

**2021**

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

**ROAD TRANSPORT LEGISLATION AMENDMENT BILL 2021**

**EXPLANATORY STATEMENT  
and  
HUMAN RIGHTS COMPATIBILITY STATEMENT  
(*Human Rights Act 2004, s 37*)**

**Presented by  
Chris Steel MLA  
Minister for Transport and City Services**

# ROAD TRANSPORT LEGISLATION AMENDMENT BILL 2021

The Bill **is not** a Significant Bill. Significant Bills are bills that have been assessed as likely to have significant engagement of human rights and require more detailed reasoning in relation to compatibility with the *Human Rights Act 2004*.

## OVERVIEW OF THE BILL

The purpose of the Road Transport Legislation Amendment Bill 2021 (the Bill) is to amend the road transport legislation to improve road safety by strengthening the Territory's regulatory and enforcement framework for dangerous driving and other unsafe behaviours on the Territory's road network.

The Bill amends the Territory's road transport legislation including the *Road Transport (Safety and Traffic Management) Act 1999*, *Road Transport (General) Act 1999* and *Road Transport (Road Rules) Regulation 2017*.

The *Road Transport (Safety and Traffic Management) Act 1999* and the *Road Transport (Road Rules) Regulation 2017* issued under that Act, establish the Territory's safety and traffic management system. Part 2 of the *Road Transport (Safety and Traffic Management) Act 1999* contains offences for speeding and other dangerous driving behaviours, including negligent driving. The *Road Transport (Road Rules) Regulation 2017* provides a single regulation of road rules applying to vehicles and road users on roads and road related areas in the ACT.

The *Road Transport (General) Act 1999* provides for the administration and enforcement of the road transport legislation and includes automatic licence disqualification periods that must be applied by the Court following the conviction or finding of guilt for some road transport offences.

The amendments in the Bill:

- a) establish a new offence for negligent driving that occasions actual bodily harm;
- b) increase existing minimum automatic licence disqualification periods for the offences culpable driving and negligent driving to support a road transport penalties framework that is commensurate with the associated road safety risks, deters behaviour and supports behavioural change
- c) establishes two new offences to address unsafe behaviours of other transport modes.

## CONSULTATION ON THE PROPOSED APPROACH

Consultation has been undertaken with key Government stakeholders including the Justice and Community Safety Directorate, the Director of the Public Prosecutions,

the Magistrates Court, the Human Rights Commission and Chief Minister, Treasury and Economic Development Directorate. TCCS also met with key external stakeholders to discuss the proposed amendments for inclusion in the Bill, including ACT Policing, Pedal Power, the ACT Law Society and Canberra Community Law.

No public consultation on the Bill has occurred. A communications strategy will be developed to support the introduction of the new offences. TCCS will also work closely with stakeholders to support the implementation of the new offences.

## **CONSISTENCY WITH HUMAN RIGHTS**

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

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.

International human rights law places obligations on governments to “respect, protect and fulfil” rights. The obligation to respect means governments must ensure its organs and agents do not commit violations themselves; the obligation to protect means governments must protect individuals and groups from having rights interfered with by third parties and punish perpetrators; and the obligation to fulfil means governments must take positive action to facilitate the full enjoyment of rights.

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

An assessment against section 28 of the HRA is provided below.

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. The achievement of road safety is an important objective for the ACT community.

## **Rights engaged**

Broadly, the Bill engages with, and limits the following human rights:

- Section 8 – Recognition and equality before the law

- Section 13 – Freedom of movement
- Section 18 – Right to liberty and security of person
- Section 22 – Rights in criminal proceedings
- Section 27B – Right to work

### ***Recognition and equality before the law***

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 laws.<sup>1</sup> 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 article 26 of the ICCPR is that laws should guarantee ‘all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status’.<sup>2</sup>

It is within community expectations that access to public facilities and services, including the road network (roads, footpaths, bicycle paths, shared paths), are regulated so that they are safe for everyone. To the maximum extent possible, in regulating use of the ACT road network, the approach has been to limit any disproportionate impacts on any particular groups. However, it is necessary on occasion to include provisions in the ACT’s road transport legislation that could put some members of the community at a disadvantage.

