

2012

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

**ROAD TRANSPORT (GENERAL)
AMENDMENT BILL 2012**

EXPLANATORY STATEMENT

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Road Transport (General) Amendment Bill 2012

Outline

This Bill amends the scheme in the road transport legislation and, in particular, provisions in the *Road Transport (General) Act 1999*, for issuing, serving and enforcing infringement notices in relation to offences under the road transport legislation. The Bill includes new powers in relation to statutory declarations about offences for which an infringement notice has been issued, which are intended to reduce the scope for making incomplete or false statutory declarations.

The Bill wholly repeals and replaces divisions 3.2 and 3.3 in part 3 of the *Road Transport (General) Act 1999*. It includes amendments to replace the existing provisions dealing with statutory declarations with new provisions. Under the new scheme, if the responsible person for a registrable vehicle was not in possession or control of that vehicle when the offence was committed, the Bill imposes an obligation on the responsible person to take *all reasonable steps* to assist the administering authority to identify and locate the person who was in possession or control of the vehicle at that time. The concept of all reasonable steps is defined in the Bill, and includes the completion of an *infringement notice declaration* in the prescribed form, as well as the provision of other information or assistance that may be required by the administering authority.

The obligation to take all reasonable steps is intended to encourage the responsible person for the vehicle to be honest, timely and accurate in completing the infringement notice declarations in relation to infringement notices. The obligation to take all reasonable steps is designed to discourage people from making false declarations either to avoid incurring demerit points against their licence, or failing to make a declaration and thereby incurring points that should have been allocated to another person to enable that other person to avoid incurring those demerit points.

The Bill also contains new provisions (division 3.3A) to encourage corporations to identify the drivers of vehicles involved in offences that carry demerit points, to enable the demerit points for those offences to be recorded against the driver licence record for the person who actually committed the offence. Corporations that fail, on two or more occasions, to take all reasonable steps to assist the administering authority to identify the driver of a vehicle registered to the corporation that is involved in an offence, will be advised that registration sanctions will be applied to the corporation's vehicle (or another vehicle owned by the corporation, if the corporation has disposed of its interest in the vehicle involved in the relevant offences).

The sanction will apply whether or not the corporation pays the infringement penalty – the purpose of the sanction is to ensure that demerit points for the offence can be allocated, not to secure payment of the penalty amount. The sanction will remain in place for the earlier of 6 months or until the corporation takes the “reasonable steps”. The period of 6 months has been chosen because it is the vehicle-based equivalent of the maximum period of a demerit point licence suspension. The intention is to discourage the practice whereby a director or other staff member of a corporation is able to hide behind the corporate identity to avoid having demerit points recorded against his or her licence.

The amendments in the Bill also ensure that the infringement notice scheme provisions and the demerit point scheme provisions (which are contained mainly in the *Road Transport*

(*Driver Licensing*) Act 1999 and its Regulation) are properly aligned, so that any associated demerit points for an offence are recorded in the register of demerit points at the appropriate time after the infringement notice for the offence has been served under the Act.

The Act currently contains provisions that purport to impose criminal liability on the responsible person for a vehicle, even where the responsible person did not actually commit the offence (section 37). That provision is considered to be inconsistent with human rights and with criminal law principles. Instead, the Bill inserts new section 53AA which provides that in a prosecution for an infringement notice offence involving a registrable vehicle, there is a rebuttable presumption that the responsible person for the vehicle was in possession or control of that vehicle when the offence was committed. This approach is more consistent with human rights and principles of criminal law and procedure (and is discussed in more detail under “Human Rights implications”, below).

The Bill removes the current provisions that state that service on one of the responsible persons for a vehicle is deemed to be service on all the other responsible persons for a vehicle, as these provisions are not considered to be consistent with the right in section 22 (2) (a) of the *Human Rights Act 2004*. That provision states that everyone charged with a criminal offence has the right to be told promptly and in detail, in a language that he or she understands, about the nature and reason for the charge.

Related amendments to the *Road Transport (Vehicle Registration) Regulation 2000* provide that if there are two or more registered operators for a vehicle, those operators must agree which of them is to be the contact person for receiving notices, including infringement notices, in relation to the vehicle. That person will be the responsible person for the vehicle. These amendments reflect the current administrative practice within the Office of Regulatory Services.

The Bill also allows for applications for additional time to do something in response to an infringement notice to be made “out-of-time”. This is a new measure to allow a person to make a late application for additional time to take certain action, including disputing the infringement notice, paying it or making a statutory declaration to nominate someone else as the person who committed the offence. The approval of out-of-time applications for additional time will be subject to guidelines made by the Minister. Those guidelines will be a disallowable instrument. Decisions to refuse applications for extra time will be reviewable – this is a new feature of the legislation and is intended to make the Act more compatible with rights.

The Bill also amends the road transport legislation, and in particular part 3 of the *Road Transport (General) Act 1999* and the *Road Transport (Offences) Regulation 2005* to update and simplify the processes for issuing and serving infringement notices. Much of the detail relating to the service and content of notices is moved from the Act to the Regulation, consistent with modern drafting practice. The changes made by the Bill include clarification of the concept of *responsible person for a vehicle*, and these changes also make it clear that *vehicle* in this context only means vehicles that can be registered.

Among other matters, the new provisions clarify the time frames for taking certain actions in response to an infringement notice. The existing legislation allows for applications for extension of time to do these things, and requires that a person must make an application for additional time within 28 days of the date of service of an infringement notice, or 28 days of

the date of service of a reminder notice. Like the current Act, the Bill allows for applications for additional time to pay the infringement notice penalty, dispute the notice, apply for withdrawal or make an infringement notice declaration.

Related and consequential amendments are made to provisions elsewhere in the Act, and to provisions in the *Road Transport (Driver Licensing) Act 1999*, the *Road Transport (General) Regulation 2000*, the *Road Transport (Mass, Dimensions and Loading) Act 2009*, the *Road Transport (Offences) Regulation 2005* and the *Road Transport (Vehicle Registration) Regulation 2000*.

Human rights implications

As the Bill deals in great detail with infringement notices for offences, it is clear that the Bill will engage the various human rights relating to criminal proceedings set out in sections 21 and 22 of *Human Rights Act 2004* (the HRA). The provisions in the Bill dealing with infringement notice declarations may also engage the right to privacy and reputation under section 12 of the HRA, in so far as the provisions in the Bill deal with the disclosure to the administering authority of personal information about another person by a person who is served with an infringement notice. The question is whether the Bill limits any of the rights under the HRA and if so, to what extent this limitation is reasonable for section 28 of the HRA.¹

Section 12 of the HRA is concerned about unlawful or unwarranted intrusion into privacy or reputation. It provides:

- “12 Privacy and reputation**
Everyone has the right—
- (a) not to have his or her privacy, family, home or correspondence interfered with unlawfully or arbitrarily; and
 - (b) not to have his or her reputation unlawfully attacked.”

The provisions in the Bill do not authorise *unlawful or arbitrary* interferences with privacy. The purposes for which the information is sought is closely and directly connected to the enforcement of the road transport legislation, and is specifically limited to the identification and location of persons who were in possession or control of vehicles involved in an offence. The information is sought by way of a statutory declaration, which places the maker of the declaration under a legal obligation to be truthful. This is an additional safeguard against any unlawful attacks on reputation. For these reasons, the Government considers that while the provisions in the Bill may engage the right to privacy and reputation in section 12, they do not limit those rights for the purposes of section 28 of the *Human Rights Act 2004*.

In relation to the rights in sections 21 and 22, it is noted that the infringement notice procedure is an alternative to the criminal trial process that permits the expiation of an offence. To that extent, the majority of the provisions in the Bill are not directly connected to the criminal trial process and do not limit or alter rights in criminal trials. Significantly, an

¹ The provisions in new Division 3.3A apply to corporations and provide for the suspension of the registration of vehicles registered by corporations. Under section 6 of the HRA, only human beings have human rights. As the effect of section 6 is that corporations do not have human rights, it is not necessary to discuss the provisions in Division 3.3A here.

infringement notice penalty, if paid, does not result in a criminal conviction. It should also be noted that the person on whom a notice is served retains the right to have the matter determined by a court, if he or she so chooses.

None of the amendments in the Bill curtails the right of a person to dispute an infringement notice in court. The amendments to allow out-of-time applications for an extension of time to do something, and the changes to limitation periods may increase a person's opportunities to dispute an infringement notice in court, if that person so chooses.

The current scheme is substantially based on provisions drawn from the former *Motor Traffic Act 1936*. Those provisions pre-dated the enactment of the *Criminal Code 2002* and the *Human Rights Act 2004*. There are provisions in the current scheme that appear to be inconsistent with general principles of criminal responsibility and in particular with rights in relation to criminal proceedings under the *Human Rights Act 2004*.

The Government considers that the changes to the infringement notice scheme that are made by this Bill make the current scheme more consistent with human rights, in particular by:

- removing provisions that provided for deemed service of infringement notices, where there were multiple responsible persons, with the result that a responsible person could potentially be regarded as liable for an infringement notice offence without actually having received a copy of that notice;
- removing provisions that deemed a person liable for an offence even if he or she did not actually commit it;
- removing provisions that effectively required a court in a civil proceeding to make a determination of guilt or innocence in relation to an infringement notice offence;
- removing provisions that purported to make hearsay evidence admissible against a person in a subsequent trial²;
- adding new review rights; and
- resolving ambiguous use of terminology in the legislation to make it easier to read and understand.

