

2011

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

**ROAD TRANSPORT LEGISLATION
AMENDMENT BILL 2011**

EXPLANATORY STATEMENT

**Circulated by authority of
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Minister for Transport**

Road Transport Legislation Amendment Bill 2011

Outline

This Bill makes a range of technical and operational amendments to the road transport legislation, including the *Road Transport (Driving Licensing) Act 1999*, the *Road Transport (General) Act 1999*, the *Road Transport (General) Regulation 2000*, the *Road Transport (Offences) Regulation 2005* and the *Road Transport (Vehicle Registration) Act 1999*.

The amendments in the Bill:

- amend the *Road Transport (General Act) 1999*, the *Road Transport (General) Regulation 2005* and the *Road Transport (Offences) Regulation 2005* to:
 - clarify police powers in relation to false, unlawful, cancelled or suspended driver licences and public vehicle driver authority cards, and provide for ways that specimen signatures may be given to compare with licence signatures;
 - provide that an immediate licence suspension notice ceases to have effect when police decide to discontinue charges and oblige the road transport authority to return a suspended licence as soon as practicable after a suspension notice ceases to have effect under section 61B (5);
 - amend the provisions dealing with suspensions for non-payment of court fines, to provide for suspension of a person's right to drive in the ACT;
 - relocate the offence in section 44 (8) to the *Road Transport (Driver Licensing) Act 1999* and expand it to cover other circumstances in which a person's right to drive has been suspended;
- amend the *Road Transport (Driver Licensing) Act 1999* to:
 - allow for more time under sections 19 and 21 to elect to be of good behaviour in lieu of a licence suspension or period of licence ineligibility for excessive demerits points;
 - create a new offence driving while a person's right to drive in the ACT has been suspended, which replaces the offence in section 44 (8) of the *Road Transport (General) Act 1999*;
 - clarify that driver licence photos and signatures, which may be used for the purpose of the 'road transport legislation' may also be used for the purposes of the *Dangerous Goods (Road Transport) Act 2009*;
- amend the *Road Transport (Vehicle Registration) Act 1999* to:
 - clarify the power to seize stolen, forged or fraudulently altered number plates and registration documents; and

- allow a police officer to enter a vehicle in order to exercise the power to seize registration-related documents.

Some provisions, such as the amendments to allow people to elect to be of good behaviour after a period of suspension or licence ineligibility have begun, and the amendments to section 61B of the *Road Transport (General) Act 1999* to provide for the cessation of suspensions and the return of licences, have a positive impact for affected drivers because they enable drivers to have their licences returned more quickly than would otherwise be the case.

The powers to seize driver licence, public vehicle drive authority and vehicle registration-related items might be seen as a limitation on the right to privacy under section 12 of the *Human Rights Act 2004*. If so, this limitation is justified for the purposes of section 28 of the *Human Rights Act 2004* by the need to ensure that all drivers (including public vehicle drivers) who drive on ACT roads are properly trained and licensed; and that all motor vehicles used on ACT roads are properly registered, are covered by third-party insurance and comply with the relevant vehicle standards, which include mandatory vehicle safety standards as well as standards relating to emissions and other environmental harms associated with motor vehicles. Statistically, unregistered vehicles and unlicensed drivers are more likely to be involved in motor vehicle accidents than licensed drivers and registered vehicles¹, particularly in accidents involving injury or death. For example, in the ACT in

¹ [Watson, Barry C.](#) & [Steinhardt, Dale A.](#) (2007) *The long-term crash involvement of unlicensed drivers and riders in Queensland, Australia*. In: International Council on Alcohol, Drugs, and Traffic Safety (ICADTS), August 26 - 30, Seattle, USA. The synopsis for that article states: Australian and international research has consistently found that unlicensed drivers and motorcycle riders are over-represented in serious crashes, and that these crashes are more likely to involve high-risk behaviours like drink driving and speeding. This paper reviews the long-term crash involvement of unlicensed drivers and riders in the Australian state of Queensland, utilising police-reported crash data for the years 1995 – 2004. Over this ten year period, the involvement of unlicensed controllers in reported crashes remained relatively stable. They consistently represented between 3% - 4% of all controllers involved in total crashes, and between 6% - 10% of those involved in fatal crashes, confirming their overrepresentation in more serious crashes. However, the proportion of unlicensed riders involved in motorcycle crashes was more variable and higher than was the case for unlicensed drivers, at all crash severity levels. For example, during the period, unlicensed riders accounted for between 7% - 14% of motorcycle riders involved in total crashes and 9% - 30% of all those involved in fatal crashes. The involvement of key contributing factors in the crashes involving unlicensed controllers also appears relatively stable. Among those unlicensed controllers involved in serious casualty crashes, 23% - 33% had alcohol or drugs in their system (compared to 3% - 7% for licensed controllers), 10% - 14% were judged to be speeding (compared to 2% - 3% for licensed controllers), and 25% - 34% were judged to be inattentive/negligent (compared to 17% - 19% for licensed controllers). Although more variable over time, unlicensed controllers were also consistently over-represented in single vehicle crashes compared to their licensed counterparts. Together, the findings of this study confirm that both unlicensed drivers and riders remain a concern for road safety. The relative stability in their crash-involvement patterns, particularly among unlicensed drivers, suggests that more targeted countermeasures are required to better address this problem. In particular, unlicensed riders represent a special sub-group of concern.

