to have his or her privacy interfered with unlawfully or arbitrarily. It is arguable that the vehicle seizure and surrender scheme also engages this right.

The scheme may be seen to engage the right to property set out in article 17 of the Universal Declaration of Human Rights.

The scheme potentially also engages the rights in section 21 (rights to a fair trial) and section 22 (rights in criminal proceedings) of the HRA, in that the sanction of vehicle seizure or requirement to surrender may be applied before an offence is proven by a court of law.

When considering a number of amendments to strengthen Victoria's vehicle seizure scheme in 2011, the Victorian Minister for Planning noted that parts of that scheme engaged with, but did not limit, rights to privacy, property and freedom of movement. The Minister also noted

that while the scheme could be found to limit the right to a fair hearing and the right to a criminal trial, such limitations were reasonable and proportionate.³

The new offence of failing to comply with a surrender notice is a strict liability offence. Strict liability offences can be seen as engaging or limiting the right to the presumption of innocence (section 22(1) of the HRA), as they do not require the establishment of a “mental element” for the physical act constituting the offence.

The importance of the purpose of the limitation

Insofar as the vehicle seizure scheme could be said to engage the rights in sections 12, 13, 21 and 22 of the HRA, and the right to property, the purpose of any limitation is to improve road safety and to protect the public from unsafe drivers. This will further the ability of all residents of and visitors to the ACT to live and travel safely within the community. This is a vitally important objective.

Apart from mentally deterring individuals from engaging in the anti-social and potentially dangerous behaviours targeted by the scheme, impoundment of vehicles helps to physically prevent drivers from taking part in these acts. An additional benefit of the scheme may be to improve community enjoyment of local neighbourhoods, as a number of the behaviours subject to the scheme, such as burnouts, create unpleasant noises and smoke and are likely to disturb or distress other individuals residing in or visiting the vicinity of the behaviour.

To the extent that the creation of the offence of failing to comply with a surrender notice as a strict liability offence could be said to engage the right at section 22 of the HRA, it reflects the offence being regulatory in nature and of a type which is suitable for construction as a strict liability offence. The creation of this offence as a strict liability offence is also consistent with a number of other offences in the Safety and Traffic Management Act being strict liability offences.

The nature and extent of the limitation

Any limitations under section 21 and 22 of the HRA created by the vehicle seizure and surrender scheme are not extensive. These powers can be only exercised in very specific circumstances, where a police officer reasonably believes that a driver has engaged in particular and potentially very dangerous driving behaviours.

Any limitations to these rights arising from the newly created offence of failing to comply with a surrender notice are also minimal. These limitations apply only to the responsible owner of a vehicle. It is an offence for that person to fail to comply with the notice, punishable by a maximum of 20 penalty units. It is a defence if the responsible person has a reasonable excuse for failing to comply with the notice.

Insofar as the right to freedom of movement is limited by the scheme, such limitation is minimal. The owner of the vehicle and any other individuals affected by impoundment are still free to use other forms of transport such as walking, cycling and public transport. In addition, if the owner of the vehicle continues to hold a driver licence or permit, then that person is free to drive an alternate vehicle. In many cases however, the seizure or required surrender of a vehicle will not directly affect an offender's ability to drive because that person is already prohibited from driving. The person may be unlicensed (and disqualified from applying for a licence) or may have had his or her licence suspended.

³ Victorian Hansard, Thursday 16 June 2011, p 2076.

Any limitation under section 12 of the HRA that arises from the scheme is also not extensive. As noted above, the seizure and surrender powers can be exercised only in very specific circumstances, where certain serious road safety offences are reasonably suspected of having been committed. The amendment providing for a notice to surrender (as an alternative to immediate seizure) in fact supports the right to privacy, as it allows a responsible person for a vehicle to remove his or her personal items from the vehicle before surrendering it to police.

Any limitation in relation to the right to property is not extensive. A vehicle can be seized or required to be surrendered by a police officer only where that officer believes on reasonable grounds that the vehicle has been used in a relevant offence under the road transport legislation. Therefore, the power cannot be exercised in an arbitrary manner. Additionally, a number of safeguards exist to ensure that the seizure and surrender power is exercised appropriately. For example, a person who is entitled to possession of the vehicle may apply to the chief police officer for its release, on the grounds that the offence for which the vehicle was impounded was not committed by or with the consent of that person, and he or she could not have known that the vehicle would be used for the commission of the offence. A person entitled to possession of the vehicle may also apply to the Magistrates Court for an order of release of the vehicle, on the grounds that continued impoundment would cause excessive hardship or other injustice.