As noted above, a provision in the current Act that provides for a responsible person for a vehicle to be held liable for an offence, and to be convicted and punished for that offence even if another person actually committed that offence³, is omitted by this Bill. In its place, the Bill provides that in a prosecution in relation to an infringement notice offence served on the responsible person for a registrable vehicle, there is a rebuttable evidentiary presumption that the responsible person for that vehicle had possession or control of that vehicle at the time of the offence. This presumption is mainly relevant for offences that are detected by camera (or for parking offences) where the identity of the offender is not readily apparent. It is not relevant for infringement notice offences detected by police officers or other authorised officers where the identity of the offender is known.

The responsible person will have the onus of rebutting the presumption. The rebuttable presumption approach is considered to be more consistent with principles of criminal law than existing section 37 (1). It recognises that in a regulatory scheme such as the driver licensing and vehicle registration scheme established under the road transport legislation, it is

² See sections 38 (6), 39 (6) and 40 (6) of the Road Transport (General) Act 1999, which appear to be inconsistent with section 59 of the *Evidence Act 1995* (Cwlth).

³ Section 37 (1) of the *Road Transport (General) Act 1999*

both fair and reasonable that the person who actually owns or operates a registrable vehicle is presumed to be in possession or control of that vehicle at any given time. The responsible person (the person who actually owns or operates the vehicle) is in the best position to provide the court with evidence about the persons who had access to the vehicle at the relevant time, and about the person's own movements in relation to that vehicle.

Section 28 of the HRA deals with the limitations that may be placed on human rights and provides:

“28 Human rights may be limited

- (1) Human rights may be subject only to reasonable limits set by Territory laws that can be demonstrably justified in a free and democratic society.
- (2) In deciding whether a limit is reasonable, all relevant factors must be considered, including the following:
 - (a) the nature of the right affected;
 - (b) the importance of the purpose of the limitation;
 - (c) the nature and extent of the limitation;
 - (d) the relationship between the limitation and its purpose;
 - (e) any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve.”

In considering whether the rebuttable presumption in new section 53AA is a reasonable limit of the right in section 22 (1) of the HRA (presumption of innocence) for the purpose of section 28 (2) of that Act, the Government considers that the following matters are relevant:

- an evidentiary presumption about a single factor in a regulatory offence does not mean that the prosecution is relieved of the burden of establishing all the other elements in that offence that must be proved beyond reasonable doubt to support a finding of guilt. It is a partial limitation of the presumption of innocence, at most;
- the responsible person for a vehicle directly benefits from participation in the regulatory scheme established by the road transport legislation (by being permitted to use the registrable vehicle on the Territory's roads);
- the responsible person is far better placed than the Territory or its officers to control access to that vehicle and to provide the court with evidence about the persons who had access to the vehicle at the time of the offence;
- the purpose of the regulatory scheme of which the relevant provisions form part is to provide a safe and efficient system of road use, and in particular to improve the enforcement of the infringement notice and demerit points schemes that are a key element of the road safety strategy for the ACT. The limitation of the rights is directly related to the achievement of that purpose for section 28 (2) (d) of the HRA; and
- the rebuttable presumption arises when a responsible persons seeks to dispute an infringement notice offence. These are regulatory offences and the penalties for these offences are at the lower end of the penalty scale. The defendant in a prosecution for an infringement notice offence is usually not at risk of a custodial sentence. The rebuttable presumption replaces a much less satisfactory provision and is considered to be the least restrictive means to achieve an effective, enforceable infringement notice scheme.

For all these reasons, the Government considers that the measures in the Bill are consistent with human rights for section 28 of the HRA.

Notes on Clauses

Clause 1 Name of Act

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

Clause 2 Commencement

This clause explains when the provisions in the Bill will take effect. Clause 2 (2) provides for a delayed commencement period, of up to 2 years, for certain provisions in the Bill. The reason for the delayed commencement is to enable essential programming work to be undertaken in the rego.act system. That system manages the Territory's vehicle registration and driver licence databases, the demerit points scheme and the road transport infringement notice scheme. It is an extremely complex system that is required to manage hundreds of thousands of client records each year. The work program for enhancements to the rego.act system is already very full. It is estimated that it will take up to two years before the changes to allow for the implementation of the new vehicle registration sanctions for corporations that fail to nominate the driver involved in demerit points offences can be fully programmed into the system.

To allow for this delayed commencement, clause 2 (3) makes it clear that section 79 of the Legislation Act will not apply to a provision that is mentioned in clause 2 (2). The reasons for the disapplication of section 79 are discussed above.

Clause 3 Legislation amended

This clause lists the legislation amended by the Bill. The primary Act to be amended is the *Road Transport (General) Act 1999* (the General Act). The note to clause 3 lists all the other Acts and Regulations amended by the Bill.

Clause 4 Offences against this Act—application of Criminal Code etc Section 5A, note 1

This clause amends note 1 to section 5A to include a reference to a new offence to which the Criminal Code will apply. Section 5A is a standard provision that explains the Criminal Code 2002 applies to certain offences against the Act. The Bill inserts a new offence, relating to driving an interstate-registered corporate vehicle that is subject to suspension action under new Division 3.3A, and the note refers to this new offence provision.

Clause 5 Section 10

This section inserts a revised definition of 'responsible person' for a vehicle. Under the Act, the responsible person for a vehicle may be served with an infringement notice for an offence. The difficulty with the existing definition of 'responsible person' is that it is so wide that it includes persons whose names and addresses may not be known to the administering authority and who do not have any actual possession or control of the vehicle. Nevertheless, under section 36 and 37 of the current General Act, these persons could be held liable for offences committed in the vehicles for which they are notionally 'responsible'.

The revised definition limits the range of persons who may be regarded as the responsible person for a vehicle, to persons who either currently have actual responsibility for the vehicle (as the registered operator of a registered vehicle, or the person who holds the trader's plate for an unregistered vehicle), or the person who was most recently recorded as the registered operator of the vehicle. It should be noted that under section 73 of the *Road Transport (Vehicle Registration) Regulation 2000*⁴ a person has an obligation to advise the road transport authority if he or she disposes of the person's interest in the vehicle. The effect of section 10 (c) is that the person who was last recorded as the registered operator for an unregistered vehicle will continue to be regarded as a responsible person for that vehicle, until such time as the vehicle is registered by another person or the former registered operator advises the road transport authority that he or she has disposed of the operator's interest in the vehicle.

Section 10 (d) allows for additional persons to be prescribed as responsible persons, by regulation, should this become necessary.

Clause 6 Rights, liabilities and obligations of multiple responsible persons Section 11 (3)

The amendment to section 10 (see clause 5) should mean that, over the next few years as vehicle registrations expire and vehicles that currently have multiple registered operators come to the end of their operating life, there will be only one responsible person for a vehicle at any given time. Section 11 should eventually become redundant. In the interim, this amendment will remove section 11 (3). That provision is considered to be an inappropriate delegation of legislative power, as it purports to allow for matters such as the allocation of rights and liabilities between multiple responsible parties to be determined by the regulations.

Clause 7 New section 21A

This clause inserts new section 21A into division 3.1. New section 21A contains definitions of terms that are used in Part 3 of the General Act, including:

- illegal user declaration
- infringement notice declaration
- known user declaration
- reminder notice
- sold vehicle declaration
- unknown user declaration.

The various declarations mentioned in new section 21A are all types of statutory declaration. Elsewhere in the Bill there are notes explaining that the *Statutory Declarations Act 1959* (Cwlth) applies to making of these declarations.

Clause 8 Divisions 3.2 and 3.3

This clause inserts replacement divisions 3.2 and 3.3 into the General Act, to modernise and improve the scheme for issuing and dealing with infringement notices for offences under the road transport legislation. In summary, while several of the provisions in new division 3.2

⁴ The person acquiring the interest has a corresponding obligation to notify the road transport authority when he or she acquires that interest, under section 74 of the *Road Transport (Vehicle Registration) Regulation 2000*.

are based on provisions from the existing Act, the detail relating to the service and contents of infringement notices has been moved to the *Road Transport (Offences) Regulation 2005* and the language has been simplified where possible. In division 3.3, the obligations of the responsible person for a registrable vehicle are recast, to require the person to take all reasonable steps to assist the administering authority to identify and locate the person who was in possession and control of the vehicle when an infringement notice offence involving the vehicle was committed.

New division 3.2 comprises new sections 24 through 31 inclusive, and contains the core provisions relating to infringement and reminder notices.

New section 24 provides for the service of an infringement notice for an offence, in the way prescribed by regulation, if an authorised person believes on reasonable grounds that an infringement notice offence has been committed. It also provides for time limits for the service of infringement notices.

New section 25 provides for regulations to be made prescribing the contents of infringement notices. These Regulations are included in the Bill, by way of amendments to the *Road Transport (Offences) Regulation 2005* – see item 1.13 of Part 1.4 of the Schedule to the Bill.

New section 26 explains what a person must do within 28 days after the person is served with an infringement notice, if the notice is not withdrawn during that time by the administering authority. The person must either pay the infringement notice penalty, apply for withdrawal of the notice, give the administering authority an infringement notice declaration or give the administering authority a notice disputing liability. It should be noted that corporations who are served with an infringement notice for a demerit points offence must also take action under Division 3.3A.

