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

ROAD SAFETY LEGISLATION AMENDMENT BILL 2022

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

**Presented by
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ROAD SAFETY LEGISLATION AMENDMENT BILL 2022

The Bill is 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 Road Safety Legislation Amendment Bill 2022 (the Bill) is the first Road Safety Legislation Amendment Bill for 2022.

The purpose of the Bill is to amend the road safety legislation to improve road safety by strengthening the reporting and monitoring of driver licence holders' fitness to drive and provide enhanced penalties to deter dangerous driving behaviours. Dangerous driving has contributed to an increased road death toll in the ACT in 2022. The Bill increases the penalties for a range of offences, or introduces new penalties, to ensure the penalties for dangerous driving behaviours are appropriate and proportionate to address a range of risky behaviours occurring on ACT roads. A robust regulatory framework is essential to establishing safe people and safe behaviours on our roads, and there are significant benefits for both the community and individuals.

Broadly, measures to deter unsafe driving behaviour in the Bill include expanding the list of offences for which an immediate licence suspension can/must be issued, increased timeframes for seizure and impoundment of vehicles following a relevant offence, increased penalties for certain offences such as street racing, and a new aggravated offence for street racing.

A key driver underpinning the intent of the Bill is the ACT's commitment to continue efforts to harmonise the ACT's road transport legislation with other jurisdictions, particularly in relation to legislation intended to deter dangerous driving behaviours. The Bill acknowledges community preferences for increased penalties in response to several tragic deaths that have occurred on ACT roads, while also ensuring consistency and balance with the human rights requirements set forth in the *Human Rights Act 2004*.

The road safety legislation being amended by this Bill is the:

- a) *Road Transport (Alcohol and Drugs) Act 1977*
- b) *Road Transport (Driver Licensing) Act 1999*
- c) *Road Transport (General) Act 1999*
- d) *Road Transport (Offences) Regulation 2005*
- e) *Road Transport (Safety and Traffic Management) Act 1999*.

The amendments in this Bill:

- a) introduce a regulation making power which may require health practitioners to report information relating to a person's fitness to drive to the road transport authority (RTA);
- b) introduce a regulation making power to allow the RTA to share information relating to an interstate licence holder's fitness to drive with the issuing interstate licensing authority;
- c) introduce a mandatory requirement for ACT Policing to issue an immediate licence suspension notice for speeding more than 45km/h over the speed limit, for an aggravated offence of furious, reckless or dangerous driving or for refusing to provide an oral fluid sample;
- d) introduce automatic licence disqualification where a court convicts a person for speeding more than 45km/h over the speed limit;
- e) increase the maximum time allowable for a police officer to seize a vehicle after an offence under section 10C of the *Road Transport (Safety and Traffic Management) Act 1999* from 10 to 30 days;
- f) inserts a new aggravated offence at section 5AA of the *Road Transport (Safety and Traffic Management) Act 1999* for races, attempts on speed records, speed trials etc;
- g) amends the penalty for vehicle street races, attempts on speed records, speed trials, etc. to introduce an imprisonment penalty for repeat or aggravated offenders, increase the applicable penalty units for committing an offence and infringement notice penalty amount for non-repeat or aggravated offenders;
- h) increase the range of offences that would result in an offender being classified as a repeat or aggravated offender when a person is charged with offence under sections 5A or 5C of the *Road Transport (Safety and Traffic Management) Act 1999*; and
- i) introduce a discretionary power for ACT Policing to seize and impound a vehicle for speeding more than 45km/h over the speed limit or for an aggravated offence of furious, reckless and/or dangerous driving.

CONSULTATION ON THE PROPOSED APPROACH

Consultation has been undertaken with key Government stakeholders including the Justice and Community Safety Directorate, the Chief Minister, Treasury and Economic Development Directorate, the Health Directorate, the ACT Human Rights Commission (in relation to mandatory medical reporting), Director of Public Prosecutions and ACT Policing.

TCCS will work closely with stakeholders to support the implementation of the enhanced penalties and appropriate communications will support the introduction of the Bill.

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:

- the nature of the right affected
- the importance of the purpose of the limitation
- the nature and extent of the limitation
- the relationship between the limitation and its purpose
- 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 Limited

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

- Section 8 - Recognition and equality before the law
- Section 11 - Right to protection of the family and children
- Section 12 – Right to privacy
- Section 13 – Freedom of movement
- Section 18 – Right to liberty and security
- Section 21 – Right to a fair trial

- Section 22 – Rights in criminal proceedings
- Section 27B – Right to work.

Rights Promoted

This Bill can also be seen as to engage and promote the following human rights:

- Section 9 – Right to life.

Rights Promoted

Right to life

Section 9 of the HRA provides that everyone has the right to life and to not have their life taken. The right to life includes a duty on government to take appropriate steps to protect the right to life.

The Bill promotes the right to life by establishing an appropriate legal framework for dangerous driving offences with the road transport legislation. Dangerous driving behaviours including high range speeding, racing, furious, reckless, dangerous and menacing driving, etc are extremely high-risk behaviours which can result in loss of life for both the driver who commits the offence and other road users. The Government has a responsibility to maintain a robust regulatory framework which supports safe people and safe behaviours on ACT roads in order to protect the lives of road users. This includes pedestrians, motorcycle riders, cyclists and other vulnerable road users.

The amendments in this Bill will increase ACT Policing’s ability to act immediately to address drivers who are undertaking dangerous driving on Territory roads. This will protect the lives of road users in the ACT. The amendments aim to reduce the prevalence of dangerous driving by ensure there are appropriate sanctions for dangerous driving on ACT roads. Further, the amendments ensure that a person who undertakes dangerous driving is not able to avoid appropriate sanction by unlawfully preventing police officers from seizing their motor vehicle where permitted under the road transport legislation by order of a court.

Rights Limited

Requirement for health practitioners to report to the RTA relating to a person’s fitness to drive

Broadly, clause 5 of this Bill engages and limits the following human rights:

- 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.

- Section 12 of the HRA provides that everyone has the right to not have their privacy interfered with unlawfully or arbitrarily; and not have their reputation unlawfully attacked.
- Section 21 of the HRA provides that everyone has the right to a fair trial.
- Section 27B of the HRA provides that everyone has the right to work and choose their occupation or profession freely, without discrimination.

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

The proposed amendments will enable regulations to be made that require health practitioners, or certain health practitioners, to report to the RTA relating to the person's fitness drive.

Subject to the regulatory provisions which will define the scheme, clause 5 may allow for reporting to be required to the RTA when a health practitioner believes the person's ability to drive a vehicle safely is impaired. It allows for reporting to be required if a driver licence holder, or applicant, holds certain licence classes or types of licences, as deemed appropriate in the subordinate laws.

The Bill could be considered to limit a person's right to:

- equality and non-discrimination because only drivers or applicants that are considered to have health concerns that may affect their ability to drive may be reported to the RTA;
- privacy as the Bill allows for regulations to introduce provisions that require the production of personal information and health information by health practitioners to the RTA relating to a person's fitness to drive a motor vehicle; and
- a fair trial and/or right to work when the RTA, upon receiving a report from a health practitioner, relies on an administrative process to determine a person's fitness to drive and whether the person can hold, or continue to hold, a class or type of driver licence. For example, the RTA may impose conditions on the person's licence or vary, suspend, or cancel the licence in the most serious cases.

The regulations address the need to refer reports as permitted under the existing fitness to drive regulatory framework. For complex cases, the RTA may need to refer a report or other evidence relevant to a person's fitness to drive, obtained either from the licence holder, a health practitioner or other sources, such as incident reports from ACT Policing, for expert advice from authorised medical reviewers. Authorised medical reviewers will then use this information to assess the person's fitness to hold a driver licence or to drive a particular class or kind of motor vehicle in accordance with the required medical standards and provide a recommendation to the RTA. Authorised medical reviewers are appointed under section 78B.

Licence classes can be a requirement for people engaged in certain work, such as when driving public passenger vehicles or driving heavy vehicles over 4.5 tonnes on ACT roads and road-related areas. Where a person's fitness to drive is assessed and the person is not considered fit to drive, fit only to drive in certain circumstances or limited to on drive light vehicles, or vehicles that are not public passenger vehicles, there may be a more significant impact on the person's livelihood. Further, although certain members of the community do not require a driver licence for work,

a licence suspension or imposition of certain conditions might impact their ability to travel to and from work.

Consideration of a person's driving ability is twofold, firstly by the health practitioner and secondly by the RTA against national driver licensing medical standards.

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 ACT Government has a responsibility to identify and respond to heightened risks in road trauma. Medical conditions, or a combination of medical conditions, can affect a person's ability to drive safely, by influencing a person's perception, judgement, response time or physical capability, and possibly resulting in a crash causing death or injury¹.

In the last three financial years, two ACT road fatalities have indicated that a medical condition may be the cause and are currently pending a Coronial Inquiry. In another fatality in 2018, the driver was found guilty of culpable driving against his background of medical concerns which were not reported to the RTA. Chief Coroner Walker recommended that the Minister for Transport and City Services considers legislative amendment to mandate that health practitioners notify the RTA when the health practitioner has reasonable cause to believe that a patient is suffering from an illness, disability or deficiency that is likely to endanger the public if the patient drives a heavy vehicle at the time of completing a medical assessment in support of a heavy vehicle licence application, and with an ongoing obligation at any point at which the health practitioner is provided with information reasonably causing him or her to form that belief.

The ACT adopts nationally consistent assessment and fitness standards based on best practice measures to licence safe and competent drivers. The required medical standard in the ACT is defined as Austroads' *Assessing Fitness to Drive*, which is based on available evidence on crash risk and the effects of medical conditions. A key input to the licensing criteria in *Assessing Fitness to Drive* includes the Monash University Accident Research Centre report *Influence of chronic illness on crash involvement of motor vehicle drivers: 3rd edition*. While noting the report's limitations in making conclusions, it considered that based on evidence from studies reviewed, seven conditions were found to have one good rated study with at least a moderately elevated risk of crash involvement compared to their relevant control group. Specifically, these were Alcohol use disorder, Epilepsy, Sleep, Vision, Multiple Medical Conditions (Diabetes with Neuropathy), Dementia, and Stroke.²

¹Austroads. *Assessing Fitness to Drive*. Page 2. Available at https://austroads.com.au/_data/assets/pdf_file/0037/498691/AP-G56-22_Assessing_Fitness_Drive.pdf

² Charlton, J.L., Di Stefano, M., Dow, J., Rapoport, M.J., O'Neill, D., Odell, M., Darzins, P., & Koppel, S. *Influence of chronic illness on crash involvement of motor vehicle drivers: 3rd edition*. Monash University Accident Research Centre Reports 353. Melbourne, Australia: Monash University Accident Research Centre. (2021). Available at https://www.monash.edu/_data/assets/pdf_file/0008/2955617/Chronic-illness-and-MVC-risk_Report-MUARC-report-no-353_JUNE2022.pdf

Certain vehicles or types of work can further increase the risk to road safety. Commercial vehicle drivers may spend a significant amount of time on the roads increasing their risk of crash involvement. Additionally, any heavy vehicle involved in a serious collision is likely to have devastating consequences to occupants in the other vehicle. The fitness standards, as set out in Austroads' *Assessing Fitness to Drive*, recognise that certain drivers have additional driving tasks which affect their ability to respond in a safe and timely manner – for example, heavy vehicle drivers interacting with in-vehicle technologies; fatigue demands; vehicle size; stability; and load distribution, as well as the additional skills needed for turning and braking.³ In response, *Assessing Fitness to Drive* sets more stringent commercial medical standards, which apply to drivers of heavy vehicles, with medium rigid vehicle licence and above, public passenger vehicles or vehicles carrying dangerous goods.