#### ***1. Nature of the right and the limitation (ss 28(2)(a) and (c))***

The amendments in the Bill provide police officers with the power to direct a person to get off, or not get on, a vehicle or animal if the police officer believes on reasonable grounds that the person is under the influence of alcohol or a drug.

These provisions may engage the right to equality and non-discrimination because they have the potential to disproportionately impact on certain segments of the community – for example people with substance use issues.

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<sup>1</sup> Nowak, M., *UN Covenant on Civil and Political Rights: CCPR Commentary*, (N.P. Engel, Publisher, 2<sup>nd</sup> revised edition, 2005) 606.

<sup>2</sup> International Covenant on Civil and Political Rights, opened for signature 19 December 1966, 999 UNTS 171 (entered into force 23 March 1976), art 2(1), 26.

## **2. Legitimate purpose (s 28(2)(b))**

The ACT Government is committed to the realisation of Vision Zero – a strategy outlined in the *ACT Road Safety Strategy 2020-25* and the *ACT Road Safety Action Plan 2020-23*, which aims to achieve zero road fatalities and serious injuries.

The use of e-scooters and other similar devices has become a popular new mode of transport for Canberrans. The ability to direct a person to get off, or not get on, a vehicle (as defined in the new provision) or animal (as defined in the new provision) who is intoxicated or under the influence of a drug is important to ensure the safety of the public and amenity of public places for the benefit of the broader community.

## **3. Rational connection between the limitation and the purpose (s 28(2)(d))**

The amendments contained in this Bill reflect the increased safety risk cyclists, operators of personal mobility devices, riders of animal drawn vehicles or animals pose to themselves and the broader community while under the influence of alcohol or a drug.

The amendments support the ACT Government's road safety guiding principles outlined in the *ACT Road Safety Strategy 2020-2025* by deterring people from unsafe behaviours on the Territory's road network.

The new offence in relation to a person being intoxicated or under the influence of drugs is aimed at the fact that this behaviour poses a significant safety risk and that the transport modes to which this offence applies should not be viewed as an alternative to driving for people who are intoxicated or under the influence of drugs.

Additionally, police officers are well trained in identifying signs of intoxication or drug use and will both observe and talk to people thought to be intoxicated or under the influence of a drug before deciding to direct them to get off or not get on a vehicle or animal. It will also be taken as an opportunity to educate users on safe use of these transport mode. They also have training in relation to discrimination standards, cultural sensitivities, and mental health issues.

## **4. Proportionality (s 28(2)(e))**

The amendments are proportionate in light of the Bill's legitimate purpose to protect public health and safety on the ACT road network. The amendments recognise the concerns raised by the community around unsafe behaviours on these transport modes. The road safety risks represented by such behaviour highlight the need for public safety measures directed at changing the behaviour, or removing the risk of the behaviour, as quickly as possible.

The amendment seeks to support an early intervention process where a person has the ability to get off or not get on a vehicle or animal of their own accord once given a direction by a police officer and are proportionate to protect the safety of all road users, including the operators of the bicycles, PMDs, animals and animal-drawn vehicles. The offences are drafted so that the emphasis is on the behaviour and the

risk it poses to public safety, rather than a particular character trait or aspect of an individual.

It is not considered that there are any less restrictive means available to achieve the purpose of reducing unsafe behaviours on the Territory's road network and to ensure the safety of all road users.

### ***Freedom of movement***

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 his or her residence in the ACT.

#### ***1. Nature of the right and the limitation (ss 28(2)(a) and (c))***

The amendments in the Bill:

- provide police officers with the power to direct a person to get off, or not get on, a vehicle or animal if the police officer believes on reasonable grounds that the person is under the influence of alcohol or a drug;
- increase minimum automatic disqualification periods for certain serious driving offences;
- establish a new offence of negligent driving occasioning actual bodily harm which comes with a possible maximum imprisonment term of 6 months.

These amendments restrict a person's freedom of movement as they have the potential to remove a person's access to certain modes of transport, remove a person's right to drive (hold or apply for a driver licence) and impose a potential term of imprisonment.