New section 27 provides for the service and contents of reminder notices. A reminder notice will be served on a person who has been served with an infringement notice if the person has failed to do any of the things mentioned in section 26 (2) within the relevant time frame and has not been granted an extension of time to do one of these things.

New section 28 explains what a person must do within 28 days after the person is served with a reminder notice, if the infringement notice to which the reminder notice relates is not withdrawn.

New section 29 provides for a person to apply for an extension of time to do one of the things mentioned in section 26 (2) or section 28 (2). The details about how to apply for an extension of time, and the conditions that apply to applications, are contained in regulations under the *Road Transport (Offences) Regulation 2005*, to be inserted by Schedule 1 of this Bill. Decisions on applications for extensions of time are reviewable under the *Road Transport (General) Regulation 2000*, and the administering authority must give reasons for decisions.

Section 30 provides that the Minister may make guidelines about deciding applications for extensions of time, including applications for extensions of time that are made ‘out of time’ (that is, after the 28 day period for doing something under section 26 or 28 has ended). These guidelines are disallowable instruments and are binding on the administering authority. The purpose of this provision is to enable ‘out of time’ applications to be allowed on certain

grounds, including cases of financial hardship or where the applicant has been unable (for example due to extended illness or absence overseas) to respond to an infringement notice within the normal time frame for response.

Section 31 deals with the time frames for commencing prosecutions in relation to offences for which an infringement notice has been served and liability for the relevant offence has been disputed. This provision is required because the usual one year timeframe for commencing prosecutions under section 192 (2) (a) of the *Legislation Act 2001* may not always be achievable, without any fault or delay on the part of the administering authority or others associated with the prosecution.

Section 192 (2) (b) of the *Legislation Act 2001* contemplates that another period may be allowed by another law of the Territory. Section 31 is such a law. It recognises that decisions about whether, and when, to dispute liability for an offence are generally within the control of the person on whom the notice is served rather than the administering authority and that as a result the timing of any subsequent prosecution would be determined, to a significant degree, by the actions of the accused person.

Of course, the limitation period under the *Legislation Act* will continue to be relevant for other prosecutions under the road transport legislation that are not commenced following a disputed infringement notice – section 31 does not displace the limitation period for those prosecutions in any way.

New division 3.3 consists of new sections 32 to 39. This division deals mainly with the liability of the responsible person for a registrable vehicle involved in an infringement notice offence. As the identity of the person who actually committed an offence in a registrable vehicle will not always be known when the offence is first detected (for example, this may be the case in relation to parking offences and camera-detected offences), the responsible person for a registrable vehicle will be liable in the first instance for offences involving that person's vehicle.

The person can, in effect, transfer liability for the infringement notice offence to another person by *taking all reasonable steps* (this concept is defined in new section 32) to assist the administering authority to identify and locate the person actually responsible for the offence, which includes the completion of an *infringement notice declaration* and providing such other information to the authority as may be required. Where this occurs, the administering authority will withdraw the infringement notice issued to the responsible person, as the completion and lodgement of an *infringement notice declaration* is treated as an application for withdrawal of an infringement notice. The administering authority may serve a fresh infringement notice on the person who has been identified as the person who was in possession or control of the vehicle at the relevant time, if there are reasonable grounds for doing so under section 24.

New section 32 is a definition of *all reasonable steps*, which a responsible person for a vehicle must take under section 33 (2). The elements that make up *all reasonable steps* are:

- the completion of an infringement notice declaration within the required time, and its acceptance by the administering authority
- the completion of approved forms in the proper way
- responding to correspondence from the administering authority within 14 days.

New section 33 sets out the obligations of a responsible person for a registrable vehicle, where that person has been served with an infringement notice for an offence involving that vehicle. New section 33 (1) explains that where an infringement notice is served on the responsible person for a vehicle, and that person was not in fact in possession or control of the vehicle at the time of the alleged offence, then new section 33 (2) will apply. That subsection provides that the responsible person for the vehicle must take *all reasonable steps* to give the administering authority sufficient information to identify and locate the person who was in possession or control of the vehicle at the time of the offence.⁵

The purpose of this provision is to ensure that a person who owns or operates a registrable vehicle has an obligation to provide timely and effective assistance to authorities involved in the enforcement of the road transport legislation, to enable them to take action against people who commit offences involving those vehicles, particularly offences that carry demerit points. The effective enforcement of the road transport legislation is in the interests of all registered operators and licensed drivers, as it is intended to encourage safer driving practices and to deliver safer roads for all road users. Through their ownership or control of the vehicle, the responsible person for a vehicle would usually be in a position to limit or monitor access to the vehicle, and/or to find out who is using the responsible person's vehicle. The note to new section 33 refers readers to the rebuttable presumption in new section 53AA, which is that the responsible person for a registrable vehicle involved in an infringement notice offence was in possession or control of the vehicle at the time of the offence. That presumption operates in much the same way as the concept of 'all reasonable steps' – essentially, it is based on the premise that the responsible person is best placed to provide information about the persons who used or operated a registrable vehicle at any given time. Once that information has been provided, the liability of the responsible person for the relevant offence can, in effect, be discharged.

New section 34 deals with applications to the administering authority for the withdrawal of an infringement notice for an offence. It is based on current section 30 of the General Act. An application for withdrawal is different from a notice disputing liability for an infringement notice, as an application for withdrawal does not necessarily involve a denial of liability for the offence (for example, withdrawal might be sought on the basis of the person's previous good driving record or the existence of a special mitigating factor, like a medical emergency), although issues affecting liability may also be raised in the application for withdrawal. New section 34 (2) provides that the application for withdrawal must be in writing and must state the grounds relied on. New section 34 (3) is based on former section 30 (3) and provides that an infringement notice declaration that is made and given to the administering authority is taken to be an application for withdrawal of the infringement notice to which it relates.

New section 35 deals with deciding applications for withdrawal of an infringement notice. It requires the administering authority to either withdraw the notice, refuse to withdraw the notice or ask for further information in relation to the application. It ensures that the administering authority does not have the option of failing to act. Further information can be sought from the applicant or from someone named in the application (for example, from a person nominated as the actual offender), and this information must also be provided in the form of a statutory declaration. This power to obtain information is particularly important,

⁵ New section 32 defines *all reasonable steps*.

as the administering authority will usually need to rely on evidence given by the responsible person about the identity of the person in possession of the vehicle at the relevant time.

New section 35 (3) relates to the obligation in section 33 (2) to take “all reasonable steps”. It provides that for deemed withdrawal applications to which new section 34 (3) applies, the administering authority may refuse to withdraw the infringement notice if it is satisfied on reasonable grounds that the applicant has failed to take *all reasonable steps* to assist the authority to identify and locate the person in possession and control of the vehicle when the offence was committed. The note makes it clear that the guidelines for withdrawal may include other grounds for refusal.

New section 35 (4) provides for notice of the decision on the application to be given to the applicant and requires that the administering authority give reasons for its decision, if the decision is to refuse the application.

New section 36 is based on current section 31 of the General Act and explains the circumstances in which an administering authority may withdraw an infringement notice. New section 36 (1) makes it clear that the administering authority may withdraw a notice either at its own initiative or following an application under section 34, and it may withdraw a notice whether or not the penalty for the offence has been paid or the notice has been disputed. For example, the “own motion” power may be used where the authority discovers that a parent has paid an infringement notice penalty served on the parent as the responsible person for a vehicle involved in an offence, and the parent has deliberately failed to disclose to the authority that the driver of the vehicle at the time of the offence was the parent’s provisionally-licensed teenage child.

New section 36 (2) requires the administering authority to give written notice of the withdrawal on the person who was served with the infringement notice. New section 36 (3) sets out the contents of a withdrawal notice, while new section 36 (4) and (5) explains the effects of serving a withdrawal notice. In particular, new section 36 (5) makes it clear that the administering authority may issue another infringement notice for that offence to another person, or may issue another infringement notice for that offence to the same person if the withdrawal was made in error or as the result of a misrepresentation or a false declaration.

New section 37 explains the effect of a refusal to withdraw an infringement notice. It explains what the person who was served with an infringement notice and/or a reminder notice for an offence must do when the administering authority refuses the person’s application for a withdrawal of the notice.⁶ The person must either pay the infringement notice penalty, dispute the notice or give the administering authority an infringement notice declaration⁷ within the specified time, which is not later than 7 days after the person is notified of the refusal, or 28 days after the infringement notice or reminder notice was served on the person (or any extension of time granted under new section 29).

⁶ Or the person’s deemed application, in the form of an *infringement notice declaration*.

⁷ Note: the person may have already given the administering authority an infringement notice declaration that has not been accepted, but that does not preclude the person from submitting a fresh declaration – noting that it is an offence to make a false statutory declaration under the *Statutory Declarations Act 1959 (Cwlth)* and making a false or misleading statement is also an offence under Part 3.4 of the Criminal Code 2002 that attracts heavy penalties.

New section 38 is based on section 32 of the current General Act, and allows the Minister to make guidelines for the withdrawal of infringement notices. Guidelines are binding on the administering authority, and are a disallowable instrument.

