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THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

ROAD TRANSPORT LEGISLATION AMENDMENT BILL 2015 (No 2)

EXPLANATORY STATEMENT

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ROAD TRANSPORT LEGISLATION AMENDMENT BILL 2015 (NO 2)

Introduction

This explanatory statement relates to the Road Transport Legislation Amendment Bill 2015 (No 2) (the Bill) as presented to the Legislative Assembly. It has been prepared in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.

The Statement must to be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

Overview of the Bill

The Bill makes a number of amendments to the ACT's road transport legislation to improve the administration and enforcement of the legislation. Changes made by the Bill improve road safety and support the goals of the Digital Canberra Action Plan, assisting the Government to better engage with citizens, and deliver services more efficiently to meet the needs of the community.

The Bill:

- allows for electronic service of infringement notices (in addition to the personal or postal service currently required by the road transport legislation) – this supports the goals of the Digital Canberra Action plan and will deliver efficiencies for police and the Road Transport Authority (RTA), allowing existing resources to be better allocated;

- allows for infringement notice declarations to be completed online (in addition to the current method, which is by statutory declaration) – this too supports the goals of the Digital Canberra Action plan by making it easier for individuals to provide information to government, and reducing red tape;

- creates consistency in the appeal rights of drivers who face automatic disqualification of their driver licences for drink or drug driving offences, to ensure that both those who are disqualified for the default period under the legislation and for a different period ordered by the Court are both able to appeal their disqualification – this will ensure equality of treatment for these drivers;

- removes an existing police power of entry to arrest for a drink or drug driving offence, and instead provides police with a limited power to enter premises to require alcohol or drug screening tests, where police reasonably suspect that an individual on the premises has committed a drink or drug driving offence, and has either failed to stop when requested or signalled by police while driving on a road or road related area, or has been involved in a traffic accident on a road or road related area and left the scene of the accident – this will improve road safety and ensure that drivers are appropriately sanctioned for dangerous drink and drug driving offences;

- removes an inconsistency in how ACT, interstate and external driver licence holders who are suspended and then disqualified from holding or obtaining a driver licence are treated – again, this will ensure equality of treatment for these drivers; and

- provides that police advice of an existing licence suspension, where an individual has already been suspended from driving by the RTA (such as for accumulation of demerit points or non-payment of infringement notice penalties) is taken to be formal notification of that advice — this will support road safety and the enforcement of the road transport legislation by ensuring that drivers who have been suspended are not able to claim they were unaware of their suspended driver licence status if they are subsequently apprehended driving while the suspension is in place.

Human rights implications

Two amendments being made by the Bill may be seen as engaging particular rights in the *Human Rights Act 2004* (the HRA). These are:

- freedom of movement, section 13; and
- right to privacy, section 12.

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 provisions of the Bill seen as potentially engaging human rights are considered having regard to the provisions of section 28 of the HRA.

Police advice of existing licence suspension

The Bill (clauses 12 and 16) amends the *Road Transport (General) Act 1999* (the General Act) and the *Road Transport (Driver Licensing) Act 1999* (the Driver Licensing Act) to provide that police advice of an existing driver licence suspension under those Acts is formal notification of that fact, notwithstanding that the driver may claim to have not received the initial notice of suspension from the RTA.

Nature of the right affected

Under existing provisions within the road transport legislation, the RTA may serve a notice of licence suspension on a driver in a number of circumstances, including where the driver has accumulated more than the maximum number of demerit points, failed to pay an infringement notice penalty, or failed to comply with an infringement notice management plan. The notice must specify the suspension date, upon which, if the driver fails to take appropriate action, the driver's licence is suspended.

The amending provisions provide that where a suspension notice has been sent to a person and police advise the person of that suspension, the driver is taken to be aware that his or her licence has been suspended. This will be relevant in circumstances where a driver claims that he or she did not receive initial notice of the suspension from the RTA, and therefore was unaware that he or she should not have been driving. The amendment will ensure that suspended drivers cannot claim to be unaware of the status of their licence, once they have been advised by a police officer that the licence is suspended.

Driving is a licensed activity, subject to conditions imposed by law, and the right to drive is not a right that is recognised or protected by the HRA. However, section 13 of the HRA provides that everyone has the right to move freely within the ACT. This not an absolute right, as it has inherent limitations, which are acknowledged at subsection (3) of article 12 of the ICCPR (the equivalent right to section 13 of the HRA): *the rights to liberty and freedom of movement shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order, public health or morals or the rights or freedoms of others and are consistent with the other rights recognised in the Covenant.'*

Insofar as suspension of a licence prohibits an individual from driving, the existing provisions of the road transport legislation about driver licence suspensions may be said to engage the right to freedom of movement.

