

**2009**

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

**ROAD TRANSPORT (THIRD-PARTY INSURANCE)  
AMENDMENT BILL 2009**

**EXPLANATORY STATEMENT**

**Presented by  
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## **Road Transport (Third-Party Insurance) Amendment Bill 2009**

### **Overview**

The Road Transport (Third-Party Insurance) Amendment Bill 2009 (the Bill) amends the *Road Transport (Third-Party Insurance) Act 2008* (the CTP Act). The CTP Act established a new compulsory third party (CTP) insurance scheme for the ACT, which came into effect on 1 October 2008.

This Bill fine tunes the new scheme by making a number of technical amendments to the CTP Act and addressing a number of matters that were covered by transitional provisions that were set to expire in October 2009.

Specifically, the amendments incorporate trader's plates and unregistered vehicle permits (UVPs) into the new CTP scheme, bringing them broadly into line with other registrable vehicles under the CTP Act. As a result, there are also a number of consequential amendments to the Act and other primary and subordinate legislation reflecting this amendment.

In addition, the opportunity has been taken in this Bill to simplify some of the procedural provisions and repeal a number of provisions that are now unnecessary under the new CTP legislation. These amendments are detailed below.

### **Detail**

#### **Clauses 1 - 3**

These clauses set out the name of the Act, the commencement date and the legislation amended by the Act.

Specifically, the Act is to commence 5 days after its notification.

#### **Clause 4**

This clause repeals sections 12-14 of the CTP Act as the definition of 'owner' is no longer necessary.

The term 'owner' in the CTP Act is to be replaced with the term 'responsible person' as defined in section 10 of the *Road Transport (General) Act 1999*. For a registered vehicle, the responsible person may be the registered operator of the vehicle, someone who acquires the vehicle from the registered operator or someone else who has a legal right to possession of the vehicle under a lease or hire-purchase agreement. For an unregistered vehicle with trader's plates attached, the responsible person may be the person to whom the trader's plate is issued or someone else with a legal right to possession of the vehicle. For an unregistered vehicle with no trader's plate attached, the responsible person may be the last recorded registered operator of the vehicle or someone else with a legal right to possession of the vehicle.

This standardisation addresses any potential confusion around the different nomenclature that up until now existed in the suite of road transport legislation for similar definitions.

### **Clause 5**

This clause amends section 15 of the CTP Act by adding ‘other things’ to the existing definition of an insured motor vehicle.

This technical amendment recognises that under the current CTP Act there are other things that may be the subject of a CTP insurance policy, which are listed under section 19 of the CTP Act.

### **Clause 6**

This clause amends section 17(2) of the CTP Act by amending the current phrase of ‘lawful use’ to specific scenarios of lawful use, being where an unregistered vehicle permit is in force or where the registration provisions do not apply to a particular vehicle because of Part 2.2 of the *Road Transport (Vehicle Registration) Regulation 2000* (Vehicle Registration Act).

Section 17 of the CTP Act contains the main offence provision that makes it an offence to use an uninsured vehicle on a road or road related area. Subsection 17(2) makes exemptions to the offence created under subsection 17(1). This amendment makes it clear that the lawful use of an uninsured vehicle occurs specifically where a UVP is in place, or where a vehicle is not subject to the registration provisions because of Part 2.2 of the Vehicle Registration Act. Part 2.2 of the Vehicle Registration Act operates as a catch all provision for the purposes of this offence by exempting any other vehicle that is not required by law to be registered.

### **Clause 7**

This clause amends section 19 of the CTP Act to simplify the current subsection 19(a) and gives effect to the coverage of trader’s plates within the new CTP scheme. In particular, it includes a motor vehicle with a valid trader’s plate attached as something that may be the subject a CTP policy.

### **Clauses 8 & 9**

These clauses amend section 22 of the CTP Act to give effect to replacing the term ‘owner’ with ‘responsible person’, as discussed above under clause 4.