New section 39 is based on section 29 of the current General Act. It deals with the effect of paying the infringement notice penalty. The general principle is that paying the infringement penalty ‘expiates’ the offence, and that the liability of the person who pays the penalty is discharged once the payment is made. New section 39 (3) explains that section 39 is subject to section 36 – this means that if an infringement notice is withdrawn after the penalty is paid, the payment of the penalty ceases to the effects set out in section 39.

One qualification to the general principle of expiation is that the demerit points associated with an offence are recorded against the driver licence of the person who is served with an infringement notice when the penalty is paid in whole or in part (assuming that person is a natural person who holds a licence). This is the effect of existing section 13A (1) of the *Road Transport (Driver Licensing) Act 1999*.

Corporations do not have driver licences, however, so if a corporation is served with an infringement notice and pays the penalty, any demerit points for the offence cannot be recorded unless and until the corporation advises the administering authority of the identity of the person who was actually driving the vehicle when the offence was committed and a replacement infringement notice is issued to that person.

Clause 9 Infringement notice—payment of penalty etc
Section 26, new note

This clause, which will commence on the commencement of division 3.3A, will insert an additional note into new section 26 to explain that a corporation served with an infringement notice in relation to an offence involving a registrable vehicle has additional obligations under new division 3.3A.

Clause 10 Action on service of reminder notice—payment of penalty etc
Section 28, new note

This clause, which will commence on the commencement of division 3.3A, will insert an additional note into new section 28 to explain that a corporation served with a reminder notice in relation to an offence involving a registrable vehicle has additional obligations under new Division 3.3A.

Clause 11 Responsible person’s obligations
Section 33 (1), new paragraph (aa)

This clause, which will commence on the commencement of division 3.3A, inserts additional paragraph (aa) into new section 33 (1) of the General Act. The new paragraph will have the effect of making the obligation in section 33 to “take all reasonable steps” apply to only responsible persons who are individuals, once new division 3.3A commences. That is because the obligation of responsible persons who are corporations to take “all reasonable steps” to identify the driver of the vehicle when the offence was committed will thenceforward be set out in new division 3.3A.

Clause 12 New division 3.3A

This clause inserts new division 3.3A, which deals with the liability of corporations for demerit points offences. By way of background, the demerit points scheme is part of the driver licensing scheme under which certain road transport offences, usually involving breaches of the road rules that are regarded as indicative of unsafe driving behaviour, will result in the driver incurring a specified number of demerit points if they are detected committing a demerit points offence. The points associated with each offence are prescribed in the *Road Transport (Offences) Regulation 2005*. Demerit points are accumulated over a three year period. If a driver accumulates excessive demerit points over the period he or she may face a period of licence suspension. Demerit points have the advantage over infringement notice penalties in that their impact is unrelated to the person's capacity to pay – the driver cannot simply pay the penalty and ignore their unsafe driving practices.

However, the scheme will not work optimally to encourage safer driving habits if people who commit traffic offences in corporately-registered vehicles are not identified as the drivers at the time of the offence. At present, a significant proportion of responsible persons who are corporations are paying the corporate penalty rate (which is 5 times higher than the individual penalty) rather than providing the name of the driver to the administering authority. This practice allows the corporation to 'shield' the driver from the demerit points associated with the offence. Drivers with poor safety records are able to continue driving, posing a risk to other road users and themselves.

New division 3.3A is aimed at encouraging corporations to take *all reasonable steps* to assist the administering authority to identify and locate the person who was in possession or control of a vehicle involved in a demerit points offence at the time of the offence so that person can be served with an infringement notice for the offence and have the associated demerit points recorded against the person's licence. Corporations who fail to take these steps on more than one occasion will have their vehicle's registration suspended for a period of up to 6 months, which is equivalent to the period of suspension that a driver licence holder would face under a demerit points suspension. Alternative vehicle suspensions are provided if the corporation does not have any ACT-registered vehicles whose registration may be suspended.

New section 40 contains definitions used in division 3.3A. It defines *corporation's vehicle*.

New section 41 defines the concept of *all reasonable steps*, which a corporation is required to take to assist an administering authority to identify and locate the person who was in possession or control of the vehicle when a demerit points offence involving that vehicle occurred. This concept of *all reasonable steps* is substantially similar to the concept of *all reasonable steps* that applies to a natural person who is the responsible person for a vehicle (see proposed new sections 32 and 33 (2), to be inserted by clause 8 of this Bill). It should be noted that paying the infringement penalty does not relieve the corporation of the obligation to take *all reasonable steps* – the objective of division 3.3A is to ensure the allocation of demerit points for offences, not to secure payment of infringement notice penalties.

New section 42 provides for suspension action to be taken in relation to a corporation's vehicle if the corporation has previously failed to take *all reasonable steps* to assist the administering authority to identify and locate the driver, on at least one previous occasion and has again failed to *take all reasonable steps* in relation to another infringement notice offence that attracts demerit points. Under new section 42 (2), the road transport authority must send

the corporation a suspension warning notice about the impending suspension. The type of suspension action that can be taken is:

- if the vehicle involved in the offence is registered in the ACT— suspend the vehicle’s registration;
- if the vehicle involved in the offence is registered interstate— suspend the right of everyone to drive that vehicle in the ACT;
- if the corporation has sold, transferred or otherwise disposed of its interest in the vehicle involved in the offence—suspend the registration of another of the corporation’s vehicles, or suspend the right of everyone to drive another of the corporation’s interstate-registered vehicles if they do not have another ACT-registered vehicle.

The corporation then has a further period of time to comply with the requirement to take *all reasonable steps*. If the corporation continues to fail to take *all reasonable steps* by the specified date (which under section 42 (3) must be at least 10 days after the warning notice is sent) the authority must take suspension action on that date.

Under section 42 (4), the authority must send the corporation a suspension confirmation notice when it takes suspension action. Section 42 (5) makes it clear that the suspension takes effect on the suspension date, while section 42 (6) explains when the suspension will cease to have effect. This will be either six months after the suspension action takes effect, or when the corporation gives the administering authority the information it needs to identify and locate the driver involved in the demerit points offence, or when the vehicle’s registration is transferred to someone else, whichever is the earlier.

New section 43 explains some of the consequences of a suspension under section 42. In addition to the obvious effect that it is not permitted to use the vehicle on Territory roads (see for example section 18 (1) of the *Road Transport (Vehicle Registration) Act 1999*, which provides that a person must not use an unregistered registrable vehicle, or a vehicle with suspended registration, on a road or road related area), the corporation will not be able to renew the vehicle’s registration if it expires during the suspension period. Additionally, the corporation will not be able to register a vehicle in the ACT if the right of everyone to drive the vehicle is suspended.

New section 43A allows a corporation to apply to the Magistrates Court for a review of a suspension under section 42. In this context, it should be noted that the road transport authority does not have a discretion to take suspension action under section 42. The authority is required to do so, by law, once certain conditions exist. The purpose of the review under this section is to enable judicial confirmation of the existence of those conditions. This section therefore does not encompass a review of the merits of any particular ‘decision’ by the authority, as the authority is not required to make any decision to take suspension action.

The court may confirm the suspension or revoke the suspension. A suspension may be revoked only if the court is satisfied that the conditions for taking suspension action did not exist or no longer exist.

New section 43B is a new offence that deals specifically with persons who drive an interstate-registered vehicle where the right of everyone to drive that vehicle in the ACT has been suspended under division 3.3A. At present, it is not possible for the ACT to suspend the registration of a vehicle that has been registered by another jurisdiction, in the same way that

it cannot suspend the driver licence of an interstate driver. Instead, the ACT can only suspend the right of a person (or of everyone) to drive that interstate-registered vehicle in the ACT, in much the same way that it can suspend a driver's right to drive in the ACT. The insertion of the offence in new section 43B is required to ensure that the suspension provisions in new division 3.3A can be enforced against corporations with interstate-registered vehicles in the same way that they can be enforced against corporations with ACT-registered vehicles. It is already an offence to drive an ACT-registered vehicle while the registration of that vehicle is suspended: section 18 (1) of the *Road Transport (Vehicle Registration) Act 1999*. The insertion of the new offence ensures that corporations with interstate registered vehicles are on the same footing as their ACT-counterparts when it comes to the enforceability of the sanctions in new division 3.3A.

The new offence is a strict liability offence. While the use of strict liability may engage the presumption of innocence in section 22 (1) of the HRA, it should be noted that the categorisation of this 'drive while suspended offence' as a strict liability offence ensures it will be consistent with all the other 'drive while suspended' offences under the road transport legislation.⁸ This is a comparatively straightforward offence that forms part of a regulatory scheme for the safe and efficient use of motor vehicles on the Territory's roads. The offence is one that carries a relatively low financial penalty and for which there is no risk of imprisonment. As with other strict liability offences, the defence of mistake of fact is available, and there are other defences under the *Criminal Code 2002* that may be applicable depending on the particular circumstances of each case.

For all these reasons, it is considered that the proposed offence (including the element of strict liability) is a reasonable limitation of rights for section 28 of the HRA.

Clause 13 Suspension for nonpayment of infringement notice penalties Section 44 (1) (b)

This clause makes a minor amendment to section 44 (1) (b) to make it clear that this section is intended to apply to offences involving registrable vehicles. This intention is apparent from the references to 'driver licence' and 'registration' in existing section 44⁹, as the sanctions under that section could not be applied in the context of non-registrable vehicles.