The purpose of the limitation from the amendments in clause 5 is to protect the public from the dangers posed by driver's that have a medical condition that may affect their ability to drive safely. The RTA has a responsibility to the ACT community to ensure drivers are fit and competent and take action to address any elevated crash risk.

Once the RTA receives a report concerning a person's fitness to drive, the administrative process within the fitness to drive assessment framework allows the RTA to assess each person's individual health information, the impacts on road safety and any required risk mitigation on a case-by-case basis. Relying on the advice from health practitioners, the RTA can assess each person's compliance with the required medical standards. It is important that the RTA can utilise the information once it is received in order to respond to any potential heightened road safety risks.

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

The requirement for drivers to self-report medical conditions affecting their ability to drive safely is included in every Australian state and territory driver licensing legislation. However, the RTA may not be aware of a change in a person's fitness to drive under the existing legislation, unless they receive a voluntary report from a health practitioner or concerned community member. Introducing reporting requirements by health practitioners in the ACT further enhances this framework. The amendment seeks to capture the expertise of health practitioners and their central role in the community to identify a person when their ability to drive is affected. Reporting by health practitioners of an impairment to driving vehicles safely empowers the RTA to uphold national fitness standards and effectively manage the risks as per national best practice standards.

The RTA administers a driver licensing register that reflects each driver's authorisation and their compliance with best practice road safety standards, including competency to control the vehicle(s), knowledge of road laws and fitness to drive. The register allows for efficient enforcement for the purposes of road safety, enables for interjurisdictional recognition of competencies and when presented as a driver licence card, is often relied on as evidence of driving skills when gaining employment.

³ Austroads. *Assessing Fitness to Drive*. Page 9. Available at https://austroads.com.au/_data/assets/pdf_file/0037/498691/AP-G56-22_Assessing_Fitness_Drive.pdf

Where a person's physical or mental ability changes, they can present an increased road safety risk to themselves and to the public. The RTA may need to assess the person against the national fitness to drive standards to ensure the person's driving authorisation reflects the person's safe driving ability. Further, upholding road safety medical standards in the driver licencing system is imperative to protect all road users. In the interests of road safety, after receiving reports concerning a person's fitness to drive, the RTA undertakes an assessment of a person's fitness to drive in accordance with existing standards and processes legislated by the *Road Transport (Driver Licensing) Regulation 2000*. These reports may include the person's private information as well as the person's health information (for example the grounds for the opinion by the health practitioner that the person has a long-term or permanent illness, injury of incapacity that is considered to impair the person's ability to drive a vehicle safely).

When conducting a fitness to drive assessment against the approved medical standards, the RTA relies on the advice of health practitioners. In some complex cases, the regulations allow the RTA to seek the advice of authorised medical reviewers with expertise in assessing a person's fitness to drive in accordance with the national standards. Ultimately, the RTA gathers evidence to make a well-informed decision of a person's ability to drive the classes or kinds of licences held by the person, and accurately reflect this decision on the register and the licence card.

It is imperative that any decision made by the RTA that affects a person's driver licence is based on a robust decision-making process that considers expert advice. A strong regulatory framework is essential to establishing safe drivers on our roads, with benefits for both the community and individuals. Health information is necessary to improve road safety and ensure the objectives of the driver licensing system is achieved.

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

The amendments are proportionate in light of the Bill's legitimate purpose to protect public safety on the ACT road network. The amendments balance the responsibility of licence holders to monitor and report their own fitness to drive conditions, and the need for the RTA to receive information to further mitigate the risk of medically unfit drivers continuing to drive. The amendment builds upon existing notification processes and allows for prompt reporting by practitioners who have an awareness of a condition affecting a person's ability to drive. The Bill upholds the existing medical assessment standards and the flexibility necessary to assess each person individually.

The Bill introduces the least restrictive means by limiting the regulation making power to reporting only information the health practitioner considers relevant to a person's ability to drive. The regulation:

- may limit the reporting requirements to those health practitioners with knowledge or clinical understanding of a patient's fitness to drive;
- may limit reporting to holders of certain types or kinds of licences as deemed a greater risk to road safety, such as where the danger of causing death or serious injury to other road users is elevated in the event of a collision;
- may be limited to when the health practitioner must report, such as when they form an opinion of the person during an examination or assessment;

- may limit reporting to where the illness, injury or incapacity is considered permanent or long-term. In accordance with Austroads' *Fitness to Drive*, temporary conditions are not usually a matter for the licensing authority;⁴
- may specify the information required to be reported in the interests of road safety, this may include the grounds for the health practitioner's opinion that the person has an impairment to their fitness to drive, as well as other minimum details that will enable the person to be identified by the RTA; or
- will allow for the introduction appropriate human rights safeguards considering the HRA.

Once a report has been made, in line with the existing framework, the RTA:

- will consider the report against nationally approved fitness to drive standards;
- may require the person, by notification in writing, to complete any medical or practical driving assessments as required to enable a comprehensive fitness to drive assessment against national standards; and
- information will be held in the ACT in accordance with Government Privacy Policies and comply with the privacy and information management requirements prescribed in the *Information Privacy Act 2014*, the *Territory Records Act 2002* and the *Health Records (Privacy and Access) Act 1997*.

It is important to note that reports from health practitioners will not necessarily result in a decision by the RTA that impacts the person's driver licence or the person's right to work or right to a fair trial. Following an assessment, the RTA may determine that the person meets the required standards and therefore the licence is not affected, or may impose a condition that does not affect their right to work, for example the requirement to wear corrective lenses while driving.

A driver licence will only be affected to the extent necessary for public safety, where the RTA is satisfied on reasonable grounds that the person does not comply with the required medical standards. In serious situations, the RTA will have the power to suspend or cancel the licence. The RTA will consider all evidence available before making a decision. The RTA will uphold the medical standards, example, heavy vehicle drivers (class MR and above) and drivers of public passenger vehicles applicable to the more stringent commercial standards.

Section 11 of the *Road Transport (General) Regulations 2000* prescribes decisions made by the RTA as internally reviewable decisions. The following decisions made by the RTA under the *Road Transport (Driver Licensing) Regulation 2000* are internally reviewable decisions:

- require a person to provide evidence of their compliance with the medical standards or to complete a test or medical examination under section 78(2) or 69(6), or undergo an examination by an authorised medical reviewer under 78(4)(a) or 69(8)(a);
- refer a report or other medical information relevant to a person's fitness to hold a licence to an authorised medical reviewer in accordance with section 78(4)(b) or 69(8)(b);

⁴ Austroads. Assessing Fitness to Drive. Page 11. Available at https://austroads.com.au/_data/assets/pdf_file/0037/498691/AP-G56-22_Assessing_Fitness_Drive.pdf

- refuse to renew, issue or vary a licence, or a decision to cancel, suspend or impose a condition on a licence.

The person can therefore seek an internal review of a decision by the RTA. A person also has a right to apply to the ACT Civil and Administrative Tribunal to request a review on an internal reviewer's decision.

The amendment integrates into the existing fitness to drive framework and the existing protections for people to obtain or hold a driver licence, together with the need to consider implications on the safety of all ACT road users. The amendments are the least restrictive means to prevent serious injury and deaths in the ACT road network.

Sharing of information to an interstate licensing authority.

Clause 6 of the Bill engages and limits the right to privacy. Section 12 of the HRA provides that everyone has the right to not have their privacy interfered with unlawfully or arbitrarily; and not have their reputation unlawfully attacked.

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

The amendments in the Bill limit the right to privacy as they allow for regulations to introduce provisions that allow for information received by the RTA relating to an interstate licence holder's fitness to drive to be disclosed to the issuing interstate licensing authority.

If the RTA receives a report or other evidence relevant to an interstate licence holder's fitness to drive, the RTA will be able to, subject to regulatory provisions when introduced, forward this information to the issuing road transport authority. The issuing road transport authority can then, if they consider it appropriate, commence a fitness to drive assessment of the interstate licence holder under their legislative framework.

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 effect that medical conditions, or a combination of medical conditions, can have on a person's ability to drive safely, is discussed in the section above outlining the legitimate purpose for the amendments that require health practitioners to report to the RTA relating to a person's fitness to drive.

The proposed amendment allows for disclosing fitness to drive related information received by the RTA to an issuing interstate jurisdiction for the purposes of responding to a heightened risk in road safety on ACT roads.

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

Generally a person may drive under the authority of any Australian driver licence in the ACT. Based on the principles of a nationally consistent driver licensing scheme,

similar road safety and licensing standards between jurisdictions allows for the recognition of driving and fitness competencies.

When conducting a fitness to drive assessment for interstate licence holders against the approved medical standards, the RTA relies on the advice of health practitioners. In some complex cases, the regulations allow the RTA to seek the advice of authorised medical reviewers with expertise in assessing a person's fitness to drive in accordance with the national standards. Ultimately, the RTA gathers evidence to make a well-informed decision of a person's ability to drive the classes or kinds of licences held by the person, and accurately reflect this decision on the register and the licence card. A robust regulatory framework is essential to establishing safe drivers on our roads, with benefits for both the community and individuals. Health information is necessary to improve road safety and ensure the objectives of the driver licensing system is achieved.

Where fitness to drive related information is received by the RTA relating to the holder of another jurisdiction's licence, the RTA can commence a fitness to drive assessment and in certain circumstances where a person is unfit to drive, may disqualify the person's ability to drive in the ACT. However, it may be more appropriate, depending on the circumstances, to refer the information to the issuing licensing authority, particularly as the ACT's approved medical standards are adopted nationally and the ACT may have difficulty contacting visiting drivers while located in the ACT.

Accordingly, the amendments seek to:

- protect all road users on the ACT road network and support Government's commitment to Vision Zero;
- identify drivers that present an elevated risk of road trauma due to a medical condition and enable the RTA to minimise and monitor the risks for the purposes of public safety;
- uphold the integrity of the driver licensing register and the benefits of accurately reflecting driving competencies on a licence card in the community;
- strengthen the fitness to drive assessment framework to ensure fair, equitable and consistent standards are applied;
- integrate into the existing fitness to drive assessment process which affects a person's authorisation to drive only to an extent necessary for public safety; and
- uphold the principles of a national driver licensing scheme.

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

All jurisdictions apply the national fitness to drive medical standards in Austroads *Assessing Fitness to Drive*. Sharing information with another jurisdiction's licensing authority where required because of a genuine road safety risk will protect public safety and ensure drivers who are unfit to drive are medically reviewed in accordance with the *Assessing Fitness to Drive* by the driver licence authority their licence is issued. The ACT RTA doesn't have the power to impose conditions on an interstate driver licence, sharing the information will ensure that appropriate

conditional licences can be issued and allow ACT Policing to enforce these conditions when driving on the ACT road network.

The information received by each jurisdiction is regulated by the privacy legislation applicable to personal and health information in that jurisdiction. The regulations will introduce the most restrictive means to ensure that the purpose is achieved, and human rights safeguards are considered.

Increased penalties for speeding more than 45km/h over the speed limit

Section 11 provides the right to protection of the family and children.

Section 21 of the HRA provides that a person has a right to a fair hearing.

Section 22 of the HRA provides that a person has a right to minimum guarantees when charged with a criminal offence.

