

2022

ROAD TRANSPORT LEGISLATION AMENDMENT BILL 2021

Amendments to be moved by the Minister for Transport and City Services

SUPPLEMENTARY EXPLANATORY STATEMENT

**Presented by
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Minister for Transport and City Services**

ROAD TRANSPORT LEGISLATION AMENDMENT BILL 2021

INTRODUCTION

This supplementary explanatory statement relates to amendments to the Road Transport Legislation Amendment Bill 2021 (the Bill) as presented to the Legislative Assembly.

On 5 August 2021, the Bill was introduced into the Legislative Assembly. The explanatory statement accompanying the Bill as introduced provides a detailed account of the provisions contained in the Bill and can be accessed at: https://www.legislation.act.gov.au/View/es/db_64820/current/html/db_64820.html

The Government amendments to the Bill seek to further enhance the Territory's road transport laws concerning unsafe behaviours on our road network. The Government Amendments strengthen the Territory's existing dangerous driving framework by:

- a. introducing a new offence for driving without due care, attention or reasonable consideration of other road users;
- b. increasing the infringement notice penalty amount for the existing proper control of vehicles offence in section 297 of the *Road Transport (Road Rules) Regulation 2017* (road rules); and
- c. lowering the threshold in proposed new section 304A of the road rules from reasonable belief to reasonable suspicion.

CONSULTATION ON THE PROPOSED APPROACH

Consultation has been undertaken with key Government stakeholders including the Justice and Community Safety Directorate and the Chief Minister, Treasury and Economic Development Directorate. TCCS also consulted with ACT Policing.

No public consultation on the Government amendments 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 implementation of the new offences.

CONSISTENCY WITH HUMAN RIGHTS

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

Broadly, the Government amendments may be seen to engage with, and limit the following human rights:

- Section 8 – Recognition and equality before the law
- Section 13 – Freedom of movement

- Section 22 – Rights in criminal proceedings

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

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.

The explanatory statement accompanying the Bill provides that 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 the 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 Government amendments propose to lower the threshold in new section 304A from reasonable belief to reasonable suspicion. This may engage the right to equality and non-discrimination because it has the potential to disproportionately impact on certain segments of the community – for example people with substance issues.

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))

Lowering the threshold for new section 304A ensures the provision operates as intended, being to deter unsafe driving behaviours on alternative transport modes, such as PMDs, bicycles and encourage behaviour change first through education. 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. They also have training in relation to discrimination standards, cultural sensitivities, and mental health issues.

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

The Government amendment supports the early intervention process and effective enforcement of new section 304A 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.

Maintaining the standard of reasonable belief would undermine the effectiveness of the offence. Accordingly, the lower threshold is considered appropriate and there is no less restrictive means considered available to achieve the purpose of the Bill.

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))

Lowering the threshold under new section 304A from reasonable belief to suspicion has the ability to restrict a person's freedom of movement as a lower threshold may be perceived as resulting in greater enforcement.

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

The ACT Government is committed to Vision Zero, which aims to achieve zero road fatalities and serious injuries and a 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 behaviours on all transport modes and all parts of the road network.

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, PMD 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.

As outlined in the explanatory statement accompanying the Bill, 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.

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

As outlined above under the right to recognition and equality before the law, the amendment is proportionate in light of the Bill's legitimate purpose. Accordingly, there is no less restrictive means available to ensure police have sufficient powers to protect the public and deter dangerous and unsafe behaviours.

Right to the presumption of innocence

The Government amendments introduce two new strict liability offences.

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*).

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) Travelling in or on a personal mobility device without due care and attention or reasonable consideration; and
- (b) Driving a vehicle without due care and attention or reasonable consideration.

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

The intention of the new offences 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.

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 or driving a vehicle without due care and attention or reasonable consideration is against the reasonable standards expected from the community and is intended to stop an accident from occurring. Lack of due care and attention includes instances of inadvertence and inattention¹. This may be demonstrated where, for example, a person is found reading a book while driving a car or riding a bicycle. Similarly, the act of intentionally speeding up a vehicle to prevent another road user from overtaking may constitute an offence of lack of reasonable consideration².

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 they 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 offending behaviour.

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

It is not considered that there are any less restrictive means available to achieve the purpose of addressing the road safety risks that arise from the unsafe behaviours being 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 new offences address matters which the community either regards as generally unacceptable behaviour or a risk to health and safety, property or revenue.

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.

¹ *Price v Fletcher* (1972) Tas SR 35.

²Above n 1.

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.

Climate Change Implications

There are no climate change implications from the Government amendments.

CLAUSE NOTES

1

Proposed new clauses 7A and 7B

Page 5, line 9—

Clause 7A introduces a new strict liability offence in section 244L of the road rules for travelling in or on a personal mobility device without due care and attention or reasonable consideration for other road users.

Clause 7B introduces a new strict liability offence in section 296A of the road rules for driving without due care and attention or reasonable consideration for other road users. *Road users* is defined by section 14 of the road rules and means a driver, rider, passenger or pedestrian.

Driving without due care and attention may include instances of inadvertence and inattention, such as shaving a beard with an electric razor while driving a car or riding a bicycle. Intentionally speeding up of a vehicle to prevent another road user from overtaking may constitute an offence of driving without reasonable consideration.

2

Clause 8

Proposed new section 304A (1)

Page 5, line 15—

Clause 8 replaces the term *believes* in new section 304A (1) of the road rules with the term *suspects* to provide that a police officer may 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) if the police officer suspects on reasonable grounds the person is under the influence of alcohol or a drug.

3

Schedule 1, part 1.2

Amendment 1.3

Page 10, line 1—

Section 1.3 substitutes section 1.3 in the Bill and includes new items 422A and 422B. Item 422A is consequential on the changes made by clauses 7 of the Bill. Item 422B is consequential on proposed new 7A made by the government amendments.

This amendment sets the infringement notice penalty for the strict liability of not having proper control of a personal mobility device (proposed new section 244K in the road rules) and new strict liability offence of not having due care and attention or reasonable consideration in or on a personal mobility device (proposed new section 244L in the road rules).

The penalty for both offences is set at \$154 which is consistent with existing penalties for similar offences. The penalty is set in accordance with the Government's *Guide for Framing Offences*.

Section 1.3A inserts new items 523A, 523A.1, 523A.2 which is consequential on the changes made by clause 7B.

These items set the infringement notice penalty for the new strict liability of driving without due care and attention or reasonable consideration (new section 296A).

For new section 296A, the penalty is set at \$154 where the driver of a vehicle is the rider of a bicycle, which is consistent with existing penalties for similar offences involving cyclists. For any other driver, such as the driver of a motor vehicle, the penalty is set at \$301.

Section 1.3A also substitutes existing item 524 to increase the existing infringement notice penalty for the strict liability offence of driving without proper control (section 297 (1)). The infringement notice penalty amount is being increased from \$301 to \$398.

These penalties are set in accordance with the *Guide to Framing Offences*.