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

ROAD SAFETY LEGISLATION AMENDMENT BILL 2023

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

**Presented by
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ROAD SAFETY LEGISLATION AMENDMENT BILL 2023

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

OVERVIEW OF THE BILL

The Road Safety Legislation Amendment Bill 2023 (Bill) makes amendments to legislation and regulation related to impaired driving found under the:

- *Road Transport (Alcohol and Drugs) Act 1977* (RT (A&D) Act),
- *Road Transport (Alcohol and Drugs) Regulation 2000* (RT (A&D) Regulation),
- *Road Transport (Driver Licencing) Regulation 2000* (RT (DL) Regulation),
- *Road Transport (General) Act 1999* (RT (General) Act) and the
- *Road Transport (Offences) Regulation 2005* (RT (Offences) Regulation).

This legislative framework contains provisions relating to driving under the influence of alcohol, drugs, or a combination of both. The Bill builds on amendments made to ACT road safety legislation in 2023 that addressed dangerous driving behaviours through the Road Safety Legislation Amendment Bill 2022 (2022 Bill)¹. The 2022 Bill targeted dangerous driving behaviour, drug driving, and fitness to drive.

The amendments in this Bill are underpinned by the following policy considerations:

- aligning impaired driving penalties with community expectations, balanced against road safety outcomes;
- ensuring that impaired driving offences and their enforcement are swifter and more effective;
- sending a strong message to the community that any and all impaired driving is high risk behaviour;
- where possible and appropriate, diverting first-time offenders from the justice system by imposing balanced and equitable punishments;
- moving toward *Vision Zero*, which aims to achieve zero deaths or serious injuries on ACT roads²; and
- broadly supporting national alignment, where reasonable and practical, for impaired driving offences and their associated penalties.

More specifically, the Bill:

- increases and equalises, where relevant and feasible, penalties for drink and drug driving offences;
- creates a low-range drink driving (LRDD) Traffic Infringement Notice (TIN) for first-time offenders;

- creates a new offence for simultaneous drug and alcohol driving;
- updates the penalties of the offence designed to capture the highest risk and most severe cases of impaired driving;
- expands roadside drug testing to include cocaine; and
- makes several structural, minor and technical amendments to road transport legislation to align with modern legislative standards and improve readability.

Impacts of impaired driving on ACT Roads

Drink and drug driving is one of the top contributing factors to death and serious injury on Australian roads and identified as one of the ‘fatal five’ top contributing factors to death and serious injury on ACT Roads³. For example, in 2019 in New South Wales (NSW), 121 people died in crashes involving illegal levels of alcohol or the presence of illicit drugs. NSW sees an average of 56 people die and 320 seriously injured in crashes each year involving illegal levels of alcohol – and 22 percent of fatalities, or the equivalent of 78 lives lost, involve a driver with the presence of illegal drugs in their system.

Impaired driving affects judgement and decision making, slows reaction time, reduces attention span and is often combined with other risky behaviours, such as speeding. The risk of a casualty crash doubles when driving with an alcohol level just in excess of a 0.05 blood alcohol concentration and the risk of involvement in a fatal crash increases even more sharply.⁴ The crash risk of a high range (Blood Alcohol Content >0.15) alcohol driving offence has been estimated by NSW as 25 times that of a zero BAC reading⁵.

In the ACT over the 2019–2022 period, 2,608 people were charged with a total of 2,833 section 19 drink driving offences, an average of more than 700 people every year caught with illegal levels of alcohol in their blood or breath. Of these, 1,186 (45%) people were level 3 offenders (BAC 0.08 – 0.15) and 617 (24%) were level 4 offenders (BAC above 0.15). Over the same period, 2,446 section 20 drug driving charges were laid against 1,738 people, an average of 435.⁶ Noting the above rates of elevated crash risk, it is evident that these not-insignificant numbers of drink and drivers pose a significant and real danger on our roads.

