

1999
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Urban Services)

**Road Transport (Safety and Traffic
Management) Bill 1999**

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1999
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Urban Services)

**Road Transport (Safety and Traffic
Management) Bill 1999**

**A BILL
FOR**

**An Act to facilitate the adoption of nationally
consistent road rules in the Territory, to make
provision about other matters concerning safety and
traffic management on roads and road related areas,
and for other purposes**

The Legislative Assembly for the Australian Capital Territory enacts as follows:

PART 1—PRELIMINARY

Note This Act and the regulations made under it form part of the road transport legislation. Other road transport legislation includes the *Road Transport (Alcohol and Drugs) Act 1977*, the *Road Transport (Dimensions and Mass) Act 1990*, the *Road Transport (Driver Licensing) Act 1999*, the *Road Transport (General) Act 1999*, the *Road Transport (Vehicle Registration) Act 1999* and the regulations made under those Acts. As part of the road transport legislation, this Act is subject to various provisions of the *Road Transport (General) Act 1999* about the administration and enforcement of the road transport legislation generally.

1 Name of Act

This Act is the *Road Transport (Safety and Traffic Management) Act 1999*.

2 Commencement

This Act commences on 1 December 1999.

3 Objects of Act (NSW s 3)

The objects of this Act are—

- (a) to provide for a safety and traffic management system in the ACT that is—

- (i) consistent with the agreements scheduled to the *National Road Transport Commission Act 1991* (Cwlth); and
(ii) part of the uniform national road transport legislation envisaged by that Act; and

- (b) to re-enact with some changes certain provisions of the *Motor Traffic Act 1936* about safety and traffic management; and

- (c) to improve road safety and transport efficiency, and reduce the costs of administering road transport.

4 Definitions—the dictionary (Cwth s 4, NSW s 4)

The dictionary at the end of this Act is part of this Act.

Note 1 The dictionary defines certain words and expressions, and includes references (*signpost definitions*) to other words and expressions defined elsewhere in this Act or elsewhere in the road transport legislation.

For example, the signpost definition '*driver licence*—see the *Road Transport (Driver Licensing) Act 1999*, dictionary' means the expression '*driver licence*' is defined in the dictionary to that Act and the definition applies to this Act.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see *Interpretation Act 1967*, s 11F and s 11G).

5 Notes (NSW s 7)

(1) A note included in this Act is explanatory and is not part of this Act.

(2) In this section—

note includes material enclosed in brackets in section headings.

5 *Note* For comparison, a number of sections of this Act contain bracketed notes in their headings drawing attention to equivalent or comparable (though not necessarily identical) provisions of other Acts. Abbreviations in the notes include the following:

- Cwth: *Road Transport Reform (Vehicles and Traffic) Act 1993* (Cwlth)
- 10 • MTA: *Motor Traffic Act 1936*, as in force immediately before the commencement of this Act
- NSW: *Road Transport (Safety and Traffic Management) Act 1999* (NSW)
- NSW RT (Gen): *Road Transport (General) Act 1999* (NSW)
- TA: *Traffic Act 1937*, as in force immediately before the commencement of this Act.

PART 2—SPEEDING AND OTHER DANGEROUS DRIVING

Division 2.1—Speeding and other dangerous driving offences

Note The offence of culpable driving is in section 29 of the *Crimes Act 1900*.

6 Negligent driving (NSW s 42 (1), MTA s 129 (1A), (2), s 130)

- 5 (1) A person must not drive a motor vehicle negligently on a road or road related area.

Maximum penalty:

- (a) if the driving occasions death—200 penalty units, imprisonment for 24 months or both; or
10 (b) if the driving occasions grievous bodily harm—100 penalty units, imprisonment for 12 months or both; or
(c) in any other case—20 penalty units.

- (2) In deciding whether an offence has been committed against subsection (1), the court must have regard to all the circumstances of the
15 case, including—

- (a) the nature, condition and use of the road or road related area where the offence is alleged to have been committed; and
(b) the amount of traffic on, or that might reasonably be expected to have been on, the road or road related area.

- 20 (3) In this section—

grievous bodily harm includes permanent or serious disfigurement.

Note If an offence against this section occasions death or grievous bodily harm, automatic licence disqualification applies (see *Road Transport (General) Act 1999*, s 63).

7 Furious, reckless or dangerous driving (NSW s 42 (2), 25 MTA s 129 (1), (2), s 147A)

- (1) A person must not drive a motor vehicle furiously, recklessly, or at a speed or in a way that is dangerous to the public, on a road or road related area.

Maximum penalty: 100 penalty units, imprisonment for 12 months or both.

- 30 (2) In deciding whether an offence has been committed against subsection (1), the court must have regard to all the circumstances of the case, including—

- (a) the nature, condition and use of the road or road related area where the offence is alleged to have been committed; and

- (b) the amount of traffic on, or that might reasonably be expected to have been on, the road or road related area.

Note Automatic licence disqualification applies to an offence against this section (see *Road Transport (General) Act 1999*, s 63).

5 **8 Menacing driving (NSW s 43)**

- (1) A person must not drive a motor vehicle on a road or road related area in a way that menaces someone else with the intention of menacing the other person.

Maximum penalty: 100 penalty units, imprisonment for 12 months or both.

- 10 (2) A person must not drive a motor vehicle on a road or road related area in a way that menaces someone else if the person ought to have known that the other person might be menaced.

Maximum penalty: 100 penalty units, imprisonment for 12 months or both.

- (3) This section applies—

- 15 (a) whether the other person is menaced by a threat of personal injury or by a threat of damage to property; and
 (b) whether or not the other person or that property is on a road or road related area.

