

2021

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

ROAD TRANSPORT LEGISLATION AMENDMENT BILL 2021 (No 2)

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

**Presented by
Chris Steel MLA
Minister for Transport and City Services**

ROAD TRANSPORT LEGISLATION AMENDMENT BILL 2021 (No 2)

The Bill is **not** 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 Road Transport Legislation Amendment Bill 2021 (No 2) (the Bill) is the second Road Transport Legislation Amendment Bill for 2021.

The purpose of the Bill is to amend the road transport legislation to improve road safety and improve the administration and efficiency of Territory's road transport legislation.

The road transport legislation being amended by this Bill is the:

- a) *Road Transport (Alcohol and Drugs) Act 1977*
- b) *Road Transport (Driver Licensing) Act 1999*
- c) *Road Transport (General) Act 1999*
- d) *Road Transport (Safety and Traffic Management) Act 1999*
- e) *Road Transport (Road Rules) Regulation 2017*
- f) *Road Transport (Vehicle Registration) Act 1999*
- g) *Road Transport (Vehicle Registration) Regulation 2000*
- h) *Heavy Vehicle National Law (ACT) Act 2013*

The Bill also makes minor and technical amendments to the *Motor Accident Injuries Act 2019*, *Road Transport (General) Regulation 2000*, *Road Transport (Offences) Regulation 2005* and *Victims of Crime Regulation 2000*.

The amendments in this Bill:

- a) introduce a regulatory timeframe of three months before the owner of a vehicle that is kept at an ACT garage address must transfer its registration to the ACT;
- b) introduce a legislative exemption to the regulatory timeframe for vehicles registered in the name of a transferred defence force member and their eligible family members;

- c) introduces amendments to the Territory’s Road Rules to incorporate the relevant provisions about electric vehicle parking from the 13th amendment package of the model Australian Road Rules (ARRs);
- d) remakes the existing section 24A offence under the *Road Transport (Alcohol and Drugs) Act 1977* about the use of certain vehicles or animals on the road while under influence of alcohol or drug so that it applies to a road and road related area;
- e) introduces into section 24A of the *Road Transport (Alcohol and Drugs) Act 1977* for driving or riding certain transport modes while under the influence a requirement that this influence has to be to such an extent as to be incapable of having proper control of the vehicle or animal in alignment with the existing provision for motor vehicles;
- f) amends the maximum penalty in section 24A of the *Road Transport (Alcohol and Drugs) Act 1977* about the use of certain vehicles or animals on the road while under influence of alcohol or drugs for first time and repeat offenders;
- g) amends outdated references to the National Road Transport Commission, Australian Transport Council and outdated national agreements referred to in the objective provisions and Dictionary of various road transport legislation; and
- h) makes minor technical amendments to other road transport legislation provisions to improve the administration and efficiency of the legislation.

CONSULTATION ON THE PROPOSED APPROACH

Consultation has been undertaken with key Government stakeholders including the Justice and Community Safety Directorate, the Chief Minister, Treasury and Economic Development Directorate, the ACT Human Rights Commission, Director of Public Prosecutions and ACT Policing.

TCCS will work closely with stakeholders to support the implementation of the new strict liability offences and appropriate communications will support the introduction of the Bill.

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).

The preamble to the HRA notes that few rights are absolute and that they may be subject only to the reasonable limits in law that can be demonstrably justified in a free and democratic society.

International human rights law places obligations on governments to “respect, protect and fulfil” rights. The obligation to respect means governments must ensure

its organs and agents do not commit violations themselves; the obligation to protect means governments must protect individuals and groups from having rights interfered with by third parties and punish perpetrators; and the obligation to fulfil means governments must take positive action to facilitate the full enjoyment of rights.

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
- e) any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve

An assessment against section 28 of the HRA is provided below.

The limitations on human rights in the Bill are proportionate and justified in the circumstances because they are the least restrictive means available to achieve road safety. The achievement of road safety is an important objective for the ACT community.

Rights engaged

Broadly, this Bill engages and limits the right to recognition and equality before the law (section 8), the right to freedom of movement (section 13), the right to liberty of a person (section 18) and the rights in criminal proceedings (section 22).

This Bill can also be seen as to engage and promote the rights to recognition and equality before the law (section 8), freedom of movement (section 13) and the right to liberty of a person (section 18).

Right to equality

Section 8 of the HRA provides that everyone is entitled to equal and effective protection against discrimination, and to enjoy their human rights without discrimination.

1. Nature of the right and the limitation (ss 28(2)(a) and (c))

‘Equality before the law’ has been essentially held to mean that judges and administrative officials must not act arbitrarily in enforcing laws.¹ The non-discrimination provisions in the HRA are founded on articles 2(1) and 26 of the International Covenant on Civil and Political Rights (the ICCPR).

¹ Nowak, M., UN Covenant on Civil and Political Rights: CCPR Commentary, (N.P. Engel, Publisher, 2nd revised edition, 2005) 606.

'Discrimination' as the term appears in article 26 of the ICCPR is that laws should guarantee 'all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status'.²

In the ACT, a mobility parking scheme authority may be issued to a person who:

- (a) cannot walk because of permanent or temporary loss of the use of one or both legs or another permanent medical or physical condition; or,
- (b) whose physical condition is detrimentally affected by walking 100m; or,
- (c) needs to use a walking frame, crutches, callipers, a scooter, a wheelchair or a similar mobility aid.

Under existing timeframe extensions, mobility parking permit holders can park for an additional 2 hours where the time limit on a permissive parking sign is 30 minutes or less, or all day in any other case (if the area is not for people with disabilities).

The Bill introduces a new time extension for mobility parking permit holders who park in the electric vehicle parking bays. The Bill engages and promotes the right to equality by providing mobility parking permit holders an additional 30 minutes to the time limit posted on the permissive parking sign.

These amendments, however, could also be considered to limit the right. The provision of only an additional 30 minutes to mobility parking permit holders in electric vehicle parking bays may be considered inconsistent with the existing time extensions they are afforded in other parking bays, i.e. an additional 2 hours or all-day parking.

2. *Legitimate purpose (s 28(2)(b))*

The ACT Government is committed to reducing transport emissions to protect public health and address climate change.

To support this, the ACT Government has also committed to commence work on a Zero Emissions Vehicle Public Charging Masterplan for the rollout of charging infrastructure, including 50 publicly accessible charging stations in 2021-22.

3. *Rational connection between the limitation and the purpose (s 28(2)(d))*

Electric-powered vehicles are considered to be an effective method to protect public health generally from transport emissions, and public health and the environment from the effects of climate change to which transport emissions contribute.

² International Covenant on Civil and Political Rights, opened for signature 19 December 1966, 999 UNTS 171 (entered into force 23 March 1976), art 2(1), 26.

In order to promote the use of electric-powered vehicles in the ACT, owners of these vehicles require adequate access to electric parking stations, particularly, as there are only four electric vehicle parking bays in ACT Government-controlled parking areas. It is also important that these needs are considered to ensure an integrated transport network.