Likewise, there is a range of evidence linking drugs to elevated crash risk. Driving while drug impaired can also slow reaction times and cause a distorted view of time and distance. Drugs stimulate a person’s central nervous system, which can lead to a reduced attention span and the sudden onset of fatigue as the effects wear off. Driving while drug impaired can also cause people to make dangerous decisions, increasing the chance they will harm themselves, their passengers, and/or other road users.⁷

In the ACT, drink and drug driving has been, and remains, a main contributing factor to deaths and serious injuries on the road network. The Road Safety Action Plan

2020-23 identifies that penalties associated with road transport offences must be commensurate with the road safety risk posed by the behaviour, which, in this case, is objectively significant.

All drivers in Australia have an obligation to know the road rules. To assist the ACT community in fulfilling this obligation, the ACT Government operates learner driver licence programs and implements road signage, and driver awareness campaigns (by both the Road Traffic Authority and ACT Policing), that drink and drug driving and driver impairment generally are offences carrying serious penalties, including licence disqualification, fines, and (for extremely serious or repeat offenders) the possibility of imprisonment.

Achieving swifter, stronger, fairer and more visible penalties

The amendments in this Bill are designed to achieve a primary purpose: swifter, stronger, fairer, and more visible penalties that are commensurate with the significant risk posed by drink and drug driving. The implementation of a low range drink driving TIN, creation of a new combined drink and drug driving offence, along with the various penalty level amendments and structural, minor and technical changes to make the legislation clearer, are all designed to achieve this primary purpose.

Importantly, the Bill reinforces the message that the ACT Government does not condone or encourage the recreational use of illicit drugs, with an absolute zero tolerance of their use while driving. This is a message the Government will continue to share with the Canberra community both in the context of this legislation, and more broadly.

The risks and dangers of impaired driving, and the rules surrounding it, are well known by the community and all licenced drivers. Impaired driving is an essential part of knowledge testing for driver licences across jurisdictions⁸ – in the ACT, these questions must be answered correctly to pass⁹. Further, risks and offences are well publicised across state and territory agency websites¹⁰, and across the social support (e.g., Legal Aid¹¹) and legal spheres¹².

Defence provisions – legal burden of proof

Several of the offences in the Bill contain specific defences that are in addition to the defences that are generally available to defendants in criminal proceedings. The clause notes for the relevant provisions explain the defences and the evidentiary issues that may arise for those defences.

Section 60 of the *Criminal Code 2002* applies to several of these defences and requires the defendant to establish the matters constituting the defence on the balance of probabilities. The matters that a defendant must establish are generally matters that the defendant is best placed to know. An example is the defence in the

new section 21 of the *Road Transport (Alcohol and Drugs) Act 1977*, which deals with special drivers who ‘innocently’ consume alcohol in the form of food, medicine or as part of religious observance.

CONSULTATION ON THE PROPOSED APPROACH

Consultation on policy and Bill development across the ACT Government occurred via the Transport Penalties Review Inter-Directorate Committee (IDC). The IDC is a cross-agency committee which supports and provides advice on the Penalties Review project. Members were Executive level officials from across the ACT Government and authorised to represent the needs and position of their Directorate/Agency.

The IDC included dual membership from Community Services Directorate (CSD) who represented the needs and concerns of vulnerable community groups throughout development of this Bill. CSD members were specifically consulted to understand if and how the amendments proposed through this Bill may unduly impact people with disability, youth, seniors, veterans and/or Aboriginal and Torres Strait Islander people. No issues specific to vulnerable groups were raised by those members, other than the potential impost of greater financial penalties. The Bill does not override or change existing government mechanisms, the offences and penalty amendments proposed in this bill continue to be non-discriminatory in line with their existing status as road transport offences and penalties, and the supports available to assist vulnerable individuals facing financial hardship as a result of an imposed penalty remain unchanged. Note also, that sentencing considerations for vulnerable individuals is the remit of ACT Courts and Tribunal (including the Galambany Circle Sentencing Court) and the *Crimes (Sentencing) Act 2005* and are not addressed specifically under this Bill as they are out of scope.