- 20 (4) A person does not commit an offence against this section if the person could not, in the circumstances, reasonably avoid menacing the other person.

- (5) A person cannot be found guilty of an offence—

- (a) both against subsection (1) and against subsection (2) arising out of a single incident; or
25 (b) both against this section and against subsection 6 (1) or 7 (1) arising out of a single incident.

Note Automatic licence disqualification applies to an offence against this section (see *Road Transport (General) Act 1999*, s 63).

Division 2.2—Traffic offence evasion articles

30 **9 Sale etc of traffic offence evasion articles (NSW s 48, MTA s 164G, s 164H)**

- (1) A person must not sell, offer for sale, or buy a traffic offence evasion article.

Maximum penalty: 20 penalty units.

(2) A person must not drive or park a vehicle on a road or road related area if a traffic offence evasion article is fitted to, applied to, or carried in the vehicle.

Maximum penalty: 20 penalty units.

5 (3) The responsible person for a vehicle driven or parked on a road or road related area in contravention of subsection (2) commits an offence.

Maximum penalty: 20 penalty units.

10 (4) It is a defence to a prosecution for an offence against this section if the defendant satisfies the court that the traffic offence evasion article was not designed as a traffic offence evasion article but was designed for a lawful purpose.

(5) It is a defence to a prosecution for an offence against subsection (2) or (3) if the defendant satisfies the court that, at the time of the offence—

15 (a) the vehicle was being taken to a place required by a police officer, the road transport authority or a court to surrender the traffic offence evasion article; or

(b) a notice issued under the regulations required the responsible person for the vehicle to remove the traffic offence evasion article from the vehicle within a stated time and that time had not expired; or
20

(c) the defendant did not know, and in the circumstances could not reasonably be expected to have known, the traffic offence evasion article was fitted to, applied to, or carried in the vehicle.

25 **10 Surrender and forfeiture of traffic offence evasion articles**
(NSW s 49, MTA s 164I, s 164J)

(1) This section applies if a police officer or authorised person believes on reasonable grounds that a person—

(a) is selling, is offering for sale, has sold or has bought a traffic offence evasion article in contravention of subsection 9 (1); or
30

(b) is driving or has parked a vehicle on a road or road related area with a traffic offence evasion article fitted to, applied to, or carried in the vehicle in contravention of subsection 9 (2).

(2) The police officer or authorised person may—

35 (a) require the person to surrender the traffic offence evasion article to the police officer or authorised person; or

(b) if the article is fitted to a vehicle and is not immediately removable—by written notice served on the responsible person for the vehicle, require the responsible person for the vehicle to surrender the article to the chief police officer within a stated time and in a stated way.
40

(3) A person must not, without reasonable excuse, contravene a requirement under subsection (2), whether or not the person is the owner of the traffic offence evasion article.

Maximum penalty: 20 penalty units.

5 (4) If—

- (a) a court finds an offence against section 9 or subsection (3) proven against someone; and
- (b) the traffic offence evasion article has not already been surrendered under this section;

10 the court may order the person to surrender the article to the chief police officer within a stated time and in a stated way.

(5) A traffic offence evasion article surrendered under this section is forfeited to the Territory and may be destroyed or otherwise disposed of as directed by the chief police officer or road transport authority.

15 (6) If a person who is not the absolute owner of a traffic offence evasion article surrenders the article under this section, no liability attaches to the person because of the surrender.

PART 3—UNSAFE LOADS

11 **Meaning of loaded unsafely** (NSW s 58 (5))

In this Part—

loaded unsafely, for a vehicle, means—

- 5 (a) a load on the vehicle is placed in a way that makes the vehicle unstable or unsafe; or
- (b) a load on the vehicle is not secured or is secured in a way that it is likely to fall or be dislodged from the vehicle; or
- 10 (c) an appropriate method is not used to secure a load on the vehicle.

12 **Driver of vehicle loaded unsafely** (NSW s 58 (1), MTA s 189 (1) (j))

A person commits an offence if—

- 15 (a) the person knows, or ought reasonably to know, a vehicle is loaded unsafely; and
- (b) the person drives the vehicle, or allows it to stand, on a road or road related area; and
- (c) while the vehicle is being so driven or allowed to stand, a person dies or is injured, or property (other than the vehicle or load) is
20 damaged, because the vehicle is loaded unsafely.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

13 **Responsible person for vehicle loaded unsafely** (NSW s 58 (2), (3))

(1) The responsible person for a vehicle commits an offence if—

- 25 (a) the vehicle is loaded unsafely and is driven, or allowed to stand, on a road or road related area; and
- (b) the person knows, or ought reasonably to know, the vehicle is loaded unsafely; and
- (c) while the vehicle is being so driven or allowed to stand, a person
30 dies or is injured, or property (other than the vehicle or load) is damaged, because the vehicle is loaded unsafely.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

(2) A person commits an offence if—

- 35 (a) the person is a director of, or is concerned in the management of, a corporation that is the responsible person for a vehicle loaded

unsafely and driven, or allowed to stand, on a road or road related area; and

- (b) the person knows, or ought reasonably to know, the vehicle is loaded unsafely; and
- 5 (c) while the vehicle is being so driven or allowed to stand, a person dies or is injured, or property (other than the vehicle or load) is damaged, because the vehicle is loaded unsafely.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

14 Proceeding against this Part (NSW s 58 (4), (6))

- 10 (1) It is a defence to a prosecution of a person for an offence against this Part if the person satisfies the court that he or she could not have prevented the vehicle being driven, or allowed to stand, on a road or road related area while loaded unsafely.
- 15 (2) In a proceeding for an offence against this Part, it is sufficient to prove a vehicle was loaded unsafely if the prosecution proves the load on the vehicle was not placed, secured or restrained in a way that met the performance standards recommended in the *Load Restraint Guide—Guidelines for the safe carriage of loads on road vehicles* published by the Australian Government Publishing Service on 12 December 1994.