Accordingly, the limited time extension for mobility parking permit holders in electric-vehicle parking bays will support the increased use of electric vehicles in the community and ensure adequate availability of electric vehicle parking in the ACT.

4. *Proportionality (s 28(2)(e))*

It is considered that any limitation on this right is proportionate, reasonable and justified. The amendments balance the competing priorities of protecting public health and the environment with the need to provide mobility parking permit holders additional time to return to their vehicles when parked in electric vehicle parking bays.

The Bill encourages the increased use of electric vehicles in the community in order to support the Government's broader policy objectives of building an integrated transport network and reducing transport emissions to protect public health and address climate change.

The Bill also supports a person with a disability to be an active member of the community and enjoy their other rights for which the mobility parking permit has been provided.

Given there are only four electric vehicle parking bays in Government-controlled parking areas, it is not considered that any additional time could be afforded to mobility parking permit holders in electric vehicle parking bays and there are no less restrictive means reasonably available to achieve these purposes at this time.

Freedom of movement

Section 13 of the HRA provides that everyone has the right to move freely within the ACT and to enter and leave it, and the freedom to choose his or her residence in the ACT.

1. *Nature of the right and the limitation (ss 28(2)(a) and (c))*

The right to move freely within the ACT means that a person cannot be arbitrarily forced to remain in, or move to or from, a particular location.

The amendments in the Bill could be considered to engage and limit a person's right freedom of movement in the ACT as clause 9 remakes section 24A of the *Road Transport (Drugs and Alcohol) Act 1977* so that the offence:

- also applies to a road related area in addition to a road; and
- attracts a new maximum penalty option of 12 months imprisonment for repeat offenders when the offence is committed on a road.

These amendments, however, could also be considered to engage and promote the right to freedom of movement, and subsequently the right to liberty, as the amendments also:

- reduce the maximum penalty attractable under section 24A where the offence was committed on a road from 50 penalty units to 30 penalty units; and
- limits the application of the offence to circumstances where the influence of alcohol or a drug renders a person incapable of having proper control of a bicycle, PMD, animal or animal-drawn vehicle.

2. *Legitimate purpose (s 28(2)(b))*

The ACT Government is committed through the *ACT Road Safety Strategy 2020-2025* to Vision Zero, which aims to achieve zero road fatalities and through the *ACT Road Safety Action Plan 2020-2023* to exploring measures that are appropriate to the ACT to which will deter drink and drug driving and a robust enforcement framework that applies penalties commensurate with the associated road safety risks being addressed and supports behavioural change. The purpose of the limitations is to protect the public from the dangers posed by unsafe behaviours on all transport modes and all parts of the road network.

A primary objective of the *Road Transport (Alcohol and Drugs) Act 1977* (Alcohol and Drug Act) is to deter people from driving while affected by alcohol or drugs. This is because impaired drivers are a recognised road safety risk. The ACT Government, as outlined in the *ACT Road Safety Action Plan 2020-2023* and *ACT Drug Strategy Action Plan 2018-2021*, is committed to addressing and minimising harms caused by alcohol and other drugs, including illicit drugs and pharmaceuticals. This commitment also supports the Government's commitment to the realisation of Vision Zero.

In April 2021 the results of a YourSay Community Panel Survey showed that while there is a high level of support for the shared e-scooter scheme in Canberra and a strong demand to expand it, there is a consistent desire for e-scooter safety education across the population, with priority topics identified for safety education being road rules for users, behaviour of other path users and unsafe riding.

A robust regulatory framework is essential to establishing safe people and safe behaviours on our roads, with benefits for both the community and individuals. The new maximum penalty of 12 months imprisonment for repeat offenders where the offence is committed on a road aligns the penalty with those under section 24, which concerns driving a motor vehicle on a road or road related area

while under influence of intoxicating liquor or a drug to the extent one is incapable of having proper control of a vehicle. The maximum penalty for an offence against section 24 for a repeat offender is 30 penalty units and/or an imprisonment term of 12 months.

3. *Rational connection between the limitation and the purpose (s 28(2)(d))*

Remaking section 24A to apply the offence to road related areas reflects the reality that the vast majority of bicycles and personal mobility device (PMD) operation is on road related areas, such as separated footpaths and footpaths. It also reflects long-standing acceptance from the community and Government of the need to restrict driving and riding while a person is affected by alcohol or a drug, and the elevated risk of harm to other road users, such as death and injury, arising from a person riding or driving a bicycle, PMD or animal-drawn vehicle while under the influence of alcohol or a drug.

Remaking section 24A so that a maximum penalty of 12 months imprisonment for repeat offenders applies is to encourage the safe and responsible operation of bicycles, PMDs, animals and animal-drawn vehicles on our road network and ensures that the treatment for riders under the influence of alcohol or a drug is consistent in comparison to other road users, such as drivers of motor vehicles. Alternative transport modes do not require a driver licence to operate, meaning traditional penalties for road transport offences, such as demerit points and automatic licence disqualifications do not apply to offences involving these transport modes. Courts will continue to have discretion to disqualify a person convicted or found guilty of relevant offences under the Territory's road transport legislation from holding or obtaining a driver licence for a period the court considers appropriate.

Drink and drug driving behaviour poses a serious road safety risk and repeatedly engaging in this behaviour demonstrates that a person has failed to learn from their actions and has continued to behave in a manner less than the standard expected by the community. There are significant public interest benefits that arise from ensuring that roads are safe for all road users and appropriate enforcement actions are essential to providing a safe road environment for the community.

Accordingly, remaking section 24A will:

- protect all road users from the dangers posed by people driving or riding bicycles, PMDs, animal-drawn vehicles and riders of animals while under the influence of alcohol or drugs;
- ensure that riders of bicycles, PMDs, animal-drawn vehicles and animals are treated in a consistent manner to other road users, such as drivers of motor vehicles;
- support a robust regulatory framework with penalties that are commensurate with the associated road safety risks and support behavioural change;

- assist in educating users on appropriate riding behaviour when operating alternative transport modes on the road network, particularly on the road where the risk of harm is high; and
- support the ACT Government's commitment to Vision Zero.

4. Proportionality (s 28(2)(e))

When an offence is committed on a road, the maximum penalty will be reduced to 30 penalty units for first offenders and repeat offenders, with a new maximum penalty of 12 months imprisonment for repeat offenders. When the offence is committed on a road related area, the Bill introduces a maximum penalty of 20 penalty units.

The limitations on the right to freedom of movement are proportionate to the legitimate purpose they seek to achieve, are not extensive and would only apply where a person is convicted, or found guilty, of an offence against section 24A of the *Road Transport (Drugs and Alcohol) Act 1977*. The Bill also limits the application of the offence by introducing 'to such an extent as to be incapable of having proper control of the vehicle or animal' thresholds to new subsections 24A (1) (b) and (2) (b). The result of this means a person will only be found to have committed an offence against section 24A where they are under the influence of alcohol or a drug to an extent as to render them incapable of having proper control of the vehicle or animal. To what extent a person is rendered incapable of having proper control of the vehicle or animal from alcohol or a drug will depend on the circumstances in the case and will require supporting evidence from a police officer or other appropriate source to be proved beyond reasonable doubt in court.

