

2019

**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

ROAD TRANSPORT LEGISLATION AMENDMENT BILL 2019

EXPLANATORY STATEMENT

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ROAD TRANSPORT LEGISLATION AMENDMENT BILL 2019

Purpose of the Bill

The policy objective of the Bill is to amend the road transport legislation to improve road safety and improve the administration and efficiency of the Territory's road transport legislation.

The *Road Transport Legislation Amendment Bill 2019*:

- a) Introduces automatic disqualification periods for drivers who repeatedly drive while suspended when the original reason for the suspension was non-payment of an infringement notice penalty, non-compliance with an infringement notice management plan, fine default or exceeding the applicable demerit point threshold.
- b) Clarifies existing provisions in the *Road Transport (Alcohol and Drugs) Act 1977* related to taking blood samples from people who have been admitted to hospital following an accident.
- c) Provides minor and technical amendments to the road transport infringement notice management scheme to improve the efficiency and administration of the scheme.
- d) Extends the offences of using an unregistered motor vehicle or uninsured motor vehicle to a responsible person who permits or allows a person to use an unregistered or uninsured motor vehicle.
- e) Provides minor and technical amendments to the Territory's road transport legislation to improve the administration and enforcement of the legislation, address emerging technologies and reflect changes to Commonwealth laws.

The road transport legislation being amended by the Bill is the:

- a) *Road Transport (Alcohol and Drugs) Act 1977*
- b) *Road Transport (Driver Licensing) Act 1999*
- c) *Road Transport (Driver Licensing) Regulation 2000*
- d) *Road Transport (General) Act 1999*
- e) *Road Transport (General) Regulation 2000*
- f) *Road Transport (Offences) Regulation 2005*
- g) *Road Transport (Public Passenger Services) Act 2001*
- h) *Road Transport (Public Passenger Services) Regulation 2002*
- i) *Road Transport (Road Rules) Regulation 2017*
- j) *Road Transport (Safety and Traffic Management) Act 1999*

- k) *Road Transport (Safety and Traffic Management) Regulation 2017*
- l) *Road Transport (Third-Party Insurance) Act 2008*
- m) *Road Transport (Vehicle Registration) Act 1999*
- n) *Road Transport (Vehicle Registration) Regulation 2000*

The Bill also makes minor amendments to the *Magistrates Court Act 1930* and the *Motor Accident Injuries Act 2019*.

The Bill has a staged commencement to enable the operational changes required to support the amendments to be made.

Human Rights Considerations

During the Bill's development due regard was given to its compatibility with human rights as set out in the *Human Rights Act 2004* (HRA).

Broadly, the Bill could be seen to engage with, and place limitations on, the following HRA rights:

- Section 8 – Recognition and equality before the law
- Section 10 – Freedom from medical treatment without free consent
- Section 11 – Protection of the family and children
- Section 12 – Right to privacy
- Section 13 – Freedom of movement
- Section 18 – Right to liberty and security of person
- Section 22 – Right to be presumed innocent (Rights in criminal proceedings)
- Section 24 – Right not to be tried or punished more than once

The preamble to the HRA notes that few rights are absolute and that they may be subject only to the reasonable limits in law 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
- e) any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve.

The limitations on human rights in the Bill are proportionate and justified in the circumstances because they are the least restrictive means available to achieve road safety and efficient road transport legislation for the Territory. An assessment of the human rights implications is set out below and in the clause notes.

Amendments to the *Road Transport (Alcohol and Drugs) Act 1977*

A primary objective of the *Road Transport (Alcohol and Drugs) Act 1977* (Alcohol and Drugs Act) is to deter people from driving while affected by alcohol or drugs. This is because impaired drivers are a recognised road safety risk.

The Bill makes minor amendments to the Alcohol and Drugs Act relating to:

- the taking of blood samples following an accident when the person is admitted to hospital for treatment and is not in police custody;
- refusing to provide a blood sample;
- the circumstances under which samples can be taken without consent;
- the exemptions from the requirement to take a sample; and
- the definition of *repeat offender*.

These amendments are necessary for ensuring the effective operation of the alcohol and drug testing scheme established by the Alcohol and Drugs Act, which is an integral part of the Territory's road safety strategy. It should be noted that these provisions are in the existing legislation and have been replicated with minor modifications to ensure the effectiveness of the scheme, consistency with other jurisdictions and to limit the impact on individual rights.

Section 15AA of the Alcohol and Drugs Act currently makes it an offence for a doctor or nurse to not take a sample of a person's blood within two hours after the person arrives at the hospital following an accident in circumstances where the doctor or nurse believes, on reasonable grounds that:

- the person was a driver or driver trainer involved in an accident; and
- the accident happened not longer than 6 hours before the person arrived at the hospital.

Section 18A extends this requirement to persons other than drivers or driver trainers involved in an accident, for example, pedestrians, cyclists, a person riding an animal.

The current drafting of these provisions leads to confusion and is affecting the successful prosecution of drink and drug driving offences.

The Bill removes the current criminal offence, consolidates the obligations on doctors and nurses when treating a person who has been involved in an accident into one provision and clarifies the application of the offence of refusing to provide a sample in these situations.

The Bill does not amend the current roadside testing regime or testing when in police custody. Any amendments to related provisions are minor and technical amendments to align terminology across the Alcohol and Drugs Act and update cross references.

The human rights implications of the amendments to the definition of *repeat offender* are set out in the clause notes for that amendment.

Nature of the right affected

The amendments outlined could be seen to be limiting a person's right to not be subjected to medical treatment without free consent, right not to have their privacy interfered with unlawfully or arbitrarily, and right to not self-incriminate.

The requirement to undergo a blood test following an accident may be seen as engaging the right to recognition and equality before the law (section 8 of the HRA), in so far as it imposes certain obligations and limits on some drivers that do not apply to drivers more generally and to the extent that a person admitted to hospital following an accident is required to provide a blood sample as opposed to a sample of oral fluid or breath.

Section 10 (2) of the HRA provides that no-one may be subjected to medical treatment without their free consent. This right is invoked when regulatory settings allow for medical treatment without consent. In *Re BWV; Ex parte Gardner* (2003) 7 VR 487, Morris J concluded that:

...a medical procedure can generally be described as a procedure that is based upon the science of the diagnosis, treatment or prevention of disease or injury, or of the relief of pain, suffering and discomfort...

The Victorian Supreme Court in *De Bruyn v Victorian Institute of Forensic Mental Health* [2016] VSC 111 found that medical treatment would ordinarily include some positive intervention under the supervision of a medical practitioner.

A policy decision to require the taking of blood samples in hospital following an accident to address the road safety risks associated with impaired driving does not make the taking of the samples medical treatment [*De Bruyn v Victorian Institute of Forensic Mental Health* [2016] VSC 111].

Section 12 of the HRA provides that everyone has the right to not have their privacy interfered with unlawfully or arbitrarily. The right to privacy includes a right to physical integrity (*Kracke v Mental Health Review Board (General)* (2009) 29 VAR 1; [2009] VCAT 646 [619]-[620]).

Interference with a person’s right to privacy is arbitrary when it is “capricious, unpredictable or unjust or are unreasonable in the sense of not being proportionate to a legitimate aim sought” (*PJB v Melbourne Health* (Patrick’s case) [2011] VSC 327). The taking of blood samples following an accident to ensure enforcement of the Territory’s drink and drug driving laws is not considered to be unreasonable or disproportionate to the aim of protecting road users from impaired road users.

Section 22 (1) of the HRA provides that everyone has the right to be presumed innocent, including the right not to self-incriminate. The requirement for persons to submit to testing for drugs or alcohol or be charged with an offence can be seen as engaging this right. The limitation of this right is proportionate as road users should not be able to avoid the consequences of drink or drug driving by deliberately avoiding detection. The penalties associated with refusing to provide a sample reflect this principle.

In assessing the total impact of the amendments on the rights of individuals, it may be beneficial to have regard to the benefits to doctors and nurses, persons involved in accidents and the broader community.

Firstly, the amendments currently remove the criminal liability for doctors and nurses who fail to take a blood sample from a person admitted to hospital following an accident. Secondly, the amendments ensure that accidents can be investigated and where appropriate charges laid on people who drive while impaired, endangering the broader community.