IDC membership and / or representation comprises the following directorates and agencies, with Executive Branch Managers (or equivalent) representing each directorate and/or agency:

- Transport Canberra and City Services (TCCS, Strategic Policy and Programs (SPP) (Policy and Legislation, Transport) (Chair and Secretariat);
- Chief Minister, Treasury and Economic Development Directorate (CMTEDD) (Access Canberra, Licensing and Registrations; Treasury, Economic and Regulatory Policy; Policy and Cabinet; Insurance);
- Justice and Community Safety Directorate (JACS) (Legislation, Policy and Programs);
- Community Services Directorate (CSD) (Strategic Policy; Office of Aboriginal and Torres Strait Islander Affairs);
- ACT Policing (Legislation and Policy);
- Education Directorate (Strategic Policy); and

- ACT Health Directorate (Data Analytics; ACT Government Analytical Laboratory).

Other key stakeholders that have provided critical input into Bill development include:

- TCCS: Strategic Policy and Programs - Transport Policy and Regulation team and TCCS Finance and Budget;
- JACS Legislation Policy and Programs - Human Rights and Social Policy;
- The ACT Human Rights Commission (HRC) - Human Rights Team, Victims of Crime Commission; and
- CMTEDD Treasury - Finance and Budget.

TCCS has also consulted with other State and Territory Governments, the Commonwealth Government, and with the New Zealand Government Ministry of Transport to support policy and Bill development.

External public consultation was not undertaken during development of the Bill. There has been extensive public discussion on road safety and dangerous driving recently including the ACT Assembly Inquiry on Dangerous Driving, the Government response to which was tabled earlier in 2023. The outcomes from the Inquiry and consultation with key stakeholders was considered in the development of this 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:

- the nature of the right affected
- the importance of the purpose of the limitation
- the nature and extent of the limitation
- the relationship between the limitation and its purpose
- 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 as it relates to impaired driving.

RIGHTS ENGAGED

Broadly, the Bill engages with the following human rights:

- Section 8 – Right to recognition and equality before the law (promoted and limited)
- Section 9 – Right to life (promoted)
- Section 11 – Right to protection of the family and children (promoted and limited)
- Section 12 – Privacy and reputation (limited)
- Section 14 – Freedom of thought, conscience, religion and belief (promoted)
- Section 18 – Right to liberty and security (limited)
- Section 21 – Right to a fair trial (limited)
- Section 22 – Rights in criminal proceedings (limited)

RIGHTS PROMOTED

The primary right promoted by the Bill is Section 9 of the HRA, the right to life. The rights promoted by the Bill include:

- Section 9 – Right to life
- Section 11 – Right to protection of the family and children
- Section 8 – Right to recognition and equality before the law, and
- Section 14 – Right to freedom of thought, conscience, religion and belief

Right to life

Section 9 of the HRA provides that everyone has the right to life and to not have their life taken. The right to life includes a duty on government to take appropriate steps to protect the right to life.

The Government has a responsibility to maintain a robust regulatory framework which supports safe people and safe behaviours on ACT roads to protect the lives of road users. This includes pedestrians, motorcycle riders, cyclists and other vulnerable road users. The Bill promotes this right to life by improving the legal framework for impaired driving offences. The Bill ensures that penalties for impaired driving in the ACT are commensurate with the road safety risk associated with this unsafe behaviour and focus on encouraging safer decisions by drivers and supporting behavioural change for offenders.

The amendments in this Bill will increase ACT Policing's ability to act more swiftly in addressing first-time LRDD on Territory roads via a TIN and corresponding Immediate Suspension Notice (ISN). It will also align drug driving offences to include an ISN. Drug driving ISNs will be issued as soon as testing results are confirmed by a laboratory, generally within two to three weeks¹³ from date of offence. These two inclusions will protect lives via swifter removal of offenders from ACT roads, as both low range drink driving and all drug driving offenders retain their licence until a court is able to hear their matter, which can take a number of months.

