

1992

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

TRAFFIC (AMENDMENT) BILL 1992

EXPLANATORY MEMORANDUM

Circulated by Authority of the Minister For Urban Services

Terence Connolly MLA

TRAFFIC (AMENDMENT) BILL 1992

The *Traffic Act 1937* ("the Principal Act") primarily provides for traffic rules and general conduct requirements in relation to pedestrians and cyclists.

Pursuant to the A.C.T. Government's acceptance of the Prime Minister's 10 point road safety initiatives, the Traffic (Amendment) Bill 1992 proposes to amend the Principal Act to provide for the compulsory wearing of bicycle helmets for all cyclists and their passengers on public roads and in public places. It is proposed that the rider be liable if his or her passenger is under the age of 14 years and is not wearing an approved helmet as required by this Bill. Pillion passengers 14 years and over will be personally liable if an offence is committed.

The Bill provides an exemption for non residents of Australia who are in Australia principally for competitive cycling events. In practice, race organisers require competitors to wear some type of helmet during races. However, these cyclists do not have to comply with the requirement to wear an approved helmet under the legislation and are thereby saved the expense of purchasing such a helmet during their visit. This provision is necessary to maintain consistency with NSW, (which has a similar provision in its legislation), given that most races of international standard conducted within the ACT would have commenced or had stages in NSW.

The general penalty provision in the Principal Act currently provides for a maximum penalty of \$100 for offences committed against the Act where no other penalty is provided. This provision was last reviewed in 1984 and it is proposed that the penalty be increased to \$500.

The Bill also proposes to repeal the *Traffic (Amendment) Act 1987* which has not commenced operation. This Act empowers the Minister to determine fees for the conduct of bicycle racing or trials on public roads, but given that these events are so occasional a fee setting mechanism is no longer considered necessary.

Financial Considerations

The Australian Capital Territory is to receive \$3.4 million in Federal funding over three years for the implementation of the Prime Minister's ten point road safety package which includes the compulsory wearing of bicycle helmets.

An amount not exceeding \$5000 will be expended to publicise the introduction of the initiative.

Details of the Bill are included in the Attachment.

ATTACHMENT

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- Clause 1** states that the short title of the Bill, upon enactment, will be the Traffic (Amendment) Act 1992.
- Clause 2** provides for the commencement of the provisions of the Bill.
- Clause 3** provides that references to "Principal Act" in the Bill mean the *Traffic Act 1937*.
- Clause 4** amends section 4 of the Principal Act which relates to the interpretation of terms.

Proposed paragraph 4(a) inserts a new term 'approved helmet' which is defined as being a protective helmet of a type approved by the Registrar, or one which meets the designated Australian Standard for protective bicycle helmets.

Proposed paragraphs 4(b) and (c) omit the definitions for certain terms and provide that these terms have the same meanings as those in the *Motor Traffic Act 1936*.

- Clause 5** inserts the following provisions after section 5 of the Principal Act.

Proposed section 6:

Subsection (1) provides that the Registrar may approve a type of protective helmet by notice in the Gazette.

Subsection (2) enables a manufacturer or importer of protective helmets to apply to the Registrar seeking approval of a type of helmet. The Registrar may approve the helmet by notice in the Gazette. This provision is limited to manufacturers and importers as they would be the initiators for the introduction of a new model of protective helmet onto the ACT market.

Proposed sections 6A and 6B

Sections 6A and 6B are standard provisions for the administrative review of a decision. Section 6A provides that where the Registrar refuses to approve a helmet under subsection 6(2), the Registrar must

give written notice of the decision to the applicant within 28 days. The notice must inform the applicant of his or her right to appeal to the Administrative Appeals Tribunal and state that an affected person may request reasons for the decision if these have not already been given. Section 6B provides that a decision of the Registrar refusing to approve a type of protective helmet is reviewable by the Administrative Appeals Tribunal.

Proposed section 6C:

Subsection (1) requires persons who ride a bicycle on a public street or in a public place to wear an approved helmet unless they have a reasonable excuse for not so doing.

Subsection (2) provides that the rider of a bicycle must not without reasonable excuse, carry a passenger under 14 years of age unless the passenger is wearing an approved helmet. The effect of this provision, in particular, is that it makes riders who are carrying very young children responsible if the child is without a helmet.

Subsection (3) compels pillion passengers who are 14 years and older to wear an approved helmet unless they have a reasonable excuse for not so doing.

The effect of subsection (4) is that a non resident of Australia who is in Australia for a competitive bicycle race, rally, test, trial or similar event is not required to wear an approved helmet.

Proposed section 6D:

Proposed subsection 6D(1) provides that where a police officer has reason to believe that a person has committed an offence under this Bill and the person is 18 or more years of age, section 180A of the *Motor Traffic Act 1936* applies to that offence as if it were a prescribed offence under that section and the prescribed penalty for the offence is \$35. Section 180A relates to the issuing of traffic infringement notices in relation to certain prescribed offences.

Clause 6 amends section 40 of the Principal Act by increasing the maximum penalty from \$100 to \$500. Section 40 provides for the penalty which may be imposed by a Court in respect of any offence against the Principal Act for which there is no specified penalty.

Clause 7 repeals the *Traffic (Amendment) Act 1987* in its entirety.