

2015

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

**ROAD TRANSPORT LEGISLATION AMENDMENT BILL 2015
Amendment to be moved by the Minister for Justice**

SUPPLEMENTARY EXPLANATORY STATEMENT

**Presented by
Shane Rattenbury MLA
Minister for Justice**

ROAD TRANSPORT LEGISLATION AMENDMENT BILL 2015

Purpose of the Bill

The Bill will amend several pieces of legislation to improve road safety and the administration and enforcement of the road transport legislation in the ACT.

The legislation amended includes the *Crimes Act 1900*; the *Road Transport (Alcohol and Drugs) Act 1977*; the *Road Transport (Driver Licensing) Regulation 2000*; the *Road Transport (General) Act 1999*; the *Road Transport (Offences) Regulation 2005*; the *Road Transport (Safety and Traffic Management) Act 1999*; the *Road Transport (Safety and Traffic Management) Regulation 2000*; and the *Road Transport (Vehicle Registration) Regulation 2000*.

Background

Clause 11A of the Bill inserts a new section 236 into the *Road Transport (General) Act 1999*.

The effect of this section is to prevent the Road Transport Authority from being compelled by any preliminary discovery process to disclose information about registrable vehicles and registered operators of registrable vehicles if it is for the purpose of the recovery of private car park fees.

New section 236(2) defines “preliminary discovery order” as meaning an order made under division 2.8.6 of the Court Procedure Rules 2006 or any requirement imposed for a similar purpose by or under any other Act, rule or law. “Private car park fee” is defined as meaning an amount alleged to be payable under the terms of a contract, arrangement or understanding for the use of a car park but not including an amount alleged to be payable under the terms of a written contract signed by the relevant parties.

The intention of new section 236 is to change the law so that any entitlement a person may otherwise have had to compel the Road Transport Authority to provide personal information is removed, in the specific circumstances contemplated by new section 236.

Human Rights considerations

The new section 236 may be seen as engaging the right to a fair trial, afforded by section 21 of the *Human Rights Act 2004* (the HRA). The amendment also engages, in a positive manner, the right to privacy (section 12 of the HRA).

Section 28 of the HRA provides that human rights are subject only to reasonable limits set by laws that can be demonstrably justified in a free and democratic society.

Section 28 (2) of the HRA provides that in deciding whether a limit on a human right is reasonable, all relevant factors must be considered, including:

- (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; and
- (e) any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve.

The amendment is therefore considered, having regard to the provisions of section 28 of the HRA.

Nature of the right affected

This amendment will support the right to privacy in section 12 of the Human Rights Act 2004 (the HRA), for all registered owners of vehicles. However, it may also engage rights afforded to some private car park operators.

While the vast majority of private car park operators are incorporated and therefore cannot claim protection under the HRA (section 6 of the HRA), the amendment potentially engages the fair hearing rights (section 21 of the HRA) of individuals who wish to commence court proceedings for recovery of car park fees.

Section 21 of the HRA provides that everyone has the right to have rights and obligations recognised by law, decided by a competent, independent and impartial court or tribunal after a fair and public hearing.

The amendment arguably engages that right because it will have the effect of removing the ability of individuals who are private car park operators, to obtain information, by way of preliminary discovery, as to the identity of a possible wrongdoer (i.e. a customer who has allegedly breached the car park's terms and conditions) from the RTA. However it is also arguable that this amendment does not affect the right to fair hearing, as it does not directly restrict access to a court, but rather provides that the RTA cannot be compelled by an order to disclose the relevant personal information.

The importance of the purpose of the limitation

The primary purpose of the amendment is to protect the personal information provided by members of the community to the Government for vehicle registration and related purposes under the road transport legislation. There is a real and legitimate expectation by the community that Government will protect such information, and ensure that it is not disclosed to, and exploited by, commercial entities.