Additionally, while in possession of the police, the chief police officer has a legislative responsibility to take all reasonable steps to secure the vehicle against theft or damage. With regards to the amendment providing for a notice to surrender, it is considered that it supports the right to property, as it allows a responsible person for a vehicle to remove his or her personal items from the vehicle before surrendering it to police.

The relationship between the limitation and its purpose

In relation to any engagement of the rights under sections 21 and 22 of the HRA, and the rights to freedom of movement, privacy and property, both the vehicle seizure scheme and the amendment to allow for a surrender notice to be issued seek to reduce the incidence of anti-social and potentially dangerous driving behaviour.

In relation to any limitation of the right in section 22 of the HRA, the use of a strict liability offence for failing to comply with a surrender notice provides an appropriate offence framework for the effective implementation of the new offence to support the surrender notice provisions. It is also consistent with the use of strict liability for other offences in the Safety and Traffic Management Act and the road transport legislation, more generally.

Any less restrictive means reasonably available to achieve the purpose

It is considered that there are no less restrictive means reasonably available.

Allowing certificate evidence about whether an area is a road or road related area; and

The Bill (clause 11) inserts a new provision to allow certificate evidence to be given as to whether an area of land is a road or a road related area (that is an area open to or used by the public for driving, riding or parking of vehicles). Whether an area is a road or road related area is relevant to determine whether provisions of the road transport law apply in the area.

Nature of the right affected

The use of certificate evidence may engage the right in section 22 of the HRA – to the presumption of innocence – as certificate evidence is taken to be evidence of the matters stated in the certificate, in the absence of evidence to the contrary.

Importance of the purpose of the limitation

Certificate evidence is already widely used in the road transport legislation. Certificate evidence assists the efficiency of the criminal justice system by allowing what are generally non-controversial evidentiary matters to be presented in court without the need to personally call the individual or expert who provided the certificate evidence to appear in court.

In proceedings relating to the application of the road transport legislation, it must be demonstrated that the conduct in question occurred on a road or road related area. For a road related area that is not a road, it must be established that the area is open to or used by the public for driving, riding or parking vehicles. These are questions that must be decided on the facts of each case. In the vast majority of instances it is clear whether or not an area is a road, or whether a road or road related area is open to or used by the public. However, uncertainty has arisen where the conduct occurred in areas such as car parks on private land or on driveways in unit developments.

In those cases, in order to establish that an area was in fact a road or, for a road related area, was open to or used by the public, the owner or manager of the land must attend the court in person during the hearing and provide evidence that the area is open to or used by the public. This requirement imposes an unnecessary burden on property owners and managers to attend court, particularly where it is not in contention that the area in question was either a road, or for a road related area, was open to or used by the public.

Nature and extent of the limitation

The Bill amends the *Road Transport (General) Act 1999* (the General Act) to allow an owner of land, or their representative, to provide evidence via an evidentiary certificate as to whether an area of land is or is not a road, or whether an area of the land is, and is not, open to or used by the public for driving, riding or parking vehicles. A court must accept such a certificate as proof of the matters stated in it if there is no evidence to the contrary.

If a defendant wishes to challenge the evidentiary certificate the defendant will be able to call evidence and exercise the right to have provider of the evidentiary certificate called for cross examination.

Relationship between the limitation and its purpose

In relation to any limitation of the right in section 22 of the HRA, the use of certificate evidence supports the efficient operation of the criminal justice system. However, as the defendant remains able to contest and challenge the certificate evidence, while the right may be engaged, it is not limited.

Any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve

There is no less restrictive means available to achieve the purpose.

Climate Change Considerations

The climate change impacts of these amendments have been considered and no impacts have been identified.

CLAUSE NOTES

Part 1 Preliminary

Clause 1 Name of Act

This clause specifies the name of the Bill, once enacted, as the *Road Transport Legislation Amendment Act 2015*.

Clause 2 Commencement

This clause provides that the amendments made by the Act will commence on the day after its notification day.

