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

ROAD TRANSPORT LEGISLATION AMENDMENT BILL 2016

REVISED EXPLANATORY STATEMENT

**Presented by
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ROAD TRANSPORT LEGISLATION AMENDMENT BILL 2016

Introduction

This explanatory statement relates to the Road Transport Legislation Amendment Bill 2016 (the Bill) as presented to the Legislative Assembly. It has been prepared in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.

The Statement must to be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

Overview of the Bill

The Bill amends the road transport legislation to complement ACT Government and ACT Policing efforts to reduce the number of police pursuits on ACT roads. The amendments enhance the ability of police to prevent, apprehend and prosecute drivers or riders who flee from police without the need to undertake a police pursuit.

Police pursuits are inherently dangerous and have the potential to cause death and injury on ACT roads. Pursuits often involve high speeds and hazardous driving, which poses significant safety risks to the drivers and passengers of a fleeing vehicle, the police involved and innocent bystanders. Between 2000 and 2011, 185 fatal police pursuit-related vehicle crashes occurred in Australia, resulting in over 200 fatalities. Innocent bystanders accounted for over a third of those killed. There have been six fatal collisions, resulting in nine deaths, emanating from crashes relating to fleeing drivers in the ACT since 2004.

In November 2011, the ACT Government adopted the “Vision Zero” philosophy as part of the ACT Road Safety Strategy 2011–2020. Vision Zero means the ACT is striving for zero deaths and zero serious injuries on ACT roads and, consistent with this, road safety and other related policies must prioritise human life and health. The Vision Zero philosophy recognises that road trauma is not inevitable and that most road deaths are preventable.

High speed police pursuits impact significantly on the ACT’s ability to achieve Vision Zero. Police pursuits introduce a high risk to the ‘safe system’ in which a highly skilled police officer is pursuing another driver who is generally not skilled or trained to drive at high speed around other traffic, vulnerable road users, pedestrians and other hazards. The ‘safe system’ approach means that efforts must be made to reduce or eliminate risk across the four pillars of roads, vehicles, speeds and people.

To support the ACT in implementing the Vision Zero philosophy, the ACT Government and ACT Policing have agreed that a limited pursuit policy be implemented in the ACT. This will mean that police will no longer pursue drivers unless it is necessary to prevent serious harm or the death of another person. ACT Policing will implement this change through an internal guideline, reflecting that this is an operational policy that is the responsibility of ACT Policing.

To support ACT Policing in being able to apprehend offenders through an enhanced investigatory approach that avoids the need for physical pursuits, this Bill includes a number of amendments to the ACT's road transport legislation.

The Bill establishes a new offence of failing to stop for police in section 5C of the *Road Transport (Safety & Traffic Management) Act 1999*. The new offence provides that a driver of a motor vehicle commits an offence if the driver fails to stop the motor vehicle as soon as practicable after being given a request or signal by a police officer to do so. The statutory defences in the *Criminal Code 2002*, such as duress or sudden emergency, are available to a person charged with the offence.

The maximum penalty for the offence for a first offender is 100 penalty units, 12 months imprisonment or both. For a repeat offender, the penalty is increased to 300 penalty units, three years imprisonment or both.

The new offence replaces the existing offence in section 109 of the *Road Transport (Safety & Traffic Management) Regulation 2000* of failing to comply with a request or signal made by a police officer to stop the vehicle. The maximum penalty for that offence is 20 penalty units. As the penalty for the new offence is significantly higher and includes a period of imprisonment, it is appropriate that the new offence be located within primary legislation (an Act) rather than subordinate legislation. The offence provision has, consequently, been placed within the *Road Transport (Safety and Traffic Management) Act 1999*.

The Bill also amends the maximum penalty for the existing aggravated offence of furious, reckless or dangerous driving in section 7 of the *Road Transport (Safety and Traffic Management) Act 1999*. The maximum penalty is increased from two years imprisonment and/or 200 penalty units to a maximum penalty of three years imprisonment and/or 300 penalty units, where the aggravating factor was that the person failed to comply with a request or signal from police to stop the vehicle. For a repeat offender, the new penalty is five years imprisonment and/or 500 penalty units. There is no change to the existing penalty where other aggravating factors are present.

The existing licence suspension and disqualification provisions in the road transport legislation are applied to the new offence. A police officer who believes on reasonable grounds that a person has committed the offence must give the person an immediate suspension notice. This notice suspends the person's right to drive for 90 days, until stayed by a Court or the case is determined, whichever is the earlier. The offence will be an automatic licence disqualification offence on conviction. This would see the licence of a person convicted of the offence automatically disqualified for at least three months (for a first offender) or at least 12 months (for a repeat offender).

Additionally, the existing vehicle seizure and impoundment provisions in the road transport legislation will apply to the new offence. Once a police officer believes on reasonable grounds that a particular vehicle was used in the alleged offence of failing to stop for police, the police officer will be able to seize the motor vehicle or alternatively issue a surrender notice for the vehicle. A vehicle seized may be kept for three months or until the court considers the matter, whichever occurs first.

