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

**ROAD TRANSPORT (SAFETY AND TRAFFIC MANAGEMENT) AMENDMENT  
BILL 2021**

**EXPLANATORY STATEMENT  
and  
HUMAN RIGHTS COMPATIBILITY STATEMENT  
(*Human Rights Act 2004, s 37*)**

**Presented by  
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# ROAD TRANSPORT (SAFETY AND TRAFFIC MANAGEMENT) AMENDMENT BILL 2021

The Bill is a Significant Bill. Significant Bills are bills that have been assessed as likely to have significant engagement of human rights and require more detailed reasoning in relation to compatibility with the *Human Rights Act 2004*.

## OVERVIEW OF THE BILL

The purpose of the *Road Transport (Safety and Traffic Management) Amendment Bill 2021* is to amend the road transport legislation to improve road safety by introducing a framework to allow for the operation of mobile device detection cameras. The Bill also simplifies the Territory's road transport legislation to maintain the integrity of the regulatory framework for traffic offence detection devices and aims to improve road safety by allowing for the sharing of de-identified data for road safety research purposes. It also amends the definition of use for mobile device offences to remove an exemption which allows for the driver of a vehicle to pass a mobile device to a passenger.

The Bill amends the Territory's road transport legislation including the *Road Transport (Safety and Traffic Management) Act 1999*, *Road Transport (General) Act 1999*, *Road Transport (Safety and Traffic Management) Regulation 2017*, *Road Transport (Offences) Regulation 2005* and *Road Transport (Road Rules) Regulation 2017*.

The *Road Transport (Safety and Traffic Management) Act 1999* and *Road Transport (Safety and Traffic Management) Regulation 2017* establish the regulatory framework for the ACT's road safety camera program (traffic offence detection devices).

The amendments in the *Road Transport (Safety and Traffic Management) Amendment Bill 2021*:

- a) simplify the regulatory framework for traffic offence detection devices, including providing approval of traffic offence detection devices by disallowable instrument;
- b) relocate the requirements in relation to images taken by a traffic offence detection device from the *Road Transport (Safety and Traffic Management) Act 1999* to the *Road Transport (Safety and Traffic Management) Regulation 2017*;
- c) allow for the use of mobile device detection cameras to enforce illegal mobile device use while driving, improving road safety within the Territory;

- d) revise the security and privacy safeguards for traffic offence detection devices, and establish these requirements for mobile device detection cameras; and
- e) allow for de-identified data collected by traffic offence detection devices to be used for research purposes to improve road safety and transport efficiency.

The introduction of mobile device detection cameras on ACT roads aims to reduce road crashes and fatalities.

Mobile device use while driving is a significant road safety concern for the Territory, due to the increased accident risks associated with mobile device use while driving and the current high prevalence of mobile device use generally in the community.

It is an offence under the *Road Transport (Road Rules) Regulation 2017* (the Road Rules) for a driver to use a mobile device while a vehicle is moving or is stationary but not parked (exemptions apply for vehicles that are emergency or police vehicles). Park, for a driver, includes stopping and allowing the vehicle to stay (whether the engine is running).

A 'mobile device' in the Territory includes a mobile phone and any other wireless hand-held or wearable device designed or capable of being used for telecommunications (for example, a tablet, smartwatch) but does not include a CB radio or any other two-way radio.

A driver, other than a learner or provisional driver, can use their mobile device to make or receive an audio call if the body of the device is secured in a mounting affixed to the vehicle while being used or through the connection of Bluetooth.

Drivers can also use their mobile device for GPS purposes and to stream, play or listen to music or audio files if the body of the device is secured in a mounting affixed to the vehicle while being used or via connection to Bluetooth.

In July 2019, a total mobile device ban was introduced in the ACT for learner and provisional licence holders (car and motorcycle). This includes talking, hands-free and speaker mode (refer section 300AA of the Road Rules). Exceptions are provided for:

- a) listening to music and podcast type audio, provided the device is not being held by the driver and does not require interaction by any means, including by voice, while driving; and
- b) using a mobile device for GPS, provided the device is secured in a mounting affixed to the vehicle and does not require interaction by any means, including by voice, while driving.

Public education campaigns and traditional enforcement methods alone have proven to be ineffective in changing driver behaviour when it comes to mobile device use.

Territory drivers continue to use their mobile devices while driving, with 1,008 infringement notices and 190 cautions issued for mobile device use while driving in the Territory in 2020. There is a need for a new technological solution to encourage and assist in social change.

Automated, camera-based enforcement, coupled with police enforcement, has played a critical role in addressing other high-risk behaviours on the roads such as speeding and red-light running. These cameras are proven to help prevent crashes and reduce road trauma. The introduction of mobile device detection cameras is expected to have a similar positive impact as evidenced through their use in other jurisdictions, for example, New South Wales.

The ACT Government has to date successfully used road safety cameras on ACT roads for managing road safety risks associated with breaches of the road transport legislation.

The expansion of the ACT's Road Safety Camera program to include mobile device detection cameras will increase the perception and probability of drivers being caught using their mobile device while driving. This will have a significant positive impact on road safety and compliance with the Territory's road transport legislation.

The road transport infringement notice management scheme will apply to any infringement notices issued from the mobile device detection cameras in the same way that it applies to any other road transport infringement notice. A person retains their right to:

- dispute liability (for example, by contesting the evidence of the offence)
- seek waiver or withdrawal of the infringement notice
- seek an extension of time to pay the infringement notice penalty
- enter into an infringement notice management plan

Simplifying the Territory's regulatory framework for traffic detection devices will improve the efficiency and effectiveness of the road safety camera program while maintaining its integrity and enforceability. This is important to ensure the safety of all ACT road users. This approach will allow the Government to rapidly respond road safety issues through emerging developments in technology aimed at improving road safety. It also aligns with other jurisdictions.

The current offence for mobile device use allows the driver of a vehicle to pass their mobile device to a passenger. This exemption does not support the Government's aim to reduce driver distraction given this behaviour also involves a degree of driver distraction.

Enhancements to road safety camera technology, particularly in relation to the use of artificial intelligence, will allow the cameras to be used to identify current and emerging road safety issues. Analysis of de-identified data collected by the cameras will assist the Government to determine the issues road safety campaigns and enforcement resources should target.

For example, the use of the cameras in Queensland has recently identified that seat belt offences are prevalent in certain parts of that State. The Queensland Government has announced that road safety cameras will be used for the enforcement of these offences.

## **CONSULTATION ON THE PROPOSED APPROACH**

Mobile device detection cameras have been introduced in New South Wales and trialled in Queensland and Victoria. Evidence from these trials indicates the cameras are effective in reducing illegal mobile device use while driving. A number of other jurisdictions are currently considering introducing the cameras. The ACT has consulted its inter-jurisdictional colleagues in determining the framework for introduction of mobile device detection cameras in the ACT.

Input to the development of this regulatory framework was provided by the ACT Human Rights Commission, Australian Information Commissioner, ACT Policing, the Director of Public Prosecution, the Justice and Community Safety Directorate, the Chief Minister, Treasury and Economic Development Directorate (Access Canberra and the Office of the Chief Digital Officer), the National Capital Authority and the Road Safety Advisory Board.

Transport Canberra and City Services have worked with, the Justice and Community Safety Directorate and the ACT Human Rights Commission to ensure that the amendments which allow for the collection, use and disclosure of information related to the introduction of mobile device detection cameras and the sharing of de-identified data for road safety research purposes, and changes to the definition of use of a mobile device, are human rights compatible.