### **Clause 10**

This clause amends section 23 of the CTP Act by giving effect to the coverage of trader’s plates in the new CTP scheme. This clause also makes the CTP Act clear that in the case of a trailer or any other thing, which may be the subject of CTP insurance under section 19(c) of the CTP Act, it is the insurer of the motor vehicle to which that trailer, or other thing is attached that is the relevant CTP insurer.

### **Clause 11**

This clause amends section 26 of the CTP Act to give effect to replacing the term ‘owner’ with ‘responsible person’, as discussed above under clause 4. This clause also gives effect to the coverage of trader’s plates within the new CTP scheme.

### **Clause 12**

This clause relocates section 30 of the CTP Act, which is a definitional clause, to the front of the legislation as a new section 12 to fit more closely with the structure of the CTP Act.

**Clause 13**

This clause inserts a new section 30 in the CTP Act to give effect to the coverage of trader's plates in the new CTP scheme. In particular, this provision provides the procedure for selecting an insurer when obtaining trader's plates from the Road Transport Authority. This procedure uses the same process as required for vehicle registration and the renewal of vehicle registration under sections 28 and 29 of the CTP Act.

**Clauses 14 – 19**

These clauses make technical amendments to the Act of a drafting nature.

**Clause 20**

This clause inserts new sections 34A and 34B in the CTP Act to give effect to the coverage of trader's plates in the new CTP scheme. In particular, these provisions provide that a CTP policy comes into effect only when a valid trader's plate is attached to the motor vehicle. The CTP insurer only remains on risk for the period that the valid trader's plate is attached to the motor vehicle.

**Clause 21**

This clause inserts section 36A to deal with the cancellation of a CTP policy applying to trader's plates. This clause also makes minor technical amendments of a drafting nature to section 36 of the CTP Act.

A CTP policy applying to a trader's plate is cancelled if the Road Transport Authority requires the plate to be returned under sections 89 and 101 of the Vehicle Registration Act, or surrendered under section 102 of the Vehicle Registration Act.

**Clause 22 – 23**

These clauses amend the heading of section 59 of the CTP Act and relocate the amended section to section 13 of the Act. This section is a definitional clause in relation to the nominal defendant that is better placed at the front of the CTP Act.

**Clause 24**

This clause inserts a new section 59 in the CTP Act to give effect to the coverage of vehicle permits (UVPs) in the new CTP scheme. In particular, this provision makes the nominal defendant liable for personal injury caused by a motor accident involving an unregistered vehicle for which a UVP issued in the ACT was in force. As is the case for uninsured motor vehicles, the nominal defendant is not liable if the injured person was trespassing or the vehicle was owned by the Commonwealth or the Territory, among other exclusions.

As vehicles for which a UVP is in force are of a different character to other vehicles, being unregistered and the subject of a specialised permit, it is more appropriate to mandate the nominal defendant with liability for insuring these vehicles, rather than placing undue burden on the private insurance market.

**Clause 25**

This clause amends section 60(1)(c) of the CTP Act to give effect to the coverage of unregistered vehicle permits in the new CTP scheme. In particular, this provision

specifically excludes a motor vehicle for which an unregistered vehicle permit is in force from being an uninsured motor vehicle.

#### **Clauses 26**

This clause amends section 64 of the CTP Act to give effect to replacing the term ‘owner’ with ‘responsible person’, as discussed above under clause 4.

#### **Clause 27**

This clause relocates section 64 of the CTP Act, as amended by clause 25, to Part 4.1, section 83A of the CTP Act.

#### **Clause 28**

This clause amends section 65(1)(a) of the CTP Act to give effect to the coverage of unregistered vehicle permits in the new CTP scheme.

Section 65 of the CTP Act deals with the liability of the nominal defendant to pay motor accident claims out of the nominal defendant fund as the nominal defendant is not to be personally liable for such claims. Specifically, as the new section 59 makes the nominal defendant liable for motor accident claims where the vehicle was covered by a UVP it is necessary to amend section 65 to make it clear that the nominal defendant is not to be personally liable in respect of these claims. Therefore, this amendment provides that liability for a claim relating to a UVP is to be paid out of the nominal defendant fund.