The Bill gives a police officer the power to enter private property without the permission of the owner or occupier for the sole purpose of seizing a vehicle under the vehicle seizure provisions. This power would only be able to be exercised where the police officer has a reasonable belief the motor vehicle is located on the property. The police officer would be required to enter the property only for as long as necessary to seize the vehicle or, alternatively, to determine the vehicle is not present. The power of entry would generally only extend to property and not premises located on that property, with the exception of a garage or shed where the police officer has a reasonable belief the motor vehicle is located within that building. The existing requirement the motor vehicle be seized within 10 days of the date of the alleged offence would be retained.

Upon conviction, the motor vehicle used by a person in committing the offence would be automatically impounded for three months (for a first offender) or forfeited (for a repeat offender). The Court could, by order, specify a shorter period of impounding, dispense with the period of impounding or commute a forfeiture to a period of impounding to avoid excessive hardship or other injustice to anyone.

The Bill also increases the penalty for the offence in section 60 of the *Road Transport (General) Act 1999* of failing to provide information to a police officer about the driver of the vehicle, when that request relates to the investigation of an offence against new section 5C of the *Road Transport (Safety and Traffic Management) Act 1999* of failing to stop motor vehicle for police. The maximum penalty in those circumstances will be increased to match the maximum penalty applying to the new offence of failing to stop for a police officer – 100 penalty units, 12 months imprisonment or both, or, for a repeat offender, 300 penalty units, three years imprisonment or both. The change to section 60 will only apply to the offence of failing to stop for police – the penalty for failing to provide information about the driver in relation to other offences will remain unchanged.

The existing defence available in a prosecution for an offence against that section where the defendant may establish the defendant did not know and could not with reasonable diligence have found out the driver's name and home address will continue to apply.

In addition, the offence, when committed in the context of an investigation into a vehicle failing to stop for police, will trigger the licence suspension and disqualification provisions in the road transport legislation. A police officer who reasonably believes that a person has committed the offence will be required to issue the person with an immediate licence suspension notice. This notice suspends the person's right to drive for 90 days, until stayed by a Court or the case is determined, whichever is the earlier. Upon conviction, the person's licence will be automatically disqualified for at least three months (for a first offender) or at least 12 months (for a repeat offender). The vehicle seizure provisions will also apply.

Human rights implications

Section 28 of the *Human Rights Act 2004* (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.

Failing to stop for police

Clause 22 of the Bill inserts new section 5C of the *Road Transport (Safety & Traffic Management) Act 1999* to create the offence of failing to stop for police. The new offence provides that a driver of a motor vehicle commits an offence if the driver fails to stop the motor vehicle as soon as practicable after being given a request or signal by a police officer to do so.

Nature of the right affected

The amendment could be seen to engage section 13 of the HRA, which provides that everyone has the right to move freely within the ACT and to enter and leave it, and the freedom to choose his or her residence in the ACT. The right to freedom of movement needs to be balanced against other rights and can be limited, provided it can be demonstrated that the limitation is necessary, reasonable and proportionate.

The importance of the purpose of the limitation

To the extent that the right to freedom of movement may be engaged, the purpose of the limitation is to improve road safety and increase ACT Policing's ability to protect the lives of road users in the Territory by reducing the incidence of police pursuits on Territory roads. In particular, the amendment ensures that drivers of vehicles who choose to attempt to evade police, through failing to stop are not able to avoid appropriate sanction. Providing effective enforcement powers to police which support a limited pursuits policy will improve the safety of ACT road users – reducing the risk of fatal or serious injury crashes associated with police pursuits.

The nature and extent of the limitation

Any limitation in relation to the right under section 13 is not extensive, as the new offence of failing to stop for police applies only in circumstances where a driver fails to comply with a police officer's request or signal to stop the motor vehicle as soon as practicable. This allows for the driver to ensure that both they and any passengers they may have with them, as well as other road users are not at risk while the driver is stopping the vehicle.

To allow for extraordinary circumstances where a person may not be able to comply, the statutory defences in the *Criminal Code 2002*, such as duress or sudden emergency, are available to a person charged with the offence.

The relationship between the limitation and its purpose

There is a rational connection between the proposed amendment and the problem that it aims to address. Introducing the offence of fail to stop when requested to do so by a police officer works as an incentive for drivers to not engage in high risk driving behaviour which places the community at risk. It also ensures that if they do so drivers do not avoid a sanction reflecting the seriousness of the offence.

Any 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 reducing the incidence of pursuits associated with drivers who choose to evade police. It is essential for this purpose that the power for police to require a driver to stop a vehicle, for law enforcement and traffic management purposes, is enforceable and that the failure of a driver to comply with the requirement is subject to an appropriate sanction.

Power to enter a place without consent of the owner or occupier

Clause 28 of the Bill creates a new power of entry for police officers to seize vehicles reasonably believed to have been used to commit an offence against section 5C (Failing to stop motor vehicle for police) of the *Road Transport (Safety & Traffic Management) Act 1999*.