Section 27B of the HRA provides that 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))*

The amendments in the Bill could be considered to engage and limit a person's right to protection of the family and children, the right to a fair hearing, the rights in criminal proceedings and the right to work as the Bill amends:

- sections 61A of the *Road Transport (General) Act 1999* to provide that where a police officer believes on reasonable grounds that an offence has been committed against section 20 of the *Road Transport (Road Rules) Regulation 2017* involving speeding in excess of 45km/h, an immediate licence suspension must be applied;
- section 61B of the *Road Transport (General) Act 1999* to provide that where a court finds that an offence has been committed against section 20 of the *Road Transport (Road Rules) Regulation 2017* involving speeding in excess of 45km/h, an automatic licence disqualification must be applied;
- section 10B of the *Road Transport (Safety and Traffic Management) Act 1999* to require a court to order the impounding or forfeiture of vehicles on conviction of an offence against section 20 of the *Road Transport (Road Rules) Regulation 2017* involving speeding in excess of 45km/h, an automatic licence disqualification must be applied;
- section 10BA of the *Road Transport (Safety and Traffic Management) Act 1999* to allow a police officer to issue a surrender notices for motor vehicles where the police officer forms the reasonable belief that an offence has been committed against section 20 of the *Road Transport (Road Rules) Regulation 2017* involving speeding in excess of 45km/h; and
- section 10C of the *Road Transport (Safety and Traffic Management) Act 1999* to allow a police officer to seize and impound a vehicle where the police

officer forms the reasonable belief that an offence has been committed against section 20 of the *Road Transport (Road Rules) Regulation 2017* involving speeding in excess of 45km/h.

Where a person uses their car or licence for work this may result in a limitation on a person's right to work. Where a person relies on a car to care for family members, this may result in a limitation on a person's right to family and children. Where a person's licence is suspended by police or their vehicle is seized or impounded, this may result in a limitation on a person's right to a fair hearing or rights in criminal proceedings.

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

The ACT Government is committed through the *ACT Road Safety Strategy 2020-2025* to *Vision Zero*, which aims to achieve zero road fatalities. Key goals of the Strategy are to reduce serious and fatal crashes and change road user attitudes and behaviour through education and compliance activities. The *ACT Road Safety Action Plan 2020-2023* commits to a review the road transport penalties framework to ensure that the penalties are commensurate with the road safety risk associated with the unsafe behaviour and support behavioural change, including Licence suspensions or disqualifications.

The purpose of the amendments is to protect the public from the dangers posed by high range speeding on the ACT road network.

High range speeding continues to be prevalent on ACT roads. From 2017-18 to 2021-22 a total of 455 drivers were charged with speeding in excess of 45km/h by ACT Policing (an average of 91 per year). In 2021-22, 318 drivers were issued a traffic infringement notice for speeding in excess of 45km/h by Access Canberra.

The risk of speeding to road users is well established in research and crash data. Speed is a factor in most traffic crashes and there is a significantly increased accident risk associated with mobile device use while driving. In the ACT over the years 2015-2018, speed was identified as a contributing factor in eight fatal crashes (21% of all fatal crashes). In NSW, speeding consistently contributes to around 41 per cent of road fatalities and 24 per cent of serious injuries each year. This equates to almost 150 lives lost and 1,270 people seriously injured each year in NSW.

Speeding is also overrepresented in repeat road transport law offenders. People who have committed two or more high-range speeding offences (more than 30 km/h above the speed limit) are more likely to have committed other driving offences and to have a criminal history.⁵

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

⁵ Watson, B., Watson, A., Siskind, V., Fleiter, J., & Soole, D. (2015). Profiling high-range speeding offenders: Investigating criminal history, personal characteristics, traffic offences, and crash history. *Accident Analysis & Prevention*, 74, 87-96.

The proposed amendment will be effective to achieving the legitimate aim of reducing road safety risk associated with unsafe behaviour. Introducing immediate licence suspension, automatic licence disqualification and vehicle seizure or impounding for speeding more than 45km/h over the speed limit works as a disincentive for drivers to engage in high risk driving behaviour which places the community at risk. It also acts as a tool to immediately limit the capacity for a person to engage in further risky behaviour and endanger other road users by removing their right to drive on ACT roads.

This penalty will only apply to the most serious speeding offences. While any level of speeding presents a road safety risk for the driver and other road users, engaging in high level speeding behaviour demonstrates that a person has much greater associated risks for the community. For example, for car occupants in a crash with an impact speed of 80 km/h, the likelihood of death is 20 times what it would have been at an impact speed of 30 km/h. The risk factor continues to increase the higher the speed.

The relationship between speed and injury severity is particularly critical for vulnerable road users such as pedestrians and cyclists. For example, pedestrians have been shown to have a 90% chance of survival when struck by a car travelling at 30 km/h or below, but less than 50% chance of surviving an impact at 45 km/h. Pedestrians have almost no chance of surviving an impact at 80 km/hr.

There are significant public interest benefits that arise from ensuring that roads are safe for all road users and appropriate enforcement actions are essential to providing a safe road environment for the community. For example, the Australasian College of Road Safety's submission to the ACT Legislative Assembly's *Inquiry into Dangerous Driving* states:

“Several studies have been done on the effectiveness of various penalties in reducing casualty crashes. In Victoria, increased demerit points and licence bans up to 12 months resulting from speeding offences reduced subsequent casualty crashes after the ban period ended. In Canada, the introduction of Excessive Speeding Legislation with penalties including immediate licence suspension, higher fines and vehicle impoundment was associated with reductions in fatal crashes”⁶

Licence disqualification periods are designed to encourage safe and responsible driving. There are significant public interest benefits that arise from ensuring that roads 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 support the seriousness of the consequences of these behaviours.

⁶ https://www.parliament.act.gov.au/data/assets/pdf_file/0007/2093875/042-Australian-College-of-Road-Safety.pdf

Strengthening sanctions for high range speeding will protect all road users from the dangers posed by this behaviour, support a robust regulatory framework with penalties that are commensurate with the associated road safety risks and support behavioural change, support the ACT Government's commitment to *Vision Zero* and assist in educating drivers of the serious nature of the conduct and potential ramifications.

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

Despite ongoing enforcement and campaign efforts about the dangers of speeding, there remains a portion of road users who do not use the roads in a responsible way and put others at unacceptable risk. For example, the Bureau of Infrastructure and Transport Research Economics (BITRE) annual enforcement dashboard shows that in 2021, the ACT had the highest jurisdictional rate of speeding infringements per 10,000 driver licences, with 3,486 speeding infringements per 10,000 licences⁷. ACT Policing regularly targets speeding through highly visible and promoted police enforcement operations.

This Bill seeks to provide an enhanced regulatory framework to address high range speeding. The proposed amendments establish a mandatory licence suspension where a police officer believes on reasonable grounds that a person has committed an immediate suspension offence. This will not be subjective, as in practice the police officer will form this view by recording evidence of the speed a person is travelling on an approved speed camera.

Where a police officer issues an immediate licence suspension, the existing regulatory framework allows for a person to seek a stay of the notice through the Courts. The suspension must be withdrawn immediately where the charges are withdrawn, discontinued, dismissed or 90 days have elapsed (see section 61B of the *Road Transport (General) Act 1999*). This will ensure that any limitation on human rights is proportionate and justified.

Similarly, an automatic licence disqualification will only be applied by a Court following consideration of evidence presented by the prosecution of the speed a person was travelling, generally captured by an approved speed camera.

The seizure and impounding of a vehicle will be a discretionary police power which is expected to only be used in serious cases. While this may limit a person's human rights, this is considered reasonable given the overarching public safety benefits for road users as it will significantly reduce the potential for them to re-offend in the relevant period.

The Bill includes safeguards that limit the exercise of this power. A vehicle can be seized or required to be surrendered by a police officer only where that officer believes on reasonable grounds that the vehicle has been to speed more than

⁷ [BITRE Enforcement dashboard – speeding infringements](#)

45km/h over the speed limit. Therefore, the power cannot be exercised in an arbitrary manner.

A number of safeguards exist in the existing regulatory framework to ensure that the seizure and surrender power is exercised appropriately by police. For example, a person who is entitled to possession of the vehicle may apply to the chief police officer for its release, on the grounds that the offence for which the vehicle was impounded was not committed by or with the consent of that person, and he or she could not have known that the vehicle would be used for the commission of the offence. A person entitled to possession of the vehicle may also apply to the Court for an order of release of the vehicle, on the grounds that continued impoundment would cause excessive hardship or other injustice.

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. It is therefore considered that there are not any less restrictive means reasonably available to significantly reduce high range speeding driving.

Increase penalties including imprisonment for races, attempts on speed records, speed trials

Section 18 of the HRA provides that everyone has the right to liberty and security, including that a person must not be subject to arrest and detention, except as provided for by law.

Section 22 of the HRA provides that a person has a right to minimum guarantees when charged with a criminal offence, including presumption of innocence until proven guilty.

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

The amendments in the Bill could be considered to engage and limit a person's right to liberty and security and rights in criminal proceedings in the ACT as the Bill amends section 5A of the *Road Transport (Safety and Traffic Management) Act 1999* so the offence attracts a new maximum penalty option of 12 months imprisonment for repeat or aggravated offenders. The maximum penalty for this behaviour has also been increased to a maximum of 50 penalty units for a first or non-aggravated offence and 100 penalty units and/or imprisonment for up to 12 months for a repeat or aggravated offence. The amount payable under a Traffic Infringement Notice for an offender who is not a repeat or aggravated offender, has increased from \$492 to \$700.

The amendment to section 5AB(3) of the *Road Transport (Safety and Traffic Management) Act 1999* increase the range of offences that would result in an offender being classified as a repeat or aggravated offender, to include offences against section 29 of the *Crimes Act 1900* or any other offence against the *Crimes*

Act 1900 if a necessary fact to constitute the offence is that someone dies or is injured because of, or as a result of, the way a person drove a motor vehicle (Culpable driving), sections 5A (Races, attempts on speed records, speed trials), 5B (Improper use of motor vehicle) and 8 (Menacing driving) of the *Road Transport (Safety and Traffic Management) Act 1999*, section 20, of the *Road Transport (Road Rules) Regulation 2017* (speeding in excess of 45 km/h) and section 19 of the *Road Transport (Alcohol and Drugs) Act 1977* (Prescribed concentration of alcohol in blood or breath).

The continued application of strict liability to section 5A of the *Road Transport (Safety and Traffic Management) Act 1999* will limit a person's rights to the presumption of innocence in criminal proceedings.

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

The purpose of the limitations is to protect the public from the dangers posed by dangerous behaviours on ACT the road network.

The ACT Government is committed through the *ACT Road Safety Strategy 2020-2025* to *Vision Zero*, which aims to achieve zero road fatalities and through the *ACT Road Safety Action Plan 2020-2023*. The Action Plan provides a commitment that the Government will review the road transport penalties framework to ensure that the penalties are commensurate with the road safety risk associated with the unsafe behaviour and support behavioural change, including appropriate application of imprisonment.

A primary objective of the *Road Transport (Safety and Traffic Management) Act 1999* is to provide for road safety and traffic management in the ACT and for safe, efficient and equitable road use. Racing, attempts on speed records or speed trials is extremely dangerous behaviour which can result in serious injury or death, both for the offender and other road users. This has been demonstrated in the evidence given by researchers, police and families of those impacted by dangerous driving during the ACT Legislative Assembly's *Inquiry into Dangerous Driving*, which commenced on 4 August 2022.

Street racing and other associated activities is an extremely dangerous behaviour that creates a high public safety to both the driver and other road users. This risk is significant regardless of whether the activities occur on urban streets where other road users are present, or remote ACT roads which may have poorer street lighting or a lower road network safety ranking. While the prevalence of police charges for street racing in the ACT is low, ACT Policing have advised the actual number of offences being committed is likely significantly higher and is impacted by a number of factors including the willingness of drivers to admit to their illegal behaviour in the event of a crash and offenders being charged with more serious offences for behaviour as a result of street racing. Anecdotally, ACT Policing have indicated that street racing or speed attempts are a catalyst for the occurrence of a number of

more serious offenses, i.e. without the street racing, many of the charged offences may not have eventuated.