#### ***2. Legitimate purpose (s 28(2)(b))***

As outlined in the *ACT Road Safety Strategy 2020-25* and the *ACT Road Safety Action Plan 2020-23*, the ACT Government is committed to Vision Zero, which aims to achieve zero road fatalities and serious injuries and robust enforcement framework for addressing unsafe behaviours on the Territory's road network.

The amendments in the Bill seek to protect the public from the dangers posed by dangerous driving behaviour on all transport modes and all parts of the road network.

The potential for negligent conduct on our roads to have serious or catastrophic consequences is high. Currently such conduct is only subject to significant sanction if the conduct results in grievous bodily harm or death. This focus on outcomes, rather than the conduct itself, can result in negligent conduct not being appropriately punished when – by luck alone – death or serious injury has not occurred. The driver licensing framework is designed to encourage safe and responsible driving and the automatic licence disqualification periods are implemented 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.

### **3. Rational connection between the limitation and the purpose (s 28(2)(d))**

The power to direct a person to get off, or not get on, a bicycle, personal mobility device or an animal-drawn vehicle or animal can only be exercised by a police officer and is limited to circumstances where the officer has reasonable grounds to suspect the person is under the influence of alcohol or a drug. This power minimises the risks of unsafe road behaviour in the Territory and presents an opportunity to educate the community on their responsibilities as a user of the road network. The dangers represented by such behaviour highlight the need for public safety measures directed at changing the behaviour, or removing the risk of the behaviour, as quickly as possible. The amendment seeks to support an early intervention process where a person has the ability to get off or not get on a vehicle or animal of their own accord once given a direction by a police officer.

The introduction of a negligent driving offence occasioning actual bodily harm will:

- (a) provide a more appropriate recognition of the seriousness with which the community regards this behaviour and the consequences which should attach to conviction or a finding of guilt; and
- (b) potentially provide a greater deterrent to this type of behaviour for prospective or previously convicted offenders.

### **4. Proportionality (s 28(2)(e))**

As outlined above under the right to recognition and equality before the law, the amendments to provide police officers with the power to direct a person to get off, or not get on, a vehicle or animal if the police officer believes on reasonable grounds that the person is under the influence of alcohol or a drug are proportionate in light of the Bill's legitimate purpose to protect public health and safety on the ACT road network. There is no less restrictive means available as otherwise police would not have sufficient powers to protect the public and take action against dangerous and unsafe behaviours.

Culpable and negligent driving is considered a serious driving offence by all jurisdictions as evidenced by the significant penalties that are applied to those offences, including higher automatic disqualification periods than proposed in this Bill.

The automatic licence disqualification periods are considered proportionate as a driver licence is issued only where a person meets regulated eligibility criteria which includes being able to demonstrate sufficient skill and knowledge to safely drive a vehicle on the road. A driver licence is something earned and is not a right. All road users are provided with adequate education about their obligations and the requirements when using roads or road related areas and the community

understands that engaging in unsafe or dangerous driving behaviour may result in a loss of licence. The automatic licence disqualification periods for culpable driving and negligent driving occasioning death and grievous bodily harm are increased to recognise the serious consequences of engaging in this behaviour, which is also recognised in other jurisdictions. If the automatic licence disqualification period is applied without a term of imprisonment, the person will still be free to move around the Territory, however they will not be able to drive a motor vehicle.

The new offence of negligent driving occasioning actual bodily harm introduces a possible maximum imprisonment term of 6 months. This is a maximum period and will only be applied in the most serious of cases. The Court is able to consider the individual circumstances of the case to ensure that the sentence is appropriate. A detailed discussion of why the maximum term of imprisonment is considered proportionate is outlined below under the right to liberty and security of a person.

The amendments recognise the seriousness with which the community regards this behaviour and the consequences which should attach to conviction or a finding of guilt. The dangers represented by such behaviour highlight the need for public safety measures directed at changing the behaviour, or removing the risk of the behaviour.

### ***Right to liberty and security of person***

Everyone has the right to liberty and security of person, in particular, no-one may be arbitrarily arrested or detained or deprived of their liberty except on the grounds and in accordance with the procedures of the law.

This right can be relevant any time a person is not free to leave a place by his or her own choice. This includes the interim detention of a person, for example, to allow a public authority to control movement within an area.