#### **Clauses 29**

This clause makes a consequential amendment to section 65 as a result of the relocation of a number of provisions within Part 2.7 (sections 64 – 67) to Part 4.10A of the CTP Act, specifically section 66 to section 163B.

#### **Clause 30**

This clause relocates section 65 of the CTP Act, as amended by clauses 27 and 28, to Part 4.10A, section 163A of the CTP Act.

#### **Clause 31**

This clause amends section 66(2) of the CTP Act to give effect to the coverage of UVPs in the new CTP scheme. In particular, this provision allows the UVP liability contributions to be collected under section 163E of the amended CTP Act to be paid into the nominal defendant fund.

#### **Clause 32**

This clause makes a consequential amendment to section 66 as a result of the relocation of a number of provisions within Part 2.7 (sections 64 – 67) to Part 4.10A of the CTP Act, specifically section 65 to section 163A.

#### **Clauses 33**

This clause relocates section 66 of the CTP Act, as amended by clauses 30 and 31, to Part 4.10A, section 163B of the CTP Act.

**Clause 34**

This clause relocates section 67 of the CTP Act to Part 4.10A, section 163C of the CTP Act.

**Clause 35**

This clause makes technical amendments to the Act of a drafting nature, specifically cross-referencing section 141 of the CTP Act with the requirements under section 144 of the CTP Act regarding costs.

**Clause 36**

This clause amends section 144 of the CTP Act to clarify the intention of the Act around lawyer's fees in relation to claims that are settled prior to litigation by the acceptance of a mandatory final offer of \$50,000 or less. To resolve any confusion that might exist around the calculation of lawyer's fees in cases where the mandatory final offer that is accepted is \$30,000 or less, this clause makes it clear that lawyer's fees are to be zero.

**Clause 37**

This clause inserts a new Part 4.10A in the CTP Act to cover the nominal defendant fund. Under this part, the new sections 163A, 163B and 163C will deal with the payment of motor accident claims by the nominal defendant from the nominal defendant fund, the nominal defendant fund itself and the collections available for the nominal defendant fund.

Additionally a new section 163D will be inserted to deal with the nominal defendant's liability for claims in relation to unregistered vehicle permits. This section provides that the UVP liability contribution is to be set by the CTP regulator to fund the present and likely future liability of the nominal defendant under the CTP Act for claims in relation to UVPs. The UVP liability contribution is to be collected by the Road Transport Authority when a person applies for a UVP under section 163E.

Similar to the requirements for CTP premiums, the CTP Regulator must issue UVP liability contribution guidelines stating how the UVP liability fees are to be worked out and the factors to be taken into account when working out those fees.

**Clauses 38 – 39**

These clauses amend sections 169 and 174 of the CTP Act to give effect to replacing the term 'owner' with 'responsible person', as discussed above under clause 4.

**Clause 40**

This clause amends the notes in section 188 (an offence provision) of the CTP Act by replacing the Consumer and Trader Tribunal with the ACT Civil and Administrative Tribunal (ACAT).

The ACAT has taken over the function previously held by the Consumer and Trader Tribunal, and as such, it is necessary to recognise the new powers held by ACAT to make occupational discipline orders.

**Clause 41**

This clause amends section 194 of the CTP Act by making a technical amendment of a drafting nature to make the grounds applicable for a licence suspension under the CTP Act consistent with the language used in the ACAT provisions, specifically section 200.

**Clause 42**

This clause amends the notes in section 194 of the CTP Act by replacing the Consumer and Trader Tribunal with the ACAT.

**Clause 43**

This clause inserts a new Part 5.4 in the CTP Act that allows the CTP Regulator to pursue an occupational discipline order through ACAT instead of prosecution under the CTP Act (section 199). In particular, the new part invokes the necessary terminology for the purpose of establishing ACAT's jurisdiction in relation to occupational discipline orders against licensed CTP insurers. The Part establishes that the CTP Regulator may apply under section 201 to ACAT for an occupational discipline order if it is believed that any one of the grounds set out in section 200 exist.