From 2017-18 to 2021-22 a total of 721 drivers were charged with section 5 offences of the *Road Transport (Safety and Traffic Management) Act 1999* (Races, attempts on speed records, speed trials, Improper use of motor vehicle, and failing to stop motor vehicle for police). A total of 870 vehicles have been seized by ACT Policing since 2017 under existing police powers to seize for offences under section 5A, 5B and 5C of the *Road Transport (Safety and Traffic Management) Act 1999*.

ACT Policing have advised that drivers who take part in this behaviour often are repeat offender and commit a range of other road transport offences. This advice is supported by charges data over the last 5 years, where charges of negligent or dangerous driving were frequently coupled with other dangerous driving charges, most commonly being driving whilst licence disqualified (2022, 50.4%), driving in an unregistered vehicle (2022, 33.9%), or driving under the influence of drugs and/or alcohol (2022, 52.4%). Another example being, in the course of three months, Operation TORIC which was formed to address an increase in motor vehicle thefts and associated dangerous driving and other crimes in the ACT, has resulted in the arrest of 122 people who have been charged with 310 offences including aggravated and dangerous driving, driving at police, taking a motor vehicle without consent, drug driving and firearms offences. Of those charged, 39 were on bail for other offences, 16 were on good behaviour orders, five were on intensive corrections orders and eight were on parole.

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

The strengthening of the existing offence under section 5A of the *Road Transport (Safety and Traffic Management) Act 1999* is designed to protect all road users from the dangers posed by dangerous driving on roads and road related areas and act as a deterrent to prevent street racing and other related offences from occurring.

The penalty of imprisonment is aimed at the most serious or repeated instances of this offence, as this behaviour can lead to serious injuries or death, 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. The Courts may determine an imprisonment term is appropriate to deter this behaviour in the future and prevent further injuries and deaths.

The NSW Sentencing Council explores the deterrent effects of imprisonment for repeat offenders in its *Report on Repeat Traffic Offenders*:

“...we believe that any driver who offends in this way again, after being given an opportunity to address their attitudes to risk, should be subject to a more serious set of penalty options. There are some concerns about the criminogenic effect of short sentences of imprisonment (especially since there are no programs in custody

specifically aimed at addressing speeding behaviour), but we would expect imprisonment to serve as a deterrent and that it would be imposed only in the most serious cases.”⁸

The potential maximum court imposed financial penalty and the infringement amount issues under a Traffic Infringement Notice have been increased to align with the seriousness of the offence and penalties imposed in other jurisdictions.

Increasing the range of offences that would result in an offender being classified as a repeat or aggravated offender will increase public safety. These offences in scope are significant offences involving serious dangerous driving behaviour and disregard for public safety. Increased penalties for engaging in repeat offending reflect the increased risk to public safety where multiple offences are committed at once.

Repeatedly engaging in this behaviour demonstrates that a person has failed to learn from their actions and has continued to behave in a manner less than the standard expected by the community. There are significant public interest benefits that arise from ensuring that roads are safe for all road users and appropriate enforcement actions are essential to providing a safe road environment for the community.

Accordingly, strengthening section 5A will protect all road users from the dangers posed by this behaviour, support a robust regulatory framework with penalties that are commensurate with the associated road safety risks and support behavioural change, support the ACT Government’s commitment to *Vision Zero* and assist in educating drivers of the serious nature of the conduct and potential ramifications.

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

The limitations on the right to freedom of movement, right to liberty and security and rights in criminal proceedings are considered proportionate to the legitimate purpose.

ACT Policing and the Australian Federal Police Association have advised that street racing is a serious road safety and dangerous driving issue which endangers public safety, and that a punishment of up to a maximum of 20 penalty units (\$3,200) does not reflect the seriousness of the offence nor act as a deterrent.

The ACT’s penalties for street racing (equivalent to s5A of the *Road Transport (Safety and Traffic Management) Act 1999*) are significantly less than other jurisdictions:

- NSW imposes a maximum court penalty of a \$3,300, maximum of nine months imprisonment and a 12-month licence disqualification period for a second offence;
- Victoria imposes a maximum court penalty of a \$3,300 and an immediate and automatic 12-month licence disqualification for the first offence, and a maximum of two years of imprisonment, and the vehicle may be confiscated permanently for a second offence;

⁸ [NSW Sentencing Council: Report on Repeat Traffic Offenders – September 2020, paragraph 6.57](#)

- South Australia imposes a maximum penalty of three years imprisonment and a 12-month licence disqualification period for the first offence, and a maximum of five years imprisonment and a maximum of 36-year licence disqualification period;
- Tasmania imposes a maximum of 20 penalty units (\$2,800) and/or three months imprisonment and/or 24-month licence disqualification;
- Queensland impose a maximum penalty of 40 penalty units (\$4,000) and/or six-months imprisonment, and/or a six-month licence disqualification period; and
- Western Australia impose a maximum fine of \$6,000, and/or nine months imprisonment, and/or a 6-month licence disqualification period for the first offence, a maximum fine of \$9,000 and/or nine months imprisonment and/or a 12-month licence disqualification period for a second offence and a maximum fine of \$12,000 and/or 12 months imprisonment, and/or a life-time licence disqualification period for a third offence.

The ACT and Northern Territory are the only jurisdictions that do not currently include imprisonment as a potential penalty.

A robust regulatory framework is essential to establishing safe people and safe behaviours on our roads, with benefits for both the community and individuals. This includes ensuring the framework that contains penalties that appropriately reflect associated road safety risks, deter offending behaviour and support behaviour change. Providing effective enforcement powers to police through the issuing of an infringement notice for a significant financial penalty attached will improve the safety of ACT road users and reduce the risk of fatal or serious injury crashes associated with police pursuits.

These amendments enhance the existing road transport framework and, while potentially limiting a person's right to liberty, the maximum term of 12 months imprisonment for an offence of racing, attempts on speed records or speed trials 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.

The proposed term of imprisonment is a maximum term and Courts have discretion not to apply or to apply a lesser term. The maximum term is expected to only apply to the most serious incidents. Although a lesser term of imprisonment may be considered a less restrictive means to address this behaviour, considering the serious harm the offence can entail, any lesser maximum term of imprisonment is not considered appropriate. In weighing up the appropriateness of this penalty, consideration was given to the penalties applicable in other jurisdictions (including NSW which geographically surrounds the ACT resulting in a large number of people driving frequently in both jurisdictions) and the seriousness of the behaviour captured.

Similarly, given the nature of the conduct and penalties in other jurisdictions it appears appropriate to increase the maximum financial penalties available to be imposed by a Court and the Traffic Infringement Notice amount payable for non-repeat or aggravated offenders. The penalties for these offences are within the normal range for strict liability offences and are in accordance with the *Guide to Framing Offences*, lending to the proportionality of this provision.

An aggravated offence has been introduced for section 5A of the *Road Transport (Safety and Traffic Management) Act 1999* which will subject the offender to a higher potential maximum penalty. In including such an offence, consideration was given to whether an aggravated offence would arbitrarily elevate one group of society over another in criminal law and whether there were other ways to reduce the incidence of this behaviour such as improving detection, arrest and prosecution of offenders. Based on the advice provided by Police on the significantly increased risk to the community from offenders committing multiple dangerous driving offences (i.e. racing at illegal speeds while intoxicated), an aggravated offence is considered reasonable and proportionate.

Research in NSW has also identified a high prevalence of repeat offenders in fatal and serious crashes. In the five year period between 2013 and 2017 for fatal crashes, 25 per cent had one prior offence and 23 per cent had multiple offences (but no high risk offences) and 11 per cent had multiple offences (including a high risk offence). For serious crashes, 23 per cent had one prior offence, 30 per cent had multiple offences but no high risk offences and 12 per cent had multiple offences including a high risk offence.⁹

The proposed amendments also increase the range of offences that would result in an offender being classified as a repeat or aggravated offender will capture a greater range of dangerous driving offences. It is considered the current range of offences classified as repeat in section 5AB of the *Road Transport (Safety and Traffic Management) Act 1999* does not adequately capture recidivist behaviour and it is reasonable and justified to include these additional offences.

Current applicable offences include failing to stop motor vehicle for police, furious, reckless or dangerous driving and a requirement for a person to disclose the identity of a driver. Previous justification for the inclusion of these offences was provided when the amendments were introduced in 2016.

The registered operator of a vehicle is required to identify an unknown driver on the basis it is reasonable for them to provide assistance to identify the person responsible for the use of their vehicle to commit an offence against s5A or 5C. It was considered necessary that person face appropriate consequences where they fail to provide this assistance to police. Registered operators of vehicles who knowingly choose not to disclose the driver of the vehicle are in effect sanctioning

⁹ NSW Government Submission NSW Sentencing Council Consultation Paper – Repeat Traffic Offenders, accessed 14/11/2022.

this behaviour, and it is proper that they face appropriate consequences for this behaviour. The responsible person (the person who actually owns or operates the vehicle) is in the best position to provide evidence about the persons who had access to the vehicle at the relevant time, and about the person's own movements in relation to that vehicle. This offence also applies to any other person required to do so by police (for example where a passenger in the vehicle is known to police). Where the person does not know and with reasonable effort could not know the identity of the driver, then the offence is not made out.

The offences of failing to stop motor vehicle for police and furious, reckless or dangerous driving are included due to the high risk to the community and police of these offences. A person driving away from police is a potentially extremely dangerous practice. When this provision was introduced in 2016, it was reported that there had been six fatal collisions, resulting in nine deaths, emanating from crashes relating to fleeing drivers in the ACT since 2004. Defences exist for this offence including where a person is under a mistaken belief about a police officer asking or signalling for them to stop or is ignorant of this circumstance.

Each new repeat offence (culpable driving, races, attempts on speed records, speed trials, improper use of motor vehicle, menacing driving and speeding more than 45km/h and drink driving) has been included on the basis it is a significant offence involving serious dangerous driving behaviour and disregard for public safety. Where multiple offences are committed at once, these offences pose a much higher safety risk for the community and the penalty should reflect this.

While it is noted the introduction of separate penalties for first and repeat offences is generally contrary to Government policy as set out in the *Guide for Framing Offences*, the *Road Transport (Safety and Traffic Management) Act 1999* already includes well established tiered penalties for certain offences where there is repeated behaviour or the offence is aggravated. This includes sections 5C (Failing to stop motor vehicle for police), section 7 (Furious, reckless or dangerous driving) and Division 2.3 (Seizure, impounding and forfeiture of vehicles for certain offences). In addition, the demerit point system for licence suspensions applies sanctions to driver's once a pre-determined rate of offending is reached (i.e. a certain number of demerit points are accrued).

The effectiveness of a tiered penalty framework for repeat offenders has not been fully evaluated. However, in 2018 the University of New South Wales Transport and Road Safety Research conducted a literature review for Transport for NSW of non-alcohol related repeat offender literature and intervention programs. This report found that interventions targeting behaviour directly, such as licence suspension, have been most successful, whereas those aimed at changing intentions by changing attitudes, norms or behavioural control have been less successful.¹⁰

¹⁰ NSW Government Submission NSW Sentencing Council Consultation Paper – Repeat Traffic Offenders, accessed 14/11/2022.