PART 4—TRAFFIC ACCIDENTS

15 Meaning of *traffic accident*

In this Act—

traffic accident includes—

- 5 (a) a collision between 2 or more vehicles or a vehicle and an animal; and
- (b) any other accident or incident involving a vehicle or animal in which a person dies or is injured, property is damaged, or an animal in someone's charge dies or is injured.

10 16 Driver or rider to stop and give assistance (NSW s 70, MTA s 178, TA s 32)

If the driver of a vehicle, or rider of an animal, is involved in a traffic accident on a road or road related area, and someone dies or is injured in the accident, the driver or rider must not knowingly fail to stop and give any

15 assistance that is necessary and in his or her power to give.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

17 Regulations about duties of participants in, and witnesses to, traffic accidents (NSW Sch 1, cl 6)

(1) The regulations may make provision for or with respect to the duties of the driver of a vehicle or anyone else involved in or affected by a traffic

(2) Without limiting subsection (1), the regulations may require a person mentioned in that subsection—

- 25 (a) to produce his or her Australian driver licence or external driver licence, or another form of identification, to anyone else; and
- (b) to give particulars to the police or anyone else about—
 - (i) any vehicle, person or property involved in or affected by the accident; or
 - (ii) injury or damage caused by the accident; or
 - 30 (iii) the names and addresses of witnesses to the accident.

PART 5—TRAFFIC CONTROL DEVICES

18 Authority to install etc prescribed traffic control devices (NSW s 51, MTA s 109)

5 For this Part, a person has *appropriate authority* to install or display
(or to interfere with, change or remove) a prescribed traffic control device if
the person is authorised in writing by the road transport authority to install
or display (or to interfere with, change or remove) the device.

19 Offences about traffic control devices (NSW s 52, MTA s 112)

(1) A person must not, without appropriate authority—

- 10 (a) install or display a prescribed traffic control device—
(i) on, above or near a road or road related area; or
(ii) on a vehicle on, above or near a road or road related area; or
(b) interfere with, change or remove a prescribed traffic control device
installed or displayed—
15 (i) on, above or near a road or road related area; or
(ii) on a vehicle on, above or near a road or road related area.

Maximum penalty: 20 penalty units.

(2) A person must not install or display a sign, signal, marking,
20 structure or other device that might reasonably be mistaken for a prescribed
traffic control device—

- (a) on, above or near a road or road related area; or
(b) on a vehicle on, above or near a road or road related area.

Maximum penalty: 20 penalty units.

20 Removal of unauthorised devices (NSW s 53, s 54)

25 (1) This section applies if a person installs or displays a sign, signal,
marking, structure or other device in contravention of section 19.

(2) The road transport authority, a police officer, or an authorised
person—

- 30 (a) may direct the person, orally or in writing, to remove the device
within a stated reasonable time; or
(b) may remove the device.

(3) If the person is given a direction under paragraph (2) (a), the person
must comply with the direction.

Maximum penalty: 20 penalty units.

(4) If the road transport authority, a police officer, or an authorised person removes the device—

- (a) the person's liability under section 19 or subsection (3) is not affected; and
- 5 (b) the road transport authority may recover the cost of removing the device as a debt payable by the person to the Territory.

(5) A certificate given by or on behalf of the road transport authority, and stating that a stated amount is the cost of removing the device under paragraph (2) (b), is evidence of the facts so stated.

10 **21 Devices generally presumed to be lawfully installed or displayed (NSW s 55, MTA s 111)**

In a proceeding for an offence against this Act (other than an offence against paragraph 19 (1) (a) or subsection 20 (3) in relation to a contravention of that paragraph), a prescribed traffic control device installed
15 or displayed on, above or near a road or road related area, or on a vehicle on, above or near a road or road related area, is conclusively presumed to have been lawfully installed or displayed there under this Act.

22 Notice of intention to challenge certain issues

(1) This section applies if a defendant in a proceeding for an offence
20 against this Act intends to challenge any of the following matters:

- (a) that a stated prescribed traffic control device was, at the time of the offence, installed or displayed at a stated place on, above or near a road or road related area, or on a vehicle on, above or near a road or road related area;
- 25 (b) that a stated prescribed traffic control device on, above or near a road or road related area, or on a vehicle on, above or near a road or road related area, is a reasonable likeness of a diagram, or complies substantially with a description, of the device under this Act;
- 30 (c) that a symbol on or with a prescribed traffic control device on, above or near a road or road related area, or on a vehicle on, above or near a road or road related area, is a reasonable likeness of a diagram of the symbol under this Act;
- 35 (d) that a stated prescribed traffic control device on, above or near a road or road related area, or on a vehicle on, above or near a road or road related area, is clearly visible during the day or night in normal weather conditions, or during the day in normal weather conditions, to the drivers or pedestrians it applies to;
- 40 (e) that a stated prescribed traffic control device on, above or near a road or road related area, or on a vehicle on, above or near a road

or road related area, was operating correctly at the time of the offence.

(2) The defendant must give written notice of the challenge to the prosecution at least 7 days before the day fixed for the hearing.