These amendments clarify existing obligations and do not extend the existing processes in place for taking blood samples from persons involved in an accident who are admitted to hospital. The amendments limit the application of the requirement to pedestrians to when the pedestrian is involved in an accident with a motor vehicle, bicycle, personal mobility device or animal-drawn vehicle. The current drafting could be interpreted as requiring a sample to be taken from a pedestrian who has been involved in an accident on a road or road related area that did not involve a motor vehicle, bicycle, personal mobility device or animal-drawn vehicle. This is outside the scope of the purposes for which samples can be taken under the Alcohol and Drugs Act. It is necessary to be able to test pedestrians involved in an accident with a motor vehicle, bicycle, personal mobility device or animal-drawn vehicle to determine the level of culpability of each party to the accident which assists police in deciding whether it is appropriate to lay charges and if so, the level of the charge. The Bill also includes an amendment to clarify that the offence of refusing to provide a blood sample does not apply to pedestrians involved in an accident who are subject to the requirement to provide a sample under section 15AA.

Importance of the purpose of the limitation

The requirement for a doctor or nurse to take a blood sample is imperative to the successful investigation and prosecution of drink and drug driving offences and other applicable offences, for example: culpable driving (section 29 of the *Crimes Act 1900*), furious, reckless or dangerous driving (section 7 of the *Road Transport (Safety and Traffic Management) Act 1999*).

The ACT Government is committed to developing a community that shares responsibility for road safety and to the realisation of Vision Zero – a strategy outlined in the ACT Road Safety Strategy 2011-20 and the ACT Road Safety Action Plan 2016-2020, which aims to achieve zero road fatalities by 2020. This requires a strong enforcement scheme and education that encourages road users to obey the road transport laws and to be unimpaired and alert when driving.

These provisions have been the subject of criticism in a number of court decisions. Recently, the Supreme Court of the ACT (*McGarvey v Mulino* [2017] ACTSCFC 1) commented that the current provisions are poorly drafted and as “the detection and punishment of driving under the influence is a matter of high public importance” the regulatory settings should be as clear as possible.

Nature and extent of the limitation

The obligation to take blood samples only applies where the doctor or nurse forms the reasonable belief that:

- the person was involved in an accident;
- is at least 15 years of age;
- was admitted to hospital for examination or treatment because of the accident; and
- the accident occurred not more than six hours before the person arrived at the hospital.

In most instances, the sample will be taken by a doctor or nurse in the emergency department.

The Alcohol and Drugs Act provides a number of exemptions to this requirement:

- The doctor or nurse believes on reasonable grounds that a sample has already been taken or will be taken under another provision of the Alcohol and Drugs Act.
- The doctor or nurse is of the opinion that it would be prejudicial to the proper care and treatment of the person or dangerous to the person’s health.
- The person objects, and the person persists in objecting after being informed that refusing to allow the sample to be taken on grounds other than religious or other conscientious grounds or on medical grounds, may constitute an offence.
- The doctor or nurse is of the opinion that the behaviour of the person or another circumstance prevents the doctor or nurse from carrying out the procedure.

Under section 18 (4), the Territory indemnifies a doctor or nurse who takes a sample under section 15AA, in relation to any damages that the doctor or nurse becomes liable to pay as a result of carrying out the procedure.

The amendments in the Bill clarify that a doctor or nurse can take a sample if the person is incapable of giving or refusing permission. This ensures that in circumstances where the person is unconscious or otherwise incapable of giving or refusing permission to take such a sample at the time the sample is taken, the person cannot circumvent any responsibility if found to be driving while under the influence of drugs or alcohol. This is consistent with the position in other jurisdictions: *Road Transport Act 2013* (NSW), *Road Safety Act 1986* (VIC), *Transport Operations (Road Use Management) Act 1995* (QLD), *Road Traffic Act 1961* (SA), *Traffic Act 1987* (NT).

Samples taken under the Alcohol and Drugs Act can only be used for the following purposes:

- analysis of the sample in accordance with the Alcohol and Drugs Act;
- research relating to drivers of motor vehicles affected by drugs, but only if identifying information about the person who provided the sample cannot be ascertained from it;
- a proceeding for an offence of culpable driving;
- a proceeding for an offence against the *Road Transport (Safety and Traffic Management) Act 1999*, section 7 (Furious, reckless or dangerous driving).

The relationship between the limitation and its purpose

Alcohol and drug use are known to be the main causes of road fatalities in Australia, along with other ‘human factors’ such as speeding, driver distraction and fatigue.

In order to establish whether a person may have been affected by drugs or alcohol at the time of an accident and involved in a road safety offence, it is important that a sample be taken from the person within a comparatively short time after the accident.

The Territory’s alcohol and drug testing regime on our roads and road related areas is aimed at promoting safer driving behaviours as part of the safe system approach to road safety. The fundamental objectives of that approach are to make road transport systems forgiving of human error and minimise the level of unsafe road user behaviour.

The intention of this provision is not to interfere in the person’s treatment or force a person who refuses a sample to be subject to an invasive medical procedure.

The penalties for drink and drug driving offences reflect the seriousness with which the community views such behaviour. Ensuring that there is an appropriate enforcement scheme for these offences is of high importance to the community, given the known risks of death and injury associated with drink and drug driving.

According to the Australian Institute of Health and Welfare’s *National Drug Strategy Household Survey 2016*, 15.1% of persons aged 14 years or older in the sample had driven under the influence of illicit drugs over the previous 12 months – 18.5% of males sampled, and 10.3% of females.

Further, the Bureau of Infrastructure, Transport and Regional Economics' (BITRE) report describes a methodology to estimate the costs due to road crashes in Australia. The estimated costs of crashes on ACT roads are: fatal crash \$3,486,341; injury crash \$106,501 and property damage crash \$13,505.

Less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve

There are not considered to be any less restrictive means available to achieve the purpose the limitation seeks to achieve without creating an administratively burdensome process that would result in greater strain on police and hospital staff. Also, in many cases the doctor or nurse will be taking blood samples for other purposes related to the person's care and treatment.

The amendments contained in the Bill clarify existing requirements and are consistent with other jurisdictions. 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 and drug driving laws across jurisdictions.

Amendments to the *Road Transport (Public Passenger Services) Act 2001* and the *Road Transport (General) Act 1999* - Power of authorised persons and police officers to seek personal information to support enforcement action under the road transport legislation

The Bill permits authorised persons and police officers to seek a person's date of birth, in addition to name and address, when the authorised person or police officer believes on reasonable grounds, that the person is committing or has just committed an offence against the road transport public passenger services legislation. The police officer or authorised person must tell the person the reason for the requirement and produce their identity card for inspection by the person. The power to request a person's date of birth is required to support the child infringement notice penalty amount introduced in October 2018 for ticketing and passenger conduct offences on bus and light rail services.

The Bill also provides police officers and authorised persons with the power to require a person to produce an identification document when the police officer or authorised person believes that the name, address or date of birth provided is false. This is consistent with the position in NSW for passenger transport offences. This provision has been drafted consistently with a similar provision in the *Smoking in Cars with Children (Prohibition) Act 2011*. The provision of correct identifying information is an essential part of the effectiveness of any scheme designed to protect the public.

Further, the Bill provides police officers and authorised persons, exercising a function under the road transport legislation, with the power to require a person riding an animal to produce an identification document if carrying one.

Nature of the right affected

These amendments could be seen to be limiting a child's right to protection by requiring them to produce identification documents. This is justified and reasonable as it is in the wider public interest to have a public transport system that is properly regulated, and safe and accessible. Authorised persons on public transport are appropriately trained on how to engage with children and are required to hold a working with vulnerable people registration.

These amendments could also be seen to engage a person's right to privacy by requiring people to provide their personal details to police officers and authorised persons to enable enforcement actions to be undertaken. This limitation achieves the important objective of ensuring that appropriate action can be taken to enforce road transport laws. The provision of identifying information is an essential part of the effectiveness of any scheme designed to protect the public.

Also, the right to liberty and security of a person and freedom of movement can be relevant any time a person is not free to leave a place of their own choice. This includes the interim detention of a person for example, to allow a police officer or authorised person to take a person's details for enforcement purposes. A person must not be detained for longer than is reasonably necessary for the enforcement purpose.

The importance of the purpose of the limitation

The limitation will achieve the important purpose of protecting the community by ensuring that the Territory and police can take appropriate action to enforce road transport laws.

The nature and extent of the limitation

Members of the public are likely to understand that using public transport or public roads involve a necessary limitation on their right to privacy and are therefore unlikely to have a reasonable expectation of privacy when using a public transport service or public road.