#### ***1. Nature of the right and the limitation (ss 28(2)(a) and (c))***

This Bill engages and limits this right through the introduction of a negligent driving offence occasioning actual bodily harm with a maximum penalty that includes 6 months imprisonment. The maximum penalty of 6 months imprisonment for the new negligent driving offence is only intended for the most serious instances of actual bodily harm. The Court will have discretion to consider all of the circumstances of the case to determine whether a term of imprisonment or a court fine is most appropriate.

These amendments may also restrict a person's right to liberty as a person may not be free to leave a place of their own choice while police are determining if they are reasonably satisfied that a person is under the influence of an alcohol or drug. For example, this might occur when a police officer is assessing if it is appropriate to direct the person not to operate certain transport modes and to take a person's details to issue an infringement notice. A person must not be detained for longer than is reasonably necessary for the enforcement purpose.



## **2. *Legitimate purpose (s 28(2)(b))***

The potential for negligent conduct on our roads to have serious or catastrophic consequences is high. Currently such conduct is only subject to significant sanction if the conduct results in grievous bodily harm or death. This focus on outcomes, rather than the conduct itself, can result in negligent conduct not being appropriately punished when – by luck alone – death or serious injury has not occurred. Actual bodily harm can include very serious injuries, although they might not be permanent, these injuries can be debilitating and seriously effect an individual's everyday life.

Further, the seriousness of harm that could result to a member of the public from a person operating a vehicle or animal under the influence of alcohol or a drug is also high. Such conduct also poses a risk to the operator themselves.

## **3. *Rational connection between the limitation and the purpose (s 28(2)(d))***

The introduction of the new offence of negligent driving occasioning actual bodily harm is designed to protect all road users from the dangers posed by negligent driving behaviour on roads and road related areas.

The penalty of imprisonment is aimed at the most serious or repeated instances of this offence, as actual bodily harm can include very serious injuries, including serious physical injuries and psychological injuries severely impacting a person for months or years. The term of imprisonment is a maximum penalty. The Courts will determine when the circumstances of the offence justify a term of imprisonment.

While the fault element of this offence is relatively low (as it does not require intent), there is a high expectation that drivers will exercise appropriate care and skill when driving a motor vehicle on a road or road related area.

Considering all of the circumstances of a case and the serious harm that actual bodily harm may include, an imprisonment term may be appropriate to deter this behaviour in the future and prevent further injuries and deaths.

Similarly, the introduction of the offence for non-compliance with a police direction to get off, not get on, a vehicle or animal, is also designed to protect the public health and safety of the public on road and road related areas. The amendments seek to ensure people under the influence of alcohol, or a drug do not operate a vehicle or animal and as a result put other road users at risk. By providing police officers the power to direct a person who is reasonably believed to be under the influence of alcohol or a drug to get off, or not get on a vehicle or animal, this promotes the safe use of the road network for all road users and ensures the safety of the wider community.

## **4. *Proportionality (s 28(2)(e))***

Although a lesser term of imprisonment may be considered a less restrictive means to address this behaviour, considering the serious harm that actual bodily harm can entail, any lesser maximum term of imprisonment is not considered appropriate. The

proposed term of imprisonment is a maximum term and Courts have discretion not to apply or to apply a lesser term.

The ACT Government is committed to having in place a robust transport regulatory framework that contains penalties that appropriately reflect associated road safety risks, deter offending behaviour and support behaviour change. These amendments enhance the existing road transport framework and, while potentially limiting a person's right to liberty, the maximum term of 6 months imprisonment for negligent driving occasioning actual bodily harm is considered proportionate, reasonable and justified noting the public interest benefits from addressing the risks to community safety associated with unsafe behaviours on the road network, and the need to protect the human rights of other road users and the broader community.

Accordingly, the proposed penalty is not considered excessive or disproportionate. The ratio of 6 months imprisonment and/or 50 penalty units is also consistent with the ratio for maximum penalty units to imprisonment terms in the ACT Government's *Guide for Framing Offences*. The term of imprisonment is also discretionary and reasonable considering the serious impact of any negligent driving that results in bodily harm.

Further, the power for police officers to direct a person to get off, or not get on a vehicle or animal, is not extensive and only applies to people reasonably believed by a police officer to be under the influence of alcohol or a drug. A person must also not be detained for longer than is reasonably necessary to issue the person with a direction to get off, or not get on, a vehicle or animal or an associated infringement notice.