Clause 3 Legislation amended

This clause names the legislation amended by this Bill. This Bill will amend the *Crimes Act 1900*, the *Road Transport (Alcohol and Drugs) Act 1977*, the *Road Transport (Driver Licensing) Regulation 2000*, the *Road Transport (General) Act 1999*, the *Road Transport (Offences) Regulation 2005*, the *Road Transport (Safety and Traffic Management) Act 1999*, the *Road Transport (Safety and Traffic Management) Regulation 2000* and the *Road Transport (Vehicle Registration) Regulation 2000*.

Part 2 Crimes Act 1900

Clause 4 Alternative verdicts for aggravated offences—offences against pregnant women Section 48B (1), table 48B, new items 5 and 6

This clause amends section 48B of the *Crimes Act 1900* which provides for alternative verdicts in relation to a range of offences against pregnant women. Clause 4 inserts two items into the table at section 48B to provide for alternative verdicts in relation to the offence of culpable driving. This will allow the trier of fact in a prosecution for the aggravated offences of culpable driving of a motor vehicle causing death or grievous bodily harm, where the trier of fact is not satisfied that the defendant committed the aggravated culpable driving offence, to find the defendant guilty of the alternative offence of culpable driving of a motor vehicle (simple offence) or negligent driving causing death or grievous bodily harm.

Clause 5 Alternative verdicts for certain other offences against the person Section 49, table 49, new items 12 and 13

Clause 5 amends section 49 *Crimes Act 1900* which provides for alternative verdicts in relation to a range of offences. Clause 5 inserts two items into the table at section 49 to provide for alternative verdicts in relation to the offence of culpable driving. This will allow the trier of fact in a prosecution for the simple offence of culpable driving of a motor vehicle causing death or grievous bodily harm to find the defendant guilty of the alternative offence of negligent driving causing death or grievous bodily harm.

Part 3 Road Transport (Alcohol and Drugs) Act 1977

**Clause 6 Offences against Act—application of Criminal Code etc
Section 4, note 1**

The amendment made by clause 6 is consequential on the amendment made by clause 7, inserting a new offence of driving while consuming alcohol. It amends note 1, section 4 of the Alcohol and Drugs Act to include a reference to the new offence (consuming alcohol — driver or driver trainer) inserted as new section 25 by clause 7. Note 1 provides that the Criminal Code, chapter 2 applies to the offences listed in the note.

Clause 7 New section 25

Clause 7 inserts a new section 25 into the Alcohol and Drugs Act. New section 25 (1) creates the new offence consuming alcohol while driving or riding a vehicle on a road or road related area. The maximum penalty for the offence is 20 penalty units. New section 25 (2) creates the new offence of a driver trainer consuming alcohol while in a motor vehicle being driven on a road or road related area.

New section 25 (3) provides that an offence against this section is a strict liability offence.

New subsection (4) provides that in a prosecution for the offence, a substance is presumed to be alcohol if the substance is in a container with a label or other mark on the container describing the contents as alcohol.

Section 25 (5) defines vehicle to include a bicycle or motor vehicle. This means that a rider of a bicycle commits the offence in subsection (1) if that person consumes alcohol whilst riding a bicycle on a road or road related area. This ensures consistency with the existing drink driving provisions in Alcohol and Drugs Act, which apply to riders of bicycles.

Part 4 Road Transport (Driver Licensing) Regulation 2000

**Clause 8 Other exemptions from requirement to hold driver licence
Section 99 (2), note**

This amendment is consequential on the amendment to the definition of bicycle made by clause 12. Section 99 of the *Road Transport (Driver Licensing) Regulation 2000* provides certain exemptions from the requirement to hold a driver licence, including for a rider of a bicycle. This clause amends the existing note, which reproduces the definition of bicycle, to reflect the amended definition.

Part 5 Road Transport (General) Act 1999

**Clause 9 Meaning of first offender and repeat offender—div 4.2 Section
61AA (5), definition of relevant offence, par (c)**

Clause 9 amends section 61AA(5)(c) of the General Act, which defines 'relevant offence' for the purpose of determining who is a repeat offender for the purpose of provisions about licence suspension and disqualification. The amendment is consequential to the amendments

made by clauses 16 and 17, which expand the previous ‘burnout’ offence to include a range of other improper uses of a motor vehicle.