The road transport legislation already requires users to maintain proper control of a vehicle or animal and this element is also a requirement in proving the offence in section 24 of the Alcohol and Drugs Act for drivers of motor vehicles. This threshold is an additional safeguard to any limitation on the right to freedom of movement. Additional defences are also available to the defendant charged with an offence against section 24A under the *Criminal Code 2002*, including the defence of mistake of fact and involuntary intoxication.

Although a lesser maximum penalty may be considered a less restrictive means, considering the serious harm that riding or driving a bicycle, PMD, animal or animal-drawn vehicle while under the influence of alcohol or a drug presents to other road users, the maximum penalty in the Bill is considered reasonable and justified to achieve its legitimate purpose. Any lesser penalty would not sufficiently address the need for greater deterrence to prevent harms arising from offender behaviour and support behavioural change. The harm presented to a person operating these transport modes and other road users is high regardless of whether the offence was committed on a road or road related area. However, as the risk exposure on road related areas is considered less than on a road, a

lesser penalty for when the offence is committed on a road related area is considered justifiable and proportionate.

Maximum penalties are intended for the most serious instances and a Court will have discretion to consider all of the circumstances of the case to determine whether a term of imprisonment or a court fine is most appropriate. It is considered necessary that the offence retains an imprisonment term where the offence is committed on a road, given more traditional road transport penalties cannot apply.

The stronger penalties that apply to repeat offenders reflect the deterrence value associated with these penalties and are justified and proportionate given the need to discourage repeated disregard for road transport laws. A repeat offender means a person who has been convicted or found guilty of an offence against s 24A in the five years immediately before the current offence was committed. This five year time frame is an additional human rights safeguard. Drink and drug driving behaviour poses a serious road safety risk and repeatedly engaging in this behaviour demonstrates that a person has failed to learn from their actions and has continued to behave in a manner less than the standard expected by the community. In the circumstances, their sentence should be higher to that of a first-time offender, to reflect the seriousness with which the community regards the offence and the potential consequences of their actions. Therefore, there are not any less restrictive means reasonably available to achieve the legitimate purpose and the amendments are considered reasonable and justified.

Right to liberty of a person

Everyone has the right to liberty and security of person, in particular, no-one may be arbitrarily arrested or detained or deprived of their liberty except on the grounds and in accordance with the procedures of the law.

1. Nature of the right and the limitation (ss 28(2)(a) and (c))

The right to liberty and security of a person can be relevant any time a person is not free to leave a place by his or her own choice. This includes the interim detention of a person, for example, to allow a public authority to control movement within an area, as well as imposing periods on imprisonment.

As mentioned above, clause 9 remakes section 24A of the *Road Transport (Drugs and Alcohol) Act 1977* to introduce a new maximum penalty where the offence was committed on a road of 12 months imprisonment for repeat offenders. Therefore, the amendments in this Bill may be seen as engaging and limiting a person's right to liberty.

2. Legitimate purpose (s 28(2)(b))

As noted under the right to freedom of movement, the purpose of the limitation is to protect the public from the dangers posed by driving under the influence on all

transport modes and achieve a robust road transport enforcement framework that contains penalties commensurate with the road safety risks being addressed and supports behavioural change. The purpose of the limitation is also to better educate the operators of alternative transport modes on acceptable riding behaviour when using the road network. It is intended that the maximum penalty of 12 months for repeat offenders will be a strong deterrent to drive or ride these transport modes while under the influence of an alcohol or drug on a road.

The ACT Government is committed to addressing and minimising harms caused by alcohol and other drugs, including illicit drugs and pharmaceuticals. This commitment supports the Government's commitment to the realisation of Vision Zero.

3. *Rational connection between the limitation and the purpose (s 28(2)(d))*

The rational connection between the limitation and purpose for this limitation is thoroughly discussed under the right to freedom of movement. The introduction of a new maximum penalty for repeat offenders where the offence is committed on a road is designed to protect all road users from the dangers posed by drink and drug driving behaviour and reflect the deterrence value associated with these penalties. The amendments reflect long-standing acceptance from the community and Government of the need to restrict driving and riding while a person is affected by alcohol or drugs, and the elevated risk of harm to other road users, such as death and injury, arising from a person riding or driving a bicycle, PMD or animal-drawn vehicle while under the influence of alcohol or drugs.

The new maximum imprisonment penalty is aimed at repeated instances of this offence and will assist with the education of the community on appropriate riding behaviour and reinforcing users' understanding of their obligations when operating alternative transport modes on the road network.

4. *Proportionality (s 28(2)(e))*

As outlined above in the human rights assessment for the freedom of movement, the increased imprisonment term for repeat offenders where an offence is committed on a road is justified and proportionate on the right to liberty noting the deterrence value and public interest benefits from reducing the risks associated with people riding bicycles, PMDs, animals or animal-drawn vehicles while under the influence of alcohol or drugs. While potentially limiting a person's right to liberty, the imprisonment term is considered to better enhance the existing road transport enforcement framework given more traditional penalties cannot apply. The imprisonment term is proportionate to the serious impact that drink and drug driving/riding behaviours may have on the community when occurring on the road.

Any limitation is not extensive and would only apply where a person is convicted, or found guilty, of an offence against section 24A of the *Road Transport (Drugs*

and Alcohol) Act 1977. The maximum penalty is intended for the most serious instances and a Court will have discretion to consider all of the circumstances of the case to determine whether a term of imprisonment or a court fine is most appropriate. Additional safeguards are also made through the Bill by introducing ‘to such an extent as to be incapable of having proper control of the vehicle or animal’ thresholds in new subsections 24A (1) (b) and (2) (b). This means an offence against section 24A will only be committed where a person is under the influence of alcohol or a drug to such an extent as to render them incapable of having proper control of the vehicle or animal. Additional defences are also available to the defendant charged with an offence against section 24A under the *Criminal Code 2002*, including the defence of mistake of fact and involuntary intoxication.

Although a lesser period of imprisonment may be considered a less restrictive means for repeat offenders, considering the serious harm that repeated riding while under the influence of alcohol or a drug presents to other road users, the penalty introduced by the Bill is considered reasonable and proportionate. It is not considered that any lesser penalty for repeat offenders will achieve the legitimate purpose of deterring driving under the influence of an alcohol or drug on a road. The introduction of this offence will assist with educating the riders and operators of alternative transport modes on acceptable riding behaviour when using the road network. Drink and drug driving is highly dangerous behaviour on our roads and this penalty is justified to support the ACT Government’s commitment to Vision Zero.

Right to the presumption of innocence

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.