The Director of Public Prosecution has provided input in relation to the framework for the mobile device use offence and considerations for the evidential burden when contesting mobile device detection camera infringement notices in court.

The Road Safety Advisory Board is a non-statutory body, which provides advice and recommendations to the Minister for Transport and City Services on the funding and direction of road safety initiatives, road safety research, education, and trauma prevention.

The cameras will form part of the ACT's Road Safety Camera Program. This Program is overseen by the Road Safety Camera Program Management Group which provides governance over the program and reports to the Road Safety Advisory Board. The Group's views have informed the proposed approach to

introducing the cameras including how the cameras will be operated to ensure the road safety benefits are maximised.

## **CONSISTENCY WITH HUMAN RIGHTS**

During the development of the Bill due regard was given to its compatibility with human rights as set out in the *Human Rights Act 2004* (HRA). Privacy has been at the forefront of the design of the regulatory framework and the roll-out of mobile device detection cameras.

An assessment of the Bill against section 28 of the HRA is provided below. Section 28 provides that human rights are subject only to reasonable limits set by laws that can be demonstrably justified in a free and democratic society.

### **Rights engaged**

The Bill engages and limits the right to privacy (section 12 of the HRA) and the right to the presumption of innocence (rights in criminal proceedings, section 22 (1) of the HRA).

#### ***Right to privacy – introduction of mobile device detection cameras***

The Bill proposes to amend several provisions within the *Road Transport (Safety and Management) Act* and the *Road Transport (Safety and Traffic Management) Management Regulation 2017* to allow for the use of mobile device detection cameras, referred to as ‘a mobile device detection system’ within the Bill, to enforce illegal mobile device use while driving within the Territory.

The right to privacy is engaged and limited by these provisions as these amendments deal with the collection, use, storage and disclosure of personal information by mobile device detection cameras as part of the ACT’s road safety camera program. This is because the mobile device detection cameras will detect the driver of a vehicle using a mobile device while driving and at this time collect images of the vehicle and images of the driver of the vehicle for the purposes of facilitating the enforcement of the ACT’s road transport legislation and protecting the community.

This data is personal information because the information collected can identify the driver and contains the vehicle’s details such as numberplate or model and may contain details of a person’s travel such as direction, location and time.

Section 12 (a) provides that an individual has the right ‘not to have his or her privacy, family, home or correspondence interfered with unlawfully or arbitrarily’. 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’.

## **1. Nature of the right and the limitation (s28(a) and (c))**

Section 12 (a) of the HRA provides that everyone has the right to not have their privacy interfered with unlawfully or arbitrarily.

The right to privacy under section 12 of the HRA protects people in the ACT from 'unlawful' interference with their privacy. This means that no interference can take place except in cases authorised by law. The amendments to the ACT's road transport legislation in this Bill provide the legal authority for the collection of personal information by mobile device detection cameras, and the use, storage and disclosure of this information, for the purposes of enforcing the Territory's road transport legislation and benefit the community by encouraging changes in behaviour.

The right to privacy extends to arbitrary interference relating to an individual, an individual's family, home or correspondence, even when authorised by law. Such interference should be in accordance with the provisions, aims and objectives of the HRA and be reasonable in the particular circumstances. Arbitrary interference in someone's private or family life is interference that may be lawful, but is unreasonable, unnecessary and the degree of interference is not proportionate to the need.

The protection of privacy is necessarily relative, and personal information should only be collected where it is in the interests of the community. The right to privacy is therefore not absolute and may be reasonably limited by laws which can be demonstrably justified in a free and democratic society.

The mobile detection device provisions in the Bill do not authorise arbitrary interferences with privacy. The purposes for which personal information is collected, used and stored is closely and directly connected to the enforcement of illegal mobile device use under road transport legislation with the aim of improving road safety within the Territory. It is also specifically limited to the identification and location of persons who were in possession or control of vehicles involved in illegal mobile phone use whilst driving, an offence under the ACT's road transport legislation.

The proposed amendments are considered to be reasonable, necessary and proportionate given the safeguards included in the framework for the operation of traffic offence detection devices as discussed in more detail below.

## **2. Legitimate purpose (s28(b))**

Provision for the collection, use, storage and disclosure of personal information by mobile device detection cameras is necessary for the enforcement of illegal mobile device use while driving, an offence under the ACT's road transport legislation. These amendments support the legitimate purpose of these

provisions by increasing the enforcement of this road transport offence, improving road safety within the Territory.

The ACT's road safety camera program benefits the community by encouraging changes in behaviour that protect and support the safety of all road users and ensure compliance with the ACT's road transport legislation.

Driver distraction is a serious road safety issue. Any activity that distracts a driver can result in higher speeds, lane deviations and a delay in reaction time. There is a significantly increased accident risk associated with mobile device use while driving.

Drivers who look at their mobile phones while driving are three times more likely to be involved in a crash than non-users (Dingus et al., 2016). Dialling as well as locating and answering a hand-held phone, increases the chances of having a crash by four times (Simmons, Hicks and Caird, 2016). Further, texting, browsing and emailing on a mobile phone while driving increases crash risk by ten times (Simmons, Hicks and Caird, 2016).

In a 2018 Commonwealth Government survey, 64 per cent of respondents reported using their mobile phone while driving, including 40 per cent who made calls while driving, with drivers on balance more likely to use their mobile phone hands-free than hand-held when making calls and 21 per cent who used their mobile phone for other activities such as browsing the internet and taking photos (Department of Infrastructure, Regional Development and Cities, 2018).

A study in Victoria estimated fatality and serious injury costs to the community for in-vehicle technology distraction over a five-year period at about \$1.2 billion (Fitzharris, Young and Bowman, 2012). According to that same study, a 25 per cent reduction over that period would translate to saving 12 lives, avoiding serious injury for 239 people and savings of \$321 million to the community. In Australia, distraction has been found to be a factor in 16 per cent of crashes where a vehicle occupant was hospitalised for at least 24 hours (Beanland et al, 2013).

### **3. *Rational connection between the limitation and the purpose (s28(d))***

There is a clear connection between the limitation and the legitimate purpose as allowing personal information to be collected, used, stored and disclosed including vehicle location details at the time of the traffic infringement and images of a person driving their vehicle while illegally using a mobile device, directly facilitates the enforcement of the ACT's road transport legislation and protects the community.

As detailed above, mobile device detection cameras are being introduced in order to change driver behaviour by encourage drivers to stop using their



mobile devices while driving through increased enforcement of existing road transport offences.

NSW has seen a significant reduction in the illegal use of mobile phones since the pilot of the cameras was first conducted in NSW in late 2018. Data from the use of the cameras in NSW indicates they are effective in reducing illegal mobile device use while driving. During the pilot of the cameras, the NSW Government captured people illegally using their mobile devices 1.22% of the time. This decreased to 0.34% during the initial implementation of the cameras, when warning letters only were issued, and further to 0.24% when enforcement of offences commenced.

Victoria has also established significant prevalence of illegal use of mobile phones during the trial of the cameras. The trial was conducted over a three-month period, assessing a total of 679,438 vehicles. Throughout the trial one in 42 drivers was detected illegally using a mobile phone behind the wheel and putting lives at risk. This equates to people being captured illegally using their mobile devices 2.3% of the time.

#### **4. Proportionality (s28 (e))**

It is considered that there are not any less restrictive means reasonably available to significantly reduce mobile device use while driving.