The relationship between the limitation and its purpose

Requiring people to provide their name, address and date of birth directly relates to the purpose of effective enforcement, public safety and protection of property and revenue.

There are a number of mandatory criteria a person must meet in order to be appointed as an authorised person, this includes:

- being an Australian citizen or a permanent resident of Australia;
- satisfying the road transport authority that they are a suitable person having regard in particular to:
 - whether the person has any criminal convictions

and

- the person's employment record
- completing adequate training to exercise the powers being given to the person.

Less restrictive means reasonably available to achieve this purpose

There are no less restrictive means reasonably available to achieve the purpose of the Bill as the provision of personal information and the collection of personal information are an essential part of ensuring the safety of public transport passengers and the public on our roads.

The requirement to give information, answer questions or anything else reasonably needed, is fundamental to the safe and accessible operation of a public passenger service and enforcement of road transport laws.

Climate change considerations

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

Road Transport Legislation Amendment Bill 2019

Part 1 Preliminary

Clause 1 Name of Act

This is a technical clause that states the name of the Bill, once enacted, as the *Road Transport Legislation Amendment Act 2019*.

Clause 2 Commencement

This clause provides for the commencement of the Bill. The Bill will commence over a staged process to enable associated operational changes to be made to support the amendments.

The following provisions will commence 6 weeks after the day the Bill is notified:

- part 2 – *Magistrates Court Act 1930*
- part 4 (other than sections 8, 25, 27 and 28) – *Road Transport (Alcohol and Drugs) Act 1997*
- part 5 (other than sections 30 and 31) – *Road Transport (Driver Licensing) Act 1999*
- part 15 – *Road Transport (Third-Party Insurance) Act 2008*
- section 107 – section 18 of the *Road Transport (Vehicle Registration) Act 1999*

Part 3 will commence on the commencement of the *Motor Accident Injuries Act 2019*.

Sections 71 and 72 commence on 10 December 2019 to align with the commencement of related provisions of the *Road Vehicle Standards Act 2018* (Cwlth).

The remaining provisions commence 14 days after the day the Bill is notified.

Clause 3 Legislation amended

This clause lists the legislation amended by the Bill. The Bill amends the:

- *Magistrates Court Act 1930*
- *Motor Accident Injuries Act 2019*
- *Road Transport (Alcohol and Drugs) Act 1977*
- *Road Transport (Driver Licensing) Act 1999*
- *Road Transport (Driver Licensing) Regulation 2000*
- *Road Transport (General) Act 1999*

- *Road Transport (General) Regulation 2000*
- *Road Transport (Offences) Regulation 2005*
- *Road Transport (Public Passenger Services) Act 2001*
- *Road Transport (Public Passenger Services) Regulation 2002*
- *Road Transport (Road Rules) Regulation 2017*
- *Road Transport (Safety and Traffic Management) Act 1999*
- *Road Transport (Safety and Traffic Management) Regulation 2017*
- *Road Transport (Third-Party Insurance) Act 2008*
- *Road Transport (Vehicle Registration) Act 1999*
- *Road Transport (Vehicle Registration) Regulation 2000*

Clause 4 Legislation repealed

This is a technical clause that repeals the *Road Transport (General) Website for Online Declarations Approval 2018 (No 1)* (NI2018-521) consequential on the changes at clause 66.

Part 2 Magistrates Court Act 1930

This part of the Bill makes a minor and technical amendment to the *Magistrates Court Act 1930* to improve the efficiency of proceedings in the Magistrates Court involving offences under the Heavy Vehicle National Law.

Clause 5 Meaning of *prescribed offence* for pt 3.7 Section 116AA (1) (b)

Legal proceedings for offences against the Heavy Vehicle National Law (HVNL) are heard in the Magistrates Court in the ACT. Part 3.7 of the *Magistrates Court Act 1930* (Service and pleadings by post for certain offences) provides for summons for prescribed offences to be dealt with by post. The definition of *prescribed offence* is currently limited to offences in the HVNL that have a maximum penalty amount of \$3000. This does not currently take into account the annual indexing arrangements for penalty amounts under the HVNL and as such, there are a limited number of offences that currently fall within this definition.

This clause amends the definition of *prescribed offence* to include any offence under the HVNL, irrelevant of the penalty amount. This amendment will avoid people having to go to court for matters that are appropriate to be dealt with by post which reduces the burden on the court system. Nothing in this amendment prevents a person choosing to appear in court to have their matter dealt with.

Part 3 Motor Accident Injuries Act 2019

Clause 6 Offence—use uninsured motor vehicle on road or road related area **Section 289 (1) (a) and (2)**

Under section 17 of the *Road Transport (Third-Party Insurance) Act 2008*, it is an offence for a person to use an uninsured motor vehicle on a road or road related area. This offence will move to section 289 of the *Motor Accident Injuries Act 2019* on commencement of that Act and repeal of the *Road Transport (Third-Party Insurance) Act 2008*.

This clause extends the application of this offence to a person who permits or allows an uninsured motor vehicle to be driven on a road or road related area. This amendment brings the Territory in line with other jurisdictions and is consistent with the existing offence for a person who permits a motor vehicle to be used in contravention of a condition of registration.

Part 4 Road Transport (Alcohol and Drugs) Act 1977

This part of the Bill makes amendments to the *Road Transport (Alcohol and Drugs) Act 1977* (the Alcohol and Drugs Act) to clarify the taking of blood samples in hospital following an accident and the offence of refusing to permit a sample to be taken. It also makes amendments to the definition of *repeat offender* to reflect the introduction of infringement notice penalties for certain drink and drug driving offences in other jurisdictions.

Clause 7 Offences against Act—application of Criminal Code etc **Section 4, note 1**

This clause inserts a new dot point in section 4A, note 1, indicating that the Criminal Code, Chapter 2 applies to section 23 (1). This amendment is consequential on the remaking of this section (see clause 17).

Clause 8 Meaning of *first offender* and *repeat offender* **New section 4F (2) (c)**

This clause amends the definition of *repeat offender* to reflect the introduction in several other jurisdictions of infringement notice penalties for certain drink and drug driving offences, for example, NSW. This amendment ensures that an ACT resident who is issued with an infringement notice for drink driving in NSW and then caught drink driving in the ACT is treated in the same way as an ACT resident who is caught more than once for drink driving in the ACT. The ACT does not currently have infringement notice penalties for drink and drug driving offences.

The amendments in this clause could be seen to be limiting a person's right to equality before the law, freedom of movement and right not to be punished more than once.

This amendment supports the right to be treated equally before the law (section 8 of the HRA) by ensuring that all ACT residents are treated the same when determining whether they

are a *repeat offender* for a drink or drug driving offence under the Alcohol and Drugs Act and subject to the same penalties. The amendment could also be seen as limiting this right by imposing stronger penalties on repeat offenders. The stronger penalties that apply to repeat offenders reflect the deterrence value associated with these penalties and are justified and proportionate given the need to discourage repeat drink and drug driving.

This amendment could be seen to be limiting a person's right to be presumed innocent until proven guilty as payment of an infringement notice penalty is not an admission of guilt. An infringement notice penalty issued in another jurisdiction will only be relevant in determining whether a person is a *repeat offender* for a period of 5 years consistent with the position in NSW.

The ACT Government is committed to developing a community that shares responsibility for road safety and to the realisation of Vision Zero – a strategy outlined in the *ACT Road Safety Strategy 2011-20* and the *ACT Road Safety Action Plan 2016-2020*, which aims to achieve zero road fatalities by 2020. This requires a strong enforcement scheme and education that encourages road users to obey the road transport laws and be unimpaired and alert when driving.

Alcohol and drug use are known to be the main causes of road fatalities in Australia, along with other 'human factors' such as speeding, driver distraction and fatigue. The penalties for drink and drug driving offences reflect the seriousness with which the community views such behaviour. Ensuring that there is an appropriate enforcement scheme for these offences is of high importance to the community, given the known risks of death and injury associated with impaired driving.

The Territory's drink and drug driving laws are aimed at promoting safer driving behaviours as part of the safe system approach to road safety. One of the fundamental objectives of that approach is to minimise the level of unsafe road user behaviour.

Clause 9 Restrictions on tests etc under this part
Section 14 (3) (b)

This clause is a minor and technical amendment to align the Territory with other jurisdictions. Currently a police officer cannot require a person to undergo a screening test or provide a sample of the person's breath or oral fluid for analysis, if the person is in hospital and the doctor or nurse practitioner attending the person certifies in writing that, in their opinion, complying with the requirement would be detrimental to the person's medical condition.