The amendments made by the Bill, providing that police advice of an existing licence suspension is formal notification of that status, are relevant to, but do not further engage, the right in section 13 of the HRA to freedom of movement, as the driver's legal right to drive under the road transport legislation was restricted by the initial suspension action, not by police advice of that action.

The importance of the purpose of the limitation

Insofar as the existing licence suspension provisions could be said to engage the right to freedom of movement (section 13 of the HRA), the purpose of the limitation is to improve road safety and protect all road users, by both removing drivers from the road who have repeatedly committed traffic offences and by ensuring that the sanctions that apply for driving offences are able to be effectively enforced and, therefore, provide a specific deterrence to unsafe driving behaviour. The achievement of road safety is an important objective for the ACT community.

The purpose of the amendment is to ensure that individuals whose driver licences have been suspended but who claim not to have received the initial suspension notice from the RTA are not able to claim they are not aware of the status of their licences, once advised by a police officer. This will be relevant should the driver subsequently be detected driving during the

period of suspension and charged with unlicensed driving, having been previously notified by police about the status of their licence.

The nature and extent of the limitation

Any limitation in relation to section 13 of the HRA (freedom of movement) is minimal as it applies only to drivers who, by their driving behaviours, have engaged the existing licence suspension provisions by committing traffic offences which have resulted in the accumulation of the maximum amount of demerit points and/or the issue of infringement notices penalties which they have failed to pay, or appropriately manage through infringement notice management plans. Any engagement of the right under section 13 of the HRA is also limited, in that those individuals who are subject to a driver licence suspension are not prevented from using other forms of public or private transport.

The amendment will be relevant only to drivers whose licences are suspended and who claim that they did not receive the RTA's notice and continue driving after the suspension period has commenced. Police advice of the driver's licence status will constitute formal notification of that status.

The relationship between the limitation and its purpose

In relation to any engagement of section 13 of the HRA, the driver licence suspension scheme seeks to improve road safety by encouraging compliance with the ACT's road transport legislation. It also ensures that individuals who have repeatedly committed traffic offences are removed from the road for a specified period. Any limitation of the right under section 13 of the HRA is reasonable and proportionate, noting the public interest benefits that arise from improving road safety in this manner.

Less restrictive means reasonably available to achieve the purpose

It is not considered that there are any less restrictive means available to achieve the purpose of the driver licence suspension scheme. Similar driver licence suspension schemes exist in all Australian jurisdictions.

Limited power of entry to require a drug or alcohol screening test

The Bill (clauses 5 and 6) amends the *Road Transport (Alcohol and Drugs) Act 1999* (the Alcohol and Drugs Act) to provide police with a limited power to enter premises to require a person on the premises to undergo a drug or alcohol screening test. The power is limited to only be available where all of the following preconditions are met:

- police suspect on reasonable grounds that a person has committed a drink or drug driving offence under section 19, 20 or 24 of the Alcohol and Drugs Act;
- police suspect on reasonable grounds that that person:
    - was the driver of a vehicle that was involved in an accident on a road or road related area; or
    - has failed to comply with a police request or signal to stop a vehicle the person was driving on a road or road related area;
- police have an existing power to require the person to undergo an alcohol or drug screening test under Division 2.2 or 2.4 of the Alcohol and Drugs Act; and
- police believe on reasonable grounds that the person is on the premises.

Currently, where a vehicle has been involved in an accident on a road or road related area, a police officer may require a person to undergo one or more screening tests if the police officer has reasonable cause to suspect that the person was the driver of the motor vehicle at the time of the accident. Where no accident has occurred, a police officer may require a person to undergo one or more screening tests if the police officer has reasonable cause to suspect that, shortly before the requirement for testing is made, the person was the driver of a motor vehicle on a road or road related area. These preconditions will need to be present before the new power of entry is enlivened.

The police officer will also need to have a reasonable suspicion that the person has committed a drink or drug driving offence. This suspicion may arise from, for example, the police officer observing the driver driving erratically, or exiting a licensed venue with a demeanour that suggests intoxication or impairment, before driving a vehicle.