1. Nature of the right and the limitation (ss 28(2)(a) and (c))

The Bill engages and limits the right to the presumption of innocence as it creates the following two new strict liability offences:

- (a) stopping in a parking area for electric-powered vehicles; and
- (b) stopping in a parking area for the charging of electric-powered vehicles.

Clause 9 of the Bill also remakes section 24A of the *Road Transport (Alcohol and Drugs) Act 1977* and applies strict liability to this offence. This offence concerns behaviour that has generally already been interpreted as attracting strict liability and the intention is to maintain the current situation.

A strict liability offence means that there are no fault elements for the mental elements of the offence to which strict liability applies. This essentially means that the conduct alone is sufficient to make the defendant culpable if it is proved beyond reasonable doubt that the conduct occurred. However, there is a specific

defence of mistake of fact for strict liability offences (see sections 23 and 36 of the *Criminal Code 2002*). Further, the offence of involuntary intoxication under section 34 of the *Criminal Code 2002* will be available for section 24A of the *Road Transport (Alcohol and Drugs) Act 1977*.

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 his or her involvement with the regulated activity, to know what the requirements of the law are, the mental, or fault, element can justifiably be excluded. A strict liability offence should also have a clear yes or no criteria as to whether the offence has occurred, and the person should reasonably know they have an obligation under law.

Alcohol and drug use are known to be the main causes of road fatalities in Australia, along with other 'human factors' such as speeding, driver distraction and fatigue. All ACT driver licence holders are made aware, through the learner driver licence programs, road signage and driver awareness campaigns run by the ACT Government and the police, that drink and drug driving are offences carrying serious penalties including licence disqualification, fines and for serious or repeat offenders, the possibility of imprisonment. Furthermore, it is within reasonable standards expected from the community that road users will not stop on roads with restricted parking signs. This is reflected in Division 12.6 of the *Road Transport (Road Rules) Regulation 2017*, which sets out road rules for stopping in restricted places, such as stopping on roads with bicycle or motorbike parking.

2. Legitimate purpose (s 28(2)(b))

The purpose of the limitation from the amendments in clause 9 is to protect the public from the dangers posed by driving under the influence on all transport modes and all parts of the road network.

As noted under the right to freedom of movement, the ACT Government is committed to addressing and minimising harms caused by alcohol and other drugs, including illicit drugs and pharmaceuticals. This commitment supports the Government's commitment to the realisation of Vision Zero.

Further, there are two legitimate purposes which the application of strict liability to the offences in clause 24 seeks to achieve.

First, electric parking areas have been designed to encourage the uptake in Zero Emission Vehicles. Increasing Zero Emissions Vehicle uptake is crucial to reaching the ACT's target of zero emissions by 2045. The ACT Government is committed to reducing transport emissions to protect public health and address climate change. The intention is also to deter non-electric vehicle users from stopping in designated parking areas for electric vehicles and deter drivers from

stopping in designated parking areas for the charging of electric-powered vehicles where charging of an electric-powered vehicle is not required.

The laws to address drink and drug driving impairment have long been recognised by the courts as laws where the ordinary presumptions about *mens rea* give way to presumptions in favour of interpretations of strict liability, even where the offence concerned involves driving under the influence causing serious bodily injury or death.³ This includes driving under the influence offences.⁴ The purpose of the applying strict liability to section 24A is to maintain the current situation.

3. Rational connection between the limitation and the purpose (s 28(2)(d))

Any limitation posed by applying strict liability to section 24A on the right to the presumption of innocence is rationally connected to the legitimate purpose of protecting the public from the dangers posed by driving under the influence on all transport modes and all parts of the road network. It also supports the Government's commitment to vision zero. Further, it ensures the current interpretation of driving under the influence laws are upheld.

The limitation posed by the strict liability offences concerning electric vehicle parking on the right to the presumption of innocence is rationally connected to the legitimate purpose as they:

- provide a measure to prevent and deter road users from stopping on roads with restricted parking signs generally and, in particular, to ensure only those who use electric-powered vehicles and seek to recharge their vehicles can park in the areas;
- support the Government's parking action plan to make parking more accessible by improving the availability of different types of parking to support different needs; and
- supports an effective road transport infringement notice scheme, as the offences apply an infringement notice penalty. Effective infringement notice schemes minimise the cost of litigation for the ACT while offering people a choice concerning whether to accept a lesser penalty without admitting the offence or remaining liable to prosecution.

4. Proportionality (s 28(2)(e))

The strict liability offences are proportionate to the legitimate purposes.

As for the amendments to section 24A, it is believed that the application of strict liability to the offences in the Bill is a justifiable and proportionate limitation on the right to the presumption of innocence given the significant risk drink and drug driving behaviour poses to all road users on the road network. Although not

³ *Leocal v Ashcroft, Attorney-General and others* (03-583) 543 U.S. 1 (2004), page 5, citing *State v Hubbard etc.*

⁴ For example in the United States. See *Leocal v Ashcroft, Attorney-General and others* (03-583) 543 U.S. 1 (2004).

recasting these offences as strict liability may have been a less restrictive means, it is not considered appropriate considering the application of case law for similar offences. Introducing a mental element for these offences would significantly affect the operation of these offences and would not achieve the legitimate purpose of protecting the public from the dangers posed by drink and drug driving, irrelevant of the transport modes and the part of the road network being used.

The Bill also reduces the maximum penalty units for when the offence is committed on a road from 50 penalty units to 30 penalty units and introduces two exceptions. Further, the *Criminal Code 2002* lists the defences available to the defendant, including the defence of mistake of fact and involuntary intoxication.

For a person to commit an offence against clause 24 of this Bill, the person would be required to stop a vehicle that is not an electric-powered vehicle in a parking area to which an electric-powered vehicle parking sign or electric-powered vehicle charging sign applies. The limitations would only be exercised in very specific circumstances where a person engages in the offending behaviour. TCCS will work closely with stakeholders to support the implementation of the new offences and education of the community.

The application of strict liability to these offences also aligns with section 8 of the *Road Transport (Road Rules) Regulation 2017*, which provides that an offence against the regulation is a strict liability offence. In developing and amending these offences due regard was given to the guidance provided in the *Guide for Framing Offences*. Each offence has an infringement notice penalty attached that is within the normal range for strict liability offences and are comparable to existing offences. The penalties for these offences are within the normal range for strict liability offences and are in accordance with the *Guide for Framing Offences*, lending to the proportionality of this provision.

It is considered that there are not any less restrictive means available to achieve this purpose.

Road Transport Legislation Amendment Bill 2021 (No 2)

Human Rights Act 2004 - Compatibility Statement

In accordance with section 37 of the *Human Rights Act 2004* I have examined the **Road Transport Legislation Amendment Bill 2021 (No 2)**. 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*.

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Shane Rattenbury MLA
Attorney-General

CLAUSE NOTES

Part 1 Preliminary

This part contains clauses 1 to 3 of the Bill dealing with the formal matters of the name of the proposed Act, its commencement and the legislation that is amended by this Act.