Mobile device use while driving is recognised as one of the greatest challenges currently facing road safety, due to the increased accident/incident risks associated with mobile device use while driving and the current high prevalence of mobile device use generally in the community.

Increasing the likelihood of being issued with an infringement notice for an offence through the use of mobile device detection cameras will result in a community wide change of behaviour. Introducing permanent cameras on ACT roads will provide ACT Policing with greater capacity to enforce offences under the road transport legislation in areas where the cameras are not located thus increasing enforcement and compliance with the ACT's road transport laws.

Two major alternate options have been considered to encourage the required change in behaviour:

- increasing penalties for illegal mobile device use; or
- increasing motorcycle police officers.

Both of these approaches are considered likely to be much less effective than the proposed approach and may not achieve the stated aim. There is a risk that increasing penalties significantly may disproportionately impact disadvantaged and younger drivers.

On 1 February 2020, Queensland increased the penalties for mobile phone use while driving from \$400 and three demerit points to \$1,000 and four demerit points. This penalty increases where a person is detected multiple times in a year. A second mobile phone offence in 12 months incurs an additional \$1,000 fine and a further eight demerit points. Despite the significant increase in penalties attached to this behaviour, Queensland have not seen a sufficient reduction in mobile phone use and have announced they will introduce mobile phone detection cameras during 2021, after a successful trial of the technology.

A number of safeguards have been incorporated into the regulatory framework to ensure that the limitations to a person's right to privacy imposed by the collection, use, storage and disclosure of personal information arising from the amendments allowing the use of mobile device detection cameras in the Territory is limited to the minimal requirements needed to enforce road transport offences for illegal mobile device use while driving. The amendments provided in this Bill ensure that there are adequate and effective safeguards that protect against arbitrary interferences with the right to privacy. These amendments have been drafted in a way that:

- identifies (as far as possible) the specific kinds of personal information that may be collected, used, stored and disclosed;
- establishes the scope of the proposed permitted collections, uses, storage and disclosures of personal information;
- clearly articulates the purpose(s) for which personal information may be collected, used, stored and disclosed.

The Bill includes the following privacy safeguards:

- images taken by a traffic offence detection device that do not show a contravention of a provision of the road transport legislation must be deleted as soon as possible;
- images and data associated with an image taken by a traffic offence detection device must be encrypted;
- images taken of a driver must only show as much of the driver as is necessary to show the driver contravening a provision of the road transport legislation;
- images of a driver are only to be captured by traffic offence detection devices that are designed to capture this information for the purpose of enforcing a provision of the road transport legislation.

These safeguards ensure the storage of personal information captured by mobile device detection devices relate to the minimum requirements for the enforcement of related road transport offences.

The purposes for which the personal information of the driver is collected, used and stored is closely and directly connected to the enforcement of illegal mobile phone use under road transport legislation with the aim of improving road safety within the Territory. It is also specifically limited to the identification and location of persons who were in possession or control of vehicles involved in illegal mobile phone use whilst driving, an offence under the ACT's road transport legislation.

The information collected as result of the amendments in the Bill is consistent with information collected in other jurisdictions and will be handled and stored in accordance with Territory Privacy Principles as provided in the *Information Privacy Act 2014*. The Bill requires that data collected by traffic offence detection devices is protected by security safeguards that are reasonable in the circumstances to prevent loss, unauthorised access, use, modification or disclosure and any other type of misuse. Also, the image any data or information related to that image or the making of that image, must be encrypted.

Information may only be disclosed in limited circumstances that relate to improving road safety. This includes supporting law enforcement, improving community education and for specific road safety related research purposes.

### ***Right to privacy - road safety camera framework restructure***

The right to privacy is engaged as provisions in the Bill relocate the requirements relating to images taken by a traffic offence detection device from the Act to the Regulation.

By moving these provisions to subordinate legislation, the right to privacy is engaged and limited because Regulation may be more easily amended.

Section 12 (a) provides that an individual has the right 'not to have his or her privacy, family, home or correspondence interfered with unlawfully or arbitrarily'. 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'.

#### ***1. Nature of the right and the limitation (s28(a) and (c))***

The Bill relocates the provisions in relation to the collection of data by traffic offence detection devices from the *Road Transport (Safety and Traffic Management) Act 1999* to the *Road Transport (Safety and Traffic Management) Regulation 2017*. These provisions were previously contained in sections 22A of, the *Road Transport (Safety and Traffic Management) Act 1999*. This data is personal information because the information collected can identify the driver

and may contain the vehicles details such as numberplate or model and may contain details of a person's travel such as direction, location and time.

The provisions relating to the collection of data are privacy safeguards as they prescribe what personal information can be collected. They prescribe the minimum requirements for the data collection to enforce a contravention of the road transport legislation, limiting the interference with a person's right to privacy in order to achieve the objective of enforcing the road transport legislation so as to improve road safety within the Territory.

By moving these provisions to the Regulation, the right to privacy is engaged because Regulation may be more easily amended. This could potentially provide less protection against any future changes that may broaden the scope of what personal information can be collected by traffic offence detection devices cameras, potentially interfering more with a person's privacy than the safeguards currently outlined in the Act and limiting the effectiveness of these privacy safeguards.

Oversight and transparency of the amendments will be retained as subordinate legislation is still subject to scrutiny by the Legislative Assembly and relevant committees and an explanatory statement considering human rights compatibility will be drafted for any future amendments to the Regulation or disallowable instruments. Further, any future amendments to the Regulation will also be subject to section 37 of the HRA, which requires the Attorney-General to examine the amendments and issue a compatibility statement to the Legislative Assembly on why the amendments are compatible or not compatible with the HRA.

As discussed above, a number of safeguards have been incorporated into the regulatory framework to ensure that the limitations to a person's right to privacy imposed by the collection, use, storage and disclosure of personal information arising from the amendments allowing the use of mobile detection cameras in the Territory is limited to the minimal requirements needed to enforce the road transport offences for illegal mobile device use while driving. The amendments provided in this Bill ensure that there are adequate and effective safeguards that protect against arbitrary interferences with the right to privacy.

## **2. *Legitimate purpose (s28(b))***

Relocating these provisions from the Act simplifies the Territory's road transport legislation to improve the efficiency of the regulatory framework for traffic offence detection devices while maintaining its integrity and enforceability. This is important to ensure the safety of all ACT road users. The simplified approach will allow the Government to more readily respond to and improve road safety as new issues emerge and new technology becomes available to address these

issues. Where this occurs, subordinate legislation can be more readily amended by the ACT executive.

### **3. *Rational connection between the limitation and the purpose (s28(d))***

There is a clear connection between the limitation and the legitimate purpose as restructuring the Territory's road transport legislation through the relocation of requirements in relation to the collection of personal information by traffic offence detection devices from the *Road Transport (Safety and Traffic Management) Act 1999* to the *Road Transport (Safety and Traffic Management) Regulation 2017* simplifies the legislation and allows the Government to more readily respond to and improve road safety as new issues and new technological solutions emerge.

### **4. *Proportionality (s28 (e))***

The Bill seeks to restructure the Territory's road transport legislation through the least restrictive means possible, to achieve the policy intent of simplifying the legislation to allow the Government to more readily respond to and improve road safety.

To ensure the changes are proportionate, the Bill retains the requirements in relation to use, retention and disclosure of personal information collected by traffic offence detection devices cameras in the Act.

Whilst the Bill moves the collection provisions from the Act to the Regulation, these amendments reflect the privacy and security safeguards in relation to the collection of personal information that are currently contained in the Act. It is not the intention of the Bill to reduce the existing privacy and security safeguards that protect personal information collected by traffic offence detection devices.