A police officer who enters premises under the new section 10A or 13CA also remains subject to the existing restrictions on testing contained within section 14 of the Alcohol and Drugs Act, including the time limits relating to how long after a person ceases to drive or is involved in an accident, a screening test can be undertaken. In the case of an accident, police cannot require a test if more than 2 hours have elapsed since the accident occurred. This means that police cannot enter premises to require a test if more than 2 hours have passed since the accident. In the case of a driver failing to stop when required by police, police cannot require a screening test if more than 2 hours have elapsed since the person ceased to be the driver of the motor vehicle. Additionally, in those circumstances, if the person is at the place where the person usually lives, section 14 (3) (iii) of the Alcohol and Drugs Act prevents police from requiring the person to undergo a screening test unless the requirement is made immediately after the motor vehicle has stopped and the officer making the requirement has followed the motor vehicle while it was being driven on the road.

In all cases, police must not require a person to undergo a screening test if it appears to the police officer that it may, because of injury suffered by the person or otherwise, be dangerous or not practicable for the person to undergo the screening test.

The new sections 10A (3) and 13CA (3) provide that a police officer who enter premises for the purpose of requiring a person to undergo one or more drug or alcohol screening tests must not remain at the premises for longer than is necessary to conduct the required tests.

The amendment is intended to improve road safety by ensuring that drivers who are reasonably suspected to have committed drug or drink driving offences and have either been involved in motor vehicle accidents (including accidents resulting in serious injuries and deaths) or failed to comply with a police request or signal to stop a vehicle, are not able to avoid detection and appropriate sanction by entering premises where they cannot be tested.

The new limited power of entry replaces an existing police power of entry in section 220 (2) of the *Crimes Act 1900* (the Crimes Act). Currently, section 220 (2) provides that police may enter a premises, to search for a person or arrest a person, if the officer has an existing power of arrest under section 212 of the Crimes Act, and the offence is a “relevant offence”. “Relevant offence” is defined as including an offence against sections 19 and 20 of the Alcohol and Drugs Act (driving with a prescribed concentration of alcohol in blood or mouth, or with a prescribed drug in oral fluid or blood).

Section 212 of the Crimes Act provides police with the power to arrest a person, without a warrant, where a police officer suspects on reasonable grounds that the person has committed an offence and proceedings by summons against the person would not achieve one or more of the purposes identified in that section, including preventing a repetition or continuation of the offence; preventing the loss of evidence relating to the offence; and preserving the safety or welfare of the person. A number of these preconditions are likely to exist in circumstances where a person is reasonably suspected of drink or drug driving. Therefore, there will be circumstances where police have a power of entry to arrest for a drink or drug driving offence.

However, operationally, police do not use section 212 of the Crimes Act to arrest individuals for drink or drug driving. Instead, police operate under the regime contained within the Alcohol and Drugs Act, to take an individual into custody for the purpose of conducting a confirmatory drug or alcohol test under that Act, in circumstances where a screening test indicates a blood alcohol concentration over the legal limit, or a prescribed drug in the individual's saliva. An individual may also be taken into custody under the Alcohol and Drugs Act if he or she has failed to undergo a screening test in accordance with the direction of a police officer. The power of entry in section 220 of the Crimes Act to arrest for a drink or drug driving offence is, therefore, redundant. Clause 4 amends the definition of "relevant offence" in section 220 (4) of the Crimes Act to remove the reference to sections 19 and 20 of the Alcohol and Drugs Act, meaning that police no longer have power to enter premises to arrest for an offence under these sections.

Clauses 5 and 6 instead amend the Alcohol and Drugs Act, to provide a limited power to enter premises to require a drug or alcohol screening test, as described above. Where the driver tested is found to have a blood alcohol concentration above the legal limit, or a prescribed drug in his or her saliva, police will take the driver into custody for the purposes of conducting confirmatory tests under the existing provisions of the Alcohol and Drugs Act.

It is important to note that the objective of the Alcohol and Drugs Act is "to provide for the detection of people who drive motor vehicles after consuming alcohol or drugs, for offences by those people, and to provide measures for the treatment and rehabilitation of those people."

It is a rational extension of the scheme under the Alcohol and Drugs Act not to allow a driver who is reasonably suspected of drink or drug driving to frustrate the objectives of the Act simply by entering premises to avoid testing and sanction.

It is acknowledged that there may be circumstances in which a person who is reasonably suspected of having committed a drink or drug driving offence may consume, or claim to have consumed, alcohol or drugs in the period between arriving at the premises and being tested by police. However, this issue exists under the law as it currently stands and has been considered both by the Australian Law Reform Commission (ALRC) and the judiciary.

The ALRC in its Report on "Alcohol, Drugs and Driving"[1] considered the issue of innocent post–driving consumption and said at paragraph 280 that "drivers may, deliberately or innocently, consume alcohol or another drug between the time of driving and the time the test

[1] Alcohol, Drugs and Driving [1976] ALRC 4.

is administered. Deliberate drinking in this interval to frustrate the relevance of a subsequent test must obviously not be tolerated. The problem is to find a formula or words which whilst inhibiting such tactics, do not intrude oppressively into the activities of drivers who may innocently consume alcohol or some other drug during this interval."