Currently a police officer may only seize a vehicle used in committing certain offences from a road or road related area or any other public place, or any other place with the consent of the owner or occupier of the place or under the authority of a court order.

This Bill gives a police officer the power to seize the vehicle from any place, including without the consent of the owner or occupier of the property. This power is restricted to vehicles reasonably believed to have been used to commit an offence against section 5C (Failing to stop motor vehicle for police) of the *Road Transport (Safety & Traffic Management) Act 1999*, and does not extend to other existing offences for which motor vehicles may currently be seized by a police officer.

Nature of the right affected

The amendment will engage section 12 of the HRA, which provides that everyone has the right not to have his or her privacy interfered with unlawfully or arbitrarily. The right to privacy needs to be balanced against other rights and can be limited, provided it can be demonstrated that the limitation is necessary, reasonable and proportionate.

By extending the existing vehicle seizure and impoundment scheme to the new offence of failing to stop motor vehicle for police, it is arguable that sections 13 (Freedom of movement), 21 (Rights to a fair trial) and 22 (Rights in criminal proceedings) of the HRA may also be engaged. While the HRA does not explicitly recognise property rights, it is also arguable that the right to property in article 17 of the Universal Declaration of Human Rights may also be engaged.

The importance of the purpose of the limitation

The purpose of the limitation is to improve road safety and increase ACT Policing's ability to protect the lives of road users in the Territory by reducing the incidence of police pursuits on Territory roads. In particular, the amendment ensures that drivers and registered operators of vehicles who choose to attempt to evade police, including through undertaking dangerous driving behaviour, are not able to avoid appropriate sanction by refusing to allow police officers onto private property to seize the motor vehicle using the existing motor vehicle seizure provisions in the road transport legislation. Providing effective investigative powers

and sanctions to police which support a limited pursuits policy will improve the safety of ACT road users – reducing the risk of fatal or serious injury crashes associated with police pursuits.

The nature and extent of the limitation

Any limitation in relation to the right under section 12 is not extensive, as the power of entry can be only exercised in very specific circumstances, that is, where:

- a police officer believes, on reasonable grounds, that the vehicle has been used by a person in committing an offences against section 5C of the *Road Transport (Safety & Traffic Management) Act 1999* (Failing to stop motor vehicle for police); and
- the police officer believes on reasonable grounds that the motor vehicle is located on the place.

This means that police cannot enter premises on an ad hoc basis, but must be satisfied that both of the above preconditions exist.

A police officer may also not enter any building on the place, other than a garage, shed or other structure where the police officer believes on reasonable grounds that the motor vehicle is located. In addition, the police officer may not remain at the place for longer than is necessary to seize the vehicle or determine that the vehicle is not at the property

Furthermore, the existing restriction in the vehicle seizure provisions that a motor vehicle may only be seized within 10 days after the later of the commission of the offence, or the date and time by which the motor vehicle was to be surrendered under a surrender notice issued to the responsible person for the vehicle will also apply.

Any limitations under section 21 and 22 of the HRA are not extensive. These powers can only be exercised in very specific circumstances, where a police officer reasonably believes that a driver has engaged in particular behaviour.

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 to commit a particular 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.

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.

The relationship between the limitation and its purpose

There is a rational connection between the proposed amendments and the issue that they aim to combat. That is, drivers who fail to stop their motor vehicle when requested to do so by a police officer should not be able to avoid the sanction of having their vehicle seized simply by locating the vehicle on private property owned or occupied by persons who refuse to allow police access. The amendments, while engaging the right to privacy of a very limited number of individuals, will enhance ACT Policing's abilities to protect all road users, by ensuring that individuals who engage in this behaviour are appropriately sanctioned and prevented from continuing to engage in this behaviour, without the need for dangerous pursuits of these vehicles. Any limitation of rights under the HRA is reasonable and proportionate, noting the public interest benefits that arise from improving road safety in this manner.

Any less restrictive means reasonably available to achieve the purpose

It is considered that there are no less restrictive means reasonably available to achieve the purpose, particularly noting the safeguards associated with the restrictions on when the power of entry may be exercised by a police officer. It is essential that drivers are not permitted to frustrate an important component of the package of sanctions and deterrents designed to reduce the incidence of death and serious injury arising from drivers seeking to evade police by hiding their vehicle on private property, thereby preventing the vehicle from being seized.

Failing to provide information to a police officer about the driver of the vehicle

The Bill increases the penalty for the offence in section 60 of the *Road Transport (General) Act 1999* of failing to provide information to a police officer about the driver of the vehicle, when that request relates to the investigation of an offence against new section 5C of the *Road Transport (Safety and Traffic Management) Act 1999* of failing to stop motor vehicle for police. The maximum penalty in those circumstances will be increased to match the maximum penalty applying to the new offence of failing to stop for a police officer – 100 penalty units, 12 months imprisonment or both, or, for a repeat offender, 300 penalty units, three years imprisonment or both. The change to section 60 will only apply to the offence of failing to stop for police – the penalty for failing to provide information about the driver in relation to other offences will remain unchanged.