**Clause 10 Automatic disqualification for certain other driving offences
Section 63 (1) (b)**

Clause 10 amends section 63(1)(b) of the General Act which sets out the offences to which automatic licence disqualification provisions apply. This amendment is also consequential to the amendments made by clauses 17, 18 and 19.

Clause 11 New section 72A

Clause 11 inserts a new section 72A to allow for the use of evidentiary certificates about the use of a road or road related area, in proceedings under the road transport legislation.

New section 72(1) allows an owner of land, or a representative of the owner (such as a body corporate manager) to provide evidence, through a certificate rather than in person, as to whether an area of the land is or is not a road, or whether an area of the land is, or is not, open to or used by the public for driving, riding or parking vehicles.

New section 72A (2) provides that a court must accept such a certificate as proof of the matters stated in it if there is no evidence to the contrary.

Clause 12 Dictionary, definition of bicycle, paragraph (c)

Clause 12 amends the definition of bicycle as it applies to the road transport legislation.

The definition as amended specifically excludes bicycles powered by an internal combustion engine, regardless of the power output of that engine. Currently, bicycles with a motor generating a power output of 200 watts or less (or 250 watts for a pedelec-type electric bicycle) are considered to be a bicycle and so are not required to be registered or for the rider to be licensed. As amended, the definition of bicycle will not include a vehicle that has an internal combustion engine.

In effect, this will prohibit the use of such vehicles on roads or road related areas, as such vehicles will be considered a motorcycle and would, therefore, need to be registered in order to be legally ridden in the ACT. However, as these vehicles would not meet a range of vehicles standards for registration, they will not be able to be registered and legally used on roads or road related areas.

Clause 13 Dictionary, definition of bicycle, new note

This clause inserts a new note 3 into the definition on bicycle. The note advises that the definition of bicycle differs from the definition of bicycle used in the Australian Road Rules, which does not exclude bicycles powered by an internal combustion engine.

Notwithstanding the definition that appears in the Australian Road Rules, the amended definition in this Act applies to all of the road transport legislation, including the Australian Road Rules as it is applied in the ACT. As the note explains, the Australian Road Rules are not completely self-contained and need to be read with associated laws of each jurisdiction.

Part 6 **Road Transport (Offences) Regulation 2005**

Clause 14 **Schedule 1, part 1.3, table, new items 18A and 18B**

Clause 14 amends part 1.3 of Schedule 1 of the *Road Transport (Offences) Regulation 2005*, which sets out offences and penalties for offences under the Alcohol and Drugs Act. This amendment is consequential on the establishment of new offences of consuming alcohol while driving or while a driver trainer, as inserted by clause 7. This clause adds short descriptions to the table in part 1.3 for these new offences. The short description of the offences can be used in an information summons or warrant notice, order or other document, to sufficiently state the offence. The schedule also sets out the offence penalty (20 penalty units) and the infringement penalty (\$300). No demerit points apply to either offence.

Part 7 **Road Transport (Safety and Traffic Management) Act 1999**

Clause 15 **New section 5AA**

Clause 15 amends the list of sections in the *Road Transport (Safety and Traffic Management) Act 1999* (the Safety and Traffic Management Act) that are subject to the Criminal Code to include section 5B (as amended by this Bill).

Clause 16 **Section 5B heading**

Clause 16 renames the heading of section 5B from ‘Burnouts and other prohibited conduct’ to ‘Improper use of motor vehicle’. This change reflects the amendments to section 5B made by clauses 17, 18, 19 and 20.

Clause 17 **Section 5B (1), definition of *burnout***

Clause 17 omits the current definition of burnout, to allow the replacement definition of ‘improper use of a motor vehicle’ to be inserted by clause 18.

Clause 18 **Section 5B (1), new definition of *improper use***

Clause 18 replaces the previous definition of burnout, with a definition of ‘improper use, of a motor vehicle’. The content of the definition has not been substantially altered, and continues to refer to operating the vehicle in a way that causes the vehicle to undergo sustained loss of traction by one or more of the vehicle’s wheels.

The amended definition focuses on the loss of traction rather than a specific type of driving behaviour. However, to provide context, the definition provides some non-exhaustive examples of improper use of a motor vehicle – burnouts, hand-brake turns, wheelies, drifting and j-turns.