The ALRC further noted that "in part, the inhibition upon innocent consumption, is controlled by fixing a time limit for the conduct of the test. In part, it is controlled by the very preconditions that must be established before the test is conducted in the first place... In the case of accidents, it is clearly not unreasonable to require that no alcohol at all should be consumed for a period of two hours following the accident. If it is consumed in this period, the result should not advantage the accused in any way. The medicinal use of alcohol after accidents is dubious. It must not be permitted to defeat the tests necessary to determine criminal liability. Non-accident situations will usually involve the immediate intrusion of the police. Innocent opportunities for consumption will not arise. If they do, they should likewise not be permitted to defeat the test during a period of two hours after the time that the suspect is first found by a member of the police force."

This issue was similarly considered by Justice Refshauge in *Cooper v Hill* [2014] ACTSC 94, who found at [36]-[37] that it is "quite clear that the policy that led to the proposed legislation recognised that the integrity of the system would result in the possibility that some innocent post-driving consumption would be criminalised. To that extent, if a court is satisfied of such innocent post-driving consumption, there is always the possibility of appropriate recognition in sentence."

It is considered that the above is equally applicable to individuals tested inside premises by police officers who have entered the premises pursuant to the amendments set out in clauses 5 and 6 of this Bill.

Nature of the right affected

Section 12 of the HR Act gives effect to article 17 of the ICCPR and protects individuals from unlawful and arbitrary interference with privacy relating to their family, home or correspondence.

The right to privacy needs to be balanced against other rights and can be limited, provided it can be demonstrated that the limitation is necessary, reasonable and proportionate.

The amendments to the Alcohol and Drugs Act providing power of entry for the purposes of conducting a screening test under the existing provisions of the Act will engage this right.

The importance of the purpose of the limitation

The purpose of the limitation is to improve road safety and increase ACT Policing's ability to protect the lives of road users in the Territory from the dangers caused by individuals who engage in drink or drug driving behaviours. In both 2013 and 2014, over half of the deaths that occurred as a result of road accidents in the ACT involved a driver or motorcycle rider who had a blood alcohol concentration above the legal limit, or a prescribed drug in his or her blood or oral fluid[2]. Preventing and appropriately sanctioning drink and drug driving is a

[2] ACT Road Safety Report Card 2014, http://www.justice.act.gov.au/safety_and_emergency/road_safety, p 12, 16.

matter of critical importance to the community, given the real risks of death and injury associated with these behaviours.

The purpose will be achieved by ensuring that individuals who engage in drink or drug driving cannot avoid sanction by entering a premise so that police are unable to conduct a drug or alcohol screening test.

This arises in the context of drivers who are involved in a road accident, leave the scene of the accident, and enter and remain within a premises where they cannot be tested for drink or drug driving until the evidence of their drink or drug driving (i.e. blood alcohol concentration, or a prescribed drug in blood or oral fluid) is no longer present.

It also applies in the context of drivers who, while driving, appear to be under the influence of alcohol or drugs and when requested or signalled to stop by police (for example, for roadside breath testing) refuse to do so, and instead quickly enter premises to avoid testing and any resulting sanctions for drink or drug driving.

In both circumstances, these drivers pose a significant road safety risk, yet are currently able to avoid sanction by entering premises to prevent police from conducting testing. By avoiding sanction, such drivers can continue engaging in dangerous drink and drug driving behaviours and threatening the safety of all other road users.

The nature and extent of the limitation

Any limitation in relation to the right under section 12 is not extensive, as the power of entry can be only exercised in very specific circumstances, that is, where:

- police suspect on reasonable grounds that a person on the premises has committed a offence under section 19, 20 or 24 of the Alcohol and Drugs Act (i.e. a drink or drug driving offence);
- police suspect on reasonable grounds that that person:
    - was the driver of a vehicle that was involved in an accident on a road or road related area; or
    - has failed to comply with a police request or signal to stop a vehicle that the person was driving on a road or road related area;
- police have an existing power to require the person to undergo a alcohol or drug screening test under Division 2.2 or 2.4 of the Alcohol and Drugs Act; and
- police believe on reasonable grounds that the person is on the premises.

This means that police cannot enter premises on an ad hoc basis, but must be satisfied that all of the above preconditions exist. Specifically, police must have a reasonable suspicion that a person has both committed a drug or drink driving offence, and either been the driver of a vehicle involved in an accident, or failed to stop a vehicle when requested by police. Police must also have a reasonable belief that that person is on the premises.