Nature of the right affected

Section 22 of the HRA provides that everyone charged with a criminal offence is entitled to not be compelled to testify against himself or herself or to confess guilt, commonly considered to be a right against self-incrimination. It could be considered that this amendment engages the rights in criminal proceedings, notwithstanding that this Bill does not alter the obligation itself, merely the maximum penalty that could be applied where the requirement to provide information relates to the new failing to stop offence.

This right is not absolute and its application can be limited by laws that can be demonstrably justified.

The importance of the purpose of the limitation

The limitation seeks to reduce the incidence of drivers who undertake the potentially extremely dangerous practice of failing to stop their motor vehicle for police. The importance of the limitation is shown by the fact that there have been six fatal collisions, resulting in nine deaths, emanating from crashes relating to fleeing drivers in the ACT since 2004.

The limitation would seek to prevent drivers failing to stop for police and then later refusing to comply with their existing obligation under section 60 to provide information about the driver at the time of the offence. The increase in penalty for failing to stop for police means that – unless the penalty for the section 60 offence is also increased – drivers would be unreasonably advantaged by refusing to comply with their section 60 obligation to provide information when requested by a police officer unless the penalty was increased as proposed.

It also ensures that registered operators are required to provide assistance to identify who is responsible for the use of their vehicle to commit an offence and face appropriate consequences if they fail to provide this assistance to police. Registered operators of vehicles who knowingly choose not to disclose who was driving the vehicle at the time the offence of failing to stop for police are in effect sanctioning this behaviour, and it is proper that they face appropriate consequences for this behaviour. The responsible person (the person who actually owns or operates the vehicle) is in the best position to provide evidence about the persons who had access to the vehicle at the relevant time, and about the person's own movements in relation to that vehicle.

The nature and extent of the limitation

This amendment does not impose any additional obligations on drivers or registered operators. Thus to an extent any limitation is necessarily limited.

The amendment does not alter the existing defence available to a person charged with a section 60 offence to establish that the defendant did not know and could not with reasonable diligence have found out the driver's name and address.

The amendments provide that a responsible person for a vehicle must, when requested, give information about the name and home address of the driver at the time of an alleged offence of failing to stop for police. A person who fails to give this information, or fails to establish that they did not know this information, commits an offence, punishable by a maximum penalty of 100 penalty units, 12 months imprisonment or both, or, for a repeat offender, 300 penalty units, three years imprisonment or both.

It could be further argued that any limitation is minimal as an alternative to being prosecuted for the offence in section 60 is to identify who was the driver at the time of the alleged offence. This identification of the driver (whether they were the registered owner or some other person) is not of itself determinative that any offence, including the offence of failing to stop, was committed. The identity of the driver is only one element in the particular offence.

This issue has been considered by European courts. In *O'Halloran and Francis v United Kingdom* (2008) 46 EHRR 21 the Grand Chamber of the European Court of Human Rights considered the UK equivalent to section 60, and whether it violated the right against self-incrimination. The Court found that the offence did not violate the right against self-incrimination. In doing so, the Court held that account should be taken of the fact that any compulsion is part of a regulatory scheme that fairly imposes obligations on vehicle owners and drivers in order to promote safety on the roads. The Court also noted that the information required to be provided is the simple, specific and restricted fact of who was driving a vehicle at a certain time, rather than a general account of movements or answers to wide ranging questions. Any compulsion was further limited by the fact that the requirement to provide information only applied where the driver of a motor vehicle was alleged to have committed a relevant offence. Finally, the court also took account of the safeguard, in the form of a defence of due diligence, which allows a conscientious owner to avoid criminal liability. For these reasons the Court found an offence such as the offence in section 60 was a reasonable limitation on the right to freedom from self-incrimination. These factors are all equally applicable to the current proposal.

Some commentators have considered that the 2010 decision of *Krumholz v Austria* [2010] ECHR 341 overturned the decision in *O'Halloran* as in that case the court found that there had been a violation of the accused's human rights arising out of a traffic fine imposed after the accused's vehicle was detected speeding by a speeding camera. However, the decision on that case can be distinguished from *O'Halloran* as in that in this case the accused was not convicted of failing to give information about who was driving the vehicle, but rather the offence of speeding. The Austrian traffic legislation did not contain any presumption deeming the registered operator as the driver at the time the offence was committed, nor does it make the registered operator liable for offences committed with the vehicle. The Court in this decision found that the Austrian's government decision to charge and convict the accused with speeding on the basis of his failure to respond to a request for information about the driver violated his right to be protected from self-incrimination. This is not the situation with this proposal, and a person who failed to comply with a request for information would not be charged with the offence of failing to stop, but rather the offence in section 60 itself.

