

Australian Capital Territory

Road Transport (Safety and Traffic Management) Traffic Offence Detection Device Approval 2023 (No 1)

Disallowable instrument DI2023 – 8

made under the

Road Transport (Safety and Traffic Management) Regulation 2017, section 13 (1) (Approval of traffic offence detection devices) and section 15 (1) (c) (Requirements for images taken by traffic offence detection devices—Act, s 24 (2) (a) and (d))

EXPLANATORY STATEMENT

This instrument provides for the approval of traffic offence detection devices as required under section 13 of the *Road Transport (Safety and Traffic Management) Regulation 2017*.

Section 13 (1) provides that the road transport authority may approve a traffic offence detection device. The approval must state the kind of device or system that is approved as a traffic offence detection 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.

Section 13 (3) requires that the road transport authority must not approve a device or system as a traffic offence detection device unless satisfied on reasonable grounds that the device or system is capable of complying with section 15 (Requirements for images taken by traffic offence detection devices—Act, s 24 (2) (a)).

A declaration by the road transport authority under subsection 13 (1) is a disallowable instrument and will have effect until revoked.

Human Rights

The Standing Committee on Justice and Community Safety (Legislative Scrutiny Role) terms of reference require consideration of human rights impacts, among other matters.

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

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 means that no interference can take place except in cases authorised by law. This instrument approves traffic offence detection devices and sets the requirements for the operation of these devices.

The devices detect road transport offences and collect personal information 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, may contain details of a person’s travel such as direction, location and time, and in the case of mobile device detection systems approved to enforce illegal mobile phone use while driving, may also include images of the driver of the vehicle.

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 *ACT Road Safety Action Plan 2020-2023* (Action Plan) recognises that distracted driving, particularly distraction from mobile devices, is an increasing road safety issue. Drivers who look at their mobile devices while driving are three times more likely to be involved in a crash than non-users; dialling or locating and answering a hand-held phone increases the chances of having a crash by four times; and texting, browsing and emailing on a mobile device while driving increases crash risk by ten times.

Additionally, the Action Plan recognises that any level of speeding presents a road safety risk for the driver and other road users. Numerous studies have shown that perceived ‘low level’ speeding contributes to a significant percentage of road casualties and fatalities. Speeding at five kilometres an hour above the speed limit increases both the likelihood of a crash occurring, and the severity of driver and pedestrian injuries in a crash. For car occupants in a crash with an impact speed of 80 km/h, the likelihood of death is 20 times what it would have been at an impact speed of 30 km/h.

The devices approved in this instrument will be used to detect speeding and mobile phone use offences under the ACT’s road transport legislation for the purposes of reducing road trauma.

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

The use of traffic offence detection devices in the community encourages changes in behaviour to protect and support the safety of all road users and ensure compliance with the ACT's road transport legislation.

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).¹ 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.

Similarly, mobile device detection cameras encourage drivers to stop using their mobile devices while driving through increased enforcement of existing road transport offences. The Human Rights Compatibility Statement to the [Road Transport \(Safety And Traffic Management\) Amendment Bill 2021](#) noted that NSW had 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 and that Victoria had also established significant prevalence of illegal use of mobile phones during a three month trial of the cameras.

The collection of personal information by the traffic offence detection devices, including vehicle details, location, date and time of the infringement and images of a driver illegally using a mobile device, directly facilitates the enforcement of the ACT's road transport legislation and protects the community.

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.

A number of safeguards have been incorporated into the regulatory framework for the operation of traffic offence detection devices. 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.

Data from the traffic offence detection devices can only be used in accordance with the safeguards in section 29 of the *Road Transport (Safety and Traffic Management) Act 1999*. The *Road Transport (Safety and Traffic Management) Regulation 2017* also includes 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; and

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

- for a traffic offence detection device designed to take an image of the driver of a vehicle, as far as practicable, the image must only show as much of the driver as is necessary to show the person in contravention of a provision of the road transport legislation.

The collection, use or disclosure of private information must comply with the *Information Privacy Act 2014* and the *Privacy Act 1988* (Cwlth). This includes the requirement for government contracts with any service provider to include appropriate provisions for privacy protections, in accordance with section 21 of the *Information Privacy Act 2014*.

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

Climate Change

Transport Canberra and City Services anticipates that approving traffic offence detection devices for use in the ACT will have not have a measurable impact on climate change.

Outline of Provisions

Clause 1 names the instrument the *Road Transport (Safety and Traffic Management) Traffic Offence Detection Device Approval 2023 (No 1)*.

Clause 2 states that the instrument commences on 1 February 2023.

Clause 3 approves the speed measuring devices to measure the speed a vehicle is travelling and to detect speeding offences.

Clause 4 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

Clause 5 approves a mobile device detection system to detect use of a mobile device by a driver while driving and to take images of the driver and vehicle being driven.

Clause 6 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

Clause 7 provides that the Director General, as the road transport authority, is satisfied on reasonable grounds that the approved traffic offence detection devices are capable of complying with the image requirements of section 15.

Where practicable, each device approved under this instrument listed in schedule 1, 2 or 4, is not permitted to take an image of the driver of a vehicle. This requirement has

been set to protect personal privacy, however, recognises limitations such as images that include motorcycle riders.

Clause 8 revokes instrument *Road Transport (Safety and Traffic Management) Traffic Offence Detection Device Approval 2021 (No 1)*. These devices are included within the new instrument.

Clause 9 refers to the definitions prescribed by the *Road Transport (Safety and Traffic Management) Act 1999* for a speed measuring device, average speed detection system, mobile device detection system and traffic offence detection device.

Schedules 1, 2 and 4 lists the approved devices, referred to in clause 3, 4 and 6. These devices are subject to the requirements imposed by Schedule 5.

Schedule 3 lists the device that is approved as a mobile phone detection system.