The amendment also aims to discourage car park operators from adopting business models that rely upon the large scale disclosure of personal information held by Government. Road transport authorities across Australia are agencies with extremely comprehensive and current holdings of personal information. It is not appropriate for commercial entities to base their business models on extensive access to personal information held by these agencies, particularly when there are a number of other business models available that do not rely upon government disclosure (for example, the use of boom gates to prevent customers from leaving without paying).

Finally, the amendment seeks to address a number of consumer protection issues relating to the recovery of private car park fees. Around Australia private car park operators have been found by various courts and tribunals to have issued documents closely resembling, or purporting to be, “infringement notices”. These notices are in fact claims for liquidated damages based on a purported breach of contract. The notices have been held to be both misleading (in that the documents deliberately resemble government issued infringement notices) and as a matter of contract law, unenforceable, as the claimed damages have no connection to the actual losses suffered by the car park operator.

When considering a similar amendment to Victoria’s *Road Safety Act 1986*, the Special Minister of State noted that there is a legitimate interest in restricting the ability of private car park operators to issue demands for excessive liquidated damages which, if contested, are likely to be declared unenforceable.¹

The Special Minister of State further noted that although certain Victorian operators were lodging bulk requests for preliminary discovery, very few matters were actually proceeding to court.² It appears that some operators instead use the preliminary discovery process, not with a genuine intention to seek damages through the courts, but instead to support a business model of posting mass demands to customers and relying on a proportion of them paying.

The three primary purposes of the limitation, being community confidence in the ability of the Government to protect their personal information, the discouragement of undesirable and in some cases unscrupulous business models, and consumer protection generally, are matters of high importance to the community.

The nature and extent of the limitation

Any limitation in relation to section 21 of the HRA is not extensive. The majority of car park operators are corporate entities, rather than individuals entitled to the protections set out in the HRA. Furthermore, the scope of the amendment is limited, in that it applies only to private car park operators, and not to any other businesses or individuals. It will not affect a car park operator’s right to bring proceedings against a customer whose identity the operator already knows. It also will not prevent car park operators from using the preliminary discovery provisions to recover an amount payable under a written contract that has been signed by the parties to the contract. It will not affect private car park operators who have adopted business models not reliant on obtaining personal information from the ACT Government, for example, those who use boom-gates.

The relationship between the limitation and its purpose

In relation to any engagement of section 21 of the HRA, the amendment seeks to protect personal information, address existing consumer protection issues, and deter car park operators from adopting undesirable business models. Importantly, the amendment seeks to give effect to existing community expectations regarding Government’s protection of personal information.

¹ Victorian Hansard , Thursday 25 June 2015, p 2076.

² Ibid.

Less restrictive means reasonably available to achieve the purpose

It is not considered that there are any less restrictive means available to achieve the purposes of the amendment.

To the extent that the amendment does engage the right to a fair trial, such engagement is reasonable and proportionate, noting the public interest benefits from the amendment.

When considering the Victorian amendment, the Special Minister of State was satisfied that there is no less restrictive means to protect the interests of consumers. Accordingly, the Special Minister was satisfied that the amendment was compatible with the right to a fair hearing contained within the Victorian human rights legislation.³

Clause notes

Clause 11A

Section 236 (Preliminary discovery for private car park fees) provides that the Road Transport Authority cannot be required to comply with a preliminary discovery order against the road transport authority if the purpose is to ascertain the identity or whereabouts of a person in order to start a proceeding against the person for the recovery of a private car park fee; or otherwise in connection with starting a proceeding for recovery of a private car park fee.

Preliminary discovery order is defined to mean an order made under the Court Procedures Rules 2006, division 2.8.6, or or any requirement imposed for a similar purpose by or under any other Act, rule or law. Private car park fee is defined to mean an amount alleged to be payable under the terms of a contract, arrangement or understanding for the use of a car park; but does not include an amount alleged to be payable under the terms of a written contract signed by the relevant parties.

³ Ibid.