Clause 19 **Section 5B (1), definition of *prohibited substance***

Clause 19 amends the definition of prohibited substance, and is consequential on the replacement of the term ‘burnout’ with ‘improper use’ made by clauses 17 and 18.

Clause 20 **Section 5B (2)**

Clause 20 amends the offence in section 5B (2) of the Safety and Traffic Management Act. The amendment reflects the change of terminology from ‘burnout’ to ‘improper use’, in relation to the use of a motor vehicle. This change reflects the change of focus in the offence from a specific type of driving behaviour to a loss of traction more generally, irrespective of the term commonly used to describe that anti-social and potentially dangerous driving behaviour. The offence has also been reworded to comply with the Criminal Code.

The nature of the offence itself has not been changed. A person still commits an offence if the person operates the vehicle in a way that causes the vehicle to undergo sustained loss of traction by one or more driving wheels. The maximum penalty – 30 penalty units if a prohibited substance has been placed on the surface of the road or road related area under, or near, a tyre of the vehicle, or 20 penalty units in any other case – remains unchanged by this amendment.

Clause 21 **Section 5B (4)**

Clause 21 amends section 5B (4) relating to engaging in other prohibited conduct, to reflect drafting practice which meets the requirements of the Criminal Code.

Clause 22 **Meaning of *first offender* and *repeat offender*—div 2.3**
Section 10AA (5), definition of *impounding offence*, par (b)

Clause 22 amends section 10AA (5) of the Safety and Traffic Management Act, which sets out what is an impounding offence for division 2.3. This amendment is consequential to the amendments made by clauses 17, 18 and 19 which expand the previous ‘burnout’ offence to include a range of other improper uses of a motor vehicle.

Clause 23 **Impounding of vehicles used for menacing driving on court order before conviction etc**
Section 10A (7)

Clause 23 amends section 10A(7) of the Safety and Traffic Management Act which discounts the impoundment period for a vehicle that a court can impose by the period the vehicle was impounded under police seizure powers. The amendment is consequential on the creation of new section 10AB (Powers of police officers to issue surrender notices for motor vehicles) by clause 28. The amendment adds a reference to the new section 10A(7), to the effect that any period for which a motor vehicle was impounded under existing section 10C and new 10AB counts toward any period of impoundment of a motor vehicle ordered by a court under section 10A.

Clause 24 **Section 10A (8)**

Clause 24 is consequential on the creation of new section 10AB (Powers of police officers to issue surrender notices for motor vehicles) by clause 28. The amendment adds a reference to the new section into 10A (8), to the effect that if a court makes an impoundment order under 10A and the motor vehicle has not already been impounded under existing 10C and new 10AB, that the court may order the responsible person for the vehicle to surrender the motor vehicle to the chief police officer within a stated time and in a stated way.

**Clause 25 Impounding or forfeiture of vehicles on conviction etc for certain offences
Section 10B (1)**

Clause 25 makes a consequential amendment to section 10B (1), dealing with impounding or forfeiture of vehicles on conviction, reflecting the amendments made by clauses 17, 18 and 19 which expand the previous ‘burnout’ offence to include a range of other improper uses of a motor vehicle.

Clause 26 Section 10B (5)

Clause 26 amends section 10B (5) of the Safety and Traffic Management Act which discounts the impoundment period for a vehicle that a court can impose. The discount is the period the vehicle was impounded under other provisions of the Act including those providing police seizure powers. The amendment is consequential on the creation of new section 10AB (Powers of police officers to issue surrender notices for motor vehicles) by clause 28. The amendment adds a reference to the new section into 10B (5), to the effect that any period for which a motor vehicle was impounded under existing sections 10A and 10C, and new 10AB, counts toward any period of impoundment of a motor vehicle ordered by a court under section 10B.

Clause 27 Section 10B (6) (c)

Clause 27 amends section 10B (6) (c) of the Safety and Traffic Management Act dealing with impounding or forfeiture of vehicles on conviction for certain offences. The amendment is consequential on the creation of new section 10AB (Powers of police officers to issue surrender notices for motor vehicles) by clause 28. The amendment adds a reference to the new section into 10B (6) (c), which provides if a court makes an impoundment order under 10B and the motor vehicle has not already been impounded under existing 10C and new 10AB, that the court may order the responsible person for the vehicle to surrender the motor vehicle to the chief police officer within a stated time and in a stated way.