The relocation of these provisions to the regulation will allow the government to quickly respond should additional safeguards for the protection of personal information be considered necessary in the future.

Whilst these provisions have been moved to subordinate legislation, changes to the *Road Transport (Safety and Traffic Management) Regulation 2017* are still subject to the Legislative Assembly scrutiny process and can be disallowed by the Legislative Assembly. An explanatory statement giving consideration to the human rights implications must accompany any changes to regulations. The Attorney-General is still required to examine the amendments and issue a compatibility statement to the Legislative Assembly on why the amendments are compatible or not compatible with the HRA in accordance with section 37 of the HRA. Consequently, the movement of these provisions to the regulations is proportionate as any changes will still be subjected to transparency, oversight and scrutiny.

## ***Amendment to mobile device use offence***

Mobile device detection cameras will be used to detect an existing strict liability offence. Strict liability offences engage section 22 (1) of the HRA. A strict liability offence means that there are no fault elements for the physical elements of the offence to which strict liability applies, which essentially means that the conduct alone is sufficient to make the defendant culpable. There is a specific defence of mistake of fact for strict liability offences (section 23 of the *Criminal Code 2002*).

Strict liability offences typically arise in a regulatory context where for reasons such as public safety and ensuring that regulatory schemes are complied with, criminal penalties are required. Where a defendant can reasonably be expected, because of their involvement with the regulated activity, to know what the requirements of the law are, the mental, or fault, element can justifiably be excluded.

The current mobile device use offences in sections 300 and 300AA of the *Road Transport (Road Rules) Regulation 2017* (the Road Rules) are considered strict liability offences. These are existing provisions that were implemented prior to this Bill. This Bill amends the mobile device use offences in sections 300 and 300AA of the Road Rules to remove the current exemption, which allows the driver to hand a passenger their phone while driving. This amendment is considered to be consistent with the ACT Government's commitment to addressing driver distraction and national reforms on driver distraction which are designed to encourage people to place their devices elsewhere in the car when driving.

### ***1. Nature of the right and the limitation (s28(a) and (c))***

Section 22 (1) of the HRA provides that everyone charged with a criminal offence has the right to be presumed innocent until proven guilty according to law. The Bill engages and limits this right as it amends two strict liability offences by amending the definition of 'use' of a mobile device in sections 300 and 300AA of the Road Rules to remove the current exemption, which allows the driver to hand a passenger their phone while driving. By amending the strict liability offences, the right to presumption of innocence is engaged and limited as the Bill continues to impose guilt without the need to prove the person's fault, however now without any exemptions to the strict liability offence.

### ***2. Legitimate purpose (s28(b))***

The intention of the strict liability offence without an exemption is to encourage ACT road users to display safe and responsible driving skills when sharing the road with others and develop a community that shares responsibility for road safety.

The purpose of this Bill is to improve public safety by encouraging people to not use their mobile devices under any circumstance while driving to reduce road crashes and fatalities. Road safety affects the whole of the ACT community. Australia adopts a safe system approach to road safety which requires

responsible road user behaviour. The safe system approach relies on safe people and safe behaviours ('safe road use'). The road safety camera program plays an important role in establishing safe road use.

A public awareness campaign is being run, on the mobile device use offences in the ACT, the risks to the community associated with mobile device use while driving and the use of cameras in the ACT to detect these offences, to encourage changes in behaviour and protect the community.

### **3. *Rational connection between the limitation and the purpose (s28(d))***

A strict liability offence should have a clear yes / no criteria as to whether the offence has occurred, and the person should reasonably know they have an obligation under law.

It is considered appropriate for these offences be ones of strict liability without any exemption to discourage certain behaviours while driving, specifically the illegal use of a mobile device, to ensure public safety and changes in behaviour. All road users are provided with adequate education about their obligations and the requirements when driving on roads and road related areas. The introduction of the cameras will be supported by a significant communications campaign.

For a person to commit an offence under the Regulation they would be required to be actively involved in the behaviour resulting in the offence.

### **4. *Proportionality (s28 (e))***

It is not considered that there are any less restrictive means reasonably available to achieve the purpose of addressing the significant road safety risk that arises from people using their mobile devices while driving under any circumstance.

The requirements to which the offences apply are not burdensome in nature and relate to ensuring the safe operation of vehicles to protect ACT road users, including vulnerable road users. It also benefits the community by encouraging changes in behaviour of not using a mobile device under any circumstances whilst driving a vehicle, ensuring the safety of the community. All Australian jurisdictions have implemented an infringement notice scheme for road transport offences, including illegal mobile device use while driving.

The inclusion of strict liability offences without any exemption supports an effective infringement notice scheme. Effective infringement notice schemes minimise the cost of litigation for the Territory while offering people a choice concerning whether to accept a lesser penalty without admitting the offence or remaining liable to prosecution.

The potential risks of ineffective regulation of the operation of vehicles include an environment where public safety measures are not in place.

The offences address matters which the community either regards as generally unacceptable behaviour or are a risk to health and safety, property or revenue.

The penalties for these offences are within the normal range for strict liability offences and are in accordance with the *Guide to Framing Offences*, lending to the proportionality of this provision.

### ***Mobile device use offence – evidential burden***

Clause 10 of the Bill includes provisions that create an evidentiary reverse onus of proof for camera detected mobile device use offences.

The starting point for the formulation of offences is that the prosecution has the evidentiary burden of proving the elements of the offence beyond reasonable doubt. The prosecution also has the task of negating any defences, exceptions or excuses raised by a defendant beyond reasonable doubt. Placing an evidentiary onus of proof on a defendant, instead of the prosecution, is known as an evidentiary reverse onus of proof.

The Road Rules provide that a mobile device may be used when a vehicle is in park. New section 25 (5) (da) will provide that (in the absence of proof to the contrary) that an image or video produced by a mobile device detection camera can be taken to be evidence that a vehicle depicted in the image or video was moving, or stationary, but not parked. The status of the vehicle being driven (including being stationary at a set of lights or intersection) for the purposes of mobile device detection cameras is a factual element of the offence.

Current enforcement of mobile device use offences relies on the observations and evidence collected by a police officer. However, enforcement of camera detected offences will rely on images or videos captured by the mobile device detection camera. The provisions in new section 25 (5) (da) will enable those images or videos to be used as evidence in court proceedings.

Introducing an evidentiary reverse onus of proof will engage section 22 (1) of the HRA.

#### ***1. Nature of the right and the limitation (s28(a) and (c))***

Section 22 (1) of the HRA provides that everyone charged with a criminal offence has the right to be presumed innocent until proven guilty according to law. The presumption of innocence means that the prosecution has the burden of proving 'beyond reasonable doubt' that the accused committed the offence. A reverse evidential burden would engage and limit the presumption of innocence, as it requires a defendant to disprove a fact or provide evidence sufficient to raise a reasonable possibility that a matter exists or does not exist.

The Bill engages and limits the right to the presumption of innocence as it introduces an evidentiary reverse onus of proof by providing that an image or



video produced by a mobile device detection camera, can be taken to be evidence that a vehicle depicted in the image or video was moving, or stationary, but not parked, for the purpose of an infringement notice issued for the mobile device use offence. This engages and limits the right to the presumption of innocence, as the provision requires a defendant to disprove the fact or provide evidence sufficient to raise a reasonable possibility that the vehicle, at the time of the alleged offence, was parked.