Police must also have an existing power to require the person to undergo a screening test under Division 2.2 or 2.4 of the Alcohol and Drugs Act.

Furthermore, any alcohol or drug testing that is required to be undertaken after a police officer has entered a premises would also be subject to the existing restrictions set out in section 14 of the Alcohol and Drugs Act – for example, where an accident has occurred, the

police officer cannot require a person to undergo a drug or alcohol screening test if more than two hours has elapsed since the accident occurred. Where a driver has failed to stop as required by police, the police officer cannot require a person to undergo a drug or alcohol screening test if more than 2 hours have elapsed since the person ceased to be the driver of the motor vehicle. In circumstances where a driver has failed to stop when required by police, and then driven to the place where he or she usually lives, police may only require a screening test if the requirement is made immediately after a motor vehicle driven by the person has stopped at or near the place where the person usually lives and the officer making the requirement has followed the motor vehicle while it was being driven on the road.

In all circumstances, a police officer must not require a person to undergo a screening test if it appears to the police officer that it may, because of injury suffered by the person or otherwise, be dangerous or not practicable for the person to undergo the test

Finally, any limitation in relation to the right under section 12 is not extensive, as police must not remain at the premises for longer than is necessary to conduct the required screening tests.

The relationship between the limitation and its purpose

There is a rational connection between the proposed amendments and the potential harm that they aim to combat. That is, drivers who engage in dangerous drink or drug driving behaviours, then are involved in accidents or refuse to stop when required by police, should not be able to avoid sanction simply by entering a premises and refusing to engage with police. The amendments, while engaging the right to privacy of some individuals, will enhance ACT Policing's abilities to protect all road users, by ensuring that individuals who drink or drug drive are detected and appropriately sanctioned and prevented from continuing their dangerous behaviours. Any limitation of the right under section 12 of the HRA is reasonable and proportionate, noting the public interest benefits that arise from improving road safety in this manner.

Any less restrictive means reasonably available to achieve the purpose

It is considered that there are no less restrictive means reasonably available. Given the temporal nature of the crucial evidence in drink and drug driving offences (i.e. a driver's blood alcohol concentration, or a prescribed drug in a driver's blood or oral fluid), it is essential that in the limited and important circumstances outlined above, police are empowered to collect the evidence, and that drivers are not permitted to frustrate the existing drink and drug driving regime simply by entering premises and refusing to engage with police. Without this amendment, police are limited in the steps they can take with respect to drink and drug driving offences committed by individuals who are able to enter premises before police can require testing.

Climate Change Considerations

The climate change impacts of these amendments have been considered and no impacts have been identified.

CLAUSE NOTES

Part 1 Preliminary

Clause 1 Name of Act

This clause specifies the name of the Bill, once enacted, as the *Road Transport Legislation Amendment Act 2015 (No 2).*

Clause 2 Commencement

This clause provides that the Act will commence on the day after its notification day.

Clause 3 Legislation amended

This clause names the legislation amended by this Bill. This Bill will amend the *Crimes Act 1900,* the *Road Transport (Alcohol and Drugs) Act 1977,* the *Road Transport (Driver Licence) Act 1999,* the *Road Transport (General) Act 1999* and the *Road Transport (Offences) Regulation 2005*.

Part 2 Crimes Act 1900

Clause 4 Power to enter premises to arrest offender Section 220 (4), definition of *relevant offence,* paragraph (b)(iv)

This clause amends the definition of "relevant offence" in section 220 (4) of the *Crimes Act 1900*. The offences listed as relevant offences are offences in respect of which section 220 applies to provide a power for a police officer to enter premises and arrest an offender. This clause omits paragraph (b)(iv), which lists "an offence against the Road Transport (Alcohol and Drugs) Act 1977, section 19 (Prescribed concentration of alcohol in blood or breath) or section 20 (Prescribed drug in oral fluid or blood—driver or driver trainer)" as relevant offences. The effect of this amendment is that the power for police to enter premises to arrest an offender will no longer apply in relation to these offences.

Part 3 Road Transport (Alcohol and Drugs) Act 1977

Clause 5 New section 10A

Clause 5 inserts a new section 10A into Division 2.2 of the Alcohol and Drugs Act.

New section 10A provides a power for a police officer to enter premises to conduct an alcohol screening test.