Clause 1 Name of Act

This clause states that the name of the Act is the *Road Transport Legislation Amendment Act 2021 (No 2)*.

Clause 2 Commencement

This clause provides for the commencement of the Act. This clause provides that the Act will commence 14 days after notification, other than the provisions listed therein, which will commence 28 days after notification.

The staged commencement is to provide sufficient time for operational changes to be implemented.

Clause 3 Legislation amended

This clause sets out the legislation that is amended by this Act, being the *Heavy Vehicle National Law (ACT) Act 2013*, *Road Transport (Alcohol and Drugs) Act 1977*, *Road Transport (Driver Licensing) Act 1999*, *Road Transport (General) Act 1999*, *Road Transport (Road Rules) Regulation 2017*, *Road Transport (Safety and Traffic Management) Act 1999*, *Road Transport (Vehicle Registration) Act 1999* and the *Road Transport (Vehicle Registration) Regulation 2000*.

Amendments to the *Road Transport (General) Regulation 2000*, *Road Transport (Offences) Regulation 2005*, the *Motor Accident Injuries Act 2019* and the *Victims of Crime Regulation 2000* are contained in Schedule 1.

Part 2 Heavy Vehicle National Law (ACT) Act 2013

This part of the Bill amends Schedule 1 of the *Heavy Vehicle National Law (ACT) Act 2013* which makes modifications to the Heavy Vehicle National Law (ACT) to address the way the Heavy Vehicle National Law (ACT) applies in the ACT.

Clause 4 Modification—Heavy Vehicle National Law (ACT) Schedule 1, modifications 1.2 and 1.11

This clause is a minor technical clause to remove modifications 1.2 and 1.11 from Schedule 1 of the *Heavy Vehicle National Law (ACT) Act 2013*. Sections 567A and 567B were local clauses inserted into the Heavy Vehicle National Law and are omitted as they now replicate other provisions in that law.

Part 3 Road Transport (Alcohol and Drugs) Act 1977

This part of the Bill amends Part 3 of the *Road Transport (Alcohol and Drugs) Act 1977*, which establish offences against the *Road Transport (Alcohol and Drugs) Act 1977*.

Clause 5 Offences against Act—application of Criminal Code etc Section 4, note 1, new dot point

This clause amends note 1 in section 4 of the principal Act, to update the list of sections to which the Criminal Code applies. This amendment is consequential on the remaking of section 24A in clause 9.

Clause 6 Taking blood samples from people in hospital Section 15AA (6), new definition of *drive*

This amendment is consequential on the remaking of section 24A in clause 9. Updating the definition will ensure consistency in language across both provisions.

Clause 7 Section 15AA (6), definition of *involved in an accident*, paragraphs (b) to (d)

This clause amends paragraphs (b) to (d) in the definition of *involved in an accident* and is consequential on the remaking of section 24A. The current wording in section 15AA is based on the language in existing section 24A. Updating the definition of *involved in an accident* is required to support implementation of the remade section 24A and will ensure consistency in language across both provisions.

Clause 8 Section 15AA (6), definition of *vehicle other than a motor vehicle*

This amendment is consequential on the remaking of section 24A in clause 9 and will ensure consistency in language across both provisions.

Clause 9 Section 24A

Section 24A of the Act deals with drink and drug drivers and riders of other transport modes on roads, such as bicycles, PMDs, animals and animal-drawn vehicles and provides that a person must not drive or ride a vehicle or animal on a road or be in charge of a vehicle or animal on a road, while under the influence of alcohol or drugs.

This clause remakes the existing section 24A offence so that it applies to both a road and a road related area.

Remaking the offence so that it applies to a road related area, in addition to a road, is necessary as the vast majority of bicycle and PMD operation is on road related areas. The amendments also support the ongoing messaging from Government that

alternative transport modes are not to be considered alternatives to driving motor vehicles while under the influence.

When an offence is committed on a road, this clause introduces new penalties for first and repeat offenders. The maximum court fine for this offence is reduced from 50 penalty units. The current maximum imprisonment term of 6 months is being retained for first offenders. A new maximum term of imprisonment of 12 months is being introduced for repeat offenders. A person is a repeat offender if they have been convicted or found guilty of an offence against s 24A in the 5 years immediately before the current offence was committed.

When an offence is committed on a road related area, a maximum penalty of 20 penalty units applies. *Road related area* is defined in the *Road Transport (General) Act 1999*, Dictionary. The clause now also contains a threshold 'to such an extent as to be incapable of having proper control of the vehicle or animal' in new subsections 24A (1) (b) and (2) (b) to mirror the threshold applicable to motor vehicles found under section 24.

The extent of the defendant's intoxication, being whether they are so much under the influence as to be incapable of having proper control, is a question of fact to which a court must be satisfied beyond reasonable doubt.⁵ In other Australian jurisdictions which also require the degree of influence to be measured by the capacity to exercise proper control, for example the Northern Territory and South Australia, the offence can be established if the prosecution can prove beyond reasonable doubt that, owing to the influence of alcohol or a drug, any mental or physical faculty of the defendant was lost or was appreciably impaired at the time the defendant was driving.⁶ A court may be satisfied a person is under the influence to such an extent as to be rendered incapable of having proper control upon inferences drawn from all the facts, especially those relating to a defendant's level of intoxication, such as the defendant's demeanour and appearance at the time of driving or riding (e.g. slurred words, loss of balance), and not solely from those relating to the defendant's manner of driving.

The amendments are also recast to remove the reference to 'in charge of' when referring to bicycles and PMDs, to clarify that a person standing with, pushing and/or walking beside these vehicles while under the influence of alcohol or drugs are not captured by the provision. A similar approach is taken in the *Road Transport (Road Rules) Regulation 2017* regarding the definition of a *rider* to not include persons pushing and walking beside a bicycle. The term *drives* is also defined by the provision and will not apply when a person is dismounted and pushing, carrying or otherwise controlling the vehicle.

In re-making section 24A, the *Criminal Code 2002* will now apply to this offence. As similar drink driving offences under ACT's road transport laws have previously been

⁵ *Pulleine v Button* [1948] SASR 1.

⁶ *Police v Heintze* [2019] SASC 2.

interpreted as strict liability, and the intention is to maintain the current situation, this offence will now also apply strict liability. The *Criminal Code 2002* lists the defences available to the defendant, including the defence of mistake of fact and involuntary intoxication.

In a proceeding for an offence against section 24A, subsection (4) makes evidence that a person was under the influence of alcohol, or a drug, or both, admissible and if the evidence establishes that a person was under the influence of alcohol or a drug, or both, the person may be convicted of the offence. This is expressly included in the provision to avoid any ambiguity, align with section 24 of the same Act and with similar clauses in other jurisdictions.

Part 4 Road Transport (Driver Licensing) Act 1999

This part of the Bill amends Part 1 and Division 2.4 of the *Road Transport (Driver Licensing) Act 1999*. Part 1 sets out formal matters of the name of the *Road Transport (Driver Licensing) Act 1999*, its commencement, its objects, the role of the Dictionary and the role of notes. Division 2.4 contains provisions concerning regulations made under the *Road Transport (Driver Licensing) Act 1999*.