There will be significant safeguards built into the mobile device detection camera process prior to the issue of an infringement notice and the defendant's evidentiary reverse onus of proof requirement to disprove the fact or provide evidence sufficient to raise a reasonable possibility that their vehicle was parked, for the purpose of the alleged offence. Artificial intelligence camera technology will be used to identify images that do not likely contain mobile device use while driving. Highly trained and authorised individuals will then have responsibility for reviewing the images to adjudicate those which capture mobile device use. Only after these processes, will an infringement notice be issued and the evidentiary reverse burden of proof be applicable.

Despite the amendment in clause 12 of the Bill, the burden of proof remains on the prosecution to prove the other elements of the offence. It is only in relation to whether the car is parked that the evidentiary burden of proof is on the accused.

## **2. *Legitimate purpose (s28(b))***

The intention in introducing a reverse onus of proof is to ensure that an image or video produced by a mobile device detection camera system can be taken to be evidence that a vehicle depicted in the image or video was moving, or stationary, but not parked. The evidence of whether or not a vehicle was parked is a matter that is uniquely within the knowledge of the defendant as the driver of the vehicle at the time of the alleged offence. It would be unreasonable for the prosecution to establish this element.

Further, it is critical that prosecutions can proceed on this evidence to maintain public confidence in the mobile device detection camera system and enable infringements to be issued.

## **3. *Rational connection between the limitation and the purpose (s28(d))***

There is a clear connection between the limitation and the legitimate purpose. Allowing images or videos taken by the mobile device detection camera system to be used to enforce mobile device use offences will support the integrity of the infringement notice scheme and court processes.

As outlined above, the knowledge and the evidence of whether or not a vehicle was parked is a matter that is uniquely within the knowledge of the defendant and it would be unreasonable for the prosecution to establish this element.

#### **4. Proportionality (s28 (e))**

Under the HRA, the presumption of innocence may be subject to reasonable and justifiable limitations in accordance with section 28 of the HRA. This means that limitations imposed by reverse burdens can be justified under the HRA where they are reasonable, necessary and proportionate in pursuit of a legitimate objective.

It is not considered that there are any less restrictive means reasonably available to achieve the purpose of addressing the significant road safety risk that arises from people using their mobile devices while driving and encouraging changes in behaviour. The Queensland Government has established a similar reverse onus of proof provision in their road transport legislation.

Despite the amendment in clause 12 of the Bill, the burden of proof remains on the prosecution to prove the other elements of the offence. It is only in relation to whether the car is parked that the evidentiary burden of proof is on the accused. This is because whether or not a vehicle was parked is a matter that is uniquely within the knowledge of the defendant and would be unreasonable for the prosecution to establish.

The status of a vehicle being moving or stationary for the purposes of mobile device detection cameras is a factual element of the offence. It would be unreasonable for the prosecution to be required to establish this element from an image. Given the purpose of these cameras and thus the locations where they will operate, it is unlikely to capture vehicles that are parked and as such, should this be the situation the facts of that are uniquely within the knowledge of the defendant and they are therefore best placed to provide this evidence.

It is important to note that the Bill does not remove a person's right to contest the evidence of the offence captured by a mobile device detection camera. As is the current administrative practice for camera detected offences, a person may write to Access Canberra to raise any issues they believe support the withdrawal of an infringement notice or dispute the infringement notice in court.

None of the amendments in the Bill curtail the right of a person to dispute an infringement notice in court. If a matter proceeds to court, the person may provide evidence contesting the infringement notice and the evidence provided. It will then be a matter for the court to determine whether an offence has been committed.

#### **Climate Change Implications**

There are no climate change implications from the Bill.

## Road Transport (Safety and Traffic Management) Amendment Bill 2021

### *Human Rights Act 2004 - Compatibility Statement*

In accordance with section 37 of the *Human Rights Act 2004* I have examined the **Road Transport (Safety and Traffic Management) Amendment Bill 2021**. In my opinion, having regard to the Bill and the outline of the policy considerations and justification of any limitations on rights outlined in this explanatory statement, the Bill as presented to the Legislative Assembly is consistent with the *Human Rights Act 2004*.

.....

Shane Rattenbury MLA  
Attorney-General

## CLAUSE NOTES

### PART 1 PRELIMINARY

#### Clause 1 Name of Act

This clause states that the name of the Act is the *Road Transport (Safety and Traffic Management) Amendment Act 2021*.

#### Clause 2 Commencement

This clause sets out that the Act will commence six weeks after notification. This will provide sufficient time for operational practices to be implemented and instruments to be issued.

#### Clause 3 Legislation amended

This clause sets out the legislation that is amended by this Act, being the *Road Transport (Safety and Traffic Management) Act 1999* and *Road Transport (Safety and Traffic Management) Regulation 2017*.

Amendments to other road transport legislation are contained in Schedule 1 and include amendments to the *Road Transport (General) Act 1999*, *Road Transport (Offences) Regulation 2005* and *Road Transport (Road Rules) Regulation 2017*.

### PART 2 ROAD TRANSPORT (SAFETY AND TRAFFIC MANAGEMENT) ACT 1999

This part of the Bill amends Part 6 of the *Road Transport (Safety and Traffic Management) Act 1999* which establishes the regulatory framework for the ACT's road safety camera program. It also makes consequential amendments to the Dictionary.

#### Clause 4 Sections 22AA and 22A

This clause substitutes existing sections 22AA and 22A with a new section 22A.

Existing section 22A is covered by new section 16 in the *Road Transport (Safety and Traffic Management) Regulation 2017*.

New section 22A provides definitions of terms that are used in Part 6 of the *Road Transport (Safety and Traffic Management) Act 1999*, including *average speed detection system*, *average speed limit*, *detection point*, *minimum travel time*, *mobile device*, *mobile device detection system*, *shortest practicable distance*, *shortest practicable route*, *speeding offence* and *speed measuring device*.

#### Clause 5 Section 23, 23A to 23C and 24

This clause repeals and replaces existing sections 23, 23A to 23C and 24 of the *Road Transport (Safety and Traffic Management) Act 1999* and renumbers them.

This clause omits section 23 of the *Road Transport (Safety and Traffic Management) Act 1999*. This section has been relocated to new section 13 of the *Road Transport (Safety and Traffic Management) Regulation 2017*, which now provides approval requirements for traffic offence detection devices.

This clause omits section 23A of the *Road Transport (Safety and Traffic Management) Act 1999*. This section has been relocated to new section 13 of the *Road Transport (Safety and Traffic Management) Regulation 2017*, which now provides approval requirements for traffic offence detection devices.

This clause omits section 23B of the *Road Transport (Safety and Traffic Management) Act 1999*. This section has been incorporated into new section 22A of the *Road Transport (Safety and Traffic Management) Act 1999*, which provides the definitions for the purposes of Part 6 of the Act.

This clause omits section 23C of the *Road Transport (Safety and Traffic Management) Act 1999*. This section has been incorporated into new section 20 of the *Road Transport (Safety and Traffic Management) Regulation 2017*.

This clause introduces as a heading, Division 6.3 Traffic offence detection devices-other matters.

### **Meaning of *traffic offence detection device***

#### **New section 23**

New section 23 defines the meaning of a *traffic offence detection device* which is a device or system:

- (a) designed to detect or take images of a vehicle being driven in contravention of a provision of the road transport legislation and/or the driver of the vehicle;  
and
- (b) approved in accordance with the *Road Transport (Safety and Traffic Management) Regulation 2017*.