The grounds for seeking an occupational discipline order, as set out in section 200, are the same grounds as those previously stated by which disciplinary action could be taken under the CTP Act by the CTP Regulator in the Consumer Trader Tribunal. The changes to this section reflect the new terminology of the ACAT.

The orders that ACAT can make on the application of the CTP Regulator under section 201 remain substantially the same as those previously stated under the CTP Act. The considerations ACAT is to have regard to before making an order are set out in section 65 of the *ACT Civil and Administrative Tribunal Act 2008* (ACAT Act) and the orders, other than those that are set out in section 202(2), can be found under section 66 of the ACAT Act.

**Clauses 44 – 47**

These clauses amend the heading of section 273 of the CTP Act and relocate the amended section to section 14 of the Act. This section is a definitional clause in relation to the CTP Regulator that is better placed at the front of the CTP Act.

In addition, a new subsection (4) is added, which replicates the delegation of the CTP Regulator's functions currently found under section 274. As a consequence, clause 47 deletes the current section 274.

**Clauses 48 - 49**

These clauses amend section 277 of the CTP Act.

For transitional purposes, subsection 277(2) specified particular topics for which regulations could be made as they were not yet mentioned in the CTP Act. Given the amended Act will now include trader's plates and UVPs, the authority for making regulations comes from the general power created in section 277(1). Therefore, it is not necessary to retain a specific regulation making power in relation to trader's plates and UVPs under section 277(2).

### **Clause 50**

This clause amends Chapter 9 of the CTP Act to break up the chapter into parts. In particular, this clause inserts a new heading of Part 9.1.

### **Clauses 51 – 55**

These clauses make consequential amendments of a drafting nature to sections 280-287 to reflect the new Part 9.1 in Chapter 9.

### **Clause 56**

This clause inserts a new Part 9.2 to deal with transitional arrangements in relation to valid trader's plates. These provisions make it clear that:

- where personal injury from a motor accident that occurs before the commencement of this amendment Bill, then the subsequent claim must be dealt with as if the amendment Bill had not been enacted; and
- where a personal injury from a motor accident that occurs after the commencement of this amendment Bill, then the subsequent claim must be dealt with under the CTP Act as amended by this amendment Bill.

These transitional provisions are to expire one year from the commencement of the amendment Bill.

### **Clauses 57 – 59**

These clauses amend the terminology used in the Dictionary part of the CTP Act to take account of the fact that the ACAT has replaced the Consumer Trader Tribunal.

### **Clause 60**

This clause omits the definition of 'owner' as it will no longer be used under the CTP Act, as discussed above under clause 4. The term owner is to be replaced by the term 'responsible person'.

### **Clause 61**

This clause inserts the following definitions into the CTP Act as a result of the amendments contained in the Bill:

- responsible person is to be defined as per the *Road Transport (General) Act 1999*, sections 10 and 11;
- trader's plates and unregistered vehicle permits are to be defined as per the *Road Transport (Vehicle Registration) Act 1999*, dictionary;
- UVP liability contribution is defined under section 163D of the amended CTP Act;
- valid trader's plate is to mean a traders plate that has been issued by the road transport authority to a person, where the Road Transport Authority has not recalled the plate, required its return or surrender under the *Road Transport (Vehicle Registration) Regulation 2000*.

### **Schedule 1 of the Amendment Bill**

Clauses 1.1 to 1.8 make consequential amendments to the CTP Act as a result of new terminology and the relocation of existing and new sections within the Act.

## **Schedule 2 of the Amendment Bill**

This Schedule makes consequential amendments to the *Road Transport (Third-Party Insurance Regulation 2008* (CTP Regulation).

### **Clauses 2.1 - 2.2**

These clauses make consequential amendments to sections of the CTP Regulations now that trader's plates have been incorporated under the new CTP scheme. Section 11 also provides that the method for calculating the CTP premium is to be in accordance with the CTP premium guidelines.

Additionally, section 13 of the CTP Regulations is repealed. The offence created under section 13 was carried over from the old third party insurance scheme. However, it is no longer necessary to keep this offence provision in light of the new CTP scheme.