5 (3) The notice must—

(a) state the defendant's full name and address; and

(b) state—

10 (i) if an infringement notice for the offence has been served on the person—the number of the infringement notice and the date of service of the infringement notice; or

(ii) if an infringement notice for the offence has not been served on the person—sufficient details of the offence to allow the prosecution to identify the offence; and

15 (c) clearly identify the stated prescribed traffic control device and the matter the defendant intends to challenge; and

(d) outline the grounds of the challenge.

PART 6—TRAFFIC OFFENCE DETECTION DEVICES

23 What is a camera detection device? (MTA s 180ZE)

(1) A *camera detection device* is a device designed to do either or both of the following:

- 5 (a) take images complying with subsection (2) (except subparagraph (b) (iv)) of vehicles being driven in contravention of traffic light signals;
- (b) measure the speed at which vehicles are travelling and take images complying with subsection (2) (except subparagraph (b) (iii)) of
10 vehicles being driven over speed limits.

(2) An image of a vehicle taken by a device complies with this subsection if—

- (a) it is a photograph, or an electronic image recorded on a magneto-optical write once read many (WORM) disk; and
- 15 (b) the image (either by itself or with other images taken by the device)—
 - (i) indicates (by a code or other information)—
 - (A) the device; and
 - (B) the date and time when, and place where, the image
20 was taken; and
 - (C) the person responsible for the use of the device when the image was taken; and
 - (ii) shows the vehicle and its numberplate; and
 - 25 (iii) if the vehicle is being driven in contravention of a provision of the regulations about traffic lights—indicates the direction and lane in which the vehicle is travelling and the number of seconds the traffic light concerned has been displayed when the image is taken; and
 - 30 (iv) if the vehicle is being driven over the speed limit—indicates the speed limit where the vehicle is, and the speed of the vehicle, when the image is taken.

(3) Subsection (2) does not limit the matters that may be indicated or shown by an image taken by a camera detection device.

24 Regulations about traffic offence detection devices (MTA s 180ZF)

35

(1) The regulations may make provision for or with respect to the testing, sealing, maintenance and use of traffic offence detection devices,

including the approval by the road transport authority of people to test, seal, maintain or use traffic offence detection devices.

- 5 (2) The regulations may also make provision about the meaning of codes and other information indicated on images produced by approved camera detection devices.

25 Evidentiary certificates etc (MTA s 180ZG)

(1) This section applies to a proceeding against a person for an offence against this Act involving a vehicle.

- 10 (2) A certificate that appears to be signed by a police officer or the road transport authority, and states a matter relevant to either of the following, is evidence of the matter:

- (a) the use of a device in relation to the vehicle;
- (b) anything done or not done in relation to the device under the regulations made for this Part.

- 15 (3) Without limiting subsection (2), a certificate given under that subsection may state any of the following matters:

- (a) that the device is—
 - (i) an approved camera detection device; or
 - (ii) an approved speed measuring device; or
 - 20 (iii) a traffic offence detection device;
- (b) that the device has been maintained, tested, sealed or used as required or permitted under the regulations made for this Part;
- (c) the condition of the device at a stated time or at any time during a stated period, including, for example, that it was accurate (or
25 accurate to a stated extent) and operating properly at that time or during that period;
- (d) if the device is an approved camera detection device—that a stated image is an accurate copy of an image taken by the device at a stated date, time and place or is an accurate copy of 1 of a series of
30 images taken by the device at a stated place during a stated period;
- (e) if the device is an approved speed measuring device—a measurement of speed obtained by the use of the device.

- 35 (4) An image stated by a certificate given under subsection (2) to be an accurate copy of an image taken by an approved camera detection device is evidence of everything indicated or shown in the image.

(5) Without limiting subsection (4), the image is evidence of the following matters:

- (a) that the vehicle shown in the image was being driven when and where (the *relevant time and place*) the image was taken by the device;
- 5 (b) if the image indicates a speed limit—that the speed limit applied to the person driving the vehicle at the relevant time and place;
- (c) if the image indicates the speed of the vehicle—that the vehicle was driven at that speed at the relevant time and place;
- (d) if the image indicates the direction or lane in which the vehicle was travelling—that the vehicle was travelling in that direction or lane;
- 10 (e) if the image indicates the number of seconds a traffic light had been displayed—that the traffic light had been displayed for that number of seconds before the image was taken.
- (6) If an image mentioned in subsection (4) is a copy of 1 of a series of images taken by an approved camera detection device during a period, subsections (4) and (5) apply to the image considered by itself and to the image considered with other images in the series.
- 15 (7) If the defendant is the responsible person (or a responsible person) for the vehicle, it is to be presumed (unless evidence to the contrary is presented) that the defendant was the driver of the vehicle at the relevant time and place.
- 20 (8) Evidence may be given by a police officer or authorised person about any matter mentioned in subsections (2) and (3).
- (9) Without limiting subsection (8), evidence by a police officer or authorised person of the speed a vehicle was moving as measured by a traffic offence detection device is evidence that the vehicle was being driven at that speed when and where the measurement was taken.
- 25 (10) Evidence of the condition of a traffic offence detection device is necessary only if evidence is given that the device was not accurate or operating properly.
- (11) This section does not limit evidence that can be presented apart from this section.
- 30

26 Interfering with traffic offence detection devices
(MTA s 180ZH)

35 A person must not, without lawful authority, knowingly or recklessly interfere with—

- (a) a traffic offence detection device or its operation; or
- (b) a seal on a traffic offence detection device; or
- (c) anything produced by a traffic offence detection device.

Maximum penalty: 30 penalty units.