New section 10A (1) sets out the preconditions applying to the power of entry provided by new section 10A (2). These preconditions are:

(a) the police officer must have reasonable grounds to suspect that a person was either the driver of a vehicle that was involved in an accident on a road or road related area or failed to comply with a police officer's request or signal to stop a vehicle the person was driving on a road or road related area;
(b) the police officer must also have reasonable grounds to suspect that the person has committed an offence under section 19, section 20 or section 24 of the Alcohol and Drugs Act;
(c) the police officer must have an existing right under Division 2.2 of the Alcohol and Drugs Act to require the person to undergo 1 or more alcohol screening tests; and
(d) the police officer must believe on reasonable grounds that the person is on the premises.

Section 10A (2) provides that the police officer may enter the premises for the purpose of conducting one or more alcohol screening tests. The police officer may use the force that is necessary and reasonable in the circumstances to enter the premises.

Section 10A (3) provides that a police officer who enters premises under new section 10A must not remain at the premises for longer than is necessary to conduct the required screening tests.

Clause 6 New section 13CA

Clause 6 inserts a new section 13CA into Division 2.4 of the Alcohol and Drugs Act.

New section 13CA provides a power for a police officer to enter premises to conduct a drug screening test.

New section 13CA (1) sets out the preconditions applying to the power of entry provided by new section 13CA (2). These preconditions are:

(a) the police officer must have reasonable grounds to suspect that a person was either the driver of a vehicle that was involved in an accident on a road or road related area or failed to comply with a police officer's request or signal to stop a vehicle the person was driving on a road or road related area;
(b) the police officer must have reasonable grounds to suspect that the person has committed an offence under section 19, section 20 or section 24 of the Alcohol and Drugs Act;
(c) the police officer must have an existing right under Division 2.4 of the Alcohol and Drugs Act to require the person to undergo 1 or more drug screening tests; and
(d) the police officer must believe on reasonable grounds that the person is on the premises.

Section 13CA (2) provides that the police officer may enter the premises for the purpose of conducting one or more drug screening tests. The police officer may use the force that is necessary and reasonable in the circumstances to enter the premises.

Section 13CA (3) provides that a police officer who enters premises under new section 13CA must not remain at the premises for longer than is necessary to conduct the required screening tests.

Clause 7 Automatic driver licence disqualification—first offenders, s 19 New section 32 (4)

Clause 7 inserts a new subsection (4) in section 32 of the Alcohol and Drugs Act to provide that for the *Magistrates Court Act 1930*, section 208 (1) (g), an automatic disqualification from holding or obtaining a driver licence under that section is taken to be an order of the court to disqualify a person from holding or obtaining a driver licence.

Currently under section 208 (1) (g) of the *Magistrates Court Act 1930*, a person may appeal from an order of the court disqualifying that person from holding or obtaining a driver licence under an automatic disqualification provision under division 4.2 of the General Act, if the order is for a longer period than the minimum period of disqualification.

Clause 61A of division 4.2 of the General Act provides that an automatic disqualification provision includes sections 32, 33 and 34 of the Alcohol and Drugs Act.

Under each of these provisions, where the court convicts a driver of a relevant drink or drug driving offence, the driver is automatically disqualified from holding or obtaining a driver licence for either the default period for the relevant offence, or if the court orders a shorter period that is not less than the minimum period identified for the offence, the shorter period. The period of disqualification may therefore be the minimum period, the default period, or a period shorter than the default period that is not less than the minimum period.

In the case of section 32 of the Alcohol and Drugs Act, this means that a convicted driver is automatically disqualified from holding or obtaining a driver licence for either the default period identified in column 4 of Table 32 of section 32, or if ordered by the court, the minimum period identified in column 3 of Table 32, or some period of time in between the default period and the minimum period.

The interaction between section 208 (1) (g) of the *Magistrates Court Act 1930* and the relevant provisions of the Alcohol and Drugs Act has been judicially interpreted as meaning that only a person who is subject to a shorter period of disqualification ordered by the court (that is not less than the minimum period) can appeal the disqualification period. Under this interpretation, a person who has been convicted of a drink or drug driving offence and is automatically disqualified from holding or obtaining a driver licence for the default period, cannot appeal, because the disqualification is said to have arisen by operation of the relevant legislative provision, not by a Court order.

The purpose of the amendment is to remedy this inconsistency by providing that an automatic disqualification under the relevant provisions of the Alcohol and Drugs Act is taken to be an order of the Court for section 208 (1) (g) of the *Magistrates Court Act 1930*.

The result of the amendment to section 32 will be that a person who has been disqualified for the default period of disqualification identified in column 4 of Table 32, or for a shorter period of disqualification ordered by the Court (that is not less than the minimum period

identified in column 3) may appeal the disqualification period. A person who has been disqualified for the minimum period identified in the column 3 of Table 32 remains unable to appeal, consistent with the operation of section 208 (1) (g) of the *Magistrates Court Act 1930*.