This clause changes this requirement, so the doctor or nurse practitioner has to be of the opinion that complying with the requirement to undergo a screening test or provide a sample of the person's breath or oral fluid for analysis, would be prejudicial to the proper care and treatment of the person or dangerous to the person's health.

Clause 10 Taking blood samples from people in custody
Section 15 (5) (b)

This clause is a minor and technical amendment to clarify that a doctor and nurse is required to take a blood sample from a person in custody, when requested by a police officer, in circumstances where the person is unconscious or because of their medical condition incapable of giving or refusing permission to the taking of the sample.

Clause 11 Taking blood samples from people in hospital
Section 15AA (1) and note

Clause 12 New section 15AA (4)

Section 15AA makes it an offence for a doctor or nurse to fail to take a blood sample from a patient they believe on reasonable grounds to have been involved in an accident where that accident happened within six hours of the arrival of the patient to the hospital. The doctor or nurse must take the sample within two hours of the patient's arrival at hospital. There is no explicit reference to the doctor or nurse having the power to take the sample but this has been considered to be provided by section 169 of the *Legislation Act 2001*. Section 18A of the Alcohol and Drugs Act expands this to cover a person involved in an accident, for example, a pedestrian or cyclist.

The current drafting of these provisions leads to confusion and is affecting the successful prosecution of drink and drug driving offences.

This clause consolidates sections 15AA and section 18A into one provision and removes the criminal offence currently applied to doctors and nurses and replaces it with an obligation to take a sample.

Clause 13 Exemptions from requirements to take blood samples or
carry out examinations
Section 17 (2) (a)

This clause is a minor and technical amendment to align the Territory with other jurisdictions. Currently a doctor or nurse is not required to take a blood sample from a person or carry out a medical examination under the Alcohol and Drugs Act if they are of the opinion that to do so would be detrimental to the person's medical condition.

This clause changes this requirement, so the doctor or nurse practitioner has to be of the opinion that taking a blood sample from the person or carrying out a medical examination under the Alcohol and Drugs Act would be prejudicial to the proper care and treatment of the person or dangerous to the person's health.

Clause 14 Section 17 (2) (c)

Section 17 sets out the exemptions from the requirement to take a blood sample under section 15AA.

This clause clarifies that a doctor or nurse is exempt from the requirement to take a blood sample under section 15AA when the doctor or nurse reasonably believes that a sample has been taken, will be taken, or the behaviour of the person or another circumstance prevents the doctor or nurse from carrying out the procedure.

Clause 15 Section 17 (3)

This clause is a technical amendment consequential on the changes at clauses 11 and 12.

**Clause 16 Taking blood samples from people involved in accidents
Section 18A**

This clause omits section 18A consequential on the changes at clauses 11 and 12.

**Clause 17 Refusing blood test etc
Section 23 (1) and (2)**

Section 23 (1) currently makes it an offence for a driver of a motor vehicle or a driver trainer in a motor vehicle, on a road or road related area to fail or refuse to permit a sample to be taken in accordance with a provision of the Alcohol and Drugs Act.

Section 23 (2) currently makes it an offence for a person who is required to have a blood sample taken under section 15AA (1) to behave in such a manner as to make it impossible or impractical for the sample to be taken.

The majority of the Supreme Court of the ACT in *McGarvey v Mulino* [2017] ACTSCFC 1 found that a person could not be charged with the refusal offence in section 23 (1) where the refusal was in response to a doctor or nurse requiring the sample to be taken in hospital following an accident (section 15AA). The majority found that this offence only applies when the person has been required to permit a sample to be taken by a police officer (including by a doctor or nurse at the request of a police officer) (section 15 (1)).

The current drafting leads to difficulties in determining which refusal offence a person should be charged with and is affecting successful prosecution of this offence.

This clause clarifies the refusal offence and simplifies the offence by making it one offence of failing or refusing to permit a sample to be taken in accordance with section 15 (police custody) or 15AA (in hospital following an accident). This offence does not apply to pedestrians (as defined in paragraph (d) of the definition of *involved in an accident* in section 15AA) who are required to provide a sample under section 15AA. Pedestrians cannot be charged with an offence under the Alcohol and Drugs Act and samples are sought under section 15AA to assist in the investigation of accidents.

Clause 18 Section 23 (4)

This clause is a technical amendment consequential on the changes at clause 17.

Clause 19 Evidentiary certificate—alcohol-related tests
Section 41 (1) (d) (vii)

This clause is a technical amendment consequential on the changes at clause 10.

Clause 20 Section 41 (1) (e) (iv)

This clause is a technical amendment consequential on the changes at clauses 9 and 13.

Clause 21 Evidentiary certificates—drug-related tests
Section 41AA (4) (d)

This clause is a technical amendment consequential on the changes at clauses 9 and 13.

Clause 22 Section 41AA (5) (i)

This clause is a technical amendment consequential on the changes at clause 10.

Clause 23 Evidentiary certificate—blood sample not taken
Section 41AC (e) (i)

This clause is a technical amendment consequential on the changes at clauses 9 and 13.

Clause 24 Evidence for insurance purposes
Section 41A (1) (g) and (5) (a)

This clause is a technical amendment consequential on the changes at clauses 11 and 12.

Clause 25 Dictionary, note 3

This clause amends note 3 to omit the reference to *personal mobility device* consequential on the changes at clauses 74 and 95.

Clause 26 Dictionary, definition of *driver involved in an accident*

This clause omits the definition of *driver involved in an accident* consequential on the changes at clause 12.

Clause 27 Dictionary, new definition of *personal mobility device*

This clause includes a definition of *personal mobility device* consequential on the changes at clauses 74 and 95.

Clause 28 Dictionary, definition of *road related area*

This clause is a minor and technical amendment to remove a duplicate definition. *Road related area* is defined for the purposes of the Territory's road transport legislation in the *Road Transport (General) Act 1999*, dictionary.

Part 5 Road Transport (Driver Licensing) Act 1999

This part of the Bill amends the *Road Transport (Driver Licensing) Act 1999* to introduce new automatic disqualification periods for drivers who drive or apply for a licence while suspended.

Clause 29 Offences committed by disqualified drivers etc Section 32 (6) (a) and (b)

Section 32 makes it an offence in the Territory to drive or apply for a driver licence during a period of suspension. A person convicted for driving while suspended, who is a first offender faces a maximum penalty of 50 penalty units and/or imprisonment for six months and a period of licence disqualification. A repeat offender faces a maximum penalty of 100 penalty units and/or imprisonment for 12 months and a period of licence disqualification. The automatic disqualification periods vary depending on the reason the person's licence is suspended. Where the suspension results from non-payment of infringement notice penalties, non-compliance with an infringement notice management plan, fine default or exceeding the demerit point threshold, the current automatic disqualification period does not draw a distinction between first and repeat offenders. For all other types of suspensions, the automatic disqualification increases for repeat offenders.

This clause introduces the following minimum disqualification periods for driving while suspended when the reason for the suspension was non-payment of infringement notice penalties, non-compliance with an infringement notice management plan or fine default:

- first offender – one month
- repeat offenders – two months

Courts retain their discretion to issue a longer period. The period of disqualification for first offenders represents the current minimum automatic disqualification period.

Any period of disqualification is not served until the reason for the original suspension has been remedied, where the suspension was for non-payment of an infringement notice penalty, non-compliance with an infringement notice management plan or fine default.

This clause introduces the following minimum disqualification periods for driving while suspended when the reason for the suspension was exceeding the applicable demerit point threshold:

- first offender – two months
- repeat offenders – four months

Courts retain their discretion to issue a longer period. The period of disqualification for first offenders is a reduction in the current disqualification period (three months down to two months).

Any period of disqualification where the suspension resulted from exceeding the applicable demerit point threshold is served at the end of the original suspension period. The current initial suspension periods for exceeding the demerit point threshold are:

- a. 12 – 15 demerit points – three months
- b. 15 – 19 demerit points – four months
- c. 20 or more demerit points – five months.

A driver in the ACT can elect to enter into a 12-month good behaviour period rather than serve the suspension period. A driver who accrues additional demerit points during this good behaviour period is subject to a suspension period that is double the original suspension period.

The amendments in this clause could be seen to be limiting a person's right to equality before the law, freedom of movement and right not to be punished more than once.