Clause 14 New section 44 (10)

This clause is a consequential amendment to include a definition of *time for payment* that includes any extension of time for payment that has been granted under new section 29.

Clause 15 Sections 48 to 50

Existing section 48 provides for a driver licence or vehicle registration suspension to be revoked where the Magistrates Court makes a declaration that a person on whom an infringement notice was served did not commit the offence or is not liable for the offence. These provisions are repealed and replaced, because they are inconsistent with principles of

⁸ The previously mentioned section 18 of the *Road Transport (Vehicle Registration) Act 1999*. See for example sections 31 and 31A of the *Road Transport (Driver Licensing) Act 1999*.

⁹ Unless a person has an exemption, a person must have a driver licence to drive a motor vehicle on a road or road related area: see section 31 of the *Road Transport (Driver Licensing) Act 1999*. Any motor vehicle is a *registrable vehicle* under the *Road Transport (Vehicle Registration) Act 1999*, dictionary)

criminal law. Current section 48 basically requires a court, in a civil matter, to determine a person's criminal liability for an offence. Existing section 48 inappropriately conflates matters of civil and criminal jurisdiction. The applicant does not have the usual protections that apply in criminal proceedings, nor is it especially clear who is required to establish what, and to what standard. The prosecution is not present and it is not clear what evidence would be either available or admissible in relation to the offence. Rather than using a review of a suspension as a basis to challenge liability for an infringement notice offence, it is considered that the Act already contains several more appropriate ways for a person who has been served with an infringement notice to deny liability for that offence. These are by making an infringement notice declaration that identifies another person as the person who committed the relevant offence, or by giving the administering authority a notice disputing liability under section 51, or by making a withdrawal application on some other mitigating grounds.

New section 48 allows a person to apply to the Magistrates Court for a review of a suspension under section 44. As is the case with suspensions under new section 42, the road transport authority does not have a discretion to take suspension action under section 44. Rather, the authority is required to do so, by law, once certain conditions exist. The purpose of the review under this section is to enable judicial confirmation of the existence of those conditions. New section 48 (2) provides that the court may confirm the suspension or revoke the suspension. New section 48 (3) explains that a suspension may be revoked only if the court is satisfied that the conditions for taking suspension action did not exist or no longer exist.

Sections 49 and 50 are omitted consequentially on the replacement of section 48, as they are no longer required.

Clause 16 Disputing liability for infringement notice offences
Section 51 (3)

This clause amends section 51, which explains how a person on whom an infringement notice or reminder notice is served may dispute liability for the offence. This must be done by giving written notice to the administering authority. The amendment omits section 51 (3), as the matters dealt with in that subsection will now be dealt with in sections 26 and 28 (and in the Regulations dealing with applications for extensions of time to do things mentioned in those sections). The note inserted by this clause refers to sections 26 and 28.

Clause 17 Extension of time to dispute liability
Section 52

This clause omits existing section 52. That section deals with an application from a person on whom an infringement or reminder notice is served to apply for additional time to dispute the notice. This provision is not required as capacity to apply for additional time to dispute an infringement notice is now provided by new section 29, to be inserted by clause 8. As previously noted new section 29 is less prescriptive than existing section 52, in relation to the amount of additional time the administering authority can allow for a person to take a range of actions in relation to an infringement or reminder notice.

Clause 18 Procedure if liability disputed
Section 53 (4)

This clause makes a minor consequential amendment to section 53 (4), to replace a reference to current section 29 of the Act with a reference to new section 39. This amendment is consequential on the renumbering and renaming of the provision setting out the effect of a person paying an infringement notice penalty.

Clause 19 Section 53 (6), note

This clause amends the note to section 53 (6) to update the reference to the time when a prosecution must be commenced. The existing note refers to section 192 of the *Legislation Act 2001*. The amended note will direct readers to section 31 of the amended Act, which deals with the time within which a prosecution must be commenced after a person gives a notice disputing an infringement notice.

Clause 20 New section 53AA

This clause inserts new section 53AA into division 3.5 of the General Act. It creates a presumption that the responsible person for registrable vehicle involved in an infringement notice offence was in possession or control of the vehicle when the offence was committed. The responsible person for the vehicle can rebut this presumption if he or she proves, on the balance of probabilities, that he or she was not in possession or control of the vehicle at the relevant time.

As explained in the Outline to this Explanatory Statement, the purpose of this provision is to replace section 37 of the current Act with a provision that is consistent with Criminal-Code principles and that is a ‘reasonable limitation’ of rights for section 28 of the HRA. Current section 37 (1) purports to apply criminal liability to a person responsible person for a vehicle even though another person actually committed the offence.

By way of background, section 37 is a central element of the infringement notice scheme for the road transport legislation. Under that scheme, the majority of infringement notices are either posted out to the responsible person for a registered vehicle (for traffic camera offences) or left on vehicles (for parking offences), with a smaller percentage handed directed to the driver by a police officer or other authorised person. For camera-detected offences and parking offences, some form of special statutory liability for the registered operators of vehicles is essential, as the administering authority will generally need to rely on assistance from, and statutory declarations made by, the registered owner/operator to identify and locate the relevant driver in the event that the responsible person for the vehicle was not the driver of that vehicle at the time. Without some form of statutory liability imposed on them for infringement notice offences committed in the vehicles registered in their name, some responsible persons may not co-operate with the administering authority in identifying and locating the actual driver.

Existing section 37 was enacted before the Criminal Code and the HRA and is not considered to be fully consistent with the principles of criminal responsibility in either enactment. In particular, it is not considered to be consistent with part 2.6 of the Criminal Code or with the presumption of innocence in section 22 (1) of the HRA, and therefore it is omitted by this Bill.

To overcome these issues, new section 53AA has been drafted with the *Criminal Code 2002* in mind. Specifically, it is a provision to which section 59 (c) of that Code applies. Section 59 states:

“59 Legal burden of proof—defence

A burden of proof that a law imposes on the defendant is a legal burden only if the law expressly—

- (a) provides that the burden of proof in relation to the matter in question is a legal burden; or
- (b) requires the defendant to prove the matter; or
- (c) creates a presumption that the matter exists unless the contrary is proved.”

Section 60 of the *Criminal Code 2002* applies where the defence has a legal burden of proof. It provides:

“60 Standard of proof—defence

A legal burden of proof on the defendant must be discharged on the balance of probabilities.”

The human rights implications of new section 53AA were discussed in detail in the Outline, at pages 4 and 5 of this Explanatory Statement. Readers are directed to that discussion. The Government accepts that new section 53AA is a limitation of the presumption of innocence in section 22 (1) of the HRA. It believes (for the reasons stated at pages 4 and 5) that this limitation is itself both limited in effect, and reasonable, for section 28 of the HRA. It is essential for the effective operation of the infringement notice scheme under the road transport legislation, particularly for camera-detected offences and parking offences where the identity of the driver may not be known to the administering authority when the infringement notice is served.

**Clause 21 Costs of application for declaration
Section 57**

This clause omits section 57, and is consequential on the repeal and replacement of section 48 (and related section 50, which is also omitted by this Bill). Those sections made provision for costs in relation to applications under existing section 48.

It is not considered necessary to make special provision in relation to costs for reviews under new section 43A or replacement section 48. Instead, the ordinary rules relating to costs in proceedings would be expected to apply.

**Clause 22 Effect of disqualification
Section 66 (4) (a)**

This clause makes a minor drafting amendment to section 66 (4) (a) to replace a reference to the court with a reference to the registrar, in a provision that requires a person to surrender a disqualified licence when a person is present at the court. This amendment recognises that accepting surrendered licences is an administrative function rather than a judicial function.

Clause 23 Section 66 (5)

This clause makes a minor drafting amendment to section 66 (5) that is related to the amendment in clause 22. It requires the registrar, when given a surrendered licence under section 66 (4), to give the licence to the road transport authority. This amendment recognises that giving surrendered licences to the road transport authority is an administrative function rather than a judicial function.

Clause 24 Section 79

This clause is related to the amendments in clauses 22 and 23. Currently, section 79 requires the court to provide particulars of convictions, orders etc to the road transport authority. Replacement section 79 confers these functions on the registrar, on the basis that providing this type of information to the road transport authority is essentially an administrative function rather than a judicial function.

Clause 25 Person not to hinder or obstruct New section 231 (2)

This clause inserts a new subsection into section 231, which is an offence provision. The offence in section 231 is the offence of ‘hinder or obstruct a police officer, an authorised officer or anyone else in the exercise of a function under the road transport legislation.’ The amendment makes it clear that the concept of hinder or obstruct includes a failure to give the person information requested by the person.

This amendment is considered desirable in the interests of clarity, but it is not considered that it extends the ordinary meaning of *hinder* or *obstruct*. At present, the concept of *hinder or obstruct* is not defined in the road transport legislation. Under the rules of statutory construction the words ‘hinder’ and ‘obstruct’ would be given their ordinary meaning, having regard to the context in which they are used. Many of the functions under the road transport legislation require the road transport authority and other authorised persons to obtain specific information from clients, often for inclusion in specific registers that the authority is obliged to maintain or for specific reporting purposes. A failure by a person to provide requested information can prevent the authority from performing its statutory functions. A failure to provide the required information may mean that registers become out of date or contain errors; the authority may not be able to verify the safety of repairs to a vehicle; compliance with public passenger service standards cannot be monitored. For these reasons, it is considered that a person who fails to provide requested information may in fact be said to ‘hinder’ or ‘obstruct’ the police, road transport authority or other person in the exercise of a function under the road transport legislation.