A *traffic offence detection device* does not include a device or system designed only to detect or take images of a vehicle parked in contravention of a provision of the road transport legislation.

A device must be approved under section 13 to constitute a traffic offence detection device.

### **Regulations for approval etc of device of system**

#### **New section 24**

New section 24 replaces existing section 24 and provides a new regulation making power in relation to the approval of traffic offence detection devices. A regulation may set requirements in relation to:

- a) approval of a device or system to take or take images of a vehicle being driven in contravention of a provision of the road transport legislation and/or the driver of the vehicle;
- b) requirements for an image taken by a traffic offence detection device;
- c) requirements for testing, sealing, certification, maintenance or operation of a traffic offence detection device;
- d) the approval of people to test, seal, certify, maintain or operate a traffic offence detection device;
- e) the use, disclosure and retention of data collected by traffic offence detection devices; and
- f) requirements in relation to signage for a traffic offence detection device.

**Clause 6 Other forms of proof of speeding offences not excluded by s 24A  
Section 24B (2), example**

This clause is a technical amendment as a result of new terminology that has been introduced in the Act. An *approved speed measuring device* is now defined as a *speed measuring device* under new section 22C (1) of the *Road Transport (Safety and Traffic Management) Act 1999*.

**Clause 7 Use of camera detection devices and average speed detection systems  
Section 24C**

This clause omits section 24C of the *Road Transport (Safety and Traffic Management) Act 1999* which is replaced by new section 15 of the *Road Transport (Safety and Traffic Management) Regulation 2017*.

**Clause 8 Evidentiary certificates etc  
Section 25 (2) (b) and (c)**

This clause is a technical amendment as a result of new terminology that has been introduced in the Act and the relocation of some provisions in the *Road Transport (Safety and Traffic Management) Act 1999*.

**Clause 9 Section 25 (3) and (4) and note**

This clause substitutes existing sections 25 (3) and (4) as a result of the introduction of a number of new definitions and the relocation of some provisions in the *Road Transport (Safety and Traffic Management) Act 1999*.

New section 25 (3) provides the matters that may be included in an evidentiary certificate. The new section has largely the same effect as the previous provisions in

the *Road Transport (Safety and Traffic Management) Act 1999*, with minor technical amendments consequential on the new definition of *traffic offence detection device* and the relocation of some provisions in the *Road Transport (Safety and Traffic Management) Act 1999*.

New section 25 (4) replicates existing section 25 (4) with minor technical amendments consequential on the new definition of *traffic offence detection device*.

#### **Clause 10 Section 25 (5) (da)**

This clause inserts new sections 25 (5) (da) which provides that where the evidence indicates the use of a mobile device by a driver, the image is taken to be evidence that the vehicle was moving, or stationary, but not parked when the image was taken.

The Road Rules provide that a mobile device may be used when a vehicle is in park. This amendment will shift the evidential burden to the defendant, should the defendant wish to prove in court that a vehicle was not moving, or stationary but in park when the image was captured (for example, where a vehicle has broken down in a traffic lane). This is considered reasonable in this instance as the defendant is in the best position to provide this evidence.

#### **Clause 11 Section 25 (6)**

This clause omits section 25 (6) of the *Road Transport (Safety and Traffic Management) Act 1999*, which is a duplication of the requirements within new section 25 (3).

#### **Clause 12 New section 25 (11)**

This clause introduces new section 25 (11) which clarifies that an image taken by a traffic offence detection device, includes both a static image (for example a photo) and a video.

#### **Clause 13 Sections 29 to 29C**

This clause substitutes sections 29, 29A, 29B and 29C to insert the new requirements in relation to the use, retention and disclosure of data by the road transport authority and other people.

#### **Use, retention and disclosure of data by road transport authority and other people New section 29**

New section 29 (1) provides the reasons the road transport authority may use or disclose data collected in relation to a traffic offence detection device.

This includes where this is necessary in order to issue a warning in connection with the enforcement of the road transport legislation. The amendment is necessary to

allow for the issuing of warning letters for mobile device offences during the first three months of operation of the cameras. This will only apply to infringement notices issued by the cameras and will not apply to those issued by ACT police officers. This warning letter period will be used to educate the community on driver distraction and the operation of the cameras before enforcement commences.

New section 29 (1) (d) provides for the use by the road transport authority of de-identified data collected in relation to a traffic offence detection device for research relating to improving road safety and transport efficiency.

There is potential for traffic offence detection cameras to be used effectively to gather data on emerging road safety issues. For example, cameras could be used to gather data on the prevalence of drivers not wearing seat belts or driving unregistered vehicles. This data could then inform decisions on whether an issue warrants an education and community awareness campaign or the expansion of the road safety camera program to cover those offences.

New section 29 (2) provides that a person to whom data collected by a traffic offence detection device is disclosed may only use, retain, and disclose the data for certain purposes and replicates existing section 29B.

New section 29 (3) provides that a person mentioned in new section 14A (2) includes a contractor engaged to operate a traffic offence detection device, who is authorised to use, retention and disclosure of data by the road transport authority.

New section 29 (4) provides that the road transport authority, and any person that has data collected by a traffic offence detection device disclosed to them, must ensure the data is protected by security safeguards that are reasonable in the circumstances to prevent loss; unauthorised access, use, modification or disclosure; and other misuse. This section replicates existing section 29C.

New section 29 (5) clarifies that:

- 'data' includes an image or a series of images.
- 'law of the Territory', in relation to data collected by a traffic offence detection device, means a law that expressly requires or authorises the use of the information.

'Law of the Territory' is no longer defined as a law made after the commencement of this section as this is an unnecessary inclusion in the definition. This was previously included in section 29 of the *Road Transport (Safety and Traffic Management) Act 1999*.

#### **Clause 14 Dictionary, definitions**

This clause is a technical amendment consequential on the changes at clause 5 and clause 6. It omits the dictionary definitions of *approved average speed detection*



system, approved camera detection device and approved speed measuring device. These definitions are now captured under the single term *traffic offence detection device*.

**Clause 15 Dictionary, definitions of *average speed detection system* and *average speed limit***

This clause substitutes the existing definitions of *average speed detection system* and *average speed limit* consequential on the changes at clause 5.

**Clause 16 Dictionary, definition of *camera detection device***

This clause is a technical amendment consequential on the changes at clause 6.

**Clause 17 Dictionary, definitions of *detection point* and *indicated on***

This clause substitutes the existing definitions of *detection point* and *indicated on* consequential on the changes at clause 5 and clause 11.

**Clause 18 Dictionary, new definitions**

This clause inserts definitions of *minimum travel time*, *mobile device* and *mobile device detection system* consequential on the changes at clause 5.

**Clause 19 Dictionary, definition of *relevant information***

This clause is a technical amendment consequential on the changes at clause 6.

**Clause 20 Dictionary, definition of *shortest practicable route* etc**

This clause is a technical amendment consequential on the changes at clause 5 and clause 6.

**PART 3 ROAD TRANSPORT (SAFETY AND TRAFFIC MANAGEMENT) REGULATION 2017**

This part of the Bill amends Part 5 of the *Road Transport (Safety and Traffic Management) Regulation 2017* which establishes the regulatory framework for the ACT's road safety camera program. It also makes consequential amendments to the Dictionary.

The authority to make this regulation is contained in new section 24 (Regulation for approval etc of device or system) of the *Road Transport (Safety and Traffic Management) Act 1999* and section 33 (General regulation making power) of the *Road Transport (Safety and Traffic Management) Act 1999*.

