

# Road Transport (Safety and Traffic Management) Traffic Offence Detection Device Approval 2021 (No 1)

Disallowable instrument DI 2021–206

made under the

***Road Transport (Safety and Traffic Management) Regulation 2017, section 13 (Approval of traffic offence detection devices)***

## EXPLANATORY STATEMENT

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The *Road Transport (Safety and Traffic Management) Traffic Offence Detection Device Approval 2021 (No 1)* provides for the approval of traffic offence detection devices and sets the requirements for the operation of a traffic offence detection device.

On 22 June 2021, the ACT Legislative Assembly passed the *Road Transport (Safety and Traffic Management) Amendment Act 2021 (the amendment Act)*. The purpose of the amendment Act was to introduce a framework to allow for the operation of mobile device detection cameras. The amendment Act also simplified the previous regulatory framework for traffic offence detection devices, including providing for the approval and operation requirements for traffic offence detection devices to be set by disallowable instrument.

The *Road Transport (Safety and Traffic Management) Regulation 2017* requires that a traffic offence detection device must be approved prior to its use within the ACT. Traffic offence detection devices are used to support road safety by detecting breaches of the ACT's road transport legislation such as speeding, red-light and illegal mobile device use.

Section 13 (1) provides that the road transport authority may approve a traffic offence detection device. The approval must 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.

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 section 15 of the *Road Transport (Safety and Traffic Management) Regulation 2017*.

## Overview

Schedules 1 to 3 provide for the approval of traffic offence detection devices.

Schedule 1 approves speed measuring devices which detect speeding offences. These devices measure speed at either a fixed location or are relocated between a number of locations across the ACT road environment.

Schedule 2 approves an average speed detection system, also referred to as point-to-point speed cameras, which detect speeding offences. These devices measure average vehicle speed between two locations.

Schedule 3 approves traffic offence detection devices which detect red-light offences. These devices address red-light running at signalised intersections where road users are vulnerable to right angle crashes.

Each device approved under this instrument is not permitted to take an image of the driver of a vehicle. This requirement has been set to protect personal privacy.

Approving these devices will enable the use of the latest technology in the detection of breaches of the ACT's road transport legislation.

Schedule 4 sets the requirements for the operation of traffic offence detection devices. This schedule includes requirements in relation to deletion of images, recording of image files, verification of image files and the meaning of codes on images taken by a traffic offence detection device. Each requirement set by this instrument was previously provided under the *Road Transport (Safety and Traffic Management) Act 1999* or *Road Transport (Safety and Traffic Management) Regulation 2017*.

Section 5 provides a signpost for the definitions of centre of the road, left, red traffic arrow and red traffic light under the *Road Transport (Road Rules) Regulation 2017*.

## Human rights implications

The explanatory statement for the amendment Act included a comprehensive analysis of the restructure to the road safety camera framework including its compatibility with human rights as set out in the *Human Rights Act 2004*.

An assessment of this instrument 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

This instrument engages and limits the right to privacy (section 12 of the HRA). 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'.

This instrument approves traffic offence detection devices and sets the requirements for the operation of these devices.

The right to privacy is engaged and limited by this instrument as the use of traffic offence detection devices to collect, use, store and disclose personal information occurs as part of the use of these devices in the ACT's road safety camera program.

The devices detect road transport offences and collect personal information 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 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.

However, the right to privacy is enhanced by this instrument as the requirements for the operation of traffic offence detection devices protect personal privacy by setting safeguards in relation to minimum timeframes for the deletion of images, requirements for recording of image files and verification requirements for image files.

### **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 *Road Transport (Safety and Traffic Management) Regulation 2017* provides the legal authority for the approval of traffic offence detection devices for the purpose of enforcing the Territory's road transport legislation which benefits the community by encouraging changes in unsafe behaviours on the ACT's road network.

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

The use of traffic offence detection devices is necessary to support the enforcement of breaches of the Territory's road transport legislation and improve road safety within the Territory.

The devices approved in this instrument will be used to detect speeding and red-light traffic offences under the ACT's road transport legislation. The approval of the traffic offence detection devices increasing the enforcement of this road transport offence

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.

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

In 2019, the ACT Government released the findings of an evaluation of the ACT's Road Safety Camera program, conducted by an expert road safety research body, Monash University's Accident Research Centre (MUARC).<sup>1</sup>

The report found the ACT's Road Safety Camera program prevents crashes, reduces injuries and saves the community more than \$60 million each year in road trauma costs.

Fixed mid-block speed cameras and point-to-point cameras were found to contribute to an average reduction in all reported crashes of 25 per cent, being a reduction of 69 reported crashes annually and saving \$1.3 million annually in crash costs to the ACT community.

In the 12 months up to September 2017, the mobile camera program was found to have reduced crashes by about 22 per cent compared to if the program had not been running.

As a result of mobile speed cameras being in place, this was found to result annually in:

- the prevention of some 120 casualty crashes that could have resulted in a fatality or injury;
- the prevention of some 2,900 property damage crashes (i.e. a crash where there is no serious injury or death); and
- more than \$60 million in crash costs (i.e. costs of road trauma in the community) saved each year, as well as untold impacts for the Canberra community.

There is a clear connection between the limitation and the legitimate purpose, as the approval of traffic offence detection devices directly facilitates the enforcement of the ACT's road transport legislation and protects the community by increasing road safety.

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

It is considered that there are not any less restrictive means reasonably available to significantly improve road safety. The benefits of road safety cameras, in combination with police enforcement, is well established. Increasing the likelihood of being issued with an infringement notice for a speeding or red-light offence through the use of road safety cameras has resulted in a community wide change of behaviour and improvements to road safety.

This instrument does not approve any new devices for use on ACT roads. Each device approved in Schedules 1 to 3 was previously approved under the *Road Transport (Safety and Traffic Management) Regulation 2017*, prior to the commencement of the amendment Act.

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<sup>1</sup> Clark, B., Budd, L., Thompson, L., Cameron, M., & Newstead, S. (2019). *Evaluation of the ACT Road Safety Camera Program*. Monash University.

A number of safeguards have been incorporated into the regulatory framework for the operation of traffic offence detection devices through the amendment Act and in this instrument. These will protect a person's right to privacy imposed by the collection, use, storage and disclosure of personal information arising from the use of these devices in the Territory.

These amendment Act included the following privacy safeguards:

- images taken by a traffic offence detection device that does 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; and
- 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.

This instrument includes additional privacy safeguards by setting minimum timeframes for the deletion of images, requirements for the recording and verification of image taken by a traffic offence detection device.

These privacy safeguards will ensure there are adequate and effective safeguards that protect against arbitrary interferences with the right to privacy.

## **Climate change implications**

There are no climate change implications associated with this disallowable instrument.