Section 8 of the HRA provides that everyone is entitled to equal and effective protection against discrimination, and to enjoy their human rights without discrimination. 'Equality before the law' has been essentially held to mean that judges and administrative officials must not act arbitrarily in enforcing laws¹. The non-discrimination provisions in the HRA are founded on articles 2 (1) and 26 of the International Covenant on Civil and Political Rights (the ICCPR). 'Discrimination' as the term appears in the ICCPR is understood as meaning any 'distinction, exclusion, restriction or preference which is based on any ground which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms'.

It is within community expectations that access to public spaces are regulated so that they are safe for everyone. The stronger penalties that apply to repeat offenders reflect the deterrence value associated with these penalties and are justified and proportionate given the need to discourage repeated disregard for road transport laws and those that enforce the laws.

Section 13 of the HRA provides that everyone has the right to move freely within the ACT and to enter and leave it, and the freedom to choose their residence in the ACT. This is relevant in the ACT today, in respect to circumstances involving people's access to public places.

This right has inherent limitations, which are acknowledged at subsection (3) of article 12 of the International Covenant on Civil and Political Rights (the ICCPR) (the equivalent right to section 13 of the HR Act):

the rights to liberty and freedom of movement shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order,

¹ NNowak, M UN Covenant on Civil and Political Rights: CCPR Commentary, 2nd revised edition, N.P.Engel, Publisher, 2005 at 606

public health or morals or the rights or freedoms of others and are consistent with the other rights recognised in the Covenant.

A driver licence is a privilege not a right. All road users are provided with adequate education about their obligations and the requirements when using roads or road related areas. The Territory provides a number of pathways through which people can manage any road transport infringement notices received, including a number of options to assist people to pay and thus avoid having their driver licence suspended as a result of non-payment.

There are significant public interest benefits that arise from ensuring that roads and road related areas are safe for all road users. Appropriate enforcement actions are essential to providing a safe road environment for the community, with shared responsibility by all road users. Demerit points are designed to encourage safe and responsible driving and the setting of a threshold reflects that demerit points are used to deter drivers from non-compliance with the road transport laws. A robust regulatory framework is essential to establishing safe people and safe behaviours on our roads, with benefits for both the community and individuals.

Road safety affects the whole of the ACT community. Australia adopts a safe system approach to road safety which requires responsible road user behaviour. It makes allowance for human error. The safe system approach relies on safe speeds, safe roads and roadsides, safe vehicles, as well as safe people and safe behaviours. It must be recognised that people are generally on notice concerning what behaviour is permitted on our roads and road related areas. For a person to commit the offence of driving while suspended they would be required to be actively involved in the behaviour resulting in the offence and had sufficient notice of the suspension and the reasons for the suspension.

Clause 30 Dictionary, note 3

This clause is a minor and technical amendment to align the definitions of *road* and *road related area* across the Territory's road transport legislation by reference to the definition of these terms in the *Road Transport (General) Act 1999*, dictionary.

Clause 31 Dictionary, definitions of *road* and *road related area*

This clause is a technical amendment consequential on the changes at clause 30.

Part 6 Road Transport (Driver Licensing) Regulation 2000

This part of the Bill amends the definition of *habitual offender* in the *Road Transport (Driver Licensing) Regulation 2000* for the purposes of the Territory's interlock program to reflect the introduction of infringement notice penalties for certain drink driving offences in other jurisdictions.

Clause 32 Mandatory interlock condition
Section 73T (5)

It is mandatory in the Territory for a person to participate in the Territory's interlock program if the person has been convicted or found guilty of certain drink driving offences (for example, driving with a prescribed concentration of alcohol at level 4) or is a *habitual offender*.

A *habitual offender* is currently defined as a person convicted or found guilty of an *alcohol-related disqualifying offence* and who has within five years before the conviction been convicted or found guilty of 2 or more other *alcohol-related disqualifying offences*. An *alcohol-related disqualifying offence* includes an equivalent offence against a law of another jurisdiction.

This clause amends the definition of *habitual offender* to reflect the introduction in several other jurisdictions of infringement notice penalties for certain drink driving offences, for example, NSW. This amendment ensures that an ACT resident who is issued with an infringement notice for drink driving in NSW and then caught drink driving in the ACT is treated in the same way as an ACT resident who is caught more than once for drink driving in the ACT. The ACT does not currently have infringement notice penalties for drink driving offences.

This amendment supports the right to be treated equally before the law (section 8 of the HRA) by ensuring that all ACT residents are treated the same when determining whether they are a mandatory participant in the Territory's interlock program. The amendment could be seen to be limiting this right in so far as it imposes certain obligations and limits on some categories of drink driving offenders that do not apply to other offenders or to drivers more generally.

This amendment could be seen to be limiting a person's right to be presumed innocent until proven guilty as payment of an infringement notice penalty is not an admission of guilt. For the purposes of determining whether a person must participate in the Territory's interlock program, previous convictions or findings of guilt are only relevant for a period of 5 years. Infringement notices issued will also only be considered relevant for a period of 5 years.

The Territory's Interlock Program is aimed at promoting safer driving behaviours as part of the safe system approach to road safety and helping people to separate drinking from driving. There are a number of benefits of participating in the Territory's Interlock Program. Firstly, participation in the program allows an offender to return to driving more quickly than would otherwise be the case. Secondly, the person also receives the direct road safety benefit of driving with an interlock, which prevents that person from driving while affected by alcohol.

Allowing a driver to return to driving part-way through their disqualification period, subject to a mandatory alcohol interlock condition, can assist the driver to learn, in a practical way, how to separate drinking from driving. The basis for this policy is that an earlier return to driving, with an interlock fitted to the person's vehicle, will support the driver in adopting

better approaches to managing the person's drinking and driving behaviours following the driver's conviction for a drink-driving related offence.

Clause 33 Dictionary, note 3

This clause is a minor and technical amendment to align the definitions of *road* and *road related area* across the Territory's road transport legislation by reference to the definition of these terms in the *Road Transport (General) Act 1999*, dictionary.

Clause 34 Dictionary, note 4

This clause is a technical amendment consequential on the changes at clauses 33 and 74.

Clause 35 Dictionary, definition of *permanent resident*

This clause is a technical amendment consequential on the changes at clause 74.

Part 7 Road Transport (General) Act 1999

This part of the Bill amends the *Road Transport (General) Act 1999* to improve the administration and efficiency of the road transport legislation and the road transport infringement notice management scheme.

**Clause 36 Objects of Act
Section 3 (a)**

This clause is a minor and technical amendment to remove the requirement for the Territory to act in a way that is consistent with agreements attached to the *National Road Transport Commission Act 1991* (Cwlth) which was repealed in 2004. These agreements were terminated and replaced by the *Inter-Governmental Agreement for Regulatory and Operational Reform in Road, Rail and Intermodal Transport*. The Territory works with other jurisdictions to ensure consistency across road transport legislation where appropriate through the Transport and Infrastructure Council.

Clause 37 Section 3, note

This clause is a technical amendment consequential on the changes at clause 36.

**Clause 38 Application orders and emergency orders
Section 14 (2)**

This clause is a minor and technical amendment to remove the requirement for the Territory to ensure any application orders or emergency orders are consistent with provisions about such orders contained in agreements attached to the *National Road Transport Commission Act 1991* (Cwlth) which was repealed in 2004. These agreements were terminated and replaced by the *Inter-Governmental Agreement for Regulatory and Operational Reform in Road, Rail and Intermodal Transport*. The Territory works with other jurisdictions to ensure

consistency across road transport legislation where appropriate through the Transport and Infrastructure Council.

Clause 39 Delegation of road transport authority's functions
Section 17 (2) to (4)

This clause provides a delegate of the road transport authority with the power to delegate a delegated function to a public employee or a person prescribed by regulation. Where the first delegate is the chief police officer, the chief police officer can delegate to a public employee, a person prescribed by regulation or a police officer.

This amendment supports a streamlined delegation process and allows directorates and agencies with operational responsibility for road transport matters greater flexibility and control over their operations.

Clause 40 Delegation of chief police officer's functions
New section 18 (2)

This clause provides a public employee delegated functions under the road transport legislation by the chief police officer to delegate those functions to another public employee.

This amendment supports a streamlined delegation process and allows directorates and agencies with operational responsibility for road transport matters greater flexibility and control over their operations.

Clause 41 Definitions—pt 3
Section 21A, definition of *illegal user declaration*

This clause replaces the requirement for an *illegal user declaration* to be either a statutory declaration or an online declaration with a requirement that such a declaration be made by way of a written statement. Removal of the requirement to provide statutory declarations reduces unnecessary administrative and compliance costs for business, citizens and Government.