The amendments also aim to reduce the prevalence of impaired driving by ensuring there are appropriate sanctions for other related behaviour on ACT roads. Other amendments include a new combined offence for the very high-risk behaviour of impaired driving while under the influence of both alcohol and drugs, and proportionally increased penalties for refusal to undertake alcohol or drug screening tests. These amendments ensure that a person who drives while impaired is deterred from seeking a lesser penalty by instead unlawfully refusing to be tested for drink or drug driving, or by failing to stay for a drug or alcohol test.

Right to protection of the family and children.

Section 11 of the HRA provides that the family is the natural and basic group unit of society and is entitled to protection by society. It also provides that every child has the right to the protection needed by a child because of being a child, without distinction or discrimination of any kind. This right is promoted as the Bill addresses drink and drug driving behaviours and mitigates the potential for loss of life and/or serious injury on ACT roads by providing swifter, stronger and fairer penalties for drink and drug driving.

Drink and drug driving is a significant contributing factor to the loss of life and serious injury on the ACT roads. Loss of life and serious injury have lasting and traumatic impacts on families and children¹⁴. This could include, for example, the death or serious injury of a parent or a child and the devastating impact this has on families. Preventing deaths on ACT roads is a Government responsibility that plays a significant contribution to ensuring that families and children are not impacted by these preventable tragedies.

Right to recognition and equality before the law and right to freedom of thought, conscience, religion and belief

Section 14 of the HRA provides that everyone has the right to freedom of thought, conscience, religion and belief, including the freedom to demonstrate their religion in observance and practice. The Bill promotes this right by introducing a defence for the low-level alcohol readings (not more than 0.02g in 100ml of blood or 210L of breath) where the defendant can prove the consumption of an alcoholic beverage formed part of a religious observance. Section 8 of the HRA provides that everyone has the right to recognition and equality before the law. This right is promoted through the

application of this defence by ensuring people aren't indirectly discriminated against on the grounds of religion.

This defence is only relevant to special drivers as full licence drivers can legally drive with an alcohol reading of up to 0.05g in 100ml of blood or 210L of breath.

RIGHTS LIMITED

The following rights are limited by the Bill:

- Section 8 – Right to recognition and equality before the law
- Section 11 – Right to protection of the family and children
- Section 12 – Privacy and reputation
- Section 18 – Right to liberty and security
- Section 21 – Right to a fair trial
- Section 22 – Rights in criminal proceedings.
- Section 27B - Right to work

This section is divided by the four major policy outcomes that engage and limit human rights:

- A. increasing penalties for alcohol and drug driving offences including penalty units, imprisonment, automatic driver licence disqualification and alcohol interlocks;
- B. creating a low-range drink driving (LRDD) Traffic Infringement Notice (TIN) for first-time offenders;
- C. creating a new combined offence for simultaneous drug and alcohol use while driving; and
- D. expanding roadside drug testing to include testing for cocaine in bodily fluid.

The rights limited by each of these policy outcomes is detailed sequentially below.

A. Increasing penalties for alcohol and drug driving offences

The Bill increases the maximum penalty units for all relevant offences. Any increases will be incorporated in the equalisation efforts. The Bill also makes changes to licence disqualification and prison alternative periods, bringing offences under the Road Transport (Alcohol and Drugs) Act 1977 as closely back in line with GFFO requirements as feasible given the strict liability nature of these offences.

The proposed new penalty levels may appear to increase significantly compared to current levels. However, there has been a significant period since last amendment to increase penalty levels. Further, there are significant disparities of current levels when viewed against other offences that pose a much lower road safety risk, and the very real risk of impaired driving. For these reasons the new levels are assessed as reasonable. The proposed new levels are also, with some nuances to enable

comparison between the offences, broadly in line with NSW and Victoria. Further information on jurisdictional comparisons is available in the proportionality section.

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

Penalty units

The Bill engages and limits the right to equality before the law including equal and effective protection from discrimination as increases in penalty units (fines) may disproportionately impact vulnerable people such as younger offenders or those with drug and alcohol addictions. The primary impact of increased fines is the increased financial strain this may place on a vulnerable community member, which can lead to additional penalties, legal fees and the suspension of driving privileges.