Clause 8 **Automatic driver licence disqualification—repeat offenders, s 19**
New section 33 (4)

Clause 8 inserts a new subsection (4) in section 33 of the Alcohol and Drugs Act to provide that for the *Magistrates Court Act 1930*, section 208 (1) (g), an automatic disqualification from holding or obtaining a driver licence under that section is taken to be an order of the court to disqualify a person from holding or obtaining a driver licence.

The result of this amendment will be that a person who has been disqualified for the default period of disqualification identified in Table 33 of section 33, or for a shorter period of disqualification ordered by the Court (that is not less than the minimum period identified in Table 33) may appeal the disqualification period. A person who has been disqualified for the minimum period in Table 33 remains unable to appeal.

Clause 9 **Automatic driver licence disqualification—repeat offenders, s 19**
New section 34 (3)

Clause 9 inserts a new subsection (3) in section 34 of the Alcohol and Drugs Act to provide that for the *Magistrates Court Act 1930*, section 208 (1) (g), an automatic disqualification from holding or obtaining a driver licence under that section is taken to be an order of the court to disqualify a person from holding or obtaining a driver licence.

The result of this amendment will be that a person who has been disqualified for the default period of disqualification identified in section 34 (1) (a) or the default period in section 34 (2) (a), or for a shorter period of disqualification ordered by the Court (that is not less than the minimum period identified in section 34 (1) (b) or section 34 (2) (b) of the Alcohol and Drugs Act) may appeal the disqualification period. A person who has been disqualified for the minimum period remains unable to appeal.

Clause 10 **Automatic driver licence disqualification—immediate suspension period**
Section 35 (2)

Clause 10 amends section 35 of the Alcohol and Drugs Act which currently provides that the period for which a person is disqualified under part 4 of the Act from holding or obtaining a driver licence (including any period of minimum disqualification under section 32 or section 33) is reduced by the period that person's driver licence (for ACT licence holders) was suspended under section 61B of the General Act. The amendment made by clause 10 expands the operation of section 35 so that it also applies to reduce a period of disqualification by the period for which a person's or right to drive in the ACT (for interstate and external driver licence holders) was suspended under section 61B of the General Act.

Clause 11 New part 22

Clause 11 inserts a new Part 22 in the Alcohol and Drugs Act to make transitional arrangements to clarify that the amendments to sections 33, 34 and 35 of the Alcohol and Drugs Act, which allow a person to appeal a "default" period of licence disqualification, are prospective only, and do not allow a right to appeal in respect of matters dealt with before the amendment is passed.

Part 22 contains new sections 111, 112 and 113.

Section 111 provides that *commencement day* means the day the *Road Transport Legislation Amendment Act 2015 (No 2)* commences.

Section 112 is a transitional provision. Section 112 (1) states that section 112 applies if, before the commencement day, a person is automatically disqualified from holding or obtaining a driver licence under section 32 (Automatic driver licence disqualification—first offenders, s 19), section 33 (Automatic driver licence disqualification—repeat offenders, s 19) or section 34 (Automatic driver licence disqualification—offences other than s 19). Section 112 (2) provides that in such cases, section 32, section 33 and section 34, as in force immediately before the commencement day, continue to apply to the automatic disqualification.

Section 113 provides that Part 22 expires 2 years after the day it commences. The note to section 113 explains that transitional provisions are kept in the Act for a limited time. Under the Legislation Act, a transitional provision is repealed on its expiry but continues to have effect after its repeal.

Part 4 Road Transport (Driver Licensing) Act 1999

Clause 12 New section 19A

Clause 12 inserts a new section 19A in the Driver Licensing Act which is intended to ensure that a person who drives while their driver licence is suspended is not able to claim they are unaware of their licence status once they have been advised by police that the driver licence is suspended. This provision will assist in refuting the claims made by some drivers prosecuted for unlicenced driving that they are unaware their licence was suspended at the time they were driving.

Section 19A (1) provides that section 19A applies if the RTA serves a notice of licence suspension on a person under section 18 or 19 of the Act, and a police officer stops the person while the person is driving a motor vehicle and tells the person that the person's driver licence is suspended. Police have access to real time RTA data which enables them to advise a driver if the driver's licence has been suspended. In practice, where a police officer advises a person that their licence is suspended they will also notify the RTA that this advice has been provided to the driver so that this information can be retained on RTA records.

Section 19A (2) provides that where a police officer has advised a driver that the person's licence is suspended, the person is taken to know that the person's driver licence is suspended.