27 Inspection and copies of images produced by traffic offence detection devices (MTA s 180ZI)

(1) This section applies to—

- 5 (a) the responsible person for a vehicle shown in an image taken by a traffic offence detection device; or
- 10 (b) a person nominated under section 38 (Illegal user declarations), 39 (Known user declarations) or 40 (Sold vehicle declarations) of the *Road Transport (General) Act 1999* by the responsible person for a vehicle shown in an image taken by a traffic offence detection device.

(2) The road transport authority must—

- 15 (a) make a copy of the image available for inspection by a person this section applies to; and
- (b) give a copy of the image to the person on payment of the determined fee.

28 Notice of intention to challenge certain issues (MTA s 180ZJ)

(1) This section applies if a defendant in a proceeding for an offence against this Act intends to challenge the maintenance, testing, sealing, use, accuracy or operating condition of a traffic offence detection device.

20 (2) The defendant must give written notice of the challenge to the prosecution at least 7 days before the day fixed for the hearing.

(3) The notice must—

- (a) state the defendant's full name and address; and
- 25 (b) state—

- 30 (i) if an infringement notice for the offence has been served on the person—the number of the infringement notice and the date of service of the infringement notice; or
- (ii) if an infringement notice for the offence has not been served on the person—sufficient details of the offence to allow the prosecution to identify the offence; and
- (c) outline the grounds on which the defendant intends to challenge the maintenance, testing, sealing, use or condition of the traffic offence detection device.

29 Expiry of Pt 6 (MTA s 180ZK)

35 This Part expires on 6 October 2001.

PART 7—TRAFFIC MANAGEMENT

30 Road or road related area may be closed temporarily to traffic (NSW s 74)

(1) A police officer may—

- 5 (a) close a road or road related area to traffic during a temporary obstruction or danger to traffic or for any temporary purpose; and
- (b) give directions to prevent the traffic of any vehicles, people or animals in or on a road or road related area closed to traffic under paragraph (a) or under the authority of another Act.

- 10 (2) A person must not, without reasonable excuse, contravene a direction of a police officer under this section.

Maximum penalty: 20 penalty units.

31 Removal of dangers and obstructions to traffic (NSW s 75, MTA s 202 (3))

- 15 (1) If a danger or obstruction to traffic on a road or road related area is caused by—

- (a) a vehicle that is involved in a traffic accident or is broken down; or
- (b) anything that has fallen, escaped or been removed from a vehicle; or
- 20 (c) a container used for transporting materials or rubbish (including a building skip) or anything else left or placed on a road or road related area;

a police officer or authorised person may remove the vehicle, thing or container and take other steps necessary to protect the public and assist the free flow of traffic.

- 25 (2) The road transport authority may recover the cost of action taken under subsection (1) as a debt payable to the Territory by—

- (a) for a vehicle—the driver of, or responsible person for, the vehicle at the time of the traffic accident or breakdown; or
- 30 (b) for anything that has fallen, escaped or been removed from a vehicle—the driver of, or responsible person for, the vehicle at the time of the fall, escape or removal; or
- (c) for anything else left or placed on a road or road related area—the person who left or placed it, or had possession of it when it was
- 35 left or placed.

(3) A certificate given by or on behalf of the road transport authority, and stating that a stated amount is the cost of taking stated action under subsection (1), is evidence of the facts stated.

32 Removal of unattended vehicles from certain places
(NSW s 76, MTA s 202 (3))

(1) A police officer or authorised person may move an unattended vehicle from a road or road related area to a retention area—

- (a) if the vehicle is unlawfully parked; or
- (b) if the police officer or authorised person believes on reasonable grounds that the vehicle is causing, or is likely to cause, a danger to the public or an unreasonable obstruction to other users of the road or road related area; or
- (c) in any other circumstances prescribed under the regulations.

(2) As soon as practicable after moving the vehicle to a retention area, the police officer or authorised person must report the action to the police officer in charge of the closest police station and ask that the responsible person for the vehicle (or other person entitled to possession of the vehicle) be told where it has been moved to.

(3) A vehicle moved to a retention area is taken to be uncollected goods under the *Uncollected Goods Act 1996* and—

- (a) the road transport authority is taken to be the possessor of the vehicle under that Act; and
- (b) the responsible person for the vehicle is taken to be the owner of the vehicle; and
- (c) the road transport authority may dispose of the vehicle in accordance with Part 3 of that Act; and
- (d) reasonable costs of the possessor in complying with that Act are taken to include the cost of moving the vehicle to the retention area.

(4) However, the responsible person for the vehicle is not required to pay costs under paragraph 26 (2) (a) or (b) of the *Uncollected Goods Act 1996* if the person satisfies the road transport authority that the vehicle was stolen or illegally taken or used at the relevant time.

Note Paragraphs 26 (2) (a) and (b) of the *Uncollected Goods Act 1996* require the owner to pay the reasonable costs incurred by the possessor in complying with that Act and the possessor's reasonable costs in storing and maintaining the goods before they are collected.