Clause 42 Section 21A, definition of *infringement notice declaration*
note 1

This clause is a minor and technical amendment to remove the reference to the application of the *Statutory Declarations Act 1959* (Cwlth) to the making of statutory declarations under Territory laws and is consequential on the amendments made in the Bill that replace statutory declarations with written statements.

Clause 43 Section 21A, definition of *known user declaration*

This clause replaces the requirement for a *known user declaration* to be either a statutory declaration or an online declaration with a requirement that such a declaration be made by way of a written statement. Removal of the requirement to provide statutory declarations

reduces unnecessary administrative and compliance costs for business, citizens and Government.

Clause 44 Section 21A, definition of *online declaration*

This clause is a minor and technical amendment that removes the definition of *online declaration* and is consequential on the changes at clause 66.

Clause 45 Section 21A, definition of *relevant circumstances*

This clause changes the requirement for a person’s relevant circumstances to ‘significantly affect’ their ability to pay to ‘contributes to’ a person’s ability to pay. A person’s relevant circumstances are taken into account in determining a person’s application to participate in an approved community work or social development program and an application for waiver of an infringement notice penalty. This change aligns with recommendations in a report from Justice Connect in Victoria entitled “*Fair’s fare: Improving access to public transport for Victorians experiencing homelessness*” (March 2016) and the Australian Law Reform Commission Report (ALRC) *Pathways to Justice: Inquiry into Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* (ALRC Report 133, 2018) in relation to fines and driver licences.

Clause 46 Section 21A, definition of *relevant circumstances* paragraphs (a) and (b)

This clause is a minor and technical amendment to align the terminology around mental illness and disability with the terminology in the *Mental Health Act 2005* and the *Disability Services Act 1991*.

Clause 47 Section 21A, definition of *relevant circumstances*, paragraph (d)

This clause removes the requirement for a person to have to be subjected to family violence in order for it to be a relevant circumstance for determining a person’s application to participate in an approved community work or social development program or an application for waiver of an infringement notice penalty. This amendment means family violence, whether current or past, is a relevant circumstance for the purposes of determining a person’s application to participate in an approved community work or social development program or an application for waiver of an infringement notice penalty.

Clause 48 Section 21A, definition of *sold vehicle declaration*

This clause replaces the requirement for a *sold vehicle declaration* to be either a statutory declaration or an online declaration with a requirement that such a declaration be made by way of a written statement. Removal of the requirement to provide statutory declarations reduces unnecessary administrative and compliance costs for business, citizens and Government.

Clause 49 **Section 21A, definition of *unknown user declaration***

This clause replaces the requirement for an *unknown user declaration* to be either a statutory declaration or an online declaration with a requirement that such a declaration be made by way of a written statement. Removal of the requirement to provide statutory declarations reduces unnecessary administrative and compliance costs for business, citizens and Government.

Clause 50 **New section 21A (2)**

This clause is a minor and technical amendment to align the terminology around mental illness and disability with the terminology in the *Mental Health Act 2005* and the *Disability Services Act 1991*.

Clause 51 **Application for infringement notice management plan or
addition to plan—decision
New section 31B (7) (ca)**

This clause provides explicitly a process by which a person can apply to an administering authority to vary or suspend their infringement notice management plan.

Clause 52 **Approval of community work or social development
program
Section 31D (2) and note**

This clause is a minor and technical amendment to change the requirement for community work or social development programs to be approved via a disallowable instrument to approval via a notifiable instrument. This is consistent with other approvals of this nature in the road transport legislation.

Clause 53 **Application for waiver of penalty—decision
New section 31G (3) (e)**

This clause is a technical amendment consequential on the changes at clause 54.

Clause 54 **New section 31I**

This clause provides the Minister with the power to issue guidelines for waiver of infringement notice penalties. An administering authority must comply with the guidelines when making a decision on an application for waiver of an infringement notice penalty. This is consistent with the power the Minister currently has to issue guidelines for withdrawal of infringement notices and the requirement for an administering authority to comply with those guidelines when making a decision on an application for withdrawal of an infringement notice.

Clause 55 Application for withdrawal—decision
Section 35 (2)

This clause replaces the current requirement for a person to provide additional information sought by an administering authority as part of deciding an application for withdrawal of an infringement notice by statutory declaration with a requirement to provide this information by written statement. Removal of the requirement to provide statutory declarations reduces unnecessary administrative and compliance costs for business, citizens and Government.

Clause 56 Section 35 (2), note 1

This clause is a minor and technical amendment to remove the reference to the application of the *Statutory Declarations Act 1959* (Cwlth) to the making of statutory declarations under Territory laws and is consequential on the amendments made in the Bill that replace statutory declarations with written statements.

Clause 57 Section 40

This clause is a minor and technical amendment to clarify that this division only applies to motor vehicles as demerit points can only be applied to offences relating to the use of a motor vehicle.

Clause 58 Meaning of *all reasonable steps*—div 3.3A
Section 41 (1)

This clause is a minor and technical amendment to clarify that this section only applies to motor vehicles as demerit points can only be applied to offences relating to the use of a motor vehicle.

Clause 59 Section 41 (1), note 3

This clause is a technical amendment consequential on the changes at clause 64.

Clause 60 Sections 42 to 43A

This clause is a minor and technical amendment to clarify that these sections only apply to motor vehicles as demerit points can only be applied to offences relating to the use of a motor vehicle.

Clause 61 Offence—driving interstate corporate vehicle
Section 43B

This clause is a minor and technical amendment to clarify that this section only applies to motor vehicles as demerit points can only be applied to offences relating to the use of a motor vehicle.

Clause 62 Section 43B (3)

This clause is a minor and technical amendment to clarify that this section only applies to motor vehicles as demerit points can only be applied to offences relating to the use of a motor vehicle.

**Clause 63 Effect of suspension
Section 45 (2)**

Section 45 currently provides that the period for which a person's driver licence or right to drive is suspended for non-payment of an infringement notice penalty, non-compliance with an infringement notice management plan or default on a court imposed fine, is to be served concurrently with any uncompleted period of driver licence suspension or disqualification applying to the person under another part of the *Road Transport (General) Act 1999* or law of the territory, subject to any court order in relation to the period of suspension or disqualification.

This is inconsistent with section 24 of the *Road Transport (Driver Licensing) Act 1999* that provides that any period of licence suspension as a result of exceeding the applicable demerit point threshold is not to be served with any period of suspension otherwise imposed under that division (division 2.3) of the *Road Transport (Driver Licensing) Act 1999* or another territory law, it is to be in addition to. The intention of this provision was to make it clear that any demerit point licence suspension is in addition to any current suspension (irrelevant of what for) and does not operate concurrently with any other suspension.

This clause is a minor and technical amendment to clarify that this provision does not apply where the suspension has been issued under division 2.3 of the *Road Transport (Driver Licensing) Act 1999*, meaning demerit point suspensions are served cumulatively with other suspension periods.

The current initial suspension periods for exceeding the demerit point threshold are:

- a. 12 – 15 demerit points – three months
- b. 15 – 19 demerit points – four months
- c. 20 or more demerit points – five months.

A driver in the ACT can elect to enter into a 12-month good behaviour period rather than serve the suspension period. A driver who accrues additional demerit points during this good behaviour period is subject to a suspension period that is double the original suspension period.

Demerit points are designed to encourage safe and responsible driving and the setting of a threshold reflects that demerit points are used to deter drivers from non-compliance with the road transport laws. A robust regulatory framework is essential to establishing safe people and safe behaviours on our roads, with benefits for both the community and individuals.

Being issued with a demerit point suspension generally results from repeated non-compliance with the Territory's road transport laws.

Clause 64 Section 55

This clause remakes existing section 55 as a consequence of the decision to replace all references to statutory declarations in the road transport legislation with written statements. Removal of the requirement to provide statutory declarations reduces unnecessary administrative and compliance costs for business, citizens and Government.

**Clause 65 Evidentiary certificates
Section 56 (3) (p) and (q)**

This clause is a minor and technical amendment to remove the reference to a statutory declaration and is consequential on the amendments made in the Bill that replace statutory declarations with written statements.

**Clause 66 Approval of website for online declarations
Section 57**

This clause removes the provision giving the road transport authority the ability to approve a website for giving an online declaration consequential on the changes at clause 44.