Clause 28 New section 10BA

This clause inserts a new section 10BA. This section creates the power for a police officer to issue a surrender notice requiring the responsible person for a vehicle to surrender the vehicle for impounding at the place and by the date stated in the notice. The power to issue a surrender notice is in addition to the existing power to seize and impound a motor vehicle under section 10C. The circumstances when a surrender notice may be issued mirror the circumstances in which the existing power to seize and impound a motor vehicle in 10C may be exercised. There is no expansion of the circumstances as to when a vehicle may be impounded made by this Bill – it merely establishes an alternative method of impoundment.

New section 10BA (1) specifies when a surrender notice may be issued – when a police officer believes, on reasonable grounds, that the vehicle is being or has been used by a person in committing an offence against section 5A or section 5B. New section 10BA (3) provides that the police officer may only give a person a surrender notice within 10 days after the commission of the offence mentioned in subsection 10BA (1).

New section 10BA (4) specifies what must be stated on a surrender notice. Subsection (4) (c) provides that the surrender notice must specify a reasonable date and time by which the motor vehicle must be surrendered. The surrender notice must also state that it is an offence to fail to comply with a surrender notice, and that a police officer may seize the vehicle under section 10C if the person fails to comply with the notice.

It is an offence under new section 10BA (5) for the responsible person for a motor vehicle to fail to comply with a surrender notice, with a maximum penalty of 20 penalty units. New section 10BA (7) provides that the offence does not apply if the person has a reasonable excuse for failing to comply with the notice. The person bears an evidential burden to establish a reasonable excuse.

New section 10BA (8) provides that where a person fails to comply with a surrender notice, a police officer may seize the vehicle under section 10C.

Clause 29 **Powers of police officers to seize and impound vehicles used in committing certain offences**
Section 10C (1) (a)

Clause 29 amends section 10C (1) (a) of the Safety and Traffic Management Act dealing with powers of police officers to seize and impound vehicles used in committing certain offences. This amendment is consequential to the amendments made by clauses 17, 18 and 19 which expand the previous ‘burnout’ offence to include a range of other improper uses of a motor vehicle.

Clause 30 **Section 10C (2)**

Clause 30 substitutes a new section 10C (2). Currently, section 10C (2) provides that a police officer may only seize a motor vehicle under section 10C (1) (a) within 10 days after the commission of the offence. The substituted section 10C (2) includes a reference to a surrender notice issued under 10BA, so that a police officer may only seize a motor vehicle within 10 days after the later of the commission of the offence, or if a surrender notice has been issued – the date and time by which the motor vehicle was to be surrendered under the notice.

This ensures that a responsible person for a motor vehicle cannot avoid having their motor vehicle seized should they fail to comply with a surrender notice and 10 days has expired since the commission of the offence. This clause provides that a police officer may, in those circumstances, seize a motor vehicle within 10 days of the date and time by which the motor vehicle was required to be surrendered under a surrender notice.

Clause 31 **Registered operator and interested people to be notified**
Section 10D (2)

Clause 31 amends section 10D (2) of the Safety and Traffic Management Act which imposes obligations on police to notify the registered operator of a vehicle and other people with an interest in a vehicle where a vehicle is seized or a prosecution is commenced that could result in the forfeiture of the vehicle. This amendment is consequential to the amendments made by clauses 17, 18 and 19 which expand the previous ‘burnout’ offence to include a range of other improper uses of a motor vehicle.

Clause 32 Section 10E heading

Clause 32 amends the heading for section 10E. The change to the heading is consequential on the creation of new section 10BA, and reflects the changes made to section 10E by clauses 33 to 35.

Clause 33 Section 10E (1A)

Clause 33 amends section 10E dealing with requirements for the keeping of seized vehicles by police. This clause inserts new section 10E(1A) consequential on the creation of new section 10BA. It adds a reference to the new section 10BA, so that the provisions of 10E also apply to vehicles surrendered under section 10BA.

Clause 34 Section 10E (3)

Clause 34 amends section 10E (3), consequentially on the change to the headings of sections 10G and 10H made by clauses 36 and 38 of this Bill. Those changes are in turn consequential on the creation of new section 10BA.

Clause 35 Section 10E (5), definition of *relevant offence*, par (b)

Clause 35 amends section 10E (5) which sets out relevant offences for section 10E. It is consequential on the amendments to section 5B made by clauses 17, 18 and 19 which expand the previous ‘burnout’ offence to include a range of other improper uses of a motor vehicle.