PART 8—REGULATIONS ABOUT SAFETY AND TRAFFIC MANAGEMENT

Division 8.1—General

- 5 **33 General regulation-making power** (Cwth s 7, NSW s 71, MTA s 218)
- (1) The Executive may make regulations for the purposes of this Act.
- (2) The regulations may create offences punishable by maximum penalties of not more than 30 penalty units.
- 10 (3) The regulations may provide defences for offences against the regulations and provide who bears the onus of proof for the defences.
- (4) In addition to a penalty mentioned in subsection (2), the regulations may provide for a person who is convicted or found guilty by a court of an offence against this Act to be disqualified by order of the court from holding or obtaining a driver licence for the period the court considers appropriate.
- 15 (5) The regulations may provide for a person who is prosecuted for an aggravated form of an offence against the regulations to be found guilty by a court of a lesser offence if the court is not satisfied that the elements of the aggravated offence have been proven, but is satisfied that the elements of the lesser offence have been proven.
- 20 (6) The regulations may provide that a document that is signed or purports to be signed on behalf of the road transport authority (or someone else prescribed under the regulations), and stating any matter relevant to the speed limit applying to a road or road related area (including the operation of any device that sets the speed limit), is evidence of the matter in a proceeding
- 25 before a court or tribunal.
- 34 Regulations may apply certain documents etc** (Cwth s 7, NSW s 71, MTA s 218)
- (1) The regulations—
- 30 (a) may apply, adopt or incorporate, entirely or in part and with or without changes, publications of the National Road Transport Commission approved, or of matters approved, by the Australian Transport Council or any other publication (including an Act or regulation of another jurisdiction), as in force at a stated time or from time to time; and
- 35 (b) may apply to a provision of the regulations, entirely or in part and with or without changes, the provisions of the Criminal Code set out in the Schedule to the *Criminal Code Act 1995* (Cwlth).

(2) For the regulations, the regulations may define a word or expression (or apply, adopt, or incorporate a definition of a word or expression in a publication mentioned in subsection (1) (a)) defined by this Act—

- 5 (a) in the same (or in substantially the same) way as it is defined by this Act; or
- (b) by reference to a matter included in the word or expression as defined by this Act; or
- 10 (c) by reference to a combination of matters included in the word or expression as defined by this Act and in any other word or expression defined by this Act (but not in a way that exceeds the power to make regulations about those matters); or
- 15 (d) for applying, adopting or incorporating a publication of the National Road Transport Commission approved, or of matters approved, by the Australian Transport Council—in the same way as it is defined in the publication despite anything in this Act or other road transport legislation.

(3) If a regulation applies, adopts or incorporates a publication (or provision of a publication) of the National Road Transport Commission approved, or of matters approved, by the Australian Transport Council, evidence of the publication or provision may be given in a proceeding—

- 20 (a) by the production of a document purporting to be a copy of it and purporting to be published by or on behalf of the National Road Transport Commission; or
- 25 (b) by the production of a document purporting to be a copy of it and purporting to be printed by the government printer or by the authority of the Government of any jurisdiction.

(4) In this section, a reference to a *publication of the National Road Transport Commission* includes a reference to a document published on behalf of the National Road Transport Commission.

30 **35 Regulations may exclude vehicles, people and animals from Act**
(Cwth s 10, NSW s 72, MTA s 218 (ag))

(1) The regulations may—

- 35 (a) exempt a vehicle, person or animal prescribed under the regulations from this Act (or a stated provision of this Act); or
- (b) authorise the road transport authority to exempt a vehicle, person or animal prescribed under the regulations from this Act (or a stated provision of this Act).

(2) An exemption given under a regulation mentioned in subsection (1) may be conditional.

40 (3) The regulations may provide for the road transport authority to—

- (a) suspend the operation of a regulation mentioned in paragraph (1) (a) in the way and circumstances prescribed under the regulations; or
- 5 (b) suspend the operation of an exemption given by the authority to a vehicle, person or animal in the way and circumstances prescribed under the regulations.

Division 8.2—Safety

36 Regulations about safety generally (NSW Sch 1, cl 1 (i), (j))

10 The regulations may make provision for or with respect to the regulation or prohibition of traffic, people and animals on roads and road related areas, including provision about—

- (a) the use of safety equipment by drivers, riders, passengers and other people; and
- (b) standards of conduct for safety purposes.

15 **37 Regulations about safe operation of vehicles**
(NSW Sch 1, cl 3)

The regulations may make provision for or with respect to the safe operation of vehicles on roads and road related areas, including provision about—

- 20 (a) the loading and unloading of vehicles and securing of loads; and
- (b) the regulation of vehicles with a size, mass or load greater than limits prescribed under the regulations; and
- (c) the keeping and production of records and other information in relation to vehicles used on roads or road related areas.

25 **38 Regulations about child safety (NSW Sch 1, cl 5)**

(1) The regulations may make provision for or with respect to the duties of parents and other people responsible for children (other than children over 16 years and 9 months) in relation to the use of roads or road related areas (or vehicles on roads or road related areas).

30 (2) The regulations may make provision for or with respect to the establishment and conduct of schemes to assist children to cross roads and road related areas safely, including the following:

- (a) enabling the road transport authority to conduct, or authorise other people to conduct, the schemes;
- 35 (b) enabling the road transport authority to—
 - (i) amend or replace the schemes; and
 - (ii) impose conditions on an authority to conduct schemes; and
 - (iii) revoke an authority to conduct schemes;

- (c) the signs to be displayed at crossings and how the signs are to be displayed;
- (d) the placement of barriers across or partly across a road or road related area near a crossing;
- 5 (e) conditions about the wearing or display of insignias, badges, belts or other articles of uniform by anyone taking part in crossing schemes;
- (f) that evidence the sign was displayed as prescribed by a person at or near a crossing is evidence in a proceeding that the displaying of the sign by the person was authorised;
- 10 (g) anything else necessary or convenient to be prescribed for the carrying out of the scheme.