The relationship between the limitation and its purpose

The amendment seeks to ensure that drivers are not encouraged to fail to stop for police, knowing that if they do fail to stop and evade police – resulting in the police not being able to verify their identity – the maximum penalty they will be subject is 20 penalty units (the current maximum penalty in section 60). The disparity between the maximum penalty applying to the new offence of failing to stop (three years imprisonment) and section 60 (20 penalty units) would provide an unacceptable inducement to drivers to fail to stop for police. This would expose other road users and the broader public to the real and significant risks that such driving behaviours pose.

Any less restrictive means reasonably available to achieve the purpose

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

An approach adopted in Queensland is to deem the registered operator of a motor vehicle used to commit an evasion offence, who does not identify who was driving the vehicle at the

alleged offence, to be the driver. It is open to the operator to prove, on the balance of possibilities, that they were not the driver at the time of the offence. This approach was considered and rejected on the basis that it would unacceptably limit the registered operator's human rights.

Another alternative is to maintain the status quo of not implementing a limited police pursuits policy. Noting the significant number of deaths and serious injuries in recent years caused by drivers seeking to evade police this is not considered an appropriate alternative.

The approach adopted by this Bill represents the most appropriate compromise between any limitation on an individual's human rights under the HRA and the human rights of other road users and members of the community to be protected from death or serious injury caused by drivers who seek to evade police.

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 2016*.

Clause 2 Commencement

This clause provides that 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 amends the *Road Transport (General) Act 1999*, the *Road Transport (Offences) Regulation 2005*, the *Road Transport (Safety & Traffic Management) Act 1999* and the *Road Transport (Safety & Traffic Management) Regulation 2000*.

Part 2 Road Transport (General) Act 1999

Clause 4 Police officer or authorised person may require people to disclose identity of driver Section 60 (1), penalty

This clause amends the penalty for people who commit an offence against section 60 of the *Road Transport (General) Act 1999* (the General Act). That section provides that the responsible person for a vehicle, or a person in possession of the vehicle, must, when requested to do so by a police officer or authorised person, give information to a police officer about the name and home address of the driver of a vehicle at the time the vehicle was alleged to have been used to commit an offence against the road transport legislation.

The Bill amends the maximum penalty for failing to give this information where the offence alleged to have been committed was an offence against section 5C of the *Road Transport (Safety & Traffic Management) Act 1999* (Failing to stop motor vehicle for police). The maximum penalty in that situation will be, for a first offender – 100 penalty units, imprisonment for 12 months or both, or for a repeat offender – 300 penalty units, imprisonment for 3 years or both. The maximum penalty in any other case is unchanged at 20 penalty units.

Clause 5 New section 60A

Clause 5 inserts a new section 60A, which defines *first offender* and *repeat offender* for the purposes of section 60 of the General Act. Whether a person is a first offender or a repeat offender is relevant for determining the maximum penalty that is imposed upon a person convicted of the offence in section 60 of failing to disclose identity of the driver. A person is treated as a repeat offender if they have previously been convicted or found guilty of a *failing to identify or stop offence*, or the person is convicted or found guilty of one or more failing to stop or identify offences concurrently with being convicted of the relevant offence. The

clause defines a failing to identify or stop offence as an offence against either section 5C of the *Road Transport (Safety and Traffic Management) Act 1999* (Failing to stop motor vehicle for police) or section 60 of the General Act, if the requirement is to give information about the driver of a motor vehicle who is alleged to have committed an offence the new failing to stop offence.

Clause 6 **Definitions—div 4.2**
Section 61A, definition of *automatic disqualification provision*, new paragraph (aa)

Clause 6 amends the definition of *automatic disqualification provision* by inserting a reference to the offence in section 60 of the General Act, if the failure to give information was in relation to the new offence of in section 5C of the *Road Transport (Safety and Traffic Management) Act 1999* (Failing to stop motor vehicle for police). The term *automatic disqualification provision* is used to determine who is not eligible to apply for a restricted licence while subject to a period of automatic driver licence disqualification. A person convicted of the offence under section 60 (1) of the General Act, where the failure to give information was in relation to the new offence in section 5C of the *Road Transport (Safety and Traffic Management) Act 1999*, will face restrictions on when they can be issued with a restricted driver licence under sections 67 and 67A of the General Act.

Clauses 7 to 10 **Immediate suspension provisions**

Clauses 7 to 10 make amendments to the definition of *immediate suspension offence*, to include the new offence in section 5C of the *Road Transport (Safety and Traffic Management) Act 1999* (Failing to stop motor vehicle for police) and the offence in section 60 of the General Act, if the failure to give information was in relation to that failing to stop offence.

Clause 7 **Section 61A, definition of *immediate suspension offence***

This clause is a technical amendment, consequent on the amendment to the definition of immediate suspension offence made by clauses 8 and 10.

Clause 8 **Section 61A, definition of *immediate suspension offence*, new paragraph (aa)**

This clause amends the definition of immediate suspension offence to include a reference to the offence in section 60 of the General Act, if the failure to give information was in relation to the new offence in section 5C of the *Road Transport (Safety and Traffic Management) Act 1999* (Failing to stop motor vehicle for police).