Automatic licence disqualification

The amendments relating to automatic licence disqualification engage and limit a person's rights to protection of family and children, and equality before the law. Automatic licence disqualification, when applied without sufficient due process and legal safeguards, limits a person's human rights by limiting a person's ability to work where they use their car or licence for work, and right to family and children where a person relies on a car to care for family members. It can also have a disproportionate impact on disadvantaged and vulnerable community members, particularly those with lower incomes who may struggle to pay fines or legal fees.

Imprisonment

The amendments relating to imprisonment periods limit the right to liberty and security of person by introducing and increasing some maximum periods of imprisonment for relevant drink and drug driving offences.

Imprisonment limits the rights to liberty and security of a person by depriving them of freedom, which is a direct limitation on the right to liberty. People who are imprisoned lose autonomy, are separated from their family and community, can lose their jobs, can be socially stigmatised, and may experience detrimental impacts in physical and mental health. All of these factors can compromise a person's sense of security, both physically and psychologically, which is assessed against the severity of the offending and detrimental impacts which engage other human rights such as the right to life. As such, imprisonment penalties are to be applied to the most serious offences and should be proportionate to the risk cause by the offending.

For offences where maximum penalties include imprisonment terms careful consideration has been given to the nature of the offence and the risk it poses to the community and the reasonableness. The GFFO was also considered which proposes incremental increases of 6 months imprisonment per 50 penalty units. The Bill takes a tiered approach to setting penalties, including imprisonment, where less serious offending has lower terms while more serious offences and repeat offences and have incrementally higher imprisonment. This is considered reasonable as serious or extreme offences and repeat offenders show a wilful and reckless

disregard for the safety of the community. The offences proposed in the Bill are largely consistent with other jurisdictions, noting that direct comparisons are difficult due to the nuanced differences in road rules. Specifically, this Bill proposes penalties that fall between the offences set by NSW and Victoria, as outlined in Table 1.

Alcohol interlocks

An alcohol ignition interlock device is a device that prevents a motor vehicle from being started, or continuing to be driven, unless the device is provided with a sample of a person's breath containing no alcohol (section 73ZL, *Road Transport (Driver Licensing) Regulation 2000*).

The implementation of mandatory interlock requirements limits the right to privacy as it requires the interference with a person's private property to install the interlock device and the testing of a person's breath for them to use their vehicle. Furthermore, the right to privacy and reputation may be further limited given that participation in the program entails the sharing of information between agencies involved in the provision of treatment services, the road transport authority, police, and interlock service providers and installers.

Immediate suspension

The amendments in the Bill further incorporate certain drink and/or drug driving offences into the immediate suspension notice (ISN) framework. ISNs are issued where a police officer believes on reasonable grounds that a person has committed an immediate suspension offence and can lead to a person having their licence suspended for a set period without a court order.

ISNs limit the right to fair trial and rights in criminal proceedings as they are issued based on a police officer's belief on reasonable grounds (screening and confirmatory tests that provide scientifically objective readings) that a person's alcohol and/or drug test results meet the threshold of an offence, and the person accepts the penalty without a criminal charge being determined by a court. Therefore, the right to be presumed innocent until proven guilty is limited.

Where a person uses their car or licence for work this may result in a limitation on a person's right to work. Where a person relies on a car to care for family members, this may result in a limitation on a person's right to family and children.

Consequential amendments

Consequential amendments will also be made to the penalty unit levels at ss 22 (refusing to provide breath sample), 22A (refusing to provide oral fluid sample), 22B (Failing to stay for screening test), 22C (Refusing to undergo screening test) and 23 (Refusing blood test) which increase the number of penalty units in the maximum penalty and increase penalties of imprisonment (previously listed in section 27 and now relocated to each individual offence) to align with the most severe drink and drug driving offences (as is the current legislated policy).

These amendments therefore also limit the right to equality before the law as the applicable fines may disproportionately impact vulnerable people and limit the right to liberty and security of person by increasing maximum penalties of imprisonment.

Furthermore, as offences at sections 22, 22A, 22C, and 23 are strict liability offences, which of themselves limit the right to the presumption of innocence because they allow for the imposition of criminal liability without the need to prove fault, increasing penalties of imprisonment is a more significant limitation.