### ***Right to the presumption of innocence***

The Bill creates new strict liability offences and makes amendments to existing strict liability offences under road transport legislation.

Strict liability offences engage section 22(1) of the HRA. A strict liability offence means that there are no fault elements for the physical elements of the offence to which strict liability applies which essentially means that the conduct alone is sufficient to make the defendant culpable. However, there is a specific defence of mistake of fact for strict liability offences (see sections 23 and 36 of the *Criminal Code 2002*).

Strict liability offences typically arise in a regulatory context where for reasons such as public safety and ensuring that regulatory schemes are complied with, criminal penalties are required. Where a defendant can reasonably be expected, because of his or her involvement with the regulated activity, to know what the requirements of the law are, the mental, or fault, element can justifiably be excluded.

### **1. Nature of the right and the limitation (ss 28(2)(a) and (c))**

Section 22(1) of the HRA provides that everyone charged with a criminal offence has the right to be presumed innocent until proven guilty according to law. The Bill engages and limits this right as it creates the following two new strict liability offences:

- (a) operating a personal mobility device without proper control; and
- (b) failure to comply with direction of a police officer to get off, or not get on, a vehicle or animal.

### **2. Legitimate purpose (s 28(2)(b))**

The intention of strict liability offence is to encourage ACT road users to display responsible behaviours when sharing the road network with others and develop a community that shares responsibility for road safety.

The purpose of this Bill is to improve public safety by addressing unsafe behaviours on the Territory's road network through a robust enforcement framework.

### **3. Rational connection between the limitation and the purpose (s 28(2)(d))**

A strict liability offence should have a clear yes / no criteria as to whether the offence has occurred, and the person should reasonably know they have an obligation under law.

Operating a personal mobility device without proper control is against the reasonable standards expected from the community. It is already an expectation of drivers and cyclists that they have proper control of their vehicle or bicycle. For a person to commit an offence under this Bill would be required to be actively involved in the dangerous or unsafe behaviour resulting in the offence. The limitations would only be exercised in very specific circumstances where a person engages in the offence behaviour.

Operating an animal or vehicle while under the influence of alcohol or a drug is against the reasonable standards expected from the community as established by the offence in section 24A of the *Road Transport (Alcohol and Drugs) Act 1977*. The new offence in this Bill supports that provision and an intervention model that aims at preventing the dangerous behaviour before it has serious consequences.

The application of strict liability to these offences aligns with section 8 of the *Road Transport (Road Rules) Regulation 2017*, which provides that an offence against the regulation is a strict liability offence. In developing and amending these offences due regard was given to the guidance provided in the *Guide for Framing Offences*. Each offence has an infringement notice penalty attached that is within the normal range for strict liability offences and are comparable to existing offences.

#### **4. Proportionality (s 28(2)(e))**

It is not considered that there are any less restrictive means available to achieve the purpose of the road safety risks that arise from the unsafe behaviours sought to be addressed.

The new offences are not burdensome in nature and relate to ensuring the safe operation of all transport modes to protect ACT road users, including vulnerable road users. It also benefits the community by encouraging changes in behaviour.

The inclusion of strict liability offences supports an effective road transport infringement notice scheme. Effective infringement notice schemes minimise the cost of litigation for the ACT while offering people a choice concerning whether to accept a lesser penalty without admitting the offence or remaining liable to prosecution.

The offences address matters which the community either regards as generally unacceptable behaviour or a risk to health and safety, property or revenue.

The penalties for these offences are within the normal range for strict liability offences, and are in accordance with the *Guide for Framing Offences*, lending to the proportionality of this provision.

#### ***Right to work***

Everyone has the right to work, including the right to choose their occupation or profession freely and without discrimination. The right to work requires government to undertake particular actions to facilitate employment, including safeguarding the right of everyone to the opportunity to gain their living by work which they freely choose or accept.

##### **1. Nature of the right and the limitation (ss 28(2)(a) and (c))**

This Bill amends existing minimum automatic licence disqualification periods for culpable driving and negligent driving occasioning death or grievous bodily harm to reflect the seriousness of these offences.