**Clause 21 Part 5**

This clause substitutes Part 5 of the Regulation.

Previously, Part 5 of the *Road Transport (Safety and Traffic Management) Regulation 2017* was made under section 24 of the *Safety and Traffic Management Act* and approved specific devices, set out the maintenance and testing requirements and approved people to undertake testing and maintenance of the devices.

The Safety and Traffic Management Act has been amended to set out the high-level framework for the use of traffic offence detection devices. The specific requirements in relation to the approval, operation and use of the devices is now contained within the *Road Transport (Safety and Traffic Management) Regulation 2017* or disallowable instruments made under new section 13 which sets out the approval and control requirements for traffic offence detection devices. This will provide greater flexibility when approving devices and setting the minimum standards for their operation.

Part 5 is now titled Traffic offence detection devices.

### **Average speed detections systems —Act, s 22A New section 12**

New section 12 relocates current section 15 of the *Road Transport (Safety and Traffic Management) Regulation 2017* and is a signpost definition for Schedule 1 – Average speed detection systems. The new section has the same effect as the previous provisions in the *Road Transport (Safety and Traffic Management) Regulation 2017*, other than minor referencing changes.

### **Approval of traffic offence detection devices —Act, s 24 New section 13**

New section 13 provides the new framework for the approval of traffic offence detection devices.

New section 13 (1) provides that the road transport authority may approve a traffic offence detection device. The approval will state the kind of device, including whether the device is an average speed detection system, a mobile device detection system, a speed measuring device, or another kind of device or system that detects or takes images of a vehicle or the driver of a vehicle being driven in contravention of the road transport legislation.

New section 13 (2) provides that the approval of a traffic offence detection device is a disallowable instrument.

New section 13 (3) provides that the road transport authority must not approve a traffic offence detection device unless satisfied on reasonable grounds that the device or system is capable of complying with the requirements for images taken by traffic offence detection devices as provided in new section 15 of the *Road Transport (Safety and Traffic Management) Regulation 2017*.

New section 13 (4) provides that meeting the requirements for images taken by traffic offence detection devices as provided in new section 15 of the *Road Transport (Safety and Traffic Management) Regulation 2017* does not do any of the following:

- limit what may be indicated on or shown by an image taken by a traffic offence detection device; or
- limit the information included in an electronic file created by a traffic offence detection device; or
- require a traffic offence detection device to be operated by a person.

Currently section 12 and section 13 contain the approval of each device that constitutes an approved camera detection device, approved speed measuring device or approved average speed detection system or a component of these devices.

**Approval of police vehicle speedometer —Act, s 24 (1)**  
**New section 14**

New section 14 replicates existing section 14 which provides for the approval of police vehicle speedometers by the chief police officer and retains approval by the chief police officer in the form of a notifiable instrument.

**Requirements for images taken by traffic offence detection devices —Act, s 24 (2) (a) and (d)**  
**New section 12**

New section 15 inserts the requirements for images taken by a traffic offence detection device.

A number of these requirements have been relocated from the *Road Transport (Safety and Traffic Management) Act 1999* to the *Road Transport (Safety and Traffic Management) Regulation 2017*, to simplify and streamline the requirements for traffic offence detection devices, given the majority of requirements apply to all types of traffic offence detection devices, including a mobile device detection system.

This provision replicates existing requirements in relation to:

- the date and time when, and place where, the image was taken and the person responsible for the operation of the device when the image was taken (where the device was operated by a person).
- traffic light offences, the direction and lane in which the vehicle is being driven and the time shown by a red traffic light or red traffic arrow facing the driver of the vehicle before an offence was committed must be included.
- Speeding offences, an electronic or photographic image of a vehicle taken by a traffic offence detection device must include the speed measuring device component of the traffic offence detection device, the speed limit applying to

the driver of the vehicle and the speed at which the driver of the vehicle was driving.

An image taken by a traffic offence detection device must include any information required in the approval of a traffic offence detection device or any other information the road transport authority considers appropriate.

New section 15 (2) provides that a traffic offence detection device must, as far as practicable, only depict as much of the driver of a vehicle as necessary to show the person in contravention of a provision of the road transport legislation. This is a privacy safeguard specific to the use of mobile device detection cameras as at this time other traffic offence detection devices do not take images of the driver and there is not a need to extend this requirement to those devices at this time.

New section 15 (3) provides that any image or data associated with an image taken by a traffic offence detection device must be encrypted. This is a privacy safeguard to protect personal information.

New section 15 (4) provides that an image and any data associated with an image taken by a traffic offence detection device must be destroyed as soon as possible where it does not show a contravention of the road transport legislation.

New section 15 (5) provides that section 15 (4) does not apply where the image has been de-identified for the purposes of collection under section 29 (1) (d) of the *Road Transport (Safety and Traffic Management) Act 1999* or where the image is one of a series of images of which another image shows a contravention of a provision of the road transport legislation.

New section 15 (6) clarifies that *image* includes a video recording.

### **Testing and maintenance requirements—Act, s 24 (2) (b)** **New section 16**

New section 16 provides the requirements in relation to the testing and maintenance of average speed detection systems and speed measuring devices, which are traffic offence detection devices.

New section 16 (2) provides that an average speed detection systems and speed measuring devices must be tested in accordance with set requirements by a testing authority at least every 12 months while it is being used to detect offences. Where the device is a speed measuring device and operating in an area where the speed limit is over 100 kilometres per hour, the device must have an accuracy tolerance of 2%. In all other cases a speed measuring device must operate within an accuracy tolerance of 2 kilometres per hour. For an average speed detection system, the device must have an accuracy tolerance of 2%.

The testing authority must conduct this test in accordance with any applicable Australian Standard for the device and any other requirement in the approval of a traffic offence detection device.

New section 16 (3) provides that after testing a device, a testing authority must seal the device in a way that prevents any interference with the device or will show if the device has been interfered with. The testing authority must then issue a certificate that states the serial number for the device tested, the date and time when the testing was completed and the results of the testing. This will ensure the integrity and accuracy of the device during its operation.

**Testing and maintenance requirements for police vehicle  
speedometer —Act, s 24 (2) (b)  
New section 17**

New section 17 provides the requirements in relation to the testing and maintenance of a police vehicle speedometer.

New section 17 (2) provides that a police vehicle speedometer must be tested in accordance with set requirements by a testing authority at least every 12 months while it is being used to detect offences. The testing authority must conduct this test in accordance with any applicable Australian Standard for the device. A police vehicle speedometer must have an accuracy tolerance of 2%.

New section 17 (3) provides that after testing a device, a testing authority must seal the device in a way that prevents any interference with the device or will show if the device has been interfered with. The testing authority must then issue a certificate that states the serial number for the device tested, the date and time when the testing was completed and the results of the testing. This will ensure the integrity and accuracy of the device during its operation.

**Operation requirements —Act, s 24 (2) (b)  
New section 18**

New section 18 provides the operational requirements for a traffic offence detention device.

New section 18 (1) provides that a traffic offence detention device must be positioned, aimed, activated and operated in accordance with the manufacturer's specifications for the device.

New section 18 (2) provides that an approved person must test a device in accordance with any requirement stated in an approval for the device under section 13 of the *Road Transport (Safety and Traffic Management) Regulation 2017* and the manufacturer's specifications for testing the device when the device is installed at a location, the device is used for the first time, including after repair, reinstallation or

replacement, and when changes are made to the software used by the device to detect offences.

New section 18 (3) provides clarification that a device is not taken to be installed at a location for the purposes of new section 18 (2) (b) (i) where the device is designed to be moved frequently, for example mobile speed camera vans.

