

1999

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

**ROAD TRANSPORT (SAFETY and TRAFFIC MANAGEMENT)
BILL 1999**

EXPLANATORY MEMORANDUM

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Brendan Michael Smyth MLA
Minister for Urban Services

ROAD TRANSPORT (SAFETY and TRAFFIC MANAGEMENT) BILL 1999

Explanatory memorandum

This explanatory note relates to this Bill as introduced into the Assembly.

This Bill is cognate with the Road Transport (General) Bill 1999.

Overview of the Bill

The objects of the Bill are:

- (a) to provide for a safety and traffic management system for the ACT that is –
 - (i) consistent with the agreements scheduled to the National Road Transport Commission Act 1991 of the Commonwealth; and
 - (ii) part of the uniform national road transport legislation envisaged by the Act; and
- (b) to re-enact with some changes certain other provisions of the (*Motor Traffic Act*) 1936 (as in force immediately before the commencement of this Act) relating to safety and traffic management;
- (c) to improve safety and efficiency of transport and reduce the costs of the administration of road transport.

Outline of provisions

Part 1 – preliminary

Section 1 sets out the name of the proposed Act.

Section 2 provides for the commencement of the proposed Act on the 1st December 1999.

Section 3 sets out the objects of the proposed Act.

Section 4 provides that expressions used in the proposed Act have meanings given to them in the Dictionary at the end of the proposed Act.

Section 5 provides that notes used in the proposed Act do not form part of the Act.

Part 2 – Speeding and other dangerous driving

Division 1 Speeding and other dangerous driving offences

Section 6 makes it an offence for a person to drive a motor vehicle negligently on a road or road related area. The maximum penalties for such offence will be:

- (a) if the driving occasions death – 200 penalty units or imprisonment for 24 months or both, or
- (b) if the driving occasions grievous bodily harm – 100 penalty units or imprisonment for 12 months or both, or
- (c) if the driving does not occasion death or grievous bodily harm – 20 penalty units.

The section has been brought into line with New South Wales penalties.

Section 7 makes it an offence for a person to drive a motor vehicle furiously, recklessly or at a speed or in a way dangerous to the public, on a road or road related area. The maximum penalty for such an offence will be 100 penalty units or imprisonment for 12 months or both.

The proposed section substantially re-enacts the provisions of sections 129 and 147A, of the (*Motor Traffic Act*) 1936. Section 130 which covered the offence of careless and inconsiderate driving has been repealed as it is no longer used and the offence of furious driving has been added to bring it into line with current national standards for this type of offence.

Section 8 makes it an offence for a person to drive a motor vehicle on a road or road related area in a manner that menaces another person with the intention of menacing that other person. The maximum penalty for the offence will be 100 penalty units or imprisonment for 12 months or both.

The proposed section also makes it an offence for a person to drive a motor vehicle on a road or road related area in a manner that menaces another person where the person ought

to have known that the other person might be menaced. The maximum penalty for that offence will be 100 penalty units or imprisonment for 12 months or both.

The proposed section is a new section based on the New South Wales legislation and is supported by the Australian Federal Police.

Division 2 Traffic offence evasion articles

Section 9 creates a number of offences in respect of prohibited traffic offence evasion articles. The Dictionary defines a *traffic offence evasion article* to mean any device or substance that is designed, or apparently designed or adapted, to be fitted or applied to, or to be carried in, a motor vehicle for the purpose of detecting, interfering with, or reducing the effectiveness of, an traffic offence detection device, and includes such a device whether or not the device is operating or in working order.

In particular, the proposed section makes it an offence for a person:

- (a) to sell, offer for sale or purchase a traffic offence evasion article, or
- (b) to drive a vehicle (or cause it to be parked) with such an article on a road or road related area.

The responsible person for a vehicle that is driven (or caused to be parked) with such an article on a road or road related area is also guilty of an offence, subject to certain defences. The maximum penalty for each of these offences will be 20 penalty units.

The proposed section substantially re-enacts the provisions of sections 164G and 164H of the (*Motor Traffic Act*) 1936, except that references to the owner of a vehicle are replaced with references to the responsible person for the vehicle.

Section 10 enables police officers and officers authorised by the Authority to require a person in possession of a traffic offence evasion article or the responsible person for the vehicle or trailer to which it is fitted or applied to remove or surrender it to the Commissioner of Police. A failure to do so will constitute an offence for which the maximum penalty is 20 penalty units. An article so surrendered is forfeited to the Territory and may be destroyed or otherwise disposed of at the direction of the Chief Police Officer or Authority.

The proposed section substantially re-enacts the provisions of sections 164I and 164J of the (*Motor Traffic Act*) 1936, except that references to the owner of a vehicle are replaced with references to the responsible person for the vehicle.