Section 13 made it a strict liability offence if a person did not pay the additional premium required as a result of a change of use or construction of a vehicle. However, the offence would only apply where the person did not register the change, as premiums are paid on registration with the Road Transport Authority. As such, evidence that the responsible person had not registered a change in use or construction of a vehicle would only predominantly come to light in the case of a motor accident.

Under the new CTP scheme, section 168 allows an insurer to recover costs reasonably incurred in an accident claim up to the value of \$2000, if the full premium has deliberately not been paid. While an offence provision may in some cases serve as a deterrent, the new Act now applies a commercial solution under section 168 that is more appropriate and reflects modern regulatory jurisprudence.

### **Clause 2.3 – 2.13, 2.21 – 2.27**

These clauses make consequential amendments to the numbering of provisions in the CTP Regulation as a result of the relocation of provisions within the CTP Act. These amendments also insert trader's plate, unregistered vehicle permit and valid trader's plate in Note 3 of the Dictionary section.

### **Clause 2.14**

This clause amends the definition of 'required further claim details' in subsection 32(5) of the CTP Regulation. The definition is amended to specify that the unique identifying number of the trader's plate is also required where a vehicle the subject of a motor accident claim has a valid trader's plate attached.

### **Clause 2.15**

This clause repeals Part 20 from the CTP Regulations.

Part 20 invoked transitional arrangements that were set to expire in October 2009. This Bill amends the CTP Act and Regulation to cover those issues that were subject to the transitional provisions contained in Part 20. Therefore, it is no longer necessary to retain the transitional arrangements under Part 20.

### **Clause 2.16**

This clause makes a minor technical amendment of a drafting nature to the definition of ‘any other vehicle’ in Schedule 1, Part 1.1 of the CTP Regulations.

### **Clause 2.17 – 2.18**

These clauses make technical amendments of a drafting nature to the definition of ‘business’ and ‘private’ use of a vehicle, which now also includes trader’s plates.

### **Clause 2.19 – 2.20**

These clauses make consequential amendments to the table in Schedule 1, Part 1.2 of the CTP Regulation for the coverage of trader’s plates in the new CTP scheme.

### **Schedule 3 of the Amendment Bill**

This Schedule makes consequential amendments to other Acts in light of the amendments to the CTP Act and Regulation.

Specifically, the following amendments are made:

- section 175 of the *Duties Act 1999* is amended to include an example in the definition of ‘third-party insurance’ — the example being the CTP Act;
- the offences listed in Schedule 1, Part 1.10 of the *Road Transport (Offences) Regulation 2005* (Offences Regulation) relating to the *Road Transport (Public Passenger Services) Act 2001* (Public Passenger Services Act) are amended to reflect the inclusion of the offence provisions contained in sections 111 and 112 of the Public Passenger Services Act as amended in Schedule 3, Part 3.3 of the amendment Bill;
- the offence listed in Schedule 1, Part 1.13A and Part 1.13B of the Offences Regulation relating to the CTP Act is amended to update the list of offences under the current CTP legislation and indicate those offences that may be the subject of infringement notice under the Offences Regulation;
- a new Part 8A is to be inserted in the Public Passenger Services Act that deals with insurance for public passenger vehicles — this new part reflects the transfer of transitional provisions in the CTP Regulation to the Public Passenger Services Act;
- section 7(d) of the *Road Transport (Vehicle Registration) Act 1999* (Vehicle Registration Act) is amended to insert a new note in relation to UVPs — the note makes it clear that a person applying for a UVP must also pay the UVP liability fee for the period of that permit as required under the CTP Act;
- similarly, section 88(1) of the Vehicle Registration Act is also amended in relation to trader’s plates, by adding a note to make it clear that a person applying for a trader’s plate must also pay a CTP premium under the CTP Act; and
- section 31 of the Vehicle Registration Act is also amended to clarify that vehicles with a UVP are not deemed to be a registered vehicle for the purposes of the CTP Act — this provision is particularly necessary as the nominal defendant is to be made liable for claims in relation to vehicles with a UVP in force.