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

The legitimate purpose of the amendments is to protect the public from the dangers posed by unsafe impaired (alcohol and/or drug) driving behaviours on all transport modes and all parts of the road network, supporting the right to life of all Canberrans.

Alcohol and drug use are known to be a main cause of road fatalities in Australia, along with other 'human factors' such as speeding, driver distraction and fatigue. There is significant evidence linking impairment, whether via alcohol or drugs, to driving performance, crash risk, and crash culpability¹⁵. The relationship between driving under the influence of alcohol and/or drugs, and the risk associated with doing so, is well-understood and accepted by the community. There are significant public interest benefits that arise from ensuring that roads are safe for all road users. Appropriate enforcement actions against a person's driver licence are essential to ensuring that drivers who pose a risk are removed from ACT roads to minimise community harm.

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

The proposed amendments are designed to be effective in achieving the legitimate aim of reducing road safety risk associated with unsafe impaired driving behaviours. Existing ACT drink and drug driving penalties are currently set lower than penalties for other less-serious road transport offences. Increasing drink and drug driving penalties to meet modern community expectations, and to recalibrate penalties to align with other Australian jurisdictions such as NSW and Victoria (see Table 1 and Table 2), is intended to support safe driving decisions and strongly disincentivise drivers from engaging in high-risk drink and/or drug driving behaviour. The fewer drink and/or drug drivers there are on ACT roads, the lower the overall road safety risk impaired driving behaviours pose to the community.

An objective of the Penalties Review, as committed to under the Road Safety Action Plan 2020 to 2023, is "*to ensure penalties are commensurate with the road safety risk of the behaviour and are consistently applied across the road transport legislation*". The Bill adopts an approach of using set ratios to determine appropriate penalties where possible.

The GFFO recommends ratios as a means to create consistency in penalties but does not propose a ratio specific to licence disqualification periods, as the GFFO provides general guidance rather than being specific to road transport. To embed future consistency in road transport penalties and apply a similar rationale as that recommended in the GFFO, a ratio of 6 months licence disqualification per 25 penalty units is applied. The resulting disqualification periods are deemed reflective of the severity of each offence, and generally fall between the default automatic licence disqualification periods of NSW and VIC. Further detail on the comparison is available in the proportionality section.

Penalty units

The Bill equalises penalty units across a range of drink and/or drug driving offences in a way that seeks to introduce proportionality and consistency to relevant penalty unit levels. Penalty units are intentionally set higher to reflect the severity of the offence, and in proportion both to similar offences in other jurisdictions and to other offences in ACT road transport legislation.

Penalty levels for drink and drug driving offences have, in some cases, not been amended in decades and the current penalty levels for most impaired driving offences are now significantly below the penalty unit levels of many other ACT offences that have a less-direct association with increased road safety risk. Amendment to ensure the penalty levels are commensurate with the road safety risk of drink and drug driving is required.

Legislative equalisation, as relevant and feasible, of drink and drug driving penalties will modernise and align ACT drink and drug driving penalties with those in other jurisdictions and reinforce that the Government views any form of intoxicated driving as dangerous and requiring the strongest deterrence.

Setting higher penalty units for drink and drug driving offences reflects the seriousness and severity through which the community views such behaviour. Ensuring that penalty units are appropriate and proportionate to these offences is of high importance to the community, given the high risk of death and injury associated with drink and/or drug driving.

As such, increasing penalty units in a consistent, measurable and proportionate way achieves the legitimate purpose of the Bill by sending a message that the Government views these offences as severe enough to warrant significantly increased penalty unit levels. Drink and/or drug driving is a conscious and avoidable decision. As such, the adverse impact of increased financial penalties should influence potential offenders' decisions and support safer driving behaviours, warranting the need for this limitation.

In relation to penalties attached to infringement notices, these are intended to deter repeat behaviour, while not imposing unjust and excessive restrictions or deprivations of human rights. A detailed discussion on the new Traffic Infringement

Notice is contained in section “*B. Creation of a Traffic Infringement Notice (TIN) for first-time LRDD offence*”.