**Clause 67 Police officer or authorised person may require name,
date of birth, address and driver licence—driver or rider
New section 58 (1) (aa)**

This clause provides a police officer or authorised person with the power to require a person riding an animal on a road or road related area, to produce an identification document if the person is carrying an identification document.

Clause 68 Section 58 (2)

This clause is a technical amendment consequential on the changes at clause 67.

Clause 69 Section 58 (5), new definition of *identification document*

This clause includes a definition of *identification document* consequential on the changes at clause 67. This definition is identical to the definition used in the *Smoking in Cars with Children (Prohibition) Act 2011*.

**Clause 70 Suspension to be concurrent
Section 89 (1)**

Section 89 currently provides that the period for which a person's driver licence or right to drive is suspended for non-payment of an infringement notice penalty, non-compliance with an infringement notice management plan or default on a court imposed fine, is to be served concurrently with any uncompleted period of driver licence suspension or disqualification applying to the person under another part of the *Road Transport (General) Act 1999* or law of

the territory, subject to any court order in relation to the period of suspension or disqualification.

This is inconsistent with section 24 of the *Road Transport (Driver Licensing) Act 1999* that provides that any period of licence suspension as a result of exceeding the applicable demerit point threshold is not to be served with any period of suspension otherwise imposed under that division (division 2.3) of the *Road Transport (Driver Licensing) Act 1999* or another territory law, it is to be in addition to. The intention of this provision was to make it clear that any demerit point licence suspension is in addition to any current suspension (irrelevant of what for) and does not operate concurrently with any other suspension.

This clause is a minor and technical amendment to clarify that this provision does not apply where the suspension has been issued under division 2.3 of the *Road Transport (Driver Licensing) Act 1999*, meaning demerit point suspensions are served cumulatively with other suspension periods.

The current initial suspension periods for exceeding the demerit point threshold are:

- a. 12 – 15 demerit points – three months
- b. 15 – 19 demerit points – four months
- c. 20 or more demerit points – five months.

A driver in the ACT can elect to enter into a 12-month good behaviour period rather than serve the suspension period. A driver who accrues additional demerit points during this good behaviour period is subject to a suspension period that is double the original suspension period.

Demerit points are designed to encourage safe and responsible driving and the setting of a threshold reflects that demerit points are used to deter drivers from non-compliance with the road transport laws. A robust regulatory framework is essential to establishing safe people and safe behaviours on our roads, with benefits for both the community and individuals. Being issued with a demerit point suspension generally results from repeated non-compliance with the Territory's road transport laws.

Clause 71 Dictionary, definition of *bicycle*, paragraph (b)

This clause is a minor and technical amendment to the definition of *bicycle* and is consequential on the Commonwealth passing the *Road Vehicle Standards Act 2018* (Cwlth) to replace the *Motor Vehicle Standards Act 1989* (Cwlth). The *Road Vehicle Standards Act 2018* (Cwlth) commences over a staged period between 11 December 2018 and 10 December 2019. This clause will not commence until 10 December 2019.

Clause 72 Dictionary, definition of *bicycle*, note

This clause is a minor and technical amendment to remove the note to the definition of *bicycle* and is consequential on the Commonwealth passing the *Road Vehicle Standards Act 2018* (Cwlth) to replace the *Motor Vehicle Standards Act 1989* (Cwlth). The *Road Vehicle Standards Act 2018* (Cwlth) commences over a staged period between 11 December 2018 and 10 December 2019. This clause will not commence until 10 December 2019.

Clause 73 Dictionary, definition of *online declaration*

This clause removes the definition of *online declaration* consequential on the changes at clauses 44 and 66.

Clause 74 Dictionary, new definition of *permanent resident*

This clause includes a definition of *permanent resident* consistent with the definition currently in the *Road Transport (Driver Licensing) Regulation 2000* and provides that a New Zealand citizen who has been issued with a permanent visa or special category visa under the *Migration Act 1958* (Cwlth) can be appointed as an authorised person to exercise functions under the road transport legislation,

Clause 75 Dictionary, definition of *personal mobility device*

This clause amends the definition of *personal mobility device* consequential on the changes at clause 96.

Clause 76 Dictionary, definitions of *road* and *road related area*

This clause includes a minor and technical amendment to the definitions of *road* and *road related area* to enable the alignment of the definition of these terms across the Territory's road transport legislation by reference to the definition of these terms in the *Road Transport (General) Act 1999*, dictionary.

Part 8 Road Transport (General) Regulation 2000

This part of the Bill includes consequential amendments to the *Road Transport (General) Regulation 2000*.

**Clause 77 Internally reviewable decisions
Schedule 1, part 1.5, new item 2A**

Section 31B (5) of the *Road Transport (General) Act 1999* gives an administering authority the power to decide the amount of the instalments that must be paid if an infringement notice management plan is approved. The legislated minimum amount that the administering authority can decide to accept is \$10 a fortnight, regardless of how often instalments must be paid. This decision by the administering authority is not currently a reviewable decision.

This clause includes this decision in the definition of *internally reviewable decision*. This provides an applicant with the opportunity to seek internal review and ultimately review in the ACT Civil and Administrative Tribunal.

Part 9 Road Transport (Offences) Regulation 2005

This part of the Bill includes consequential amendments to the *Road Transport (Offences) Regulation 2005*.

Clause 78 Sections 14F to 14I

This clause omits the note to sections 14F, 14G, 14H and 14I consequential on the changes at clauses 41, 43, 48, 49 and 56 that replace the requirement to provide a statutory declaration with a requirement to provide a written statement.

Clause 79 New section 16BA

This clause introduces a power for an administering authority to vary or suspend an infringement notice management plan on application by the person subject to the infringement notice management plan.

Clause 80 Kinds of community work or social development programs that may be approved Section 16D (2) (a) and (b)

This clause updates the terminology used in relation to mental illness and disability for consistency with the definition of these terms in the *Mental Health Act 2015* and the *Disability Services Act 1991* and is consequential on the changes at clause 52.

Clause 81 Section 16D (3), new definitions

This clause inserts new definitions of *disability*, *mental disorder* and *mental illness* consequential on the changes at clause 80.

Clause 82 Short descriptions, penalties and demerit points Schedule 1, part 1.3, item 15

This clause is a technical amendment consequential on the changes at clause 17.

Clause 83 Schedule 1, part 1.7, item 2, column 3

This clause is a technical amendment consequential on the changes at clause 60.

Part 10 Road Transport (Public Passenger Services) Act 2001

This part of the Bill makes minor and technical amendments to the *Road Transport (Public Passenger Services) Act 2001* to improve the administration of the legislation.

Clause 84 Bus operators—purposes of accreditation
Section 15 (a)

This clause is a minor and technical amendment to remove from the purposes of accreditation of bus operators the purpose of ensuring that the accredited person has the financial capacity to meet the service standards for the service. This clarifies the position that bus operators are no longer required to prove financial capacity as part of applying for accreditation. This reflects the ACT Government's commitment to a level playing field across the various public passenger service modes.

Clause 85 Taxi service operators—purposes of accreditation
Section 49 (a)

This clause is a minor and technical amendment to remove from the purposes of accreditation of taxi service operators the purpose of ensuring that the accredited person has the financial capacity to meet the service standards for the service. This clarifies the position that taxi service operators are no longer required to prove financial capacity as part of an application for accreditation. This reflects the ACT Government's commitment to a level playing field across the various public passenger service modes.

Clause 86 Demand responsive service authorisations
Section 82 (1)

Section 82 provides that the Minister must have regard to approved guidelines when deciding whether to give a person an authorisation to operate a demand responsive service. In all other instances, decisions on granting authorisations to operate a demand responsive service rest with the road transport authority.

This clause replaces the current reference to the Minister with the road transport authority for consistency across the demand responsive service authorisation scheme.

Clause 87 Demand responsive service operators—purposes of accreditation
Section 87 (a)

This clause is a minor and technical amendment to remove from the purposes of accreditation of demand responsive service operators the purpose of ensuring that the accredited person has the financial capacity to meet the service standards for the service. This clarifies the position that demand responsive service operators are no longer required to prove financial capacity as part of an application for accreditation. This reflects the ACT Government's commitment to a level playing field across the various public passenger service modes.

Clause 88 **Police officer or authorised person—power to require name and address etc**
Section 121 (1), except note

Section 121 currently provides police officers and authorised persons with the power to require a person to provide their name and address, when the authorised person or police officer believes on reasonable grounds, that the person is committing or has just committed an offence against the road transport public passenger services legislation.