Division 3

PART 3 Unsafe loads

Section 11 defines the meaning of loaded unsafely as

- (a) a load that is placed in a way that makes the motor vehicle or trailer unstable or unsafe; or
- (b) a load secured in a way that will make it likely to fall or be dislodged; or
- (c) an inappropriate method is used to secure a load.

Section 12 makes a person guilty of an offence if, in relation to unsafe loads, he or she drives or stops a motor vehicle or trailer on a road or road related area, where the person knows or reasonably ought to know that the vehicle or trailer is loaded unsafely and death or personal injury to a person, or damage to property, occurs because of it. The maximum penalty for this offence will be 50 penalty units or imprisonment for 12 months, or both, in the case of an individual.

The proposed section substantially re-enacts S.189(1)(j) of the (*Motor Traffic Act*) 1936.

Section 13 creates offences relating to unsafe loads on motor vehicles and trailers. A person will be guilty of an offence if the person is the responsible person for a motor vehicle or trailer that is driven or stood on a road or road related area while loaded unsafely, where the person knows or reasonably ought to know that the motor vehicle or trailer is loaded unsafely and death or personal injury to a person, or damage to property, occurs because it is loaded unsafely. Maximum penalty is 50 penalty units and imprisonment for 12 months or both for an individual.

This section is new in that it creates an offence for the responsible person which replaces the concept of owner.

Section 14 creates a defence for this Part if a person proves that the person was not in position to prevent the motor vehicle or trailer from being driven or stood on a road or road related area while loaded unsafely.

Part 4 Traffic Accidents

Section 15 provides the definition for traffic accident.

Section 16 makes it an offence for a driver or rider, who is involved in an accident that causes death or injury to another person, to knowingly fail to stop and give assistance. The maximum penalty for the offence is 50 penalty units or imprisonment for 6 months.

The proposed section substantially re-enacts the provisions of section 178 of the (*Motor Traffic Act*) 1936 and section 32 of the *Traffic Act*.

Section 17 sets out the power to make regulations setting out the duties of persons involved or affected by an accident on a road or road related area and covers such areas as production of licences, giving particulars about the vehicles, persons, property, damage or injury caused, and identity and address of witnesses.

Part 5 Traffic Control Devices

Section 18 defines that “appropriate authority” in relation to the installation, display, interference, alteration and removal of a prescribed traffic control device is when a person is authorised in writing by the Road Transport Authority.

This section partly re-enacts section 109 of the (*Motor Traffic Act*) 1936 in that it sets out the authorisation process. However, the power of giving that authorisation has been removed from the Minister and transferred to the Road Transport Authority.

Section 19 makes it an offence:

- (a) to install, display, interfere with, alter or remove a prescribed traffic control device unless the person has appropriate authority.
- (b) To install or display a sign, signal, marking, structure or other device that might reasonably be mistaken to be a prescribed traffic control device.

The maximum penalty is 20 penalty units.

This section re-enacts section 112 of the (*Motor Traffic Act*) 1936.

Section 20 makes it an offence if a person who has contravened section 19 and does not comply with a direction to remove a device within a stated time. The maximum penalty is 20 penalty units. Further the provision allows the Road Transport Authority, a police officer or an authorised person to remove a device the subject of section 19 and seek recovery of the cost from the person who contravened section 18. Further this action does not affect the liability of the person from action under section 19.

Section 21 makes it a presumption that a prescribed traffic control device that is installed or displayed on, above or near a road or road related area has been lawfully installed or displayed.

This section re-enacts section 111 of the (*Motor Traffic Act*) 1936.

Section 22 requires a person who intends to defend a proceeding for an offence against this proposed Act to notify the prosecution in writing at least 7 days before the hearing date that the person intends to challenge including the details of the offence and the grounds of the challenge on any of the following:

- (a) that a particular prescribed traffic control device was at the time of the offence installed or displayed at a particular place on, above or near a road or road related area;
- (b) that a particular prescribed traffic control device on, above or near a road or road related area represents a reasonable likeness of a diagram, or complies substantially with a description, of the device under this Act;
- (c) that a symbol on or with a prescribed traffic control device on, above or near a road or road related area represents a reasonable likeness of a diagram of the symbol under this Act;
- (d) that a particular prescribed traffic control device 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 drivers or pedestrians to whom it is intended to apply;

- (e) that a particular prescribed traffic control device on, above or near a road or road related area was operating correctly at the time of the offence.

Part 6 Traffic Offence Detection Devices

Section 23 describes what a camera detection device is designed to do, and the information an image produced by the device must contain. This proposed section re-enacts section 180ZE of the (*Motor Traffic Act*) 1936.

Section 24 provides that the regulations may make provisions relating to the testing, sealing, maintenance and use of traffic offence detection devices, and the meaning of codes used on images produced by such devices. This proposed section re-enacts section 180ZF of the (*Motor Traffic Act*) 1936.