Under section 61B of the General Act, if a police officer believes on reasonable grounds that a person has committed an immediate suspension offence, the police officer must give the person an immediate suspension notice for the offence. An immediate suspension notice suspends a person's right to drive until the earlier of: a court ordering a stay of the notice; the proceedings for which the immediate suspension notice is issued are withdrawn or discontinued; the person being convicted or found not guilty; or 90 days having elapsed since the notice was served on the person. It is an offence under section 61C of the General Act for a person to drive while a suspension notice is in effect.

Clause 9 **Section 61A, definition of *immediate suspension offence*, paragraphs (a) to (e)**

This clause is a technical amendment, consequent on the amendment to the definition of immediate suspension notice made by clauses 8 and 10.

Clause 10 **Section 61A, definition of *immediate suspension offence*, new paragraph (g)**

This clause amends the definition of immediate suspension offence to include a reference to the new offence in section 5C of the *Road Transport (Safety and Traffic Management) Act 1999* (Failing to stop motor vehicle for police). A police officer who believes on reasonable grounds that a person has committed an offence against section 5C of failing to stop motor vehicle for police must give the person an immediate suspension notice for the offence.

Clauses 11 to 14 **Automatic disqualification provisions**

The amendments made by clauses 11 to 14 extend the provisions regarding automatic licence disqualification to the offences in section 5C of the *Road Transport (Safety and Traffic Management) Act 1999* (Failing to stop motor vehicle for police) and section 60 of the General Act, if the failure to give information was in relation to the new failing to stop offence.

Clause 11 **Meaning of *first offender and repeat offender*—div 4.2
Section 61AA (5), definition of *relevant offence*, new paragraph (aa)**

This clause amends the definition of *relevant offence* to include a reference to the offence in section 60 of the General Act, if the failure to give information was in relation to the new failing to stop offence. The term *relevant offence* is used in the context of determining whether a person convicted or found guilty of a disqualifying offence is a first offender or a repeat offender. Whether a person is a first offender or a repeat offender is relevant for determining the automatic licence disqualification period that is imposed upon a driver.

Clause 12 **Meaning of *first offender and repeat offender*—div 4.2
Section 61AA (5), definition of *relevant offence*, new paragraph (ca)**

This clause amends the definition of *relevant offence* to include a reference to the new offence in section 5C of the *Road Transport (Safety and Traffic Management) Act 1999* (Failing to stop motor vehicle for police). The term *relevant offence* is used in the context of determining whether a person convicted or found guilty of a disqualifying offence is a first offender or a repeat offender. Whether a person is a first offender or a repeat offender is relevant for determining the automatic licence disqualification period that is imposed upon a driver.

Clause 13 **Automatic disqualification for certain other driving offences**
New section 63 (1) (aa)

This clause adds an offence against section 60 of the General Act, if the failure to give information was in relation to the new offence in section 5C of the *Road Transport (Safety and Traffic Management) Act 1999* (Failing to stop motor vehicle for police), to the offences subject to the automatic licence disqualification provisions in this section. The automatic licence disqualification provisions in section 63 of the General Act provide that a person convicted or found guilty of an offence to which that section applies - which will now include the offence in section 60 of the General Act if it relates to an offence against section 5C of the *Road Transport (Safety and Traffic Management) Act 1999* –is automatically disqualified from holding or obtaining a driver licence for at least 3 months for a first offender, or for at least 12 months for a repeat offender.

Clause 14 **New section 63 (1) (ba)**

This clause adds the new offence in section 5C of the *Road Transport (Safety and Traffic Management) Act 1999* to the offences subject to the automatic licence disqualification provisions in this section. A person convicted or found guilty of the offence in section 5C of failing to stop a motor vehicle for police will automatically be disqualified from holding or obtaining a driver licence for at least 3 months for a first offender, or for at least 12 months for a repeat offender.

Part 3 **Road Transport (Offences) Regulation 2005**

Clause 15 **Schedule 1, part 1.7, items 7 and 8**

This clause is consequential on the amendment of the maximum penalty for the offence in section 60 of the General Act of failing to disclose the identity of the driver, where the driver was alleged to have committed the new failing to stop offence. This clause amends the entry for section 60 of in the list of road transport offences in the *Road Transport (Offences) Regulation 2005*, and specifies the short description of the amended offence in section 60. A short description of an offence is used for administrative efficiencies when describing the offence in a summons, warrant or, where applicable, an infringement notice arising out of the offence.

Clause 16 **Schedule 1, part 1.12, new item 7A**

This clause is consequential on the creation of the new offence in section 5C of the *Road Transport (Safety and Traffic Management) Act 1999* by clause 21. This clause adds the new offence to the list of road transport offences in the *Road Transport (Offences) Regulation 2005*, and specifies the short description of the new offence in section 5C. A short description of an offence is used for administrative efficiencies when describing the offence in a summons, warrant or, where applicable, an infringement notice arising out of the offence.