2010, one third of the fatal motor vehicle accidents involved either an unlicensed driver or unregistered motor vehicle. Clarifying the powers to detect unlicensed drivers and unregistered vehicles will promote road safety by facilitating the exercise of powers under the road transport legislation to take action, including criminal proceedings, against unlicensed drivers and unregistered vehicles. Clearly, those powers cannot be exercised effectively if unregistered vehicles and unlicensed drivers go undetected.

Although the Bill inserts a new offence in the Road Transport (*Driver Licensing*) Act 1999, this provision replaces a substantially similar offence that is omitted from the *Road Transport (General) Act 1999*. It is not believed that either the original offence or its replacement imposes limits on human rights. The offence concerned involves driving while the person's right to drive in the ACT is suspended. Driving is a licensed activity, subject to conditions imposed by law, and the right to drive is not a right that is recognised or protected by the *Human Rights Act 2004*. The replacement offence is a strict liability offence, like the offence that it replaces and many other offences under the road transport legislation. The defence of mistake of fact is available.

Notes on clauses

Part 1 Preliminary

Clause 1 Name of Act

This clause is a formal provision that sets out the name of the legislation when enacted.

Clause 2 Commencement

This clause provides for the commencement of the Bill. Special arrangements are made for clause 18 as this clause amends uncommenced provisions of the *Road Transport (General) Act 1999*. This commencement provision ensures that clause 18 will not commence until the relevant provisions in the *Road Transport (General) Act 1999* have come into effect, to ensure that Act is amended in the correct sequence.

Clause 3 Legislation amended

This clause is a formal provision that lists all the legislation amended by the Bill.

Part 2 Road Transport (Driver Licensing) Act 1999

Clause 4 New section 5A

This clause is a standard provision include in ACT enactments that explains how the Criminal Code and other legislation relating to the criminal law apply to offence provisions in an Act. The *Road Transport (Driver Licensing) Act*

1999 was passed before the Criminal Code commenced and its offence provisions have not been redrafted to reflect the Criminal Code. As a new offence provision (new section 31A) is to be inserted by this Bill, it is necessary to include this standard reference to the Criminal Code at the beginning of the *Road Transport (Driver Licensing) Act 1999*.

**Clause 5 Good behaviour alternative to licence suspension
Section 19 (1) and (2)**

This clause amends section 19 of the *Road Transport (Driver Licensing) Act 1999*, which allows a person who faces a period of licence suspension as a consequence of incurring excessive demerit points instead to elect to be of good behaviour for a period of 12 months. For various reasons, including the person's absence from the ACT or simple inadvertence, the person may not be able to make the election before the suspension period commences. The current legislation does not permit the authority to accept a good behaviour election after the suspension period commences. The amendments will allow the person to make the election at any time before the period of licence suspension finishes. Regardless of when the person makes the election, the person must be of good behaviour for a full 12 months.

**Clause 6 Good behaviour alternative to licence ineligibility
Section 21 (1) and (2)**

This clause amends section 21 of the *Road Transport (Driver Licensing) Act 1999*, which allows a person who faces a period of licence ineligibility as a consequence of incurring excessive demerit points instead to elect to be of good behaviour for a period of 12 months. These amendments parallel the amendments made to section 19 of the Act, in relation to licence suspensions for excessive demerit points. The amendments will allow the person to make the election at any time before the period of licence ineligibility finishes. Regardless of when the person makes the election, the person must be of good behaviour for a full 12 months.

Clause 7 New section 31A

This clause inserts a new offence provision dealing with driving while right to drive suspended. This offence is, in effect relocated from section 44 (8) of the *Road Transport (General) Act 1999* by related amendments in this Bill (see also clauses 10, 20 and 21).

The 'driving while right to drive suspended' offence applies where action has been taken to suspend the right of person, who does not hold an ACT driver licence, to drive in the ACT - for example because the person has not paid an ACT infringement notice penalty or court fine. As the person does not hold an ACT driver licence, the offence in section 32 (2), which deals with driving while the person's licence is suspended - cannot apply, because 'licence' in this context means an ACT driver licence only.