The Bill:

- increases the minimum automatic disqualification period for offence negligent driving occasioning death for a first offender from 3 months to 9 months and for a repeat offender from 12 months to 18 months;
- increases the minimum automatic disqualification period for negligent driving occasioning grievous bodily harm for a first offender from 3 months to 6 months;
- increases the minimum automatic disqualification period for culpable driving causing grievous bodily harm from 6 months to 12 months for first offenders; and

- increases the minimum automatic disqualification period for culpable driving causing death from 6 months to 12 months for first offenders.

The minimum automatic disqualification period for a repeat offender for negligent driving occasioning grievous bodily harm is retained at 12 months.

The minimum automatic disqualification periods for a repeat offender for culpable driving occasioning death or grievous bodily harm are retained at 24 months.

Culpable and negligent driving that causes the death or grievous bodily harm of another person has a detrimental impact on the community and threatens community safety. Amending the existing minimum automatic disqualification periods may be seen to engage and limit a person's right to work because it can result in a person's right to drive being removed and/or remove their ability to apply for a driver licence. Driver licences are heavily relied upon by the community and are essential for several occupations in the Territory.

These automatic disqualification periods only apply to drivers convicted, or found guilty of, culpable driving or negligent driving occasioning death or grievous bodily harm. These offences are some of the most serious offences provided for under road transport legislation and involve significant harm having been suffered for the offence to be made out (i.e. death or grievous bodily harm).

### **2. *Legitimate purpose (s 28(2)(b))***

The purpose of the amendments is to protect all road users from the dangers posed by negligent driving behaviour on roads and road related areas and reducing the risk of serious injury as a result of negligent driving.

### **3. *Rational connection between the limitation and the purpose (s 28(2)(d))***

There is a high expectation that drivers will exercise appropriate care and skill when driving on the road network and it is important that this standard is enforced through appropriate penalties to protect safety of all road users and deter unsafe behaviours.

Licence disqualification periods are designed to encourage safe and responsible driving. A driver licence is a privilege not a right. There are significant public interest benefits that arise from ensuring that roads and road related areas are safe for all road users and appropriate enforcement actions are essential to providing a safe road environment for the community. The stronger penalties that apply to culpable driving and negligent driving support the seriousness of the consequences of these behaviours.

All road users are provided with adequate education about their obligations when using the road network. 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 against a person's driver licence are essential to building a community, with shared responsibility for road safety. The driver licensing scheme is designed to encourage safe and responsible driving and 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.

#### **4. Proportionality (s 28(2)(e))**

Although maintaining the existing automatic licence disqualification periods was considered, this approach would not sufficiently address the need for greater deterrence to prevent harms arising from offending behaviour and support behaviour change.

As outlined above in the human rights assessment for the freedom of movement, the increased disqualification periods are justified and proportionate on the right to work as they enhance the existing road transport framework and contain penalties that are proportionate to the significant impact that unsafe driving behaviours may incur on the community. They are also considered necessary to encourage safe driving behaviours on the Territory's road network by removing the right of a driver convicted or found guilty of serious road transport offences to drive on the road for a period of time. Loss of licence is known to be a significant tool in changing driver behaviours.

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.

A first offender who is subject to an automatic disqualification period longer than the minimum automatic period is entitled to apply for a restricted licence at the end of the minimum automatic disqualification period. If a term of imprisonment has not been ordered by the court, a person will still be able to engage in their employment if an automatic licence disqualification period has been applied. However, the person will not be able to drive a motor vehicle for this term which is proportionate to protect the public's health and safety.

#### **Climate Change Implications**

There are no climate change implications from the Bill.

## Road Transport Legislation Amendment Bill 2021

### *Human Rights Act 2004 - Compatibility Statement*

In accordance with section 37 of the *Human Rights Act 2004* I have examined the **Road Transport Legislation Amendment Bill 2021**. In my opinion, having regard to the Bill and the outline of the policy considerations and justification of any limitations on rights outlined in this explanatory statement, the Bill as presented to the Legislative Assembly is consistent with the *Human Rights Act 2004*.

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Shane Rattenbury MLA  
Attorney-General

## CLAUSE NOTES

### Part 1 Preliminary

#### Clause 1 Name of Act

This clause states that the name of the Act is the *Road Transport Legislation Amendment Act 2021*.