Clause 26 New part 13

This clause inserts new part 13. This part contains provisions dealing with transitional matters, including the arrangement that will apply to infringement notices that have been issued, but not finally dealt with, when the changes to infringement notice provisions made by the Bill commence.

New section 300 inserts a definition of commencement day, which is used in new part 13.

New section 301 explains how infringement notice declarations that were made in relation to an infringement notice issued under the current Act (existing infringement notice declarations) and that have not been finally dealt with when the amending Act commences, are to be handled. It provides that the existing Act immediately before the commencement day continues in force in relation to those infringement notice declarations.

New section 302 allows for a regulation to prescribe transitional matters necessary or convenient to be prescribed as a result of the enactment of the amendments made by the Bill. This will enable regulations to address any transitional matters not identified until after the enactment of the amending provisions. Any such regulations will be submitted to the scrutiny of the Legislative Assembly and subject to disallowance. This is a standard provision that is included in most major amendment Bills.

New section 303 provides that the transitional provisions expire 3 years after they commence. There should be no matters to which their application is required by this time.

The notes explain notwithstanding the formal repeal of a transitional provision, it continues to have effect under section 88 of the *Legislation Act 2001*.

Clause 27 Dictionary, note 2

This clause inserts a reference to the term registrar in note 2 in the dictionary. This amendment is consequential on the amendments in clauses 22 to 24 inclusive.

Clause 28 Dictionary, new definition of *all reasonable steps*

This clause substitutes a new definition for the term *all reasonable steps* for the purposes of Division 3.3. This definition will be replaced when clause 29 commences.

Clause 29 Dictionary, definition of *all reasonable steps*

This clause, which has a delayed commencement, inserts a replacement definition of *all reasonable steps* that defines this term both as it is used in division 3.3 and as it is used in division 3.3A.

Clause 30 Dictionary, new definitions

This clause, which has a delayed commencement, inserts a definition of *corporation's vehicle* and *demerit points offence* into the dictionary. These terms are used in new division 3.3A.

Clause 31 Dictionary, definition of *illegal user declaration*

This clause is a consequential amendment that inserts a revised definition of *illegal user declaration* into the dictionary.

Clause 32 Dictionary, definition of *infringement notice* and *infringement notice declaration*

This clause is a consequential amendment that inserts revised definitions of *infringement notice* and *infringement notice declaration* into the dictionary.

Clause 33 Dictionary, definition of *known user declaration*

This clause is a consequential amendment that inserts a revised definition of *known user declaration* into the dictionary.

Clause 34 Dictionary, definition of *reminder notice*

This clause is a consequential amendment that inserts a revised definition of *reminder notice* into the dictionary.

Clause 35 Dictionary, definition of *sold vehicle declaration*

This clause is a consequential amendment that inserts a revised definition of *sold vehicle declaration* into the dictionary.

Clause 36 Dictionary, definition of *unknown user declaration*

This clause is a consequential amendment that inserts a revised definition of *unknown user declaration* into the dictionary.

Schedule 1 Consequential amendments

Schedule 1 makes consequential amendments to other road transport legislation.

Part 1.1 Road Transport (Driver Licensing) Act 1999

This part of Schedule 1 amends provisions of the *Road Transport (Driver Licensing) Act 1999* (the Driver Licensing Act).

Item 1.1 Section 12 (3) (d), note

This item amends a note to section 12 (3) (d) of the Driver Licensing Act to reflect the new division numbering of Part 3 of the General Act.

Item 1.2 Section 13A (1)

This item replaces references to the *Road Transport (General) Act 1999* with references to the *General Act*, to improve the readability of the provision. This is a technical drafting amendment.

Item 1.3 Section 13A (1) (b)

This item makes consequential amendments to section 13A of the Driver Licensing Act. Section 13A explains when the road transport authority must record demerit points in the demerit points register in relation to an infringement notice issued to a person for a demerit points offence (noting that section 13B of the Driver Licensing Act explains when demerit

points are *incurred*). In summary, the demerit points incurred by a driver will be formally recorded against that person's licence when:

- the person is convicted, or found guilty of the offence;
- the person pays the infringement penalty in full or in part;
- the person applies for, and is granted, additional time to pay the penalty;
- the person does not pay the penalty within the time required nor give notice disputing liability for the offence within the time required.

This item substitutes a new section 13A (1) (b). The new section incorporates the circumstances currently dealt with in section 13A (1) (d) and additionally provides that demerit points must be recorded where a person fails to pay the infringement penalty in the time required for payment and the person has not, within the required time, given the administering authority an infringement notice declaration for the offence. This change reflects the requirements that a person served with an infringement or reminder notice must take one of the actions set out in new sections 26 and 28 of the General Act. The person cannot avoid the demerit point liability for a demerit point offence by failing to take one of these actions within the required time.

This item also inserts a replacement note that contains updated references to the relevant provisions in the General Act that explain when an infringement notice penalty is payable.

Item 1.4 Section 13A (1) (d) and note

This item inserts new section 13A (1) (d), which sets out a further circumstance in which the road transport authority is required to record the demerit points incurred for an offence. The points must be recorded against a person's licence when the person has given the administering authority an infringement notice declaration, and the administering authority refuses to withdraw the infringement notice. It is appropriate that once the administering authority has determined that an infringement notice declaration given by a person to the authority is insufficient grounds for the withdrawal of an infringement notice, the demerit points associated with the relevant offence should be recorded against that person's licence.

Item 1.5 New section 13A (3)

This amendment inserts new section 13A (3). This section contain definitions of the terms *General Act* and *infringement notice declaration* for section 13A.

Part 1.2 Road Transport (General) Regulation 2000

This part of Schedule 1 amends provisions of the *Road Transport (General) Regulation 2000* (the General Regulation). The General Regulation provides for various matters relating to the administration of road transport legislation.

Item 1.6 Section 5 (1) (c)

This item amends section 5 of the General Regulation which explains what happens when there is more than one responsible person for a vehicle. Section 5 (1) (c) deals with giving notice to the various responsible people for a vehicle. Currently, section 5 (1) (c) provides that "(c) the road transport authority is taken to have complied with an obligation under the

relevant legislation to give notice to the responsible person for the vehicle if the authority gives notice to at least 1 of them.” In the context of the service on an infringement notice, it is possible that existing section 5 (1) (c) may not be consistent with the requirement in section 22 (2) (a) of the HRA because it fails to provide for service of a copy of the infringement notice on all the persons who are liable for the relevant offence.

Section 22 (2) (a) of the HRA provides:

- “(2) Anyone charged with a criminal offence is entitled to the following minimum guarantees, equally with everyone else:
- (a) to be told promptly and in detail, in a language that he or she understands, about the nature and reason for the charge;”

Over the next few years, following changes to the definition of “responsible person for a vehicle” to ensure that there is a single registered operator who is nominated as the contact person for receiving notices, it is anticipated that there will no longer be vehicles with multiple responsible persons. Until that change is fully implemented, it is necessary to make provision for serving notices on multiple owners in a way that ensures that each responsible owner has access to important information relating to that vehicle, particularly information about infringement notices or suspension notices.

New section 5 (1) (c) clarifies that where there are two or more persons recorded as being responsible for a vehicle, and those person are recorded as having the same address, the road transport authority or an administering authority will comply with the requirement to give notice if it gives notice to at least one of them. However, where there are two or more persons responsible for a vehicle, and they have different addresses recorded in the road transport authority’s records, the authority is required to send a notice to each of them at their recorded address.

Item 1.7 Section 9

This item omits section 9 from the Regulation. The contents of section 9 are being relocated to the *Road Transport (Offences) Regulation 2005*. Section 9 deals with the contents of suspension notices for non-payment of infringement notice penalties. It is considered that this matter should be located with other matters relevant to infringement notices and offences, so that all related provisions are in the same place.

Item 1.8 Section 9B (1) (b) (i)

This minor amendment reflects the insertion of a definition of “home address” in the *Legislation Act 2001*, dictionary, part 1. It substitutes *home* for *residential*.

Item 1.9 Schedule 1, new part 1.5

This item amends Schedule 1 to the General Regulation. Schedule 1 lists the decisions for which a person has a right of internal review under part 7. This amendment inserts new part 1.5 in Schedule 1, containing two items. The first item in new part 1.5 of the Schedule is a decision under new section 29 to refuse an application for an extension of time. The second item in new part 1.5 of the Schedule is a decision under new section 35 by an administering authority to refuse to withdraw an infringement notice. It should be noted that, under section 95 of the General Act, after a decision has been internally reviewed, the person who

sought the internal review and any other person affected by the internal review may apply to the ACT Civil and Administrative Tribunal for a review of the internal reviewer's decision.

Item 1.10 Dictionary, note 2

This is a consequential amendment that is related to the amendment in item 1.8. It inserts a reference to home address in note 2 in the Dictionary; that note lists terms defined in the *Legislation Act 2001*.

Part 1.3 Road Transport (Mass, Dimensions and Loading) Act 2009

This part of the Schedule amends the *Road Transport (Mass, Dimensions and Loading) Act 2009*.