Clause 10 Objects of Act Section 3 (a)

This clause removes the requirement for the Territory to act in a way that is consistent with agreements attached to the *National Road Transport Commission Act 1991* (Cth). This Act was repealed in 2004 and the agreements were terminated and replaced by the Inter-Governmental Agreement for Regulatory and *Operational Reform in Road, Rail and Intermodal Transport*. The Territory works with other jurisdictions to ensure consistency across road transport legislation where appropriate through the current Infrastructure and Transport Ministers Meeting.

Clause 11 Section 3, note 2

This clause is a technical amendment consequential on the changes at clause 10.

Clause 12 Section 27

This clause removes the reference to the former Australian Transport Council and provides that a regulation may apply a publication of the National Transport Commission or any other instrument as in force from time to time.

Clause 13 Dictionary, note 3

This clause is a minor and technical amendment to remove the term *Australian Transport Council* and is consequential on the changes at clause 12.

Part 5 Road Transport (General) Act 1999

This part of the Bill amends Parts 2, 3, 4 and 11 of the *Road Transport (General) Act 1999*, which provides for the administration and enforcement of road transport legislation and miscellaneous matters.

Clause 14 Application orders and emergency orders Section 14 (3)

This clause is a minor and technical amendment to substitute the outdated term *Australian Transport Council* for *Ministerial Council*, to reflect the current Australian Federal Relations Architecture framework.

Clause 15 New section 14 (6)

This clause inserts new section 14 (6) which defines *Ministerial Council* which is a body (however described) that consists of the Minister of the Commonwealth, and the Minister of each State and Territory, who is responsible, or principally responsible, for matters relating to transport. This is a consequential amendment as a result of the changes made at clause 14.

Clause 16 Definitions—pt 3 Section 21A (1), definition of *heavy vehicle infringement notice offence*

This clause is a minor and technical amendment consequential on the changes made by the *Road Transport (Offences) Amendment Regulation 2021 (No 1)* and inserts an acronym into the definition of *heavy vehicle infringement notice offence* (or *HVINO*).

Clause 17 Police officer or authorised person may require name, date of birth, address and driver licence—driver or rider Section 58 (1), note

This clause is a minor and technical amendment consequential on the changes made by clause 4.

Clause 18 Section 229

This clause removes the reference to the outdated term *Australian Transport Council* and provides that a regulation may apply a publication of the *National Transport Commission* or any other instrument as in force from time to time.

Clause 19 Dictionary, definition of *Australian Design Rule*

This clause is a minor and technical amendment to correctly cross-reference to the definition of *Australian Design Rule* in schedule 1, section 1.10 of the *Road Transport (Vehicle Registration) Regulation 2000*.

Clause 20 Dictionary, definition of *Australian Transport Council*

This clause is a minor and technical amendment consequential on the changes made at clause 17 and omits the outdated definition of *Australian Transport Council*.

Clause 21 Dictionary, definition of *bicycle*, new paragraph (c) (iv)

This clause is a minor and technical amendment which clarifies that a bicycle does not include a personal mobility device. *Personal mobility device* is defined in the Dictionary.

Clause 22 Dictionary, definition of *heavy vehicle infringement notice offence*

This clause is a minor and technical amendment consequential on the changes made by the *Road Transport (Offences) Amendment Regulation 2021 (No 1)*. It inserts an acronym into the definition of *heavy vehicle infringement notice offence* (or *HVINO*).

Clause 23 Dictionary, new definitions

This clause is a minor and technical amendment consequential on the changes made by clauses 16, 22 and 41.

Part 6 Road Transport (Road Rules) Regulation 2017

This part of the Bill makes amendments to Parts 12 and 16 and Schedule 4 of the *Road Transport (Road Rules) Regulation 2017*.

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.

Clause 24 New sections 203B and 203C

This clause introduces new provisions from the Australian Road Rules (ARR) 13th amendment package in relation to stopping in parking areas designated for electric-powered vehicles and stopping in parking areas designated for charging of electric-powered vehicles.

New section 203B makes it an offence for the driver of a non-electric power vehicle to stop in a parking area designated for electric power vehicles. The maximum penalty for this offence is 20 penalty units.

New section 203B (2) provides that for this section, an *electric-powered vehicle* means a vehicle that is powered by 1 or more electric motors or traction motors, regardless of whether the vehicle is also powered by another form of propulsion and can be recharged from an external source of electricity. This definition includes a zero-emissions vehicle powered by electricity, whether alone or in combination with another energy source, as defined under section 156 (3) (a).

A *parking area for electric-powered vehicles* means a parking area for a length or area of a road to which a permissive parking sign displaying an electric-powered vehicle symbol or an electric-powered vehicle parking sign applies, or indicated by a road marking that consists of, or includes, an electric-powered vehicle symbol.

New section 203C makes it an offence for the driver of an electric powered vehicle to stop in the parking area designated for charging of electric-powered vehicles and not have the electric-powered vehicle plugged in to an external source of electricity. The maximum penalty for this offence is 20 penalty units. Electric-powered vehicle has the same meaning as section 203B.

A *parking area for charging of electric-powered vehicles* means a length or area of a road to which a permissive parking sign displaying an electric-powered vehicle charging symbol or an electric-powered vehicle charging parking sign applies, or indicated by a road marking that consists of, or includes, an electric-powered vehicle charging symbol.

Clause 25 Time extension for people with disabilities **Section 206 (2)**

This clause amends section 206 (2) to allow a driver of a vehicle displaying a current mobility parking scheme authority to park continuously in an area designated for electric-powered vehicles or charging of electric-powered vehicles for an additional 30 minutes to the time limit posted on the permissive parking sign. The driver must comply with the conditions (if any) of the authority.

The existing time extension provided for mobility parking permit holders in other parking bays (other than a parking area for people with a disability) is provided for under section 206 (2) (b).

The purpose of the time extension for people with disabilities in electric-powered vehicle parking bays is to allow mobility parking authority permit holders additional time to return to their vehicles while supporting the increased use of electric vehicles in the community and ensuring adequate availability of electric vehicle parking for drivers of electric vehicles.

Clause 26 **Wearing motorbike helmet**
Section 270 (3), definition of *relevant standard*,
paragraph (c)

This clause is a minor and technical to update the definition of *relevant standard* for a motorbike helmet imported into Australia to mean the United Nations Economic Commission for Europe standard 22.05 (or any later version of standard 22). This updated definition will allow for future versions of the United Nations Economic Commission for Europe standard 22 to come into effect without requiring changes to legislation.

Clause 27 **Parking control sign applying to length of road in area to**
which other parking control sign applies etc
Section 333 (2)

This clause amends section 333 (2) to provide that, where an area indicated by a people with disabilities road marking, electric-powered vehicle road marking, or electric-powered vehicle charging road marking, is in an area to which a parking control sign applies in accordance with section 335, the road marking applies in the same way as it would apply if it were not in that area.