#### Clause 2 Commencement

This clause sets out that the Act will commence 14 days after notification. This will provide sufficient time for operational changes to be implemented.

#### Clause 3 Legislation amended

This clause sets out the legislation that is amended by this Act, being the *Road Transport (General) Act 1999*, *Road Transport (Road Rules) Regulation 2017* and the *Road Transport (Safety and Traffic Management) Act 1999*.

Amendments to other road transport legislation are contained in Schedule 1 and include amendments to the *Motor Accident Injuries Act 2019* and the *Road Transport (Offences) Regulation 2005*.

### Part 2 Road Transport (General) Act 1999

This part of the Bill amends Division 4.2 of the *Road Transport (General) Act 1999* which establishes the regulatory framework for licence suspension, disqualification and related matters.

#### Clause 4 Automatic disqualification for culpable driving Section 62 (1) (a) and (b)

Section 62 (1) currently provides the minimum periods for which a person's driver licence is automatically disqualified for a conviction, or finding of guilty, of an offence of culpable driving.

This clause increases the minimum automatic disqualification period for a first offender convicted, or found guilty, of an offence of culpable driving from 6 months to 12 months. The automatic disqualification period for a repeat offender of 24 months is retained. The court retains its discretion to order a longer period of disqualification.

#### Clause 5 Automatic disqualification for certain other driving offences New section 63 (2A)

This clause inserts new section 63 (2A) and establishes new minimum automatic disqualification periods if a court convicts a person, or finds a person guilty, of



negligent driving occasioning death or negligent driving occasioning grievous bodily harm.

This clause increases the minimum automatic disqualification period for negligent driving occasioning death for a first offender from 3 months to 9 months and for a repeat offender from 12 months to 18 months. The court retains its discretion to order a longer period of disqualification.

This clause increases the minimum automatic disqualification period for negligent driving occasioning grievous bodily harm for a first offender from 3 months to 6 months. The automatic disqualification period for a repeat offender of 12 months is retained. The court retains its discretion to order a longer period of disqualification.

The court will have discretion as to whether to apply a period of driver licence disqualification for the new offence of negligent driving occasioning actual bodily harm using its current discretion under section 64 of the *Road Transport (General) Act 1999* to apply a period of disqualification to a person convicted or found guilty of an offence against the Territory's road transport legislation.

#### **Clause 6     Section 63 (3)**

This is a minor and technical amendment consequential on the changes at clause 5.

#### **Part 3            Road Transport (Road Rules) Regulation 2017**

This part of the Bill amends Divisions 14.3 and 18.3 of the *Road Transport (Road Rules) Regulation 2017*.

Section 33 of the *Road Transport (Safety and Traffic Management) Act 1999* gives the Executive the power to make regulations for the purposes of the Act.

Section 36 of the *Road Transport (Safety and Traffic Management) Act 1999* provides the power to make regulations in relation safety generally including the regulation or prohibition of traffic, people and animals on roads and road related areas.

Section 39 of the *Road Transport (Safety and Traffic Management) Act 1999* provides the power to make regulations in relation to traffic management generally including the regulation or prohibition of traffic, people and animals on roads and road related areas.

#### **Clause 7     New section 244K**

This clause introduces a new provision relating to the use of personal mobility devices.

New section 244K provides that it is a strict liability offence for a person to travel in or on a PMD unless the person has proper control of the PMD. The maximum penalty for this offence is 20 penalty units.

#### **Clause 8      New section 304A**

This clause introduces a new provision relating to the use of a personal mobility device, bicycle or animal-drawn vehicle while under the influence of alcohol or a drug.

New section 304A gives a police officer the power to direct a person to get off or not get on a vehicle which for the purposes of this provision means a personal mobility device, bicycle, animal-drawn vehicle or an animal which means for the purpose of this provision a horse, cattle or sheep, if the police officer believes on reasonable grounds that the person is under the influence of alcohol or a drug.

This provision makes it a strict liability offence to fail to comply with a direction given by a police officer on the above grounds. The maximum penalty for this offence is 20 penalty units.