Item 1.11 New section 12A

This is a minor consequential amendment that is related to the changes to section 10 of the General Act to limit the scope for multiple responsible persons for a vehicle under the General Act. The concept of 'responsible person for a heavy vehicle or heavy combination' under the *Road Transport (Mass, Dimensions and Loading Act) 2009* has a different and distinct meaning from 'responsible person for a vehicle' under the General Act. Until the national heavy vehicle law commences to replace the *Road Transport (Mass, Dimensions and Loading) Act 2009*, it is necessary to accommodate multiple 'responsible persons for a heavy vehicle or heavy combination'. This section explains that in the *Road Transport (Mass, Dimensions and Loading) Act 2009*, a reference to 'the responsible person for a heavy vehicle or heavy combination' is a reference to each of those persons. This amendment ensure that changes in the General Act to rationalise the concept of 'responsible persons for a vehicle' do not affect the operation of the *Road Transport (Mass, Dimensions and Loading) Act 2009*.

Part 1.4 Road Transport (Offences) Regulation 2005

This part of Schedule 1 amends the *Road Transport (Offences) Regulation 2005* (the Offences Regulation). The Offences Regulation provides for various matters relating to offences under road transport legislation, including the penalties, short description and demerit points for offences (which are set out in the Schedule to the Offences Regulation).

A number of the amendments in this part have the effect of re-locating and updating provisions from the General Act that deal with the service and content of infringement notices and reminder notices. These provisions contain a high degree of prescriptive detail. This detail is more appropriately dealt with in the Regulations than in the principal Act, in line with modern legislative drafting practice.

Item 1.12 New sections 4A to 4D

This item inserts new sections 4A to 4D into the Offences Regulation.

New section 4A defines the term *identifying particulars*, which has range of specific meanings depending on the context in which it used. These meanings are set out in turn in new sections 4B to 4D inclusive. New section 4B (which is based on current section 13 of the Offences Regulation) sets out the identifying particulars for an animal involved in an

infringement notice offence. New section 4C is based on current section 12 of the Offences Regulation and sets out the identifying particulars for a vehicle involved in an infringement notice offence. New section 4D is based on current section 14 of the Offences Regulation and sets out the identifying particulars for an authorised person who issues the infringement notice for an offence. These definitions are relocated to improve the readability of the Regulation.

Item 1.13 Sections 12 to 14

This item omits sections 12 to 14 (which are re-made as new sections 4A to 4D, as explained in the notes for item 1.12 above) and inserts new sections 12 through 14L inclusive into the Offences Regulation.

New section 12 deals with the service of infringement notices. This matter was previously dealt with (in an admittedly overlapping fashion) by both sections 24 and 36 of the General Act. New section 12 prescribes, for the purpose of new section 24 (2) of the General Act, how an infringement notice may be served. It also relocates to the Offences Regulation the offence currently contained in section 36 (6)¹⁰, and recasts that offence in Criminal-Code compliant terms.

Section 12(1) (a) provides that an authorised person may serve an infringement notice on a suspected offender where the identity of a person believed to have committed the offence is known. Under section 12 (1) (b), where the identity of the suspected offender is not known, but the offence involves a registrable vehicle, the infringement notice can be served on the responsible person for the vehicle.

Section 12(2) provides that an infringement notice may be served:

- if reasonably practicable, on the suspected offender, personally;
- if personal service is not reasonably practicable, by sending the notice to the suspected offender's home or business address, or address for service recorded in a register kept under road transport laws or corresponding interstate laws.

New section 12(3) has the effect that service may be effected on a responsible person for a registrable vehicle in either of two ways:

- by attaching it securely to the vehicle in a prominent position, addressed to the responsible person for the vehicle;
- by posting it to the address for service for the responsible person recorded in a register kept under road transport laws or corresponding interstate laws.

As noted previously, new section 12(4) recasts and relocates the offence provision in existing section 36 (6) of the General Act. This offence deals with interfering with an infringement notice that has been served by being placed on a vehicle. In order to be consistent with the *Criminal Code 2002*, the elements of the offence are recast in terms of the results or consequences of the person's acts rather than prohibiting specific actions. The person's fault element (recklessness) relates to those consequences (i.e. preventing the responsible person receiving or reading the notice). The maximum penalty of 20 penalty units is unchanged.

¹⁰ This offence relates to removing, defacing or interfering with an infringement notice placed on, or attached to, a vehicle unless the person is the driver or the responsible person for the vehicle.

New section 13 relocates existing section 16 of the Offences Regulation. New section 13 explains when infringement notices for camera detected offences should be served. The general rule is that these infringement notices should be served within 28 days after the date of the offence. The note to new section 13 explains that the time periods in section 14 will apply if an infringement notice declaration has been made by a responsible person for a vehicle nominating another person as being in possession or control of the vehicle at the time of the relevant offence.

New section 14 deals with service of an infringement notice on a person who has been nominated, in an infringement notice declaration, as being the driver or person in possession or control of a vehicle when an infringement notice offence involving the vehicle was committed. It requires service of the infringement notice on the nominated person as soon as practicable, but not later than one year of after an infringement notice declaration is accepted by the administering authority. The administering authority may need time to locate the nominated person, particular where the person is resident interstate and a current address must be obtained from corresponding authorities in another jurisdiction. The purpose of this provision is to ensure that the administering authority does not unduly delay taking action to serve an infringement notice on a nominated person, while ensuring that the authority has enough time to complete its inquires, locate the person and serve the person with an infringement notice. It complements the provisions of proposed new section 31 of the Act which require that a prosecution for an infringement notice offence cannot be begun more than a year from the day a person served with a notice disputes liability for the offence or the last day the person served with the notice can dispute liability for the offence.

New section 14A is made for the purposes of new section 25 of the General Act and sets out the information to be included in an infringement notice. It includes (with necessary changes to reflect the amendments made by the Bill) the contents of existing sections 25 and 26 of the General Act.

In summary, the information to be contained in an infringement notice will include:

- a unique identifying number;
- the date of issue for the notice
- the name of the person or corporation issued with the notice
- a short description of the offence, including the date, time and place of the alleged offence;
- identifying particulars of any registrable vehicle involved;
- identifying particulars of any animal involved;
- the infringement notice penalty payable;
- identifying particulars of the authorised person who gave the notice;
- a statement telling the person that within 28 days after the notice is issued the person must take one of a number of actions in response (i.e. pay the penalty, dispute liability or complete an infringement notice declaration, or apply for additional time to do one of these things);
- advice that if the person does not do one of these things a reminder notice will be served and the person may be prosecuted for the offence;
- advice that if a reminder notice is served, the amount of the infringement notice penalty will be increased by the prescribed cost of serving the reminder notice;
- advice that the infringement notice may be withdrawn before or after the penalty is paid;

- advice that if the person pays the penalty within the required time, unless the notice is withdrawn and any penalty refunded, the person's liability for the offence is discharged, the person will not be prosecuted for the offence and the person will not be taken to have been convicted of the offence;
- advice that if the person wants to dispute the offence, the matter may be referred to the Magistrates Court and if the matter is referred to the Magistrates Court the person may be convicted of the offence, ordered to pay a penalty and costs, and subject to other court orders;
- advice that if the offence involved a vehicle and the person does not pay the penalty or dispute liability, the matter may be dealt with under the enforcement provisions of the General Act;
- information about how the person may pay the penalty, give an infringement notice declaration or dispute liability for the offence;
- information about how the person can apply for additional time to pay the penalty or take other action in response to the notice;
- if the offence involved a registrable vehicle, information about any demerit points the person will incur if the person pays the penalty, or is convicted of the offence;
- general information about enforcement procedures;
- if the offence involved a registrable vehicle, information about the liability of the responsible person under part 3 and the obligations of the responsible person to take *all reasonable steps* to assist the administering authority; and
- if the offence is a camera-detected offence, advice to that effect and information about how to inspect and obtain a copy of the camera image relating to the offence.

New section 14B is made under new section 27 of the General Act and sets out the contents of reminder notices that will be sent to a person who has failed to take action in response to an infringement notice within the usual 28 day response period following service of the notice. The contents of reminder notices substantially replicate the contents of the infringement notice to which they relate.

Additional information required to be included in a reminder notice is:

- the date the reminder notice is issued;
- advice that the infringement penalty has not been paid and that the person must take action to either pay the penalty, dispute the offence or provide an infringement notice declaration within 28 days after the reminder notice is served;
- advice that the infringement notice has not been withdrawn;
- advice that the administering authority has not received an infringement notice declaration for the offence;
- advice that written notice disputing liability has not been received;
- advice that the infringement notice penalty has been increased by the amount payable for the cost of serving the reminder notice; and
- advice that the penalty is now payable.

The definition of *required time* in new section 14B (3) refers to the time within which a person issued a reminder notice is required to take action in response to the notice.

New sections 14C, 14D and 14E set out the framework for managing and deciding applications for extensions of time to take action in response to an infringement or reminder notice. Proposed new sections 29 and 30 of the General Act provide for greater flexibility to

accommodate requests for extensions of time than the provisions of existing section 28 of the General Act. Existing section 28 limits applications for extensions of time to take action in response to an infringement or reminder notice to:

- extensions of time to pay the penalty; and
- where the request for an extension has been made within 28 days of service of the infringement notice or reminder notice.