Clause 17 **Schedule 1, part 1.12, item 9**

This clause is consequential on the amendment to the maximum penalty for the offence of furious, reckless or dangerous driving in section 7 of the *Road Transport (Safety and Traffic Management) Act 1999* made by clause 22. This clause amends the short description and offence penalty for the offence.

Clause 18 **Schedule 1, part 1.13, item 72**

This clause is consequential on the amendments to section 109 of the *Road Transport (Safety & Traffic Management) Regulation 2000* made by clause 32. The amended section 109 no longer contains an offence provision and so it has been removed from the list of road transport legislation offences.

Part 4 **Road Transport (Safety and Traffic Management) Act 1999**

Clause 19 **Offences against Act—application of Criminal Code etc**
Section 5AA, note 1

This clause amends the list of sections in the *Road Transport (Safety and Traffic Management) Act 1999* that are subject to the *Criminal Code 2002* to include new section 5C (as inserted by the Bill). Among the consequences of this amendment is that the statutory defences in the *Criminal Code 2002*, such as duress or sudden emergency, are available to a person charged with the offence.

Clauses 20 to 23 **New failing to stop offence and aggravating factor of failing to stop**

Clauses 20 to 23 make provision for a new offence of failing to stop motor vehicle for police and increasing the penalty for the offence of furious, reckless or dangerous driving where failing to stop is an aggravating factor.

Clause 20 **New section 5AB**

This clause inserts a new section 5AB into the *Road Transport (Safety and Traffic Management) Act 1999*. New section 5AB defines the meaning of *first offender* and *repeat offender* for the purposes of a *failing to stop offence*. A *failing to stop offence* is defined in new 5AB (5) to include: the new offence in section 5C (Failing to stop motor vehicle for police); the offence of furious, reckless or dangerous driving in section 7 where the aggravated factor of failing to stop for police was present; and an offence against section 60 of the General Act where the request relates to the new failing to stop offence.

A person's status as a first or repeat offender for a failing to stop offence is relevant to the penalty applying to the person.

For the purposes of this section, a person is a *first offender* if the person is convicted or found guilty of a failing to stop offence and the person is not a repeat offender in relation to the offence. A person is a repeat offender if the person has been convicted or found guilty of a failing to stop offence at any time before the relevant (current) offence was committed, or the person is convicted of a fail to stop offence concurrently with being convicted of the relevant

(current) offence, and 1 or more of the failing to stop offences were committed before the relevant offence. This ensures that offenders who commit more than one failing to stop offence are not able to avoid being regarded as a repeat offender simply because they committed the second or subsequent disqualifying offence before the trial of their first failing to stop offence was completed.

There is a 5-year transitional provision in new section 5AB (3) (3). It applies to a person who is convicted or found guilty of a failing to stop offence that was committed before section 17 of this Bill commences. The person will be a repeat offender during the transitional period only if the person:

- was convicted or found guilty of a failing to stop offence in the 5 year period before being convicted or found guilty of the pre-commencement offence; or
- is convicted or found guilty of one or more failing to stop offences concurrently with being convicted or found guilty of the pre-commencement offence, and one or more of the failing to stop offences were committed before the pre-commencement offence.

Clause 21 New section 5C

This clause inserts a new offence of failing to stop motor vehicle for police. A person commits an offence if the person is driving a motor vehicle, a police officer asks or signals the person to stop the motor vehicle and the person fails to comply with the police officer's request or signal as soon as practicable.

The maximum penalty for the offence is, for a first offender – 100 penalty units, imprisonment for 12 months or both, or for a repeat offender – 300 penalty units, imprisonment for 3 years or both.

Clause 22 Furious, reckless or dangerous driving Section 7 (1), penalty

This clause amends the maximum penalty for the existing offence of furious, reckless or dangerous driving in section 7. The maximum penalty for the simple offence is 100 penalty units, imprisonment for 1 year or both. The offence currently includes a number of aggravating factors which result in the offence being an aggravated offence if any of those factors existed at the time of the current offence. The maximum penalty for the aggravated offence is 200 penalty units, imprisonment for 2 years or both.

One of the aggravating factors currently is the person failed to comply with a request or signal given by a police officer to stop the vehicle (section 7A (a) (i)). This clause increases the maximum penalty for the aggravated offence where that aggravating factor (failing to stop motor vehicle for police) is present. The maximum penalty in this circumstance has been increased to 300 penalty units, imprisonment for 3 years or both – for a first offender, or 500 penalty units, imprisonment for 5 years or both – for a repeat offender. There is no change to the maximum penalty applying where other aggravating factors are present, or to the maximum penalty for the simple offence.

Clause 23 **Aggravated offence—furious, reckless or dangerous driving**
Section 7 (1) (a) (i)

One of the aggravating factors for the existing offence of furious, reckless or dangerous driving is the person failed to comply with a request or signal given by a police officer to stop the vehicle (section 7A (a) (i)). This clause amends the wording of that subsection to be consistent with the wording used in new section 5C. The aggravating factor will now be that a person failed to comply, as soon as practicable, with a request or signal given by a police officer to stop the motor vehicle.