This clause is consequential to clause 24 which inserts a new definition of *electric-powered vehicle charging road marking* and *electric-powered vehicle road marking*.

Clause 28 **Symbols and traffic-related items**
Schedule 4

This clause is a minor and technical amendment consequential on the changes made at clause 24 to insert symbols for electric-powered vehicle and electric-powered vehicle charging into Schedule 4 (Symbols and traffic-related items).

Clause 29 **Dictionary, new definitions**

This clause is a minor and technical amendment consequential on the changes made at clause 24.

Part 7 **Road Transport (Safety and Traffic Management) Act 1999**

This part of the Bill makes amendments to Parts 1, 2 and 8 of the *Road Transport (Safety and Traffic Management) Act 1999*. Part 1 sets out formal matters of the name of the *Road Transport (Safety and Traffic Management) Act 1999*, its objects, the role of the Dictionary, the role of notes and the application of the *Criminal Code 2002*. Part 2 contains provisions about speeding and other dangerous driving offences and Part 8 contains provisions concerning regulations about safety and traffic management.

Clause 30 Section 3

This clause amends the objects of the Act to better reflect the functions of the Act and remove outdated references.

This includes removing the outdated reference that the Act provide a road safety system that is consistent with outdated agreements attached to the *National Road Transport Commission Act 1991* (Cth) and certain provisions of the *Motor Traffic Act 1936* about safety and traffic management.

The *Motor Traffic Act 1936* was repealed on 1 March 2000 and replaced, in part, by the *Road Transport (Safety and Traffic Management) Act 1999*.

The agreements attached to the *National Road Transport Commission Act 1991* (Cth) were repealed in 2004 and replaced by the Inter-Governmental Agreement for Regulatory and Operational Reform in Road, Rail and Intermodal Transport. The Territory works with other jurisdictions to ensure consistency across road transport legislation where appropriate through the current Infrastructure and Transport Ministers Meeting.

The updated objects of the Act is—

- to provide for safe, efficient and equitable road use;
- to provide for the installation, use and maintenance of traffic control devices and traffic offence detection devices;
- to provide for the closing of roads for traffic management and other purposes.

Clause 31 Section 34

This clause is a minor and technical amendment to remove the outdated reference to the former *Australian Transport Council* and provides that a regulation may apply a publication of the *National Transport Commission* or any other instrument as in force from time to time.

Clause 32 Dictionary, note 3

This clause is a minor and technical amendment consequential on the changes made at clause 31 and removes the term *Australian Transport Council*.

Part 8 Road Transport (Vehicle Registration) Act 1999

This part of the Bill makes amendments to Parts 1 and 2 of the *Road Transport (Vehicle Registration) Act 1999*. Part 1 sets out formal matters of the name of the *Road Transport (Vehicle Registration) Act 1999*, its objects, the role of the Dictionary, the role of notes and the application of the *Criminal Code 2002*. Part 2 sets out formal provisions concerning the registration system established under the Act.

**Clause 33 Objects of Act
Section 2 (a)**

This clause amends section 2 (a) to remove the requirement for the Territory to act in a way that is consistent with agreements attached to the *National Road Transport Commission Act 1991* (Cth) which was replaced by the *Inter-Governmental Agreement for Regulatory and Operational Reform in Road, Rail and Intermodal Transport* in 2004. The Territory works with other jurisdictions to ensure consistency across road transport legislation where appropriate through the current Infrastructure and Transport Ministers Meeting.

Clause 34 Section 2, note

This clause is a minor and technical amendment consequential on the changes made by clause 33.

**Clause 35 Regulations to establish system for vehicle standards
and inspections
Section 15 (3) (a) and (e) (ii)**

This clause is a minor and technical amendment to improve the efficiency of road transport legislation to allow a regulation to make provision in relation to the authorisation of people as authorised examiners to inspect and test registrable vehicles, including whether a stated person was an authorised examiner on a stated date or during a stated period.

Clause 36 Section 15 (3) (g) and (h)

This clause is a minor and technical to replace the term *inspectors* with the term *authorised examiner* to better reflect section 15 (3) and regulations. Similar amendments to section 15 (3) (a) were undertaken in 2000 by the *Road Transport Legislation Amendment Bill 2000 (No 2)*.

Clause 37 Section 16

This clause is a minor and technical amendment to remove the reference to the former Australian Transport Council and provides that a regulation may apply a publication of the National Transport Commission or any other instrument as in force from time to time.

Clause 38 Dictionary, note 3

This clause is a minor and technical amendment consequential on the changes made at clause 34 and removes the term *Australian Transport Council*.

Clause 39 Dictionary, definition of *identification plate*

This is a minor and technical amendment to refer to the correct provision of the *Motor Vehicle Standards Act 1989* (Cth), section 10A.

Part 9 Road Transport (Vehicle Registration) Regulation 2000

This part of the Bill makes amendments to Parts 2.2 and 6.3 of the *Road Transport (Vehicle Registration) Regulation 2000* which make provisions for vehicles not subject to registration provisions and inspections.

Clause 40 Suspension of exemptions Section 7 (1)

This clause is a technical amendment consequential on the changes made by clause 41 to provide that the road transport authority may also suspend the operation of section 15 (Vehicles registered in another jurisdiction by transferred defence force member or eligible family member) in relation to a registrable vehicle if the authority, having regard to any matter mentioned in section 84 (Suspension or cancellation of registration), decides that the suspension is in the public interest.

Clause 41 Section 14

This clause provides for two key amendments.

First, this clause amends section 14 (1) to provide that the registration provisions do not apply to a registrable vehicle that is kept at a garage address in the ACT for 3 months or less. A vehicle must still be registered under the law of another jurisdiction, external territory or foreign country and have numberplates and labels that are required and fully comply with that law or be permitted under a relevant law of another jurisdiction to be used on a road or road related area even though it is unregistered for the exemption to apply. 'Garage address' is defined under the *Road Transport (Vehicle Registration) Act 1999*.

This clause also inserts a new section 15 which will exempt a vehicle that is registered in the name of a person who is a transferred defence force member, or an eligible family member of a transferred defence force member from the registration provisions. This ensures a transferred defence force members and eligible family members are not captured by the new regulatory three-month timeframe for vehicles kept at a garage address in the ACT, given the transient nature of defence force employment.

A vehicle must still be registered under the law of another jurisdiction, external territory or foreign country and have numberplates and labels that are required and fully comply with that law for section 15 (1) to apply. The vehicle must also have MAI or compulsory third-party insurance policy under a law of another jurisdiction in force.

A definition of MAI policy is inserted in clause 22 and is defined under the *Road Transport (General) Act 1999*.

An eligible family member of a transferred defence force member is also defined under new section 15. A comparable defence force exemption is currently afforded to defence force members under the *Road Transport (Driver Licensing) Regulation 2000* from the requirement to hold an ACT licence after residing in the ACT for more

than three months. An exemption from the registration provisions for defence force members is also available under the Queensland registration framework.