Section 25 provides for the production of a certificate, signed by the police or an authorised person, containing information about the use, testing, approvals etc of traffic offence detection devices for evidentiary purposes. A copy of an image may also be used as evidence of speed, the display of a red light, and that a vehicle was being driven at a certain place and time. This proposed section re-enacts section 180ZG of the (*Motor Traffic Act*) 1936.

Section 26 provides an offence and penalty for any person who, without lawful authority, interferes with a traffic offence detection device. This proposed section re-enacts section 180ZH of the (*Motor Traffic Act*) 1936. Maximum penalty is 30 penalty points.

Section 27 provides that upon payment of the determined fee, certain people may obtain a copy of an image produced by a traffic offence detection device. The image may be viewed free of charge. The provision takes into account the administrative requirements needed to accord with the requirements of the laws in relation to privacy. This proposed section re-enacts section 180ZI of the (*Motor Traffic Act*) 1936.

Section 28 provides the information to be provided, and when it must be provided, in situations where a defendant intends to challenge the maintenance, testing, sealing and

use of a traffic offence detection device, in a court. This is included for administrative efficiency. This proposed section re-enacts section 180ZJ of the (*Motor Traffic Act*) 1936.

Section 29 provides that Part 6 – Traffic Offence Detection Devices will expire on the 6th October 2001. This was an amendment in the Assembly by Mr. Osborne.

Part 7 Traffic Management

Section 30 enables a police officer to close a road or road related area to traffic during any temporary obstruction or danger to traffic or for any other temporary purpose. It also enables a police officer to prevent the traffic of any vehicles, persons or animals on any road or road related area closed under the proposed section or under the authority of another Act. It will be an offence for a person to fail (without reasonable excuse) to obey a direction given by a police officer under the proposed section for which the maximum penalty will be 20 penalty units.

Section 31 enables a police officer or an authorised officer to remove broken down vehicles and other obstructions such as spilt loads from roads and road related areas. It also allows the removal of building skips and other containers used for transporting materials or refuse. The expense of any such removal is recoverable as debt in a court of competent jurisdiction by the appropriate Roads Transport Authority from the person responsible. The proposed section substantially re-enacts the provisions of section 202(3) of the (*Motor Traffic Act*) 1936.

Section 32 enables a police officer or an authorised officer to remove illegally parked vehicles from road or road related area. The responsible person for the vehicle will be liable for the cost of the removal, which is to be determined under the Uncollected Goods Act subject to certain exceptions.

Section 33 enables the Executive to make regulations for the purposes of the proposed Act. The regulations may create offences punishable by maximum penalties of 30 penalty units.

Section 34 enables the regulations to apply, adopt or incorporate, whether wholly or in part or with or without modifications, publications of the National Road Transport Commission that have been approved (whether before or after the commencement of the proposed section) by the Australian Transport Council or any other publication (including any Act or regulation of the Commonwealth, a Territory or another State), either as published or as in force from time to time. Both the National Road Transport Commission and the Australian Transport Council are institutions that have functions under the *National Road Transport Commission Act 1991* of the Commonwealth (and under intergovernmental agreements scheduled to that Act) in relation to the development of uniform national road laws.

Section 35 enables the regulations to exempt (or authorise the Road Transport Authority to exempt) certain vehicles, persons or animals from the operation of the proposed Act or regulations (or specified provisions of the proposed Act or regulations). This proposed provision substantially re-enacts section 218(ag) of the (*Motor Traffic Act*) 1936.

Section 36 enables the regulations to make provision for the use of safety equipment.

Section 37 enables the regulations to make provision about the safe operations of vehicles.

Section 38 enables the regulations to make provision about child safety.

Section 39 enables the regulations to make provision about traffic management generally.

Section 40 enables the regulations to make provision about the seizure and impounding of vehicles.

Section 41 enables the regulations to make provision about towing fees.

Section 42 enables the regulations to make provision about parking.

Section 43 enables the regulations to make provision about tyre markings

Section 44 provides that a reference in any Act, instrument made under an Act or document to the (*Motor Traffic Act*) 1936, *Motor Traffic Regulations 1934* and the *Traffic Act 1937* are a reference to the Road Transport (Safety and Traffic Management) Bill 1999.

Section 45 provides for definitions used in the transitional part.

Section 46 enables the regulations to make provision for matters of a saving or transitional nature.

Section 47 enables the regulations to make provision to modify the transitional part for matters not covered or not adequately covered.

Section 48 provides for a notice under section 164I(1)(d) of the (*Motor Traffic Act*) 1936 shall be a notice under the proposed section 10 of the Road Transport (Safety and Traffic Management) Bill 1999 and require the person to comply with the notice under the original terms.

Section 49 enables existing traffic signs are taken to be installed or displayed with appropriate authority.

Section 50 provides that the transitional part shall cease to have effect 15 months after the commencement of the Road Transport (Safety and Traffic Management) Bill 1999.

Dictionary

The Dictionary contains definitions of words and expressions used in the proposed Act.