The relocation of the ‘drive while right to drive suspended’ offence from the *Road Transport (General) Act 1999* to the *Road Transport (Driver Licensing) Act 1999* will assist in clarifying the relationship between the two offences and ensuring the correct charges are laid when a person is detected driving after suspension action is taken.

This offence is expressed to be a strict liability offence. This is consistent with the offence that it replaces (section 44 (8) of the *Road Transport (General) Act 1999*). It should be noted that offence pre-dated the enactment of the Criminal Code and therefore did not expressly include a statement about the application of strict liability. The defence of mistake of fact is available for strict liability offences.

**Clause 8 Use of photographs and signatures
 Section 36 (1) (e)**

This clause makes a minor amendment to section 36 to clarify that driver licence photos and signatures on the driver licence database may be used for the purposes of the *Dangerous Goods (Road Transport) Act 2009*. Currently, driver licence photos and signatures may be used for the purposes of the road transport legislation. While the *Dangerous Goods (Road Transport) Act 2009* is legislation is closely interlinked with the road transport legislation, it is not formally part of that legislation. The amendments are desirable for streamlining the processing of applications for transporting goods and other administrative systems.

**Clause 9 Disclosure of photographs and signatures by road
 transport authority
 Section 37 (1) (c)**

This clause makes a minor amendment to include a reference to clarify that driver licence photos and signatures on the driver licence database may be disclosed for the purposes of the *Dangerous Goods (Road Transport) Act 2009*. This amendment is related to the amendment in clause 8, discussed above.

Part 3 Road Transport (General) Act 1999

**Clause 10 Suspension for nonpayment of infringement notice
 penalties
 Section 44 (8)**

This clause omits the section, which contains the offence of ‘driving while right to drive suspended’. The offence is, in effect, relocated to the *Road Transport (Driver Licensing) Act 1999* by Part 2 of this Bill.

**Clause 11 Seizure of licences
 Section 59 (1)**

This clause replaces existing section 59 (1) in order to effect two changes. The first change ensures that the seizure powers extends to public vehicle driver authority cards issued to public vehicle drivers under the *Road Transport (Driver Licensing) Regulation 2000*. Public vehicle driver authority cards were introduced by amendments to the *Road Transport (Driver Licensing) Regulation 2000* in 2010. The card includes a photo of the driver - it is an official identification document for public vehicle drivers. The cards do not include the driver's signature. Drivers must display their card while driving their vehicle for hire or reward.

It is acknowledged that the seizure power is a limitation on the right to privacy under the *Human Rights Act 2004*. The purpose of including these cards in section 59 of the *Road Transport (General) Act 1999* is to assist in reducing the risk of false, expired, cancelled, suspended or otherwise unlawfully possessed cards from being used or displayed by persons who are driving a public vehicle. These cards are intended to provide a degree of consumer protection for members of the public - only appropriately licensed persons, who have undergone police character checks, are authorised to drive public vehicles. Amending section 59 so that it applies to public vehicle driver authority cards is consistent with that consumer protection objective and is believed to be a reasonable limitation of the right to privacy.

The second change is the inclusion of new subparagraphs (b) (iii) and (iv), which are specifically included in case there is ambiguity as to whether these grounds would be covered by the ground in subparagraph (b) (ii), namely 'that is unlawfully in the person's possession.' These grounds are that the item is required to be returned or surrendered to the authority under the road transport legislation, or that it is defaced or altered. These grounds will ensure that cancelled or otherwise unauthorised driver licenses or public vehicle driver authority cards do not continue to circulate in the community after they are detected by the police.

Clause 12 Section 59 (4)

Like clause 11, this clause ensures that the powers in relation to seized driver licences also cover public vehicle driver authority cards issued to public vehicle drivers under the *Road Transport (Driver Licensing) Regulation 2000*. It redrafts existing section 59 (4) so that it applies, where relevant, to public vehicle driver authority cards. It should be noted that as public vehicle driver authority cards do not include the driver's signature, some elements of this redrafted provision do not apply to those cards.

Clause 13 Section 59 (5)

This clause redrafts section 59 (5) to include references to public vehicle driver authority cards and to amend the requirement in section 59 to give seized items to the road transport authority as soon as practicable (and within 14 days). The current provision requires the police to give the seized item immediately to the authority. This requirement is impracticable as the authority is not staffed around the clock. In practice, it may also conflict with

other police priorities, such as responding to a policy emergency call or transporting a suspected drink-driving offender to a hospital for a blood test within the statutory time frames for testing. The proposed amendment is consistent with the period for delivering suspended licences to the authority under section 61B of the *Road Transport (General) Act 1999*.