Part 5 Road Transport (General) Act 1999

Clause 13 Definitions—pt 3
Section 21A, definitions of *illegal user declaration* and *known user declaration*

Clause 13 amends the definitions of *illegal user declaration* and *known user declaration* in section 21A to provide that those declarations, which can currently only be made by statutory declaration, can also be made by online declaration.

Clause 14 Section 21A, new definition of *online declaration*

Clause 14 inserts into section 21A a definition of *online declaration. Online declaration* is defined as meaning a declaration made by a person using a website approved by the RTA.

Clause 14 also inserts a note which explains that it is an offence under Part 3.4 of the Criminal Code to make a false or misleading statement, give false or misleading information or produce a false or misleading document.

Clause 15 Section 21A, definition of sold vehicle declaration

Clause 15 amends the definition of *sold vehicle declaration* to provide that those declarations, which can currently only be made by statutory declaration, can be made by online declaration.

Clause 16 New section 44B

Clause 16 inserts a new section 44B into the General Act. Similarly to new section 19A of the Driver Licensing Act, this section is intended to ensure that a person who drives while their driver licence is suspended cannot claim they are unaware of their licence status after they have been advised of the existing suspension by police.

Section 44B (1) provides that section 44B applies if the RTA serves a notice of licence suspension on a person under section 44 or 44A of the Act, and a police officer stops the person while the person is driving a motor vehicle and tells the person that the person's driver licence is suspended.

Section 44B (2) provides that where a police officer has advised a driver that the person's licence is suspended, the person is taken to know that the person's driver licence is suspended.

This provision will assist in refuting the claims made by some drivers prosecuted for unlicenced driving that they are unaware their licence was suspended at the time they were driving.

Clause 17 New Section 57

This clause inserts a new section 57. Section 57 (1) provides that the RTA may approve a website for giving an online declaration. Section 57 (2) states that an approval is a notifiable instrument. The note to section 57 clarifies that a notifiable instrument must be notified under the Legislation Act.

Part 6 Road Transport (Offences) Regulation 2005

Clause 18 Infringement notices—service—Act, s 24 (2) Section 12 (2) (b), except note

Clause 18 amends section 12 (2) to expand the means by which an infringement notice for a road transport offence can be served on a suspected offender, to include service by electronic means. Substituted section 12 (2) of the *Road Transport (Offences) Regulation 2005* provides that where the identify of a suspected offender is known, and personal service is not reasonably practicable, an infringement notice may be served by prepaid post, or by an electronic means approved by the chief police officer or RTA, to an electronic address voluntarily given by the offender to the authorised person and recorded by the authorised person as given by the offender for service.

Clause 19 Section 12 (3) (b), except notes

Clause 19 amends section 12 (3), which relates to service of an infringement notice on the operator of a vehicle, where the offence involves the vehicle, and the identity of the offender (typically the driver) is not known, for example when a traffic offence is detected by a road safety camera or a vehicle is parked but the driver is not present. The amendment similarly expands the means of service of the infringement notice to include service by electronic means. Substituted section 12 (3) (b) provides that where the identify of a suspected offender is not known, and access to the relevant vehicle is not reasonably practicable, an infringement notice may be served on the responsible person for the vehicle by prepaid post, or by an electronic means approved by the chief police officer or RTA, to an electronic address voluntarily given by the responsible person for the vehicle to the authorised person and recorded by the authorised person as given by the responsible person for service.

Clauses 20 and 21 New section 12 (3A) and (3B) and new section 12 (5)

Clauses 20 and 21 insert new provisions to support the introduction of service by electronic means, including presumptions about when service has been effective or not effective.

New clause 20 inserts a new section 12 (3A) which states that if the sender has no reason to suspect that an infringement notice served by electronic means was not received by the recipient when sent, the notice is presumed to be served when sent unless evidence sufficient to raise doubt about the presumption is given.

New section 12 (3B) states that for subsection (3A), the sender has reason to suspect that an infringement notice served by electronic means was not received by the recipient when sent only if, on the day the notice was sent or on the next working day, the equipment the sender used to send the notice indicated by way of a signal or other message that— (a) the equipment did not send the notice when the equipment as used to send the notice; or (b) for an email—the address to which the email was sent was not an email address of the recipient; or (c) for a mobile telephone—the number to which the notice was sent was not a mobile telephone number of the recipient.

Clause 21 amends section 12 to provide definitions of *recipient* and *sender*. Recipient, for an infringement notice, means the person on whom the notice is intended to be served. Sender, for an infringement notice served, or to be served, by electronic means, means the person sending, or seeking to send, the notice.