This provision supports section 24A of the *Road Transport (Alcohol and Drugs) Act 1977* that makes it an offence to drive or ride a vehicle (bicycle, personal mobility device or an animal-drawn vehicle) or an animal on a road or be in charge of a vehicle or animal on a road, while under the influence of alcohol or a drug.

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

This part of the Bill amends the *Road Transport (Safety and Traffic Management) Act 1999* which provides a safety and traffic management system in the ACT which includes offences for speeding and other serious unsafe driving behaviours.

#### **Clause 9        Negligent driving Section 6 (1), penalty, paragraph (c)**

This clause introduces a new offence for negligent driving occasioning actual bodily harm with a maximum penalty of 50 penalty units, imprisonment for 6 months or both.

This clause also amends the wording of the existing offence 'negligent driving – in any other case' to 'negligent driving – if paragraphs (a), (b) and (c) do not apply' to make it clear that it only applies when the negligent driving has not occasioned the death, grievous bodily harm or actual bodily harm of another person.

This clause includes examples of actual bodily harm to assist the community to interpret and understand the effects of the new provisions and are not included to limit the common law definitions of actual bodily harm.

**Clause 10**    **Aggravated offence—furious, reckless or dangerous driving**  
**Section 7A (4), definition of *vulnerable road user*, examples 5 and 6**

This is a minor and technical amendment consequential on the introduction of the regulatory framework for personal use of e-scooters and other similar devices in the *Road Transport Legislation Amendment Regulation 2019* (No 1).

**Schedule 1**            **Other amendments**

**Part 1.1**              **Motor Accident Injuries Act 2019**

This part makes minor and technical amendments to the *Motor Accident Injuries Act 2019* consequential on the changes at clause 9.

**Section 1.1**            **Section 41, definition of *driving offence*, paragraph (d) (iv)**

This section includes the new offence of negligent driving occasioning actual bodily harm as a driving offence for the purposes of the motor accident injuries scheme. This inclusion aligns with other offences included in the definition of driving offence, in particular negligent driving occasioning death, negligent driving occasioning grievous bodily harm.

**Part 1.2**              **Road Transport (Offences) Regulation 2005**

This part makes amendments to the *Road Transport (Offences) Regulation 2005* consequential on the changes at clause 4 and 5.

Section 23 of the *Road Transport (General) Act 1999* gives the power for a regulation to be made that prescribes an offence as an infringement notice offence and the amount of the penalty payable, including different amounts payable for different offences and different amounts payable for the same offence committed by different people.

Section 233 of the *Road Transport (General) Act 1999* gives the Executive the power to make regulations for the *Road Transport (General) Act 1999*. Regulations issued can prescribe matters that are necessary or convenient for the carrying out or giving effect to the *Road Transport (General) Act 1999* or other road transport law and prescribe offences for contravention of a regulation.

Schedule 1 of the *Road Transport (Offences) Regulation 2005* lists the offences contained in each Act and Regulation that form part of the road transport legislation. If an offence may be dealt with by infringement notice, the schedule prescribes the infringement notice penalty amount that is payable.

**Section 1.2**            **Schedule 1, part 1.12, item 9**

This section amends item 9 and is consequential on the changes at clause 9.

It incorporates at item 9.3 the new offence of negligent driving occasioning actual bodily harm.

It increases the infringement notice penalty amount for negligent driving that does not occasion death, grievous bodily harm, or actual bodily harm from \$398 to \$598 (item 9.4). The penalty is set in accordance with the *Guide for Framing Offences*.

**Section 1.3                      Schedule 1, part 1.12A, new item 422A**

This section inserts new item 422A consequential on the changes at clause 7.

It sets the infringement notice penalty for the new strict liability of not having proper control of a personal mobility device. The penalty is set at \$154 which is consistent with existing penalties for similar offences. The penalty is set in accordance with the *Guide for Framing Offences*.

**Section 1.4                      Schedule 1, part 1.12A, new item 550A**

This section inserts new item 550A consequential on the changes at clause 8.

It sets the infringement notice penalty for the new strict liability offence of not complying with a direction of a police officer to get off, or not get on, a vehicle or animal. The penalty is set at \$154 which is consistent with existing penalties for similar offences. The penalty is set in accordance with the *Guide for Framing Offences*.