**Approved people —Act, s 24 (2) (c)**  
**New section 19**

New section 19 provides who may be an approved person to operate a traffic offence detection device.

This section largely substitutes the existing provisions that provide who may be an approved person to operate a traffic offence detection device.

New section 19 (1) replicates the existing provisions that provide that each police officer is approved to use any traffic offence detection device.

New section 19 (2) replicates existing provisions that provide that the road transport authority may approve a person who is not a police officer to use a traffic offence detection device.

New section 19 (3) provides that the approval of a person who is not a police officer to use a traffic offence detection device of is a notifiable instrument.

New section 19 (4) replicates existing provisions that provide that the road transport authority may only approve a person to use a traffic offence detection device, where satisfied the person has appropriate qualifications to operate, or experience in the operation of, the device.

**Traffic offence detection device signage —Act, s 24 (2) (e)**  
**New section 20**

New section 20 inserts the requirements for signage of traffic offence detection device that is an average speed detection system. This has been relocated from the *Road Transport (Safety and Traffic Management) Act 1999* to the *Road Transport (Safety and Traffic Management) Regulation 2017*. The new section has the same effect as the previous provisions in the *Road Transport (Safety and Traffic Management) Act 1999*, other than minor referencing changes.

**Clause 22**                      **Dictionary, new definition of *testing authority***

This clause relates the definition of *testing authority* in the *Road Transport (Safety and Traffic Management) Regulation 2017*.

A testing authority means:

- a department of electrical or electronic engineering at a university in Australia; or
- ‘the *National Measurement Institute under the National Measurement Act 1960 (Cwlth)*; or
- an entity that is accredited by the National Association of Testing Authorities to test traffic offence detection devices; or
- Technical Services, Australian Federal Police, Canberra.

### **Clause 23            Schedule 1**

This clause substitutes existing Schedule 1 and makes minor and technical amendments.

This clause relocates the definitions for *ACT Standard Grid Coordinates* and *AHD* from existing section 15 of the *Road Transport (Safety and Traffic Management) Regulation 2017* in accordance with current drafting practices.

No amendments are being made to Part 1.2 of Schedule 1.

### **Clause 24    Dictionary, note 3**

This clause inserts the term *average speed detection system*, *detection point*, *mobile device detection system* and *speeding offence* in note 3 and is consequential on the changes at clause 4.

### **Clause 25    Dictionary, note 3**

This clause omits the term *camera detection device* in note 3 and is consequential on the changes at clause 5 and 6.

### **Clause 26    Dictionary, definitions**

This clause omits the following definitions consequential on the changes at clauses 5, 6 and 21:

- approved police speedometer
- digital camera detection device
- fixed camera detection device
- laser speed measuring device
- loop detector speed measuring device
- operator

- piezo strip speed measuring device
- radar speed measuring device
- recording medium
- security checksum.

## **SCHEDULE 1      Other amendments**

### **PART 1.1          Road Transport (General) Act 1999**

This part makes minor and technical amendments to the *Road Transport (General) Act 1999* consequential on the changes at clause 5 and 6.

#### **Section 1.1          Dictionary, definition of *approved camera detection device* and *camera-detected offence***

This is a minor and technical amendment consequential on the changes at clause 5 and 6.

### **PART 1.2          Road Transport (Offences) Regulation 2005**

This part makes minor and technical amendments to the *Road Transport (General) Act 1999* consequential on the changes at clause 4 and 5.

Section 233 of the *Road Transport (General) Act 1999* gives the Executive the power to make regulations for the *Road Transport (General) Act 1999*. Regulations issued can prescribe matters that are necessary or convenient for the carrying out or giving effect to the *Road Transport (General) Act 1999* or other road transport law and prescribe offences for contravention of a regulation.

#### **Section 1.2          Section 4C (2) and 4CA (2)**

This section is a minor and technical amendment consequential on the changes at section 1.1 and clauses 4 and 5.

#### **Section 1.3          Section 6 (2) (b)**

This section is a minor and technical amendment consequential on the changes at section 1.1 and clauses 4 and 5.

#### **Section 1.4          Section 13 heading**

This section is a minor and technical amendment consequential on the changes at section 1.1 and clauses 4 and 5.



### **Section 1.5            Section 13 and note**

This section is a minor and technical amendment consequential on the changes at section 1.1 and clauses 4 and 5.

### **Section 1.6            Section 14A (2) (I) (vii)**

This section is a minor and technical amendment consequential on the changes at section 1.1 and clauses 4 and 5.

### **Section 1.7            Section 14B (2) (d) (vii)**

This section is a minor and technical amendment consequential on the changes at section 1.1 and clauses 4 and 5.

### **Section 1.8            Dictionary, note 3**

This section is a minor and technical amendment consequential on the changes at section 1.1.

## **PART 1.3            Road Transport (Road Rules) Regulation 2017**

This part amends the *Road Transport (Road Rules) Regulation 2017* to incorporate nationally agreed amendments to the mobile device use offences and to amend the definition of *use* in the mobile device offences to support enforcement of offences detected by mobile device detection cameras and address driver distraction.

Section 33 of the *Road Transport (Safety and Traffic Management) Act 1999* gives the Executive the power to make regulations for the purposes of the Act.

Section 36 of the *Road Transport (Safety and Traffic Management) Act 1999* provides the power to make regulations in relation to safety generally including the regulation or prohibition of traffic, people and animals on roads and road related areas.

Section 39 of the *Road Transport (Safety and Traffic Management) Act 1999* provides the power to make regulations in relation to traffic management generally including the regulation or prohibition of traffic, people and animals on roads and road related areas.

### **Section 1.9            New section 300 (3AA)**

This section clarifies the definition of *park* in section 300 (3AA) to provide that a vehicle may be parked even though the key for the vehicle is located in the vehicle's ignition lock or the engine of the vehicle is running.

This amendment aligns the definition of *park* in relation to mobile device use in the *Road Transport (Road Rules) Regulation 2017* with the nationally agreed definition as provided in the model Australian Road Rules.

### **Section 1.10      Section 300 (4), definition of *use*, paragraph (a)**

This section amends the definition of *use* in section 300 to omit the exception which allows the driver to hand a passenger their device while driving. This amendment provides that the driver of a vehicle commits an offence in all instances where they are captured holding their device (unless another exemption applies, for example where the vehicle is an emergency vehicle or a police vehicle).

This amendment is considered to be consistent with the ACT Government's commitment to addressing driver distraction and encouraging people to place their devices elsewhere in the car when driving.

### **Section 1.11      New section 300AA (4A)**

This section clarifies the definition of *park* in section 300 (3AA) to provide that a vehicle may be parked even though the key for the vehicle is located in the vehicle's ignition lock or the engine of the vehicle is running.

This amendment aligns the definition of *park* in relation to mobile device use in the *Road Transport (Road Rules) Regulation 2017* with the nationally agreed definition as provided in the model Australian Road Rules.

### **Section 1.12      Section 300AA (5), definition of *use*, paragraph (a)**

This section amends the definition of *use* in section 300AA to omit the exception which allows a provision or learner driver to hand a passenger their device while driving. This amendment provides that the driver of a vehicle commits an offence in all instances where they are captured holding their device.

This amendment is considered to be consistent with the ACT Government's commitment to addressing driver distraction and encouraging people to place their devices elsewhere in the car when driving (unless another exemption applies, for example where the vehicle is an emergency vehicle or a police vehicle).