Division 8.3—Traffic management

39 Regulations about traffic management generally
15 (NSW Sch 1, cl 1)

The regulations may make provision for or with respect to the regulation or prohibition of traffic, people and animals on roads and road related areas, including provision about—

- 20 (a) the places where and how vehicles or animals may or may not be driven or ridden; and
- (b) the use of roads and road related areas by people on foot and other people and by animals; and
- (c) speed limits for vehicles (including speed limits that may be varied electronically or otherwise); and
- 25 (d) signs, signals, structures and other devices to control, direct or warn traffic; and
- (e) the marks that are to be used on the surface of roads and road related areas; and
- 30 (f) the control and reduction of traffic congestion or danger in vehicle operation; and
- (g) the conduct of events on roads and road related areas that may disrupt traffic; and
- (h) complying with directions by police officers, authorised persons or other people prescribed under the regulations; and
- 35 (i) the use of stalls or other ways of selling goods or services, or carrying out any business or trade, on a road or road related area.

40 Regulations about seizure, impounding etc of vehicles
(NSW Sch 1, cl 8 (2))

The regulations may make provision for or with respect to—

- (a) the seizure and moving to a retention area of a vehicle that is—
- (i) a danger to the public or an unreasonable obstruction to traffic; or
 - (ii) abandoned or left unattended on a road or road related area; or
 - (iii) parked unlawfully on a road or road related area where there is conspicuously displayed a sign including the words 'tow away area' or 'vehicles impounded' or other words indicating the vehicle may be seized; and
- (b) the conditions to be complied with before a vehicle can be seized; and
- (c) the application of the *Uncollected Goods Act 1996* to a vehicle seized and moved to a retention area.

41 Regulations about towing fees (NSW Sch 1, cl 4)

- The regulations may make provision for or with respect to—
- (a) the payment of a fee by the driver or responsible person for a vehicle for the towing of the vehicle because of the exercise of functions under this Act; and
 - (b) the recovery of the fee by the road transport authority or anyone else as a debt payable to the Territory in a court of competent jurisdiction; and
 - (c) the issue of certificates about towing and the cost of towing, and their use as evidence of those matters in proceedings.

Division 8.4—Parking

42 Regulations about parking (NSW Sch 1, cl 2)

- (1) The regulations may make provision for or with respect to the regulation or prohibition of the parking of vehicles (including pay parking), and parked or stopped vehicles, on roads, road related areas and other places, including provision about the following:
- (a) the Territory and other entities establishing and operating pay parking schemes;
 - (b) the Territory and other entities fixing and collecting parking fees, and the application of parking fees by the collector of the fees and the payments to be made to the road transport authority;
 - (c) allocating the costs for pay parking schemes;
 - (d) providing pay parking on a common payment basis;
 - (e) installing and operating devices used for pay parking;
 - (f) the road transport authority issuing guidelines for pay parking schemes and the legal effect of the guidelines;

- (g) the road transport authority granting approvals for the establishment and operation of pay parking schemes;
- (h) resolving disputes about pay parking;
- 5 (i) the powers of police officers and authorised persons to remove vehicles parked or stopped in parking spaces and to close parking spaces;
- (j) parking vehicles on residential land.

(2) In this section—

residential land means land leased for residential purposes.

10 **43 Regulations about marking tyres (NSW Sch 1, cl 8 (1))**

The regulations may make provision for or with respect to the marking of tyres on vehicles using crayon, chalk or a similar substance by police officers and authorised persons for any purpose connected with the enforcement of a provision of any Act or subordinate law.

PART 9—MISCELLANEOUS

44 References to Motor Traffic Act, Traffic Act etc

In any Act, instrument made under an Act or document, a reference to any of the following legislation is, in relation to anything to which this
5 Act applies, a reference to this Act:

- (a) *Motor Traffic Act 1936*;
- (b) *Traffic Act 1937*;
- (c) *Motor Traffic Regulations 1934*.

PART 10—TRANSITIONAL

45 Definitions for Pt 10

In this Part—

commencement means the commencement of this Act.

5 *former Acts* means—

- (a) the *Motor Traffic Act 1936*; and
- (b) the *Traffic Act 1937*;

and includes the former regulations.

former regulations means the *Motor Traffic Regulations 1934*.

10 46 Transitional regulations (NSW s 78)

(1) The regulations may prescribe savings or transitional matters necessary or convenient to be prescribed because of the enactment of this Act.

15 (2) Without limiting the scope of subsection (1), the regulations may prescribe matters necessary or convenient to be prescribed for carrying out or giving effect to the provisions of this Act instead of the provisions of the former Acts.

20 (3) Regulations made for this section must not be taken to be inconsistent with this Act as far as they can operate concurrently with this Act.

(4) This section is additional to, and does not limit, section 47.

47 Modification of Part's operation

25 The regulations may modify the operation of this Part to make provision with respect to any matter that is not, or not adequately, dealt with in this Part.

48 Notices about radar detecting devices etc (NSW RT (Gen) Sch 2, cl 18)

30 A notice under paragraph 164I(1)(d) of the *Motor Traffic Act 1936* that is in force immediately before the commencement, requiring a person to surrender a radar detecting device or radar jamming device to the chief police officer, that provides for compliance within a time that ends after the commencement is taken, after the commencement—

- (a) to be a notice given under section 10; and

- (b) to require the person to surrender the device at the end of the same time and in the same manner as originally provided in the notice.

49 Existing traffic signs taken to be approved prescribed traffic control devices (NSW RT (Gen) Sch 2, cl 9)

- 5 (1) An existing traffic sign that is also a prescribed traffic control device is taken to be installed or displayed with appropriate authority for Part 3—
 - (a) on, above or near a road or road related area; or
 - (b) on a vehicle on, above or near a road or road related area.