Providing a tiered offence will allow for police to issue a Traffic Infringement Notice for first offenders where police consider this appropriate. Introducing a tiered penalty framework for this offence will provide a strong deterrent effect to repeat offenders. Repeat offenders who have failed to learn from their actions or engaged in a range of dangerous behaviour will be subject to potentially stronger penalties considered by the courts. In these circumstances, there should be option for their sentence to be higher to that of a first-time offender, to reflect the seriousness with which the community regards the offence and the potential consequences of their actions. As outlined above, a tiered penalty framework reflects the frameworks in other jurisdictions. This has also been included to act as a deterrent for repeat offenders and incentivise good driving behaviour. Given the ACT's geographical location within NSW, it is important to ensure consistency with other jurisdictions where reasonable.

Although establishing a non-tiered penalty framework may be considered a less restrictive means, 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. It is not considered an alternate approach for repeat offenders will achieve the legitimate purpose of deterring dangerous driving ACT roads.

Increased penalties for furious, reckless and dangerous driving and menacing driving

Section 11 provides the right to protection of the family and children.

Section 21 of the HRA provides that a person has a right to a fair hearing.

Section 22 of the HRA provides that a person has a right to minimum guarantees when charged with a criminal offence.

Section 27B of the HRA provides that 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))*

The amendments in the Bill could be considered to engage and limit a person's right to protection of the family and children, the right to a fair hearing, the rights in criminal proceedings and the right to work as the Bill amends:

- sections 61A of the *Road Transport (General) Act 1999* to provide that where a police officer believes on reasonable grounds that an offence has been committed against section 7(1)(a)-(c) of the *Road Transport (Safety and Traffic Management) Act 1999*, an immediate licence suspension must be applied;

- section 10B of the *Road Transport (Safety and Traffic Management) Act 1999* to require a court to order the impounding or forfeiture of vehicles on conviction of an offence against section 7 of the *Road Transport (Safety and Traffic Management) Act 1999*;
- section 10BA of the *Road Transport (Safety and Traffic Management) Act 1999* to allow a police officer to issue a surrender notice for motor vehicles where the police officer forms the reasonable belief that an offence has been committed against section 7(1)(a)-(c) of the *Road Transport (Safety and Traffic Management) Act 1999*;
- section 10B of the *Road Transport (Safety and Traffic Management) Act 1999* to require a court to order the impounding or forfeiture of vehicles on conviction of an offence against section 8 of the *Road Transport (Safety and Traffic Management) Act 1999*; and
- section 10C of the *Road Transport (Safety and Traffic Management) Act 1999* to allow a police officer to seize and impound a vehicle where the police officer forms the reasonable belief that an offence has been committed against section 7(1)(a)-(c) of the *Road Transport (Safety and Traffic Management) Act 1999*.

Where a person uses their car or licence for work this may result in a limitation on a person's right to work. Where a person relies on a car to care for family members, this may result in a limitation on a person's right to family and children. Where a person's licence is suspended by police or their vehicle is seized or impounded, this may result in a limitation on a person's right to a fair hearing or rights in criminal proceedings.

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

The ACT Government is committed through the *ACT Road Safety Strategy 2020-2025* to Vision Zero, which aims to achieve zero road fatalities. Key goals of the Strategy are to reduce serious and fatal crashes and change road user attitudes and behaviour through education and compliance activities. The *ACT Road Safety Action Plan 2020-2023*, commits to a review the road transport penalties framework to ensure that the penalties are commensurate with the road safety risk associated with the unsafe behaviour and support behavioural change, including licence suspensions or disqualifications, and vehicle seizure or impounding.

ACT Policing and the Australian Federal Police Association have advised that dangerous driving is a significant issue on ACT Roads and the current regulatory framework does not sufficiently allow police to address unsafe driving at the time it occurs.

The amendments in this Bill are aimed at providing Police with the necessary tools to remove a dangerous driver from the road, including through revoking a person's right to drive and/or their capacity to undertake dangerous behaviour through the seizure and impounding of vehicles. Courts should have the power to impose reasonable penalties following a finding of guilt.

ACT Policing are continuing to charge a high number of people with dangerous driving offences. From 2017-18 to 2021-22 a total of 565 drivers were charged with furious, reckless or dangerous driving against section 7 offences of the *Road Transport (Safety and Traffic Management) Act 1999*. ACT Policing have advised the actual number of offences being committed is likely significantly higher.

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

This amendment increases ACT Policing's ability to protect the lives of road users in the Territory by reducing the incidence of dangerous driving on Territory roads and ensure there are appropriate sanctions for dangerous driving on ACT roads.

There is a clear connection between the proposed amendment and the legitimate purpose. There is an 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.

Furious, reckless and dangerous driving and menacing driving are extremely dangerous behaviours. The proposed amendment will be effective in achieving the legitimate aim of reducing road safety risk associated with unsafe behaviour. Introducing immediate licence suspension, automatic licence disqualification and vehicle seizure or impounding for these offences works as a disincentive for drivers to engage in high risk driving behaviour which places the community at risk. It also acts as a tool to immediately limit the capacity for a person to engage in further risky behaviour and endanger other road users by removing their right to drive on ACT roads.

Furious, reckless and dangerous driving is against the reasonable standards expected from the community as established by the offence in section 7 of the *Road Transport (Safety & Traffic Management) Act 1999*. The new penalties in this Bill support that provision and builds on the existing framework for an intervention model that aims at preventing the dangerous behaviour before it has serious consequences.

Licence disqualification periods are designed to encourage safe and responsible driving. There are significant public interest benefits that arise from ensuring that roads 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 support the seriousness of the consequences of these behaviours.

Seizure and impounding are important vehicle sanctions used in a large number of jurisdictions to control extremely risky behaviour, particularly by serial offenders. They build on the existing framework to protect the public from potentially lethal criminal behaviour.

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

Although maintaining the existing provisions where furious, reckless and dangerous driving would not be an immediate licence suspension offence and seizure and

impounding would not apply, was considered, that approach would not sufficiently address the need for greater intervention to prevent harms arising from offending behaviour and support behaviour change. The continued high rate of offences against section 7 of the *Road Transport (Safety & Traffic Management) Act 1999* support the need for increased regulatory powers to address this behaviour.

The proposed ACT police powers for the seizure and impounding of vehicles will apply to a smaller range of offences than the vast majority of other Australian jurisdictions including the human rights jurisdictions of Victoria and Queensland.

This Bill gives a police officer enhanced powers to seize a vehicle in certain circumstances. This includes where the driver of a vehicle is reasonably believed to have been used to commit an offence against section 7 (Furious, reckless or dangerous driving) of the *Road Transport (Safety & Traffic Management) Act 1999*. It is important to note that this is a discretionary power, and its use by police would be dependent on a range of factors including previous offence history, the relative risk of the drivers conduct and whether the driver's behaviour constituted multiple offences of the road transport legislation.

It is important to note that police may not seize and impound a vehicle where an infringement notice is issued. Section 10E(3)(b) of the *Road Transport (Safety & Traffic Management) Act 1999* provides that the Chief Police Officer may only keep a motor vehicle until an infringement notice is served on the person for the offence. Where an infringement notice is issued on the roadside, this limits the ability of police to also impound the vehicle. It is important for this to remain a discretionary power for police as there will be instances where the registered operator did not commit the offence (e.g. the vehicle was stolen or the offence was committed in a family member's car).

As the decision is discretionary, all police officers are provided training and information about the policy intent of the relevant legislation for seizing of vehicles. Police officers are provided training when any Government policies and procedures are updated to ensure consistent application of the legislation is achieved. Police are trained to apply their discretion in a manner that is proportionate considering the circumstances surrounding the offending behaviour and to ensure that certain community members are not disproportionately affected.

The Bill includes safeguards that limit the exercise of this power to ensure the power cannot be exercised in an arbitrary manner. A vehicle can be seized or required to be surrendered by a police officer only where that officer believes on reasonable grounds that the vehicle has been used to commit a furious, reckless or dangerous driving particular offence under the road transport legislation. A vehicle also cannot be seized if the offence was committed more than 30 days ago.

In addition, an immediate licence suspension offence and seizure and impounding only apply where an aggravated offence is committed against section 7(1)(a)-(c) and 7A of the *Road Transport (Safety & Traffic Management) Act 1999*. This will ensure

only the most serious of behaviour is subject to these new powers. The aggravated offences in section 7A are extremely serious and are not subject to a high degree of discretion.

A number of safeguards exist in the existing regulatory framework to ensure that the seizure and surrender power is exercised appropriately by police. A person may apply to the chief police officer for its release under certain circumstances (refer section 10G of the *Road Transport (Safety & Traffic Management) Act 1999*) and may also apply to the Courts to order the release of the motor vehicle (refer section 10H of the *Road Transport (Safety & Traffic Management) Act 1999*).

In addition, where an immediate suspension notice is applied, a person may apply to the Courts for a stay of the suspension notice (refer section 61F of the *Road Transport (General) Act 1999*), noting that the court must not make an order staying the notice unless satisfied that exceptional circumstances justify doing so (refer section 61F of the *Road Transport (General) Act 1999*). Additional safeguards are provided under section 61B of the *Road Transport (General) Act 1999*, including that a notice ceases to have effect if stayed, or where the relevant proceedings are withdrawn, discontinued or otherwise finalised and, in any case, once 90 days have elapsed.

An immediate suspension of a person's licence and the option to seize and impound a vehicle when an aggravated offence is committed is considered reasonable and justified to achieve its legitimate purpose, given the significant risk to public safety. Any lesser penalty would not sufficiently address the need for greater deterrence to prevent harms arising from offender behaviour and support behavioural change.

Lastly, while the Bill amends section 10B of the *Road Transport (Safety and Traffic Management) Act 1999* to require a Court to order the impounding or forfeiture of vehicles on conviction of an offence against section 8 of the *Road Transport (Safety and Traffic Management) Act 1999*, this is not considered to be a significant policy change. Currently, under section 10A of the *Road Transport (Safety and Traffic Management) Act 1999*, the Courts have the power to seize and impound a vehicle prior to conviction of an offence under section 8. It is therefore considered reasonable that Courts would also be provided with the power to order a vehicle be seized and impounded following a conviction and finding of guilt.

Immediate licence suspension for refusing to provide an oral fluid sample

Section 8 provides that everyone has the right to equality including equal and effective protection against discrimination.

Section 11 provides the right to protection of the family and children.

Section 21 of the HRA provides that a person has a right to a fair hearing.

Section 27B of the HRA provides that 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))

The amendments in the Bill could be considered to engage and limit a person's right to a fair trial, right to protection of the family and right to work as the Bill amends sections 61A of the *Road Transport (General) Act 1999* to provide for the immediate licence suspension, where a person refuses to provide an oral fluid sample under section 22A of the *Road Transport (Alcohol and Drugs) Act 1977*. The amendments may also engage the right to equality where a person with a health condition is disadvantaged has their licence suspended because they are not able to provide proof of their medical condition at the time it is requested by police.

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

The purpose of the limitations is to protect the public from the dangers posed by unsafe behaviours on all transport modes and all parts of the road network.

The ACT Government is committed through the *ACT Road Safety Strategy 2020-2025* to *Vision Zero*, which aims to achieve zero road fatalities. The *ACT Road Safety Action Plan 2020-2023* commits to exploring measures that are appropriate to the ACT to which will deter drink and drug driving and a robust enforcement framework that applies penalties commensurate with the associated road safety risks being addressed and supports behavioural change.

A primary objective of the *Road Transport (Alcohol and Drugs) Act 1977* (Alcohol and Drug 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 ACT Government, as outlined in the *ACT Road Safety Action Plan 2020-2023* and *ACT Drug Strategy Action Plan 2018-2021*, is committed to addressing and minimising harms caused by alcohol and other drugs, including illicit drugs and pharmaceuticals.