Automatic licence disqualification

Although minimum sentences are generally not recommended by the GFFO, applying minimum automatic disqualification periods for relevant drug and alcohol offences is currently approved and legislated government policy. This approach is consistent with NSW and VIC. The Bill carries over these provisions with adjustments being made to ensure the disqualification is appropriate and proportionate. This essential element of the Bill underpins the rational connection.

Using the 6 months per 25 penalty unit ratio outlined above brings the new automatic licence disqualification periods broadly in line with Victoria and slightly lower than NSW. This ratio results in the reduction of default automatic licence disqualification periods for some of the higher range drink driving offences (section 19, level 3 repeat and level 4 first and repeat) and section 24. Minimum automatic disqualification periods have, in all cases except sections 22, 22A, 22C, and 23, been calculated as 50% of the default period set using this ratio.

These amendments achieve the legitimate purpose of this bill by ensuring that people who have committed relevant offences are removed from ACT roads for a suitable period likely to have a significant deterrent effect. This is not excessively or disproportionately punitive given the severity of drink and/or drug driving offences. The amended disqualification periods are considered reasonable as the disincentive of losing one’s licence should strongly influence potential reoffenders’ decisions and support safer driving behaviours.

Imprisonment

Increasing imprisonment penalties as outlined in the Bill achieves the legitimate purpose of protecting the public from the dangers posed by extreme or multiple repeat alcohol and/or drug driving behaviours on ACT roads, supporting the right to life. These amended imprisonment periods strongly reinforce the message that the ACT Government will not accept drink and/or drug driving.

Imprisonment periods are intended as an alternative sentencing option to be considered and applied by the judiciary in only the most extreme cases of offending, or cases of multiple reoffending where other interventions are having no deterrent effect on an offender’s decisions to put themselves and the community at significant risk by drink and/or drug driving.

Repeat drink driving offending is a significant issue in the ACT. Data from ACT Police from the period 2003 to 2022 indicates that 44% (3,660) of all repeat traffic offenders (those offenders that have 2 or more traffic related offences recorded) are repeat drink driving offenders. Of these, 21% have offended 3 times, and 10% offending 4 or more times over the period¹⁶. For evidence on the elevated crash risk

of extreme drink and drug driving behaviours, please see the “*Impacts of impaired driving on ACT Roads*” section in the Overview section.

The Bill proposes a tiered approach to setting imprisonment penalties that increase with the severity of the offending and risk of harm. The Bill also broadly follows the GFFO ratio of 6 months per 50 penalty units (noting this is generally recommended for application to non-strict liability offences). The resulting increased imprisonment periods align or fall broadly between those set in VIC and those set in NSW.

Imprisonment penalties will be increasing for the following offences:

- a new penalty of imprisonment for driving while alcohol impaired for BAC levels 1 and 2 for repeat offenders (s 19) to address cases of multiple repeat offending where alternative interventions have been exhausted and are still proving ineffective;
- increased sentences of imprisonment for driving while alcohol impaired for BAC levels 3 and 4 for repeat offenders (s19) to respond to the significantly elevated road safety risk of these behaviours;
- increased sentences of imprisonment for driving while drug impaired for repeat offenders (s20) to address cases of multiple repeat offending where alternative interventions have been exhausted and are still proving ineffective;
- increased sentences of imprisonment for driving while under the influence of an intoxicating liquor or drug for both first and repeat offenders (s24); and
- as a resulting consequential amendment, increased sentences of imprisonment for both first and repeat offenders for refusal to undertake an impaired driving screening test (ss22, 22A, 22C and 23) to maintain consistency with the existing and legislated position of mirroring penalties for these offences with those set for the most severe alcohol and drug offences.

Alcohol interlocks

Alcohol interlocks are a long standing and effective intervention to support behaviour change for high-risk alcohol driving offenders. Alcohol interlocks are utilised in the ACT and across Australia. In Victoria, for example, they are mandatory for all drink driving offences, for both first and repeat offenders. In the ACT it is mandatory for a person to participate in the Territory’s interlock program if the person has been convicted or found guilty of certain drink driving offences (for example, driving with a prescribed concentration of alcohol at level 4) or is a habitual offender (having been convicted or found guilty of one or more previous alcohol-related disqualifying offence).