Clause 36 Section 10G heading

This clause amends the heading for section 10G, consequential on the creation of new section 10BA, and reflects the changes made to section 10G by clause 37.

Clause 37 Section 10G (1)

Clause 37 amends section 10G which provides for the release by the chief police officer of vehicles seized under existing section 10C (1) (a). This amendment is consequential on the creation of new section 10BA and amends section 10G to add a reference to the new section 10BA, so that the provisions of 10G also apply to vehicles surrendered under section 10BA.

Clause 38 Section 10H heading

This clause amends the heading for section 10H consequential on the creation of new section 10BA, and reflects the changes made to section 10H by clause 39.

Clause 39 Section 10H (1)

Clause 39 amends section 10H which provides that an application may be made to the Magistrates Court for the release of a motor vehicle seized under existing section 10C (1) (a). This clause is consequential on the creation of new section 10BA and amends section 10H to add a reference to the new section 10BA, so that the provisions of 10H also apply to vehicles surrendered under section 10BA.

Clause 40 **Failure to prosecute**
Section 10J

Clause 40 amends section 10J which provides that a proceeding does not lie against the Territory, chief police officer or a police officer in relation to a seizure of a motor vehicle under section 10C (1) (a) or (b) only because a prosecution is not started for the offence. This clause is consequential on the creation of new section 10BA and amends section 10J to include a reference to the new section 10BA, so that the protection in 10J also applies for impoundments made under section 10BA.

Part 8 **Road Transport (Safety and Traffic Management) Regulation**
1999

Clause 41 **General**
Division 2.2.1 heading, note 3, new item 11

Clause 41 is consequential on the amendment to the definition of bicycle made by clause 12.

Part 2.2 of the *Road Transport (Safety and Traffic Management) Regulation 1999* lists how specified provisions of the Australian Road Rules are applied in the Australian Capital Territory. The Australian Road Rules are not completely self-contained and the application of those rules may be varied by each jurisdiction. The table in note 3 sets out how certain provisions of the Australian Road Rules are applied in the Australian Capital Territory by laws other than the *Road Transport (Safety and Traffic Management) Regulation 1999*.

This clause adds a reference to the definition of bicycle in the *Road Transport (General) Act 1999* into the table at note 3. This refers users of the legislation seeking the definition of bicycle to that Act. The amendment is needed because the definition of bicycle applying in the Australian Capital Territory now differs from the definition in the Australian Road Rules, in that the definition in the Australian Road Rules does not exclude bicycles powered by an internal combustion engine.

Clause 42 **Exemption for driver of police vehicle—training and assessment**
Section 69A (3), new definition of *police officer*

Section 69A of the *Road Transport (Safety and Traffic Management) Regulation 1999* provides an exemption from various road transport legislation provisions for the driver of a police vehicle doing police driver training or police driver assessment. This section allows a police officer undergoing official Australian Federal Police training or driving assessment to legally undertake real world police driving practices, which may otherwise involve a breach of a provision of the road transport legislation.

Clause 42 amends section 69A to insert a definition of police officer, which includes a person who is training to become a police officer. This amendment will allow police recruits to receive the necessary driver training to allow them to meet the operational requirements for sworn police officers.

Part 9 **Road Transport (Vehicle Registration) Regulation 2000**

Clause 43 **Section 20 heading**

Clause 43 amends section 20 of the *Road Transport (Vehicle Registration) Regulation 2000*, which provides that the registration provisions do not apply to a registrable vehicle that is a bicycle. This ensures that bicycles with auxiliary motors, which otherwise fall within the definition of a motor vehicle and so would be required to be registered, are not required to be registered.

This clause is consequential to the amendment to the definition of bicycle to exclude bicycles powered by an internal combustion engine. This clause amends the heading of the section to remove the reference to ‘auxiliary motor’ and replace it with a reference to an ‘electric motor’. This reflects that only bicycles with electric motors can fall within the definition of bicycle (provided that the bicycle meets the restrictions on power output within the definition).

Clause 44 **Section 20, note**

Clause 44 substitutes the note in section 20. The note reproduces the definition of bicycle, which has been amended by clause 12 to exclude bicycles with an internal combustion engine.