Drug driving is a well-established serious road safety issue. There is a range of significant evidence linking drugs to elevated crash risk. Drug use can slow down a person's reaction time, causing a distorted view of time and distance. Drugs can also stimulate a person's nervous system which can lead to a reduced attention span, and the sudden onset of fatigue as the stimulant effects wear off. A person who drives or rides with drugs in their system can make dangerous decisions, increasing the chance they'll harm themselves, their passengers, or other road users. Within the last five years, approximately 41% of Victorian drivers and motorcyclists who died on the roads and were tested had drugs in their system^[2]. In Victoria, where the annual number of roadside drug tests increased from 42,000 to 100,000, the increase in roadside drug tests is estimated to have saved 33 fatal crashes and at least 80 serious injury crashes per year.¹¹

¹¹ Cameron, M., Newstead, S., Clark, B. and Thompson, L. (2022). "Evaluation of an Increase in Roadside Drug Testing in Victoria Based on Models of the Crash Effects of Random and Targeted Roadside Tests". *Journal of Road Safety*, 33(2), 17-32.

Recent results from targeted drug testing on ACT roads has highlighted the prevalence of this dangerous behaviour in the Territory. Of the 808 roadside drug tests conducted in 2021, 57.1% returned a positive roadside test.

In the ACT, a total of 76 charges have been laid over the last 5 financial years by ACT Policing in relation to 64 fail/refusal to provide oral fluid sample and 12 fail/refusals for blood samples.

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

Unlike alcohol, any trace of illicit drugs in a person's system whilst driving a motor vehicle is illegal. ACT Policing commenced Random Roadside Drug Testing in May 2011. These drug tests test for cannabis, methylamphetamine (speed and ice) and MDMA (ecstasy). An oral fluid analysis is a test conducted by police on the roadside. A positive laboratory test is then required before a driver is charged with an offence under section 20 of the Alcohol and Drug Act (Prescribed drug in oral fluid or blood—driver or driver trainer). It is considered an offence to refuse to undergo testing, however police cannot stop the person from driving once released from custody.

Where a person has refused to undertake an oral fluid sample to detect whether they have driven a motor vehicle under the influence of a prohibited drug, suspending their licence on the roadside will protect the integrity of the regulatory framework. A robust regulatory framework is essential and there are significant public interest benefits that arise from ensuring that roads are safe for all road users and appropriate enforcement actions are essential to providing a safe road environment for the community. It will also prevent drivers who may be under the influence of a prohibited drug from driving and potentially endangering safety on the road.

Licence disqualification periods are designed to encourage safe and responsible driving. There are significant public interest benefits that arise from ensuring that roads 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 this offence support the seriousness of the consequences of these behaviours.

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. All road users are provided with adequate education about their obligations when using the road network including drug and alcohol testing. There are significant public interest benefits that arise from ensuring that roads 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.

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

Roadside drug and alcohol testing is well established in the ACT. They are a reasonably quick process which does not unduly impact a person. They are not

considered to be an unreasonable imposition on a person given the importance of ensuring the safety of the community from dangerous driving. The community is well aware of their purpose and drivers are educated on their obligation to undertake testing on request from Police.

Despite this, there continues to be individuals who refuse to provide oral fluid samples on request. Given the established high-risk factor for drugs in road injuries and fatalities, there is a need to ensure police have the appropriate powers to establish whether a person is under the influence of drug/s when driving. The proportion of high drug detection returned in roadside drug testing supports the inclusion of this measure. While offences are in place for refusing to provide an oral fluid sample, this does not address the immediate public risk. A person who refuses to undertake this testing can continue to drive in the ACT.

This Bill seeks to provide an enhanced regulatory framework to address drug driving. The proposed amendments establish a mandatory licence suspension where a police officer believes on reasonable grounds that a person has committed an immediate suspension offence. This offence will not be subjective. An offence against section 22A of the Alcohol and Drug Act is a strict liability offence.

There will be a limitation on the right to work and right to protection of the family and children. However, the owner of the vehicle and any other affected individuals by the licence suspension are still free to use other forms of transport such as walking, cycling and public transport. Family members are free to drive an alternate vehicle where available.

A number of human rights safeguards are already contained in the Drug and Alcohol Act.

A defence to a prosecution of this offence is available where the defendant proves that the failure was based on medical grounds. The right to equality is limited however the road transport legislation includes a medical grounds defence. As normal practice, police are trained in the availability of this offence and to consider its application when considering whether to lay charges. While people with health conditions may be disadvantaged as the suspension of their licence will be subject to police discretion and they may not be in a position to provide proof of their medical condition on the roadside and would therefore be subject to the loss of their licence in the short term.

As a further safeguard, section 35 has the effect that an immediate suspension notice period will be considered when a court is applying the mandatory licence disqualification (s34) at the time of conviction (where a person has complied with the immediate suspension notice), This could also be considered an additional human rights safeguard.

Where a police officer issues a mandatory licence suspension, the existing regulatory framework allows for a person to seek a stay of the notice through the Courts. The suspension is also withdrawn immediately where the charges are

withdrawn, discontinued, dismissed or 90 days have elapsed (see section 61B of the General Act).

Also, Courts will continue to have discretion to disqualify a person convicted or found guilty of relevant offences under the Territory's road transport legislation from holding or obtaining a driver licence for a period the court considers appropriate.

Other than the available defences, there are limited grounds for a person to refuse to undertake an oral fluid sample, given the overwhelming public benefit. As normal police practice, where a person refuses to comply with the request, a police officer would advise a person of the ramifications of non-compliance prior to imposing further penalties.

An immediate suspension of a person's licence is considered reasonable and justified to achieve its legitimate purpose. Any lesser penalty would not sufficiently address the need for greater deterrence to prevent harms arising from offender behaviour and support behavioural change.

On balance, there are not any less restrictive means reasonably available to achieve the legitimate purpose and the amendments are considered reasonable and justified.

Increased time period for police to seize a vehicle

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

Section 27B of the HRA provides that 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))*

The amendments in the Bill could be considered to engage and limit a person's right to work and right to privacy as the Bill amends section 10C(2) of the *Road Transport (Safety and Traffic Management) Act 1999* to increase the timeframe police have to seize a motor vehicle following the commission of an offence or where a person has failed to comply with a surrender notice. A person's right to work would be restricted where they use their vehicle for work.

The seizure of a person's vehicle may restrict their right to privacy. Section 12 (a) of the HRA provides that everyone has the right to not have their privacy interfered with unlawfully or arbitrarily.

The right to privacy under section 12 of the HRA protects people in the ACT from 'unlawful' interference with their privacy. This means that no interference can take place except in cases authorised by law. The amendments to the ACT's road transport legislation in this Bill provide the legal authority for the impounding and seizure of vehicles under certain circumstances. This is for the purposes of enforcing the Territory's road transport legislation and will benefit the community by encouraging changes in behaviour which will result in a safer road environment.

The right to privacy extends to arbitrary interference relating to an individual, an individual's family, home or correspondence, even when authorised by law. Such interference should be in accordance with the provisions, aims and objectives of the HRA and be reasonable in the particular circumstances. The Bill creates a new power for police officers to seize vehicles reasonably believed to have been used to commit an offence against section 7(1)(a)-(c) (Furious, reckless or dangerous driving), section 8 (Menacing driving) of the *Road Transport (Safety and Traffic Management) Act 1999* and section 20 of the *Road Transport (Road Rules) Regulation 2017*, where the offence involves speeding more than 45km/h over the speed limit. This is in addition to existing powers for offences under sections 5A (Races, attempts on speed records, speed trials), 5B (Improper use of motor vehicle) and 5C (Failing to stop) of the *Road Transport (Safety & Traffic Management) Act 1999*. The increased timeframe to seize a vehicle relates to each of these new and existing offences.

Arbitrary interference in someone's private or family life is interference that may be lawful, but is unreasonable, unnecessary and the degree of interference is not proportionate to the need. This Bill does not authorise arbitrary interferences with privacy. The proposed amendments are considered to be reasonable, necessary and proportionate given the existing safeguards included in the road transport framework.

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

The ACT Government is committed through the *ACT Road Safety Strategy 2020-2025* to Vision Zero, which aims to achieve zero road fatalities. Key goals of the Strategy are change road user attitudes and behaviour through education and compliance activities.

The purpose of this amendment is to protect the public from dangerous driving.

Police have advised the current 10 day limit does not provide sufficient time to locate and seize a vehicle. The ACT's physical location within NSW has led to difficulties in locating vehicles, as vehicles can be temporarily stored in another jurisdiction (e.g. NSW) to avoid detection and seizure. A number of investigations have been unable to be concluded by ACT Policing due to the current legislated timeframe.

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

The seizure and impounding of vehicles are considered necessary in order to maintain the integrity of the police enforcement of the road transport legislation. This

is a well-established concept in road transport legislation for a range of offences and allows police to intervene and address dangerous behaviour.

There is a clear connection between the proposed amendment and the legitimate purpose. 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.

ACT Policing have advised that there are some instances where vehicles are not surrendered within 10 days. Where a vehicle is not located, police are generally not able to re-apply for a surrender notice in court. Extending the time period to seize a vehicle to 30 days will allow police additional time to locate a vehicle and complete lengthy investigations.

The proposed amendments ensures that drivers and registered operators of vehicles who choose to attempt to evade police, including through undertaking dangerous driving behaviour, are not able to avoid appropriate sanction by hindering police officers seizure of the motor vehicles. Providing sufficient timeframes which support police to finalise their investigations and seize vehicles involved in dangerous driving offences will improve the safety of ACT road users and reduce the risk of fatal or serious injury incidents.

Research undertaken in Queensland found that many drivers' who has engaged in hooning offences were willing to flee from police in order to avoid losing their vehicle permanently, despite acknowledging risks to their own safety and that of others¹².

The amendments in this Bill are aimed at providing Police with the necessary tools to remove a dangerous driver from the road, including through a person's capacity to undertake dangerous behaviour through the seizure and impounding of vehicles.

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

The limitations on the right to work are considered proportionate to the legitimate purpose, given the severity of the behaviours associated with the relevant offences that police officers will be able to seize vehicles that they reasonably believe has been used to commit a relevant offence.

Any increase in timeframes needs to justify there is a need to prohibit a person from using their property for work prior to Court determination of the offence. Section 10C is intended as a short term measure to stop immediate risky driving behaviour. It is warranted to allow police to seize a vehicle for an indefinite period of time following the offence, given the immediate risk has subsided and the offence is no longer being committed. Where this timeframe has passed it may be appropriate for this to be considered by the Courts. On balance, it appears reasonable to extend this

¹² [Leal, Nerida, Watson, Barry, Armstrong, Kerry, & King, Mark](#) (2009) 'There's no way in hell I would pull up': Deterrent and other effects of vehicle impoundment laws for hooning. In Grzebieta, R & McTiernan, D (Eds.) *Proceedings of the 2009 Australasian Road Safety Research, Policing and Education Conference*. Roads and Traffic Authority of New South Wales, Australia, pp. 217-225.

period to 30 days to allow Police to carry out their investigations and locate the vehicle. There is a risk if this period is not extended, drivers would undertake risky behaviour will be able to undermine the police operations and continue to undertake dangerous behaviour.

The amendments, while engaging the right to privacy of a very limited number of individuals, will enhance ACT Policing's abilities to protect all road users, by ensuring that individuals who engage in this behaviour are appropriately sanctioned and prevented from continuing to engage in this behaviour, without the need for dangerous pursuits of these vehicles. Any limitation of rights under the HRA is reasonable and proportionate, noting the public interest benefits that arise from improving road safety in this manner.