Clauses 24 to 29 **Seizure, impounding and forfeiture of vehicles used in fail to stop offences**

Clauses 24 to 29 extend the application of existing provisions for seizure, impounding and forfeiture of vehicles, where they have been used to commit certain offences, to include where they have been used in the commission of the offence of failing to stop for police.

Clause 24 **Meaning of first offender and repeat offender—div 2.3**
Section 10AA (5), definition of impounding offence, new paragraph (ba)

This clause amends the definitions of *first offender* and *repeat offender* as used in the vehicle seizure and impounding provisions of the road transport legislation, to include the new offence in section 5C of failing to stop motor vehicle for police as an impounding offence.

Clause 25 **Powers of police officers to issue surrender notices for motor vehicles**
Section 10BA (1)

This clause amends section 10BA to give a police officer, who believes on reasonable grounds that a vehicle has been used to commit the offence in section 5C (Failing to stop motor vehicle for police), the power to issue a surrender notice for the motor vehicle. Surrender notices may already be issued for vehicles used to commit offences against section 5A (Races, attempts on speed records, speed trials etc) or section 5B (Improper use of motor vehicle). This amendment adds the new offence in section 5C to the list of offences for which a surrender notice may be issued by a police officer.

A person served with a surrender notice is required to surrender the vehicle for impounding at the place and by the date stated in the notice. It is an offence to fail to comply with the notice.

Clause 26 **Powers of police officers to seize and impound vehicles used in committing certain offences**
Section 10C (1) (a)

This clause is similar to clause 25, but relates to the power of a police officer to seize a motor vehicle. Section 10C (1) specifies when a police officer may seize a motor vehicle, and includes when the police officer believes, on reasonable grounds, that a vehicle has been used by a person in committing an offence against section 5A (Races, attempts on speed records,

speed trials etc) or section 5B (Improper use of motor vehicle). This amendment adds the new offence in section 5C (Failing to stop motor vehicle for police) to the list of offences for which a police officer may seize a motor vehicle.

Clause 27 Section 10C (3)

This clause makes a minor amendment to clarify that the power in 10C (3) to seize a motor vehicle from a place may only be exercised by a police officer.

Clause 28 New sections 10C (3A) and (3B)

This clause creates a new power of entry for police officers to seize vehicles reasonably believed to have been used to commit an offence against section 5C (Failing to stop motor vehicle for police). Clause 26 of this Bill gives a police officer the power to seize a vehicle in these circumstances. Currently a police officer may only seize a vehicle under section 10C from a road or road related area or any other public place, or any other place with the consent of the owner or occupier of the place or under the authority of a court order.

This amendment gives a police officer the power to seize the vehicle from any place, including without the consent of the owner or occupier of the property. This power is restricted to vehicles reasonably believed to have been used to commit an offence against section 5C, and does not extend to other existing offences for which motor vehicles may be seized by a police officer.

New section (3A) imposes a number of restrictions on the exercise of the power of entry. A police officer may only enter property if the police officer believes on reasonable grounds that the motor vehicle is located on that property. The police officer may not enter any building on the place, other than a garage, shed or other structure where the police officer believes on reasonable grounds that the motor vehicle is located. The police officer may also not remain at the place for longer than is necessary to seize the vehicle or determine that the vehicle is not at the property.

New section (3B) gives a police officer the power to use the force that is necessary and reasonable in the circumstances to enter a place or structure where the police officer believes on reasonable grounds the motor vehicle is located, and to seize the vehicle.

Clause 29 Section 10C (8), new definition of *garage*

This clause inserts a new definition of *garage* for the purposes of section 10C. *Garage* is defined to include a garage attached to a residential building. This definition confirms that a police officer may enter a garage to seize a motor vehicle under the section where the police reasonably believes the motor vehicle to be seized is located, whether or not the garage is a standalone building or attached to a residential building.

Clause 30 **Dictionary, definitions of *first offender* and *repeat offender***

This clause amends the reference in the dictionary to first offender and repeat offender, to include a reference to the definitions of these terms in new section 5AB. That section defines first offender and repeat offender for the purposes of a failing to stop offence.

Part 5 **Road Transport (Safety and Traffic Management) Regulation
2000**

Clause 31 **Section 109 heading**

This clause is consequential on the changes made by clause 32. The clause amends the heading of section 109 to better reflect the content of section 109 as amended.

Clause 32 **Section 109 (1) and (2)**

This clause is consequential on the creation of the new offence in section 5C of the *Road Transport (Safety and Traffic Management) Act 1999*. Section 109 currently includes an offence of failing to comply with a request or signal made or given by a police officer to stop a motor vehicle. The new offence in section 5C of the *Road Transport (Safety and Traffic Management) Act 1999* has made this offence redundant.