The road transport authority may suspend the operation of section 15 under section 7 of the Regulation if it is in the public interest.

Clause 42 **Definitions for pt 6.3**
Section 115, definition of *certificate of appointment*

This clause is a minor and technical amendment consequential on the changes made by clause 35.

Clause 43 **Section 115, new definition of *certificate of authorisation***

This clause is a minor and technical amendment consequential on the changes made by clause 35.

Clause 44 **Sections 119, 126 and 152 heading**

This clause is a minor and technical amendment to the headings of sections 119, 126 and 152 and is consequential on the changes made by clause 35

Clause 45 **Dictionary, note 3.**

This clause is a minor and technical consequential on the changes made by clause 39.

Clause 46 **Dictionary, note 4.**

This clause is a minor and technical consequential on the changes made by clause 23.

Clause 47 **Dictionary, definition of *certificate of appointment***

This clause is a minor and technical amendment consequential on the changes made by clauses 35 and 43.

Clause 48 **Dictionary, new definition of *certificate of authorisation***

This clause is a minor and technical amendment consequential on the changes made by clauses 35 and 43.

Clause 49 **Dictionary, definition of *identification plate***

This clause is a minor and technical amendment consequential on the changes made by clause 39.

Clause 50 Further amendments, mentions of *certificate of appointment*

This clause is a minor and technical consequential on the changes made by clauses 35, 47 and 48.

Schedule 1 Other amendments

This Schedule amends the *Motor Accident Injuries Act 2019*, *Road Transport (General) Regulation 2000*, *Road Transport (Offences) Regulation 2005* and *Victims of Crime Regulation 2000* to incorporate the new offences and consequential amendments.

Part 1.1 Motor Accident Injuries Act 2019

This part of the Bill makes minor and consequential amendments to the *Motor Accident Injuries Act 2019*.

Clause 1.1 Section 41, definition of *driving offence*, paragraph (c) (ii) (B)

This clause makes minor and technical amendments to the definition of *driving offence* in subsection (c) (ii) (B) to correctly reference section 41AD of the *Road Transport (Alcohol and Drugs) Act 1977* instead of section 41AB, which is not applicable.

Clause 1.2 Section 41, definition of *driving offence*, paragraph (c) (iii)

This clause makes minor and technical amendments to the definition of *driving offence* to correctly cross-reference provisions of the *Road Transport (Drugs and Alcohol) Act 1977* relating to evidentiary certificates and statements.

This clause also includes new section 24A (2) included in the definition of *driving offence* when a copy of a certificate under that Act is admitted in evidence in a proceeding shows the concentration of alcohol in a person's blood was equivalent to level 3 or 4 or when the offence relates to the person being under the influence of a drug. This is consistent with the policy intent behind the inclusion of other drink and drug driving offences in the definition of driving offence while also acknowledging the application of this offence to drug driving is limited to non-motor vehicle transport modes and road-related areas.

Please see the Explanatory Statement for the *Motor Accident Injuries Bill 2019* for an assessment about why any potential limitation on the right to recognition and equality before the law is considered proportionate and justified in accordance with section 28 of the HRA.

Clause 1.3 Section 48 (7), definition of *serious offence*, paragraph (b) (vii) (B)

This clause makes minor and technical amendments to the definition of *serious offence* in subsection (b) (vii) (B) to correctly cross-reference provisions of the *Road Transport (Alcohol and Drugs) Act 1977*.

Clause 1.4 Section 48 (7), definition of *serious offence*, paragraph (b) (ix) and (x)

This clause makes minor and technical amendment to the definition of *serious offence* to correctly cross-reference provisions of the *Road Transport (Alcohol and Drugs) Act 1977*.

Part 1.2 Road Transport (General) Regulation 2000

This part of the Bill makes minor and consequential amendments to the *Road Transport (General) Regulation 2000*.

Clause 1.5 Section 16 (1) (f)

This clause is a minor and technical amendment and is consequential on the changes made by clause 35.

Clause 1.6 Section 17 (1), definition of *relevant thing*, paragraph (d)

This clause is a minor and technical amendment and is consequential on the changes made by clause 35.

Clause 1.7 Schedule 1, part 1.11, item 1, column 3

This clause is a minor and technical amendment and is consequential on the changes made by clause 40.

Clause 1.8 Schedule 1, part 1.11, item 2, column 3

This clause is a minor and technical amendment and is consequential on the changes made by clause 40.

Clause 1.9 Schedule 1, part 1.11, item 58, column 3

This clause is a minor and technical amendment and is consequential on the changes made by clause 35.

Clause 1.10 Dictionary, note 3

This clause is a minor and technical consequential on the changes made by clause 23 and 41.

Part 1.3 Road Transport (Offences) Regulation 2005

This part of the Bill makes minor and consequential amendments to the *Road Transport (Offences) Regulation 2005*.

Clause 1.11 Schedule 1, part 1.2A, note

This clause is a minor and technical amendment and is consequential on the changes made by clause 4.

Clause 1.12 Schedule 1, part 1.2A, items 274 and 275

This clause is a minor and technical amendment and is consequential on the changes made by clause 4.

Clause 1.13 Schedule 1, part 1.3, item 17

This clause is a minor and technical amendment and is consequential on the changes made by clause 9.

Clause 1.14 Schedule 1, part 1.12A, new items 276A and 276B

This section inserts new items 276A and 276B consequential on the changes at clause 24.

It sets the infringement notice penalty for the new strict liability offences of stopping in parking area for electric-powered vehicles and stopping in parking area for charging of electric-powered vehicles. The infringement notice penalty is set at \$125 which is consistent with existing penalties for similar offences.

The penalty is set in accordance with the *Guide for Framing Offences*

Clause 1.15 Schedule 1, part 1.15, items 73, 76 and 89, column 3

This clause is a minor and technical amendment and is consequential on the changes made by clause 35.

Clause 1.16 Dictionary, note 3

This clause is a minor and technical consequential on the changes made by clauses 23 and 41.

Part 1.4 Victims of Crime Regulation 2000

This part of the Bill makes minor and consequential amendments to the *Victims of Crime Regulation 2000*.

Clause 1.17 Section 49A (b)

This clause is a minor and technical amendment to exclude the reference to sections 567A and 567B from section 49A (b) and is consequential on the changes made by clause 4.

Clause 1.18 Schedule 2, part 2.1, new items 52A and 52B

Schedule 2 of the *Victims of Crime Regulation 2000* provides a list of offences that are excluded from the victims' services levy. Part 2.1 contains offences against the *Road Transport (Road Rules) Regulation 2017* that are excluded from the victim's services levy and can be generally described as parking and stopping offences.

This clause is a minor and technical amendment to insert new items 52A and 52B to part 2.1 to exclude new sections 203B and 203C of the *Road Transport (Road Rules) Regulation 2017* from the victim's services levy and is consequential on the changes made by clause 24.