Clause 14 Section 59 (6)

This clause inserts references to *public vehicle driver authority card* in these provisions. This amendment is related to the amendments in clauses 11 and 12.

Clause 15 New section 59 (8)

This clause is a consequential amendment to include a definition of the term *public vehicle driver authority card* in section 59.

**Clause 16 Immediate suspension of licence
New section 61 (5) (aa)**

This clause amends section 61B, which deal with immediate suspension notices for certain drink driving offences. It inserts a new paragraph in section 61B (5), to provide that a suspension notice ceases when the Chief Police Office or the DPP notifies the suspended person that charges will be withdrawn. While the legislation already provides for a suspension notice to cease when the charges for the relevant offence are formally dismissed, in practice the decision to discontinue may have been taken by prosecuting authorities weeks ahead of a formal dismissal. The proposed amendment will enable the licence suspension to cease as soon as the person is given notice of the decision by the police or DPP to drop the relevant charges, instead of requiring the person to wait until the Court formally dismisses the charges.

Clause 17 New section 61B (6)

This clause also amends section 61B, to insert new subsection (6). This subsection requires the road transport authority to return a suspended licence as soon as practicable when an immediate licence suspension ceases to have effect.

**Clause 18 Suspension of driver licence registration etc for default of court imposed fine
New section 84 (5) (d)**

This clause amends section 84, which deals with licence and vehicle registration sanctions for non-payment of court fines, to allow for suspension of a non-ACT licence holder's right to drive in the ACT. The current provision provides for disqualifying a person from obtaining a ACT driver licence. In practice, this is not an effective sanction for interstate driver licence holders, as there is no nationally agreed process for enforcing interstate licence disqualifications and the disqualifications are rarely recorded against the

person's licence by interstate road transport authorities. This means that in most instances the person cannot be charged with a 'drive while disqualified' offence if he or she continues to drive in the ACT. The proposed amendment, in combination with the relocation of the offence of 'driving while right to drive while suspended', which does not require implementation action by interstate road transport authorities in order to take effect, will fill a gap in the scheme for enforcing infringement notice penalties and fines against non-ACT driver licence holders.

Part 4 Road Transport (General) Regulation 2000

Clause 19 New section 9C

This clause inserts new section 9C into *Road Transport (General) Regulation 2000*. This amendment provides ways in which a specimen signature may be obtained for the purposes of section 59 (2) of the *Road Transport (General) Act 1999*. That provision deals with obtaining a specimen signature to compare with the purported signature on a person's Australian or external driver licence.

Part 5 Road Transport (Offences) Regulation 2005

Clause 20 Schedule 1 Part 1.5 New item 10A

The amendments to the *Road Transport (Offences) Regulation 2005* amend the table in Part 1.5 of Schedule 1, to include a new item 10A. This item includes a reference to the new offence in section 31A, which has been relocated from the *Road Transport (General) Act 1999*.

Clause 21 Schedule 1 Part 1.7 Item 5

This clause makes a consequential amendment to Part 1.7 of Schedule 1 to reflect the omission of the 'drive while right to drive suspended' offence from the *Road Transport (General) Act 1999*.

Part 6 Road Transport (Vehicle Registration) Act 1999

Clause 22 Section 30

This clause replaces section 30 of the *Road Transport (Vehicle Registration) Act 1999* to clarify police powers in relation to the seizure of false, fraudulently altered, expired and suspended numberplates and associated registration documents from vehicles. These amendments will bring the powers of police in relation to registration documents into line with police powers in relation to

driver licences and public vehicle driver authority cards. In particular, police are given the power to 'enter' a vehicle to remove registration-related items such as expired registration labels or stolen numberplates. The power to enter vehicles is a necessary adjunct to the seizure power for registration-related documents. Vehicle registration and inspection processes ensure that registrable vehicles comply with the applicable vehicle standards and the Australian Design Rules. These standards and rules are intended to protect vehicle occupants, other road users and the environment from a range of harms, including traumatic injury and noxious emissions. Unregistered vehicles may be unroadworthy - as noted in the Outline, unregistered vehicles have a higher risk of involvement in a crash than registered vehicles. As these amendments are aimed at assisting in the enforcement of provisions for the registration of vehicles (including enforcement of safety standards), they are considered to be a reasonable limitation on the right to privacy

It should be noted that the requirement to give items to the road transport authority does not extend to expired registration labels, as these labels are usually damaged during removal and cannot be re-used, unlike numberplates. Returning expired labels to the authority would involve a waste of police and authority administrative resources.