The provisions of proposed new sections 14C to 14E will enable an administering authority to consider:

- requests made within time for an extension of time to take any action in response to a infringement or reminder notice (i.e. an extension of time to pay the penalty, dispute the offence or make an infringement notice declaration); and
- requests made “out-of-time” for an extension of time to take one of these actions (i.e. where the request for an extension of time to take the action is made more than 28 days after an infringement or reminder notice has been served).

These flexible arrangements are included to ensure that the administering authority can consider whether a person issued with an infringement notice has special circumstances for making an out of time application for an extension of time to do one of things mentioned in section 26 or 28. It is anticipated that applications for out-of-time extensions of time to pay an infringement penalty, in particular, will assist to help people who might otherwise be unreasonably “locked out” of access to additional time to pay because they were not able to apply to the administering authority within 28 days of service of an infringement or reminder notice. Those people may have special circumstances, such as prolonged absence from the ACT, or severe illness or other difficult personal circumstances, that prevented them from applying for additional time to pay within the current limit of 28 days after service of the notice.

New section 14C deals with applications that are made within time. New section 14C (1) sets out the conditions for making an application for an extension of time. In summary, if the person has been served with an infringement notice or a reminder notice and has not done anything in response to that notice within the allowed time (this is 28 days from the issue of an infringement notice or reminder notice, or any additional time already allowed), the person may apply in writing for an extension of time to take action in response to an infringement notice or reminder notice. The application must include any information required by the administering authority, and it must be given to the administering authority before the end of the allowed time.

Section 14C (3) provides that if the administering authority refuses the application the person must take action in response to the infringement or reminder notice not later than 7 days after the person is told of the decision or 28 days after the notice to which the decision relates was served.

New section 14D deals with out-of-time applications to take action in response to an infringement or reminder notice. New section 14D (1) applies to a person who has been served with an infringement notice or a reminder notice, where the time for taking action in response to such a notice (including any additional time already allowed by the administering authority) has expired and the person has not taken any action. Under new section 14D (2), the application must be in writing and must include the special circumstances that the person relies on, as well as any other information required by the administering authority.

New section 14D (3) requires the administering authority to allow the application if it reasonably believes special circumstances justify the extension of time. It is intended that the Minister will approve guidelines under new section 30 of the General Act for deciding applications for extension of time. These guidelines will bind the administering authority, to ensure consistent and appropriate decision making in relation to such applications. As explained in the clause notes for new section 30, the guidelines will be a disallowable instrument and therefore subject to scrutiny by the Legislative Assembly and its committees.

New section 14D (4) provides that where the administering authority refuses an application the person must take action in response to the infringement or reminder notice not later than 7 days after the person is told of the authority's decision.

Section 14E is based on existing section 28 of the General Act, which deals with the maximum additional time that can be given to a person to take action in response to an infringement notice or reminder notice. Section 28 (1) does not allow the administering authority to give a person more than an additional 6 months to pay an infringement penalty in respect of each application for additional time. New section 14E is consistent with the approach in existing section 28, and provides that the maximum period of time that may be allowed by the administering authority on an application under section 14C or 14D is 6 months.

New sections 14F to 14I set out the matters that must be contained in the various types of infringement notice declarations that may be made under the General Act. They replace sections 38 to 41 of the existing General Act. New section 21A contains definitions of each of the four types of infringement notice declarations for the purposes of part 3 of the General Act, and these definitions anticipate that the specific contents of each declaration will be prescribed by regulation.

The information prescribed for each type of infringement notice declaration is intended to assist the administering authority to identify and locate the individual who was in possession or control of a vehicle at the time of the relevant offence (or, in the case of an unknown user declaration, to enable the administering authority to be satisfied that the responsible person for a vehicle has in fact made genuine efforts to discover this person's identity but has not been able to do so).

The information prescribed in new sections 14F to 14I includes information about:

- the circumstance in which the responsible person for a vehicle ceased to have control or possession of the vehicle;
- other people who had access to or use of the vehicle;
- where, and in what circumstances, the vehicle was last known to have been located or used;
- what steps the responsible person for a vehicle has taken to ascertain the identity of the person who was using the vehicle when the offence was committed.

The information prescribed for each type of infringement notice declaration is information that the responsible person for a vehicle could reasonably be expected to provide to support a declaration that their vehicle was illegally used, sold, used by a person known to them, or used by a person unknown to them. To the extent that a person making an infringement notice declaration is unable to provide the prescribed information, the administering authority

will be able to consider the explanation offered by the person for being unable to provide this information in deciding whether to accept the declaration as a basis for withdrawing the infringement notice.

New section 14J prescribes the contents of a suspension warning notice for the purpose of new section 42 (2) (a) (iii) of the General Act. That provision requires the road transport authority to take suspension action against a corporation that is the responsible person for a registrable vehicle involved in a demerits point offence, where the corporation has previously failed to take reasonable steps to identify to the road transport authority the driver or drivers of the corporation's vehicles involved in demerit points offences. Before suspension action is taken, the corporation must be sent a suspension warning notice. The matters to be included in the suspension warning notice under new section 14J are, in addition to the matters listed in new section 42 (2) of the General Act:

- the date of the notice;
- the corporation's name, ACN and address;
- details of the demerit points offence to which the notice relates including the place, time and date when the offence occurred;
- that the infringement notice has not been withdrawn;
- that the corporation has failed to take all reasonable steps to assist the administering authority identify and locate the individual who had possession or control of the corporation's vehicle;
- a statement advising that the corporation has failed to take all reasonable steps to identify and locate that individual by the suspension date; and
- that any suspension taken under the notice takes effect on the suspension date and continues until the time stated in section 42 (6) of the General Act.

New section 14K prescribes the additional contents of a suspension confirmation notice under new section 42 (4) (d) of the General Act. In addition to the matters set out in section 42 (4) of the General Act, the suspension confirmation must include:

- the date of the notice;
- the corporation's name, ACN and address;
- details of the demerit points offence to which the notice relates including the time, date and place the offence occurred;
- that the corporation failed to take all reasonable steps to assist the administering authority identify and locate the individual who had possession or control of the corporation's vehicle; and
- that the infringement notice has not been withdrawn.

New section 14L relocates former section 9 of the *Road Transport (General) Regulation 2000*. That section prescribed the contents of a suspension notice for section 44 (3) of the General Act. The matters prescribed are:

- the date of the notice
- the name and address of the person served with the notice
- that the infringement notice to which the notice relates has not been paid or withdrawn.

Item 1.14 Section 16

This item is a consequential amendment to omit section 16 of the Offences Regulation. The contents of that section are now dealt with in new section 13 of that Regulation (to be inserted by item 1.13 of the Schedule).

Item 1.15 Schedule 1, part 1.7, item 2

This item omits item 2 from the table in part 1.7, Schedule 1 of the Offences Regulation. This item contains a reference to the offence in section 36 (6) of the General Act, which is omitted from that Act and relocated to the Offences Regulation, in new section 12 (4).

Item 1.16 Schedule 1, part 1.7, item 3

This amendment inserts a replacement item 3 in the table in part 1.7, Schedule 1 of the Offences Regulation. This item is a reference to the new offence in section 43B of the General Act, which has the short description “drive interstate corporate vehicle when right to drive vehicle in ACT suspended under s43.” The penalty for this offence is set at a level that is between the penalty for the offence in section 31A of the *Road Transport (Driver Licensing) Act 1999* (driving while right to drive suspended) and the offence in section 18 of the *Road Transport (Vehicle Registration) Act 1999* (driving while registration etc suspended).

Item 1.17 Schedule 1, new part 1.9

This amendment inserts new part 1.9 in the table Schedule 1 of the Offences Regulation. This part has a single item, which is a reference to the replacement offence in section 12 (4) of the Offences Regulation. This item has the short description “do something to prevent responsible person receiving/reading infringement notice on vehicle.” The penalty for this offence is the same as for the offence in former section 36 (6) of the General Act.

Part 1.5 Road Transport (Vehicle Registration) Regulation 2000

This part of the Schedule amends the *Road Transport (Vehicle Registration) Regulation 2000*.

Item 1.18 New section 28 (ca)

This item inserts new paragraph 28 (ca) into the section that deals with the information that is required for applications for vehicle registration. It requires that where 2 individuals seek to be recorded as the registered operators of the same light vehicle, one of them must be nominated as the contact person for the service of notices under the road transport legislation in relation to the vehicle. This amendment is related to the amendment to section 10 of the General Act, in clause 5 of the Bill, to rationalise the concept of *responsible person for a registrable vehicle* so that there will be one responsible person for a vehicle at any given time, with clearly defined obligations under the legislation in relation to the vehicle. A person’s status as a responsible person is not the same as the person’s ownership of that vehicle. The road transport legislation does not regulate, or purport to regulate, property rights in motor vehicles.

Item 1.19 New section 162 (5) (d)

This item inserts a new paragraph into section 162 (5), which explains what happens when 2 individuals are recorded as registered operators of the same light vehicle. New paragraph 162 (5) (d) makes it clear that the person who was nominated under new section 28 (ca) as the contact officer for receiving notices will be taken to be the *responsible person for the vehicle* in relation to any infringement notice offence involving that vehicle.

During the pre-commencement period, the Office of Regulatory Services will revise the vehicle registration forms for light vehicles to draw the attention of the nominated contact person to the effect of new sections 28 (ca) and new section 162 (5) (d).