A number of other safeguards are included in the existing regulatory framework to ensure that the seizure and surrender power is exercised appropriately. For example, a person who is entitled to possession of the vehicle may apply to the chief police officer for its release, on the grounds that the offence for which the vehicle was impounded was not committed by or with the consent of that person, and he or she could not have known that the vehicle would be used for the commission of the offence. A person entitled to possession of the vehicle may also apply to the Court for an order of release of the vehicle, on the grounds that continued impoundment would cause excessive hardship or other injustice. Additionally, while in possession of the police, the chief police officer has a legislative responsibility to take all reasonable steps to secure the vehicle against theft or damage.

Any limitation in relation to the right to property to enable a person to work is not extensive. A vehicle can be seized or required to be surrendered by a police officer only where that officer believes on reasonable grounds that the vehicle has been used to commit a particular offence under the road transport legislation. The owner of the vehicle and any other individuals affected by impoundment are still free to use other forms of transport such as walking, cycling and public transport. Where the owner of the vehicle continues to hold a driver licence or permit, then that person is free to drive an alternate vehicle.

Any limitation of rights under the HRA is reasonable and proportionate, noting the public interest benefits that arise from improving road safety in this manner. This approach is considered to be the least restrictive means available to achieve the purpose of the Bill.

Road Safety Legislation Amendment Bill 2022

Human Rights Act 2004 - Compatibility Statement

In accordance with section 37 of the *Human Rights Act 2004* I have examined the **Road Safety Legislation Amendment Bill 2022**. 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 Safety Legislation Amendment Act 2022*.

Clause 2 Commencement

This clause sets out that the Act (other than part 3) will commence on the day after its notification day. Part 3 of this act will commence 12 months after this Act's notification day. Over the next 12 months, the Government will continue to work closely with stakeholders to consider the detail of the amendment regulation and ensure that any regulatory changes are compliant with the HRA.

Clause 3 Legislation amended

This clause sets out the legislation that is amended by this Act, being the *Road Transport (Alcohol and Drugs) Act 1977*, *Road Transport (Driver Licensing) Act 1999*, *Road Transport (General) Act 1999*, *Road Transport (Offences) Regulation 2005* and the *Road Transport (Safety and Traffic Management) Act 1999*.

Part 2 Road Transport (Alcohol and Drug) Act 1977

This part of the Bill amends division 2.7 of the *Road Transport (Alcohol and Drug) Act 1977*. Division 2.7 contains provisions concerning the analysis of blood for alcohol and drugs.

Clause 4 Permitted use of samples Section 18B (d)

This clause amends section 18B of the *Road Transport (Alcohol and Drug) Act 1977* to provide that a sample of oral fluid, blood or any other body sample given or taken under the Act may be used in a proceeding against an offence against section 5A of the *Road Transport (Safety and Traffic Management) Act 1999*. This is required due to the introduction of an aggravated offence for section 5A, which includes an offence where a person with the prescribed concentration of alcohol in their blood or breath, or with a prescribed drug in their oral fluid or blood requires this evidence for the prosecution purposes.

Part 3 Road Transport (Driver Licensing) Act 1999

This part of the Bill amends Division 2.4 of the *Road Transport (Driver Licensing) Act 1999*. Division 2.4 contains provisions concerning regulations made under the *Road Transport (Driver Licensing) Act 1999*.

Section 28 sets out particular regulation-making powers relating to the driver licencing system and the identification of unlicensed drivers.

Clause 5 Driver licensing system
New section 28 (2) (da)

Section 28 sits under Division 2.4 in the *Road Transport (Driver Licensing) Act 1999*, which confers power on the Executive to make regulations for the Act. Section 28 (1) provides that there is to be a regulation to provide for a system of licensing drivers and identifying people as licenced drivers.

The insertion of subsection 28 (2) (da) allows for regulations within the *Road Transport (Driver Licensing) Regulation 2000* to be introduced that require health practitioners to inform the road transport authority of information relevant to a person's fitness to drive a motor vehicle.

This amendment strengthens RTA's ability to administer a safe driver licensing system. Being informed of drivers that may have a medical condition affecting a person's safe driving ability allows the RTA to assess, mitigate and monitor that risk in the interests of protecting all road users on the ACT road network.

Notifications from health practitioners will integrate into the existing fitness to drive regime under the *Road Transport (Driver Licensing) Regulation 2000*. The established regime requires that a person is assessed against nationally adopted medical standards within Austroads' *Assessing Fitness to Drive*.

Currently, the RTA may receive reports voluntarily from concerned health practitioners, family members or friends as well as ACT Policing. Driver licence holders must tell the RTA if they suffer any permanent or long-term illness, injury or incapacity that may impair their ability to drive safely. The RTA may also be informed of a medical condition affecting a person's driving ability through regular medical assessment requirements imposed on certain licence holders, such as drivers of public passenger vehicles.

All notifications received by the RTA are assessed under the same fitness to drive regime. The RTA may request further information from the licence holder, such as requiring that they complete a medical examination with their GP or specialist. In complex cases, The RTA may seek expert advice from an authorised medical reviewer. Ultimately the RTA must be satisfied that a person meets the required medical standards for the classes or kinds of licences held.

The RTA will only change a person's driving authorisation to an extent necessary to maintain public safety. The RTA may impose conditions on a licence in accordance with the required medical standards or may not consider any changes necessary to the driver licence. The RTA may suspend, cancel or vary a driver licence in the interests of road safety. These decisions consider the evidence available and are reviewable decisions.

The Bill will enable the development of a regulatory scheme to require practitioners, or certain practitioners, to report to the RTA where they believe a person is driving in the ACT and they have a medical condition affecting their safe driving ability. It allows for a regulatory scheme to require reporting on all drivers and applicants for a driver licence or to be limited, such as to particular classes or kinds of licences held.

Clause 6 New section 28 (2) (pa)

The insertion of section 28 (2) (pa) will allow for the RTA to refer information it receives that relates to an interstate licence holder's fitness to drive, to the issuing authority.

This amendment recognises that all ACT road users have an impact on our road safety. Where the RTA is informed that a person's ability to drive safely could be impacted due to a medical related condition, the RTA may commence an assessment of the person's fitness to obtain or hold the classes or kinds of licences held.

Under section 78 of the *Road Transport (Driver Licensing) Regulation 2000*, the RTA may require an interstate licence holder to undertake medical assessments or tests as required to determine their compliance with the required medical standards. The required medical standards are defined as those set out in *Assessing Fitness to Drive* as published by Austroads. Where the RTA is satisfied on reasonable grounds the person does not comply with the standards, the RTA may disqualify the interstate licence holder from driving in the ACT.

The amendment in the Bill builds on the ability for the RTA to mitigate any road safety concerns associated with an interstate licence holder who is driving in the ACT. The RTA may determine it appropriate to refer fitness to drive related information received on an interstate licence holder to the issuing licensing authority. Recognising that the required medical standards are approved by all Commonwealth, State and Territory Transport Ministers and are relied on as the national driver medical standards, referring the information provides the opportunity for the interstate issuing authority to assess the driver under a comparative fitness to drive framework.

The source of the information subsequently referred by the RTA under the regulatory provisions might include ACT Policing, health practitioners or concerned family or friends. The information would be relevant to a person's fitness to drive and referred to the road transport authority that issued the person the licence, or is considering issuing a licence or class or kind of licence to the person.

Part 4 Road Transport (General) Act 1999

This part of the Bill amends division 4.2 of the *Road Transport (General) Act 1999*. Division 4.2 contains provisions relating to licence suspension, disqualification and related matters.

Clause 7 Definitions—div 4.2 Section 61A, definition of immediate suspension offence, new paragraph (ca)

This clause amends section 61A to expand the offences that apply to immediate licence suspension to include refusing to provide an oral fluid sample as required by section 22A of the *Road Transport (Alcohol and Drugs) Act 1977*.

This will ensure that ACT Policing have appropriate powers to prohibit drivers who may be under the influence of drugs and refuse to provide an oral fluid sample from continuing to drive.

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

This clause amends section 61A to expand the offences that are subject to an immediate suspension offence to include a driver speeding more than 45km/h over the speed limit. The requirement for a driver to not drive at a speed over the speed limit is contained at section 20 of the *Road Transport (Road Rules) Regulation 2017*.

The intent of this amendment is to incorporate a stronger deterrent within the existing immediate suspension framework to address the prevalence of excessive speeding in the ACT, as ACT Policing continue to detect a high number of drivers travelling more than 45km/h over the speed limit.

Clause 9 Section 61A, definition of immediate suspension offence, new paragraph (i)

This clause amends section 61A to expand the offences that are subject to an immediate suspension offence to include a driver charged with furious, reckless or dangerous driving, if the offence is an aggravated offence. The requirement for a driver to not commit furious, reckless or dangerous driving behaviours is contained at section 7 of the *Road Transport (Safety and Traffic Management) Act 1999*. The intent of this amendment is to incorporate a stronger deterrent within the existing immediate suspension framework to address the prevalence of dangerous driving behaviours in the ACT, including those behaviours where an aggravated offences has occurred.

Clause 10 Meaning of first offender and repeat offender—div 4.2 Section 61AA (2), new note

This clause inserts a note under subsection 61AA (2) to clarify that if a person is found guilty of an offence, including offences taken into account under section 57 of

the *Crimes (Sentencing) Act 2005*, they are classified as a repeat offender for the purposes of licence suspension or disqualification.

Section 57 of the *Crimes (Sentencing) Act 2005* requires courts to ask offenders whether the offender wants the court to take any additional offences into account in relation to the principal offence, subject to any other conditions imposed by the operation of section 57.

Clause 11 Section 61AA (3), definition of relevant offence and note

This clause amends subsection 61AA (3) to substitute the existing definition of *relevant offence* under division 4.2 to include any offences of culpable driving, or any offences mentioned at section 63 (1) of the *Road Transport (General) Act 1999* which contains provisions relating to automatic licence disqualification for certain other driving offences.

This minor and technical change simplifies the legislative operation of division 4.2.

Clause 12 Immediate suspension of licence Section 61B (2) (d)

This clause amends subsection 61B(2)(d) to require that an immediate suspension notice must include particulars of the suspension offence notice that relate to offences against section 19 of the *Road Transport (Alcohol and Drugs) Act 1977* (concentration of alcohol in blood or breath) and section 20 of the *Road Transport (Road Rules) Regulation 2017*.

This amendment will restructure subsection 61B(2)(d) to retain the existing legislative requirement at for a police officer to include relevant information relating to a prescribed concentration of alcohol in blood or breath, and now includes the requirement for a police officer to include relevant information regarding the speed at which a person is alleged to have been driving if they have exceeded the speed limit.

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

This clause amends section 61(1) to require a court to automatically disqualify a person from holding or obtaining a drivers licence when the person has committed an offence against section 20 of the *Road Transport (Road Rules) Regulation 2017* (Obeying speed limit), and the person exceeded the speed limit applying to the person by more than 45km/h.

Part 5 Road Transport (Offences) Regulation 2005.

This part of the Bill amends Schedule 1 of the *Road Transport (Offences) Regulation 2005*. Schedule 1 contains a list of short offence provisions and descriptions, penalty units, infringement penalty amounts and demerit points relating to offences in road transport legislation and regulations.

**Clause 14 Short descriptions, penalties and demerit points
Schedule 1, part 1.12, items 1 to 4**

This clause amends items 1-4 of part 1.12 of the *Road Transport (Offences) Regulation 2005* to prescribe increased penalty values for offences of section 5A of the *Road Transport (Safety and Traffic Management) Act 1999* relating to street racing. Under this amendment, the infringement notice penalty against subsections 5A (1) (a) – (d) is increased to \$700 for an offence. The number of demerit points remains unchanged.