(2) In this section—

- 10 ***existing traffic sign*** means a traffic sign as defined in subsection 4 (1) of the *Motor Traffic Act 1936*—
 - (a) that was erected, placed or displayed in accordance with Part 7 of that Act before the commencement; and
 - 15 (b) continued to be erected or displayed immediately before the commencement.

50 Expiry of Part

This Part ceases to have effect 15 months after it commences.

DICTIONARY

(See s 4)

another jurisdiction means a jurisdiction other than the ACT.

approved camera detection device means a camera detection device approved under the regulations.

5 **approved speed measuring device** means a speed measuring device approved under the regulations.

Australian driver licence—see the *Road Transport (Driver Licensing) Act 1999*, dictionary.

10 **Australian Transport Council** means the Australian Transport Council mentioned in section 3 of the *National Road Transport Commission Act 1991* (Cwlth) or its successor.

authorised person, for a provision of this Act, means—

- 15 (a) a person who is appointed as an authorised person under the *Road Transport (General) Act 1999* for the provision; or
(b) a person who is, under the regulations made under this Act or the *Road Transport (General) Act 1999*, an authorised person for the provision.

authority—see *road transport authority*.

camera detection device—see section 23.

20 **drive** a vehicle includes—

- (a) be in control of the steering, movement or propulsion of the vehicle; and
(b) if the vehicle is a trailer—draw or tow the vehicle; and
(c) if the vehicle can be ridden—ride the vehicle.

25 **driver**, of a vehicle, means the person who is driving the vehicle.

driver licence—see the *Road Transport (Driver Licensing) Act 1999*, dictionary.

exercise a function includes perform a duty.

30 **external driver licence**—see *Road Transport (Driver Licensing) Act 1999*, dictionary.

Note An external driver licence is a foreign driver licence or an external Territory driver licence.

function includes power.

DICTIONARY—continued

infringement notice—see the *Road Transport (General) Act 1999*, dictionary.

installation, of a prescribed traffic control device, includes the painting or formation of any marks or structure that forms, or forms part of, the device.

jurisdiction means a State, the Commonwealth or an internal Territory, including the ACT.

loaded unsafely, in Part 3 (Unsafe loads)—see section 11.

motor vehicle means a vehicle that is built to be propelled by a motor that forms part of the vehicle.

National Road Transport Commission means the National Road Transport Commission established by the *National Road Transport Commission Act 1991* (Cwlth) or its successor.

prescribed traffic control device means a device, line, marking, sign, signal or anything else that is prescribed under the regulations for this definition, and includes any board, device, plate, screen, word, and anything else, with a prescribed traffic control device that provides information about the application of the device.

responsible person, for a vehicle—see the *Road Transport (General) Act 1999*, section 10.

restricted licence—see *Road Transport (Driver Licensing) Act 1999*, dictionary.

retention area—see *Uncollected Goods Act 1996*, section 4.

ride, for the rider of a motorbike or an animal-drawn vehicle, includes be in control of the vehicle.

rider, of a vehicle that can be ridden, means the person who is riding the vehicle.

road means an area that is open to or used by the public and is developed for, or has as 1 of its main uses, the driving or riding of motor vehicles, but does not include an area that would otherwise be a road so far as an order under section 12 (Power to include or exclude areas in road transport legislation) of the *Road Transport (General) Act 1999* declares that this Act does not apply to the area.

road related area means—

- (a) an area that divides a road; or

DICTIONARY—continued

- 5 (b) a footpath or nature strip adjacent to a road; or
(c) an area that is open to the public and is designated for use by cyclists or animals; or
(d) an area that is not a road and that is open to or used by the public for driving, riding or parking vehicles; or
(e) a shoulder of a road; or
10 (f) any other area that is open to or used by the public so far as an order under section 12 (Power to include or exclude areas in road transport legislation) of the *Road Transport (General) Act 1999* declares that this Act applies to the area;

but does not include an area that would otherwise be a road related area so far as an order under that section declares that this Act does not apply to the area.

15 ***road transport authority*** (or ***authority***) means the Australian Capital Territory Road Transport Authority.

Note The chief executive of the department responsible for the *Road Transport (General) Act 1999* is the road transport authority (see *Road Transport (General) Act 1999*, s 16).

20 ***road transport legislation***—see *Road Transport (General) Act 1999*, section 6.

speed measuring device means a device designed to measure the speed at which vehicles are travelling.

25 ***the regulations*** made under this Act includes any publication applied, adopted or incorporated under the regulations, whether entirely or in part and with or without changes.

this Act (or ***the Act***) includes the regulations under this Act.

traffic includes vehicle and pedestrian traffic.

traffic accident—see section 15.

30 ***traffic offence detection device*** means an approved camera detection device or approved speed measuring device.

35 ***traffic offence evasion article*** means any device or substance (the ***article***) that is designed or adapted, or apparently designed or adapted, to be fitted to, applied to, or carried in a vehicle to detect, interfere with, or reduce the effectiveness of, a traffic offence detection device, whether or not the article is operating or in working order.

DICTIONARY—continued

trailer means a vehicle being towed, or built to be towed, by a motor vehicle, but does not include a motor vehicle being towed.

vehicle means—

- 5 (a) any description of vehicle on wheels, other than a vehicle used on a railway or tramway; or
- (b) any other vehicle prescribed under the regulations.

Endnote

Penalty units

Section 33AA of the *Interpretation Act 1967* deals with the meaning of offence penalties that are expressed in penalty units.