This clause provides police officers and authorised persons with the power to also require a person to provide their date of birth. The power to request a person’s date of birth is required to support the child infringement notice penalty amount introduced in October 2018 for ticketing and passenger conduct offences on bus and light rail services.

Clause 89 **New section 121 (6) and (7)**

This clause provides police officers and authorised persons with the power to require a person to produce an identification document when the police officer or authorised person believes that the name, address or date of birth provided is false. This is consistent with the position in NSW for passenger transport offences.

This clause includes a definition of *identification document* that is identical to the definition used in the *Smoking in Cars with Children (Prohibition) Act 2011*.

Clause 90 **Dictionary, note 3**

This clause is a minor and technical amendment to align the definitions of *road* and *road related area* across the Territory’s road transport legislation by reference to the definition of these terms in the *Road Transport (General) Act 1999*, dictionary.

Clause 91 **Dictionary, definitions of road and road related area**

This clause is a technical amendment consequential on the changes at clause 90.

Part 11 **Road Transport (Public Passenger Services) Regulation 2002**

This part of the Bill makes minor and technical amendments to the *Road Transport (Public Passenger Services) Regulation 2002* consequential on the changes at part 7 and 10.

Clause 92 **Dictionary, note 3**

This clause is a technical amendment consequential on the changes at clause 90 and aligns the definitions of *road* and *road related area* across the Territory’s road transport legislation by reference to the definition of these terms in the *Road Transport (General) Act 1999*, dictionary.

Clause 93 Dictionary, note 4

This clause is a technical amendment consequential on the changes at clauses 74 and 90.

Part 12 Road Transport (Road Rules) Regulation 2017

This part of the Bill amends the *Road Transport (Road Rules) Regulation 2017* to incorporate a definition of personal mobility device.

**Clause 94 Meaning of road
 Section 12, note 1**

This clause is a technical amendment consequential on the changes at clause 76.

**Clause 95 Meaning of vehicle
 Section 15**

Section 15 defines the meaning of *vehicle* for the purposes of the *Road Transport (Road Rules) Regulation 2017*.

This clause amends the definition to specifically exclude personal mobility devices from the definition of vehicle. This is consistent with the definition of *motor vehicle* in the *Road Transport (General) Act 1999* which specifically excludes a personal mobility device.

Clause 96 New section 18A

This clause inserts a new provision that defines *personal mobility device*, consequential on the changes at clause 75. This term was previously defined in the *Road Transport (General) Act 1999*.

Clause 97 Dictionary, note 3

This clause is a technical amendment consequential on the changes at clause 99.

Clause 98 Dictionary, note 4

This clause is a technical amendment consequential on the changes at clauses 75 and 96.

Clause 99 Dictionary, note 4

This clause amends note 4 to include a reference to *road* and *road related area* by reference to the definition of these terms in the *Road Transport (General) Act 1999*, dictionary. This aligns the definitions of *road* and *road related area* across the Territory's road transport legislation.

Clause 100 Dictionary, new definition of *personal mobility device*

This clause inserts a definition of *personal mobility device* consequential on the changes at clauses 75 and 96.

Part 13 Road Transport (Safety and Traffic Management) Act 1999

This part of the Bill makes minor and technical amendments to the *Road Transport (Safety and Traffic Management) Act 1999*.

Clause 101 Dictionary, note 3

This clause amends note 3 to the dictionary to point to *road* and *road related area* as terms defined in the *Road Transport (General) Act 1999* and is consequential on the changes at clause 76.

Clause 102 Dictionary, definitions of *road* and *road related area*

This clause omits the definitions of *road* and *road related area* as these terms are defined identically in the *Road Transport (General) Act 1999*. This aligns the definitions of *road* and *road related area* across the Territory's road transport legislation.

Part 14 Road Transport (Safety and Traffic Management) Regulation 2017

This part of the Bill makes minor and technical amendments to the *Road Transport (Safety and Traffic Management) Regulation 2017*.

Clause 103 Meaning of *road* Section 7, note 1

This clause is a technical amendment consequential on the changes at clause 76.

Clause 104 Dictionary, note 3

This clause is a technical amendment consequential on the changes at clause 105.

Clause 105 Dictionary, note 4

This clause amends note 4 to include a reference to *road* and *road related area* by reference to the definition of these terms in the *Road Transport (General) Act 1999*, dictionary. This aligns the definitions of *road* and *road related area* across the Territory's road transport legislation.

Part 15 Road Transport (Third-Party Insurance) Act 2008

This part of the Bill amends the *Road Transport (Third-Party) Insurance Act 2008* to extend the application of the offence of using an uninsured motor vehicle on a road or road related area.

Clause 106 Offence—using uninsured motor vehicle on road or road related area Section 17 (1) (a)

Under section 17 of the *Road Transport (Third-Party Insurance) Act 2008*, it is an offence for a person to use an uninsured motor vehicle on a road or road related area. It is a defence to this offence (section 17 (3)) if the person believed on reasonable grounds that the vehicle was an insured motor vehicle. The Criminal Code also applies to this offence. This offence does

not apply when there is an unregistered vehicle permit in force for the motor vehicle; the motor vehicle is not subject to the registration provisions in the *Road Transport (Vehicle Registration) Regulation 2000* or the motor vehicle is exempt from this section.

This clause extends the application of this offence to a person who permits or allows an uninsured motor vehicle to be driven on a road or road related area. This amendment brings the Territory in line with other jurisdictions and is consistent with the existing offence for a person who permits a motor vehicle to be used in contravention of a condition of registration.

The current penalties that apply to this offence are unchanged.

This offence will move to section 289 of the *Motor Vehicle Accident Injuries Act 2019* on commencement of that Act and repeal of the *Road Transport (Third-Party Insurance) Act 2008* (see clause 6).

Part 16 Road Transport (Vehicle Registration) Act 1999

This part of the Bill amends the *Road Transport (Vehicle Registration) Act 1999* to support the requirement to not use unregistered vehicles or vehicles with suspended registration on Canberra roads and road related areas and amendments to the Commonwealth laws relating to vehicle standards.

Clause 107 Prohibition on using unregistered registrable vehicles or vehicles with suspended registration Section 18 (1)

Under section 18 of the *Road Transport (Vehicle Registration) Act 1999* it is an offence for a person to use an unregistered registrable vehicle or a vehicle with suspended registration on a road or road related area. The Criminal Code applies to this offence and thus the defence of honest and reasonable mistake of fact applies to this offence, for example, the person had a reasonable belief that the vehicle was registered.

This clause extends the application of this offence to a person who permits or allows an unregistered registrable vehicle or a vehicle with suspended registration to be driven on a road or road related area. This amendment brings the Territory in line with other jurisdictions and is consistent with the existing offence for a person who permits a vehicle to be used in contravention of a condition of registration.

There are no changes to the existing penalties that apply to this offence.

Clause 108 Dictionary, definitions of *gross combination mass* and *gross vehicle mass*

This clause substitutes the definitions of *gross combination mass* and *gross vehicle mass* to support the introduction of the *Road Vehicle Standards Act 2018* (Cwlth).

Clause 109 Dictionary, new definitions

The Commonwealth has passed the *Road Vehicle Standards Act 2018* (Cwlth) to replace the *Motor Vehicle Standards Act 1989* (Cwlth). The *Road Vehicle Standards Act 2018* commences over a staged period between 11 December 2018 and 10 December 2019 with full repeal of the *Motor Vehicle Standards Act 1989* (Cwlth) in December 2020.

This clause inserts a new definition of *identification plate* and *RAV* (Register of Approved Vehicles) to support the introduction of the *Road Vehicle Standards Act 2018* (Cwlth).

Clause 110 Dictionary, note 3

This clause amends note 3 to include a reference to *road* and *road related area* by reference to the definition of these terms in the *Road Transport (General) Act 1999*, dictionary. This aligns the definitions of *road* and *road related area* across the Territory's road transport legislation.

Clause 111 Dictionary, definitions of *road* and *road related area*

This clause is a technical amendment consequential on the changes at clause 110.

Part 17 Road Transport (Vehicle Registration) Regulation 2000

This part of the Bill makes minor and technical amendments to the *Road Transport (Vehicle Registration) Regulation 2000*.

Clause 112 Dictionary, note 4

This clause amends note 4 to include a reference to *road* and *road related area* by reference to the definition of these terms in the *Road Transport (General) Act 1999*, dictionary. This aligns the definitions of *road* and *road related area* across the Territory's road transport legislation.