Part 6 Road Transport (Safety and Traffic Management) Act 1999

This part of the Bill amends part 2 of the *Road Transport (Safety and Traffic Management) Act 1999*. Part 2 contains provisions that deal with speeding and other dangerous driving offences.

**Clause 15 Meaning of *first offender* and *repeat offender*—div 2.1
Section 5AB (1) and (2)**

This clause amends subsections 5AB (1) and (2) of the *Road Transport (Safety and Traffic Management) Act 1999* for first and repeat offenders to omit the words “failing to stop” and substitute “dangerous driving”.

The intent of this change is to link the meaning of first and repeat offenders with the new definition of dangerous driving offence at section 5AB (3) (see clause 16) and capture a broader range of similar dangerous driving offences.

Clause 16 Section 5AB (3)

This clause inserts a new definition of what offences comprise a dangerous driving offence under section 5AB the *Road Transport (Safety and Traffic Management) Act 1999*.

Through this amendment, dangerous driving offences are defined as the offences of:

- culpable driving;
- section 5A (races, attempts on speed records, speed trials etc);
- section 5B (improper use of motor vehicle);
- section 5C (failing to stop motor vehicle for police);
- section 7 (furious, reckless or dangerous driving) that is an aggravated offence per section 7A(1)(a)(i);
- section 8 (menacing driving);
- section 19 of the *Road Transport (Alcohol and Drugs) Act 1977* (prescribed concentration of alcohol in blood or breath);
- section 60 (1) of the *Road Transport (General) Act 1999* (which is about requiring people to disclose the identity of a driver), if the requirement is to give information about the driver of a motor vehicle who is alleged to have committed an offence against section 5C; and
- section 20 of the *Road Transport (Road Rules) Regulation 2017* (Obeying speed limit), where the person exceeded the speed limit applying to the person by more than 45km/h.

These amendments expand the range of offences that would classify a person as a repeat offender under to now include offences against sections 5A, 5B and 8 of the *Road Transport (Safety and Traffic Management) Act 1999*, section 20 of the *Road Transport (Road Rules) Regulation 2017* (speeding in excess of 45 km/h), section 19 of the *Road Transport (Alcohol and Drugs) Act 1977* (Prescribed concentration of alcohol in blood or breath) and section 29 of the *Crimes Act 1900* or any other offence against the *Crimes Act 1900* if a necessary fact to constitute the offence is that someone dies or is injured because of, or as a result of, the way a person drove a motor vehicle (Culpable driving).

This will apply to offences under sections 5A, 5C and 7 of the *Road Transport (Safety and Traffic Management) Act 1999*.

**Clause 17 Races, attempts on speed records, speed trials etc
Section 5A (1), penalty**

This clause amends the maximum penalties at section 5A (1) for first, repeat and/or aggravated offenders and introduces the option for a magistrate to impose an imprisonment penalty for offences against this section for repeat and/or aggravated offenders.

For first offenders, the maximum penalty is increased from 20 to 50 penalty units. For repeat offenders, or for an aggravated offence, the maximum penalty is increased to 100 penalty units, imprisonment for 12 months or both.

Introducing an imprisonment penalty and increasing the maximum financial penalty is intended to bring the maximum penalty for street racing in line with offences in other jurisdictions such as Victoria, New South Wales and Queensland where a matter proceeds to court, while also setting the maximum penalty proportionate to the seriousness of the offence.

Clause 18 New sections 5AAA and 5AAB

This clause inserts a new aggravated offence at section 5AAA of the *Road Transport (Safety and Traffic Management) Act 1999* for races, attempts on speed records, speed trials etc.

Clause 20 includes the conditions where a person is considered to have committed an aggravated offence against section 5A, including the circumstances that must exist at the time of the current offence which are broadly:

- failing to comply, as soon as practicable, with a request or signal given by a police officer to stop the vehicle;
- driving with a prescribed concentration of alcohol in their blood or breath, or prescribed drug in their oral fluid or blood;
- driving while under the influence of an intoxicating liquor or of a drug to an extent where a person is incapable of having proper control of the vehicle;
- at a speed that exceeds the applicable speed limit by more than 30%;

- in a way that puts the safety of vulnerable road users at risk; or
- with a person younger than 17 years old in the vehicle.

Clause 20 also includes provisions concerning the alcohol concentration or prescribed drug evidentiary requirements for the purposes of applying an aggravated offence enhancement to a charge.

Clause 20 inserts new section 5AAB of the *Road Transport (Safety and Traffic Management) Act 1999* which provides for alternative verdicts for an aggravated offence against s5A of the *Road Transport (Safety and Traffic Management) Act 1999* for races, attempts on speed records, speed trials etc. This will allow for a court to convict a person for a non-aggravated offence under section 5A where it is not satisfied that the defendant committed the aggravated offence. This mirrors section 7B of the *Road Transport (Safety and Traffic Management) Act 1999*.

**Clause 19 Aggravated offence—furious, reckless or dangerous driving
Section 7A (4), definitions of prescribed concentration, prescribed drug and vulnerable road user**

This clause omits all the definitions contained at section 7A(4) and moves them to the dictionary given they will also apply to the new section 5AAA at clause 20. The relevant definitions are shifted to the dictionary under clause 33 of the Bill.

Clause 20 Meaning of first offender and repeat offender—div 2.3 Section 10AA (2), new note

This clause inserts a note under subsection 10AA (2) to clarify that if a person is found guilty of an offence, including offences taken into account under section 57 of the *Crimes (Sentencing) Act 2005*, they are classified as a repeat offender for the purposes of seizure, impounding and forfeiture of vehicles for certain offences.

Section 57 of the *Crimes (Sentencing) Act 2005* requires courts to ask offenders whether the offender wants the court to take any additional offences into account in relation to the principal offence, subject to any other conditions imposed by the operation of section 57.

Clause 21 Section 10AA (3)

This clause amends the existing definition of impounding offence at section 10AA (3) to include section 7 of the *Road Transport (Safety and Traffic Management) Act 1999* (furious, reckless or dangerous driving), and section 20 of the *Road Transport (Road Rules) Regulation 2017* (Obeying speed limit), if the person exceeded the speed limit applying to the person by more than 45km/h.

The effect of this amendment is that a person found guilty of a furious, reckless or dangerous driving charge, or a person who is found to have exceeded the speed limit applying to the person by more than 45km/h may now have their vehicle impounded for these offences.

Clause 22 Impounding or forfeiture of vehicles on conviction etc for certain offences
New section 10B (1)

This clause amends section 10B (1) to provide that section 7 (furious, reckless or dangerous driving) and section 8 (menacing driving) are offences for which a vehicle must be impounded or forfeited by a court on conviction.

Clause 23 Section 10B (7)

This clause amends the existing subsection 10B (7) to substitute a revised schedule of offences which are subject to impounding or forfeiture of a vehicle on conviction by a court. A vehicle must be surrendered to the chief police officer within a stated time, and in a stated way, if a court orders the responsible person for the vehicle to surrender the vehicle.

Amendments to subsection 10B (7) (a) specify that a responsible person must surrender their vehicle to the chief police officer within a stated timeframe and in a stated way if the court convicts a person, or finds a person guilty of an impounding offence.

Amendments to subsection 10B (7) (b) specify the conditions that must be met for a vehicle to be surrendered to the chief police officer for impoundment or forfeiture. These include that the vehicle was used in committing the offence, that it is subject to impounding or forfeiture under this section, and that it has not already been impounded under section 10A, section 10BA or section 10C of the *Road Transport (Safety and Traffic Management) Act 1999*.

Clause 24 New section 10B (11)

This clause inserts a new subsection to clarify what is meant by *impounding offence* by linking the definition of impounding offence to section 10AA (3) of the *Road Transport (Safety and Traffic Management) Act 1999*.

Clause 25 Powers of police officers to issue surrender notices for motor vehicles
New section 10BA (1) (d)

This clause amends section 10BA (1) to include section 7 of the *Road Transport (Safety and Traffic Management) Act 1999* (Furious, reckless or dangerous driving) as an offence where police officers are empowered to issue a surrender notice for a vehicle where the police officer believes on reasonable grounds that the vehicle is being or has been used by a person to commit a relevant offence.

Other relevant offences currently under section 10BA include section 5A (Races, attempts on speed records, speed trials etc), section 5B (Improper use of motor vehicle) and section 5C (Failing to stop motor vehicle for police).

Clause 26 New section 10BA (1A)

This clause amends section 10BA (1A) to include exceeding the speed limit applying to the person by more than 45km/h as an offence for which a police officer can issue a surrender notice for a vehicle where the police officer believes on reasonable grounds that the vehicle is being or has been used by a person to commit a relevant offence.

**Clause 27 Powers of police officers to seize and impound vehicles used in committing certain offences
New section 10C (1) (a) (iv)**

This clause amends section 10C (1) to include section 7 (furious, reckless or dangerous driving) as an offences where a police officer may seize and impound a vehicle where the police officer believes, on reasonable grounds, that the vehicle is being or has been used by a person in committing a relevant offence.

Clause 28 New section 10C (1) (aa)

This clause inserts a new section 10C (1) (aa) to include exceeding the speed limit applying to the person by more than 45km/h as an offence where a police officer may seize and impound a vehicle where the police officer believes, on reasonable grounds, that the vehicle is being or has been used by a person in committing a relevant offence.

Clause 29 Section 10C (2)

This clause amends the time period allowed under section 10C (2) of the *Road Transport (Safety and Traffic Management) Act 1999* for a police officer to seize and impound a vehicle used in committing certain offences from 10 days to 30 days from when the offence is commissioned or from the date and time by which a vehicle was to be surrendered as specified in the surrender notice given to the responsible person under section 10BA, and the person fails to comply with the notice.

This will allow ACT Policing with additional time to finalise their investigations and locate the vehicle.

Clause 30 Keeping of certain vehicles seized or surrendered Section 10E (6), definition of relevant offence, paragraph (d)

This clause inserts a new definition of what offences are considered a *relevant offence* under section 10E of the *Road Transport (Safety and Traffic Management) Act 1999*.

Through this amendment, dangerous driving offences are defined as the offences found at:

- section 5A (races, attempts on speed records, speed trials etc);
- section 5C (failing to stop motor vehicle for police);
- section 7 (furious, reckless or dangerous driving);
- section 8 (menacing driving); and

- section 20 of the *Road Transport (Road Rules) Regulation 2017* (Obeying speed limit), if the person exceeded the speed limit applying to the person by more than 45km/h.

These amendments expand the range of offences for which the Chief Police Officer must keep a motor vehicle. Previously this did not apply to offences against section 7 (furious, reckless or dangerous driving) or section 20 of the *Road Transport (Road Rules) Regulation 2017* (speeding in excess of 45 km/h). These consequential amendments are required as a result of the changes to the seizure and impoundment provisions in the Bill.

Clause 31 Dictionary, note 3

This clause amends note 3 in the dictionary to advise the definition of an offence of culpable driving is located in the *Road Transport (General) Act 1999*.

Clause 32 Dictionary, definition of aggravated offence

This clause amends the dictionary in the *Road Transport (Safety and Traffic Management) Act 1999* to substitute the definition of *aggravated offence*. This is due to the inclusion of a new aggravated offence in section 5AAA of the *Road Transport (Safety and Traffic Management) Act 1999*.

Clause 33 Dictionary, new definitions

This clause amends the dictionary in the *Road Transport (Safety and Traffic Management) Act 1999* to move the definitions omitted at clause 19 that were originally contained in section 7A (4) of the *Road Transport (Safety and Traffic Management) Act 1999*. The definitions moved to the dictionary are *prescribed concentration*, *prescribed drug* and *vulnerable road user*. Examples of vulnerable road users are moved into the dictionary.