A 2017 survey of 143 of the ACT’s Alcohol Interlock Program’s participants (31%)¹⁷ showed that a majority (70.2%) of survey respondents “considered the interlock extremely fair or fair and just punishment”. The majority (80.9%) also claimed that their time with an interlock “would definitely or probably stop them from drink-driving recidivism”, generally attributing this to either (a) learning a more positive behaviour

by separating drinking from driving, or (b) not having to undertake an alcohol interlock again.

Alcohol interlocks are either voluntary or mandatory depending on the severity of the offending. Given they can offer a meaningful and effective solution to address problematic drink driving, the only proposed change is to make alcohol interlocks *mandatory* for s24 offenders to the extent that the offence is related to alcohol.

This supports the legitimate purpose of minimising road safety risk to the community by providing an additional intervention to drivers, who have historically made unsafe drink driving decisions, that supports them in making safer and more lawful driving decisions.

Immediate suspension

Introducing ISNs for drug driving offences confirmed by laboratory testing and amending Blood Alcohol Levels (BAC) at which ISNs apply to drink driving offences also acts as a tool to immediately limit the capacity for a person to engage in further risky behaviour and endanger other road users by removing their right to drive on ACT roads. This supports the legitimate purpose of minimise risk to the community by ensuring that drivers who pose a risk are removed from ACT roads as soon as practicable.

Consequential amendments

The offences relating to refusal to provide oral fluid samples and failing to stay for a drug screening offence were introduced by the Road Transport (Alcohol and Drugs) Legislation Amendment Bill 2010, a private member's bill.

Similarly, amendments were made to this suite of offences in the Road Transport (Alcohol and Drugs) Amendment Bill 2013 to insert new offences relating to failing to stay for a screening test and refusing to undergo a screening test. In its *Scrutiny Report 14 – 18 February 2014*, the Standing Committee on Justice and Community Safety considered the implications of these offences as strict liability offences and requested further justification for the limitation on human rights. In response, the Revised Explanatory Statement¹⁸ highlights the rationale behind these types of offences, including:

- preventing someone from seeking a conviction for refusing a police request rather than a drink or drug driving offence, and
- seeking to delay tests in the belief that they will no longer be over the limit when the test has been conducted.

As set out in the Revised Explanatory Statement, the maximum penalty for these offences was aligned with the penalty for a high-range drink driving offence to ensure that high-range drink drivers are not advantaged by refusing to take the test. Failing to increase the penalty units and maximum sentences of imprisonment for these offences to align with the increase in penalties for high-range offences would mean that this objective would be lost.

These consequential amendments are necessary to maintain the existing deterrent effect of mirroring the increasing penalty levels of ss 19, 20, 21 and 24 by removing the incentive for a person to refuse testing with the aim of obtaining a lower charge or penalty than should they be tested and subsequently convicted of an offence.

Currently, this deterrent effect is achieved by aligning the maximum penalty units values for ss 22, 22A, 22C and 23 (except for s22B) being set the same as those for the current highest penalty levels available for drink and drug driving offences (s24 repeat offence). The policy rationale of matching the existing highest penalty level will be maintained in amending penalty unit values for these offences, with s22B penalty units, which are currently lower, brought into line with this policy position for consistency.

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

The penalty amendments contained in the Bill amend existing penalties and are broadly consistent with other jurisdictions such as NSW and VIC. From a road safety perspective, this is relevant as it is important to support consistent messaging and reduce potential confusion for motorists through consistent drink and drug driving laws and penalties across jurisdictions.

The Bill ensures that penalties for impaired driving in the ACT are commensurate with the road safety risk associated with this unsafe behaviour, support behavioural change, and are consistently applied across the road transport legislation. Noting the complex circumstance of strict liability being applied to these offences, ratios recommended by the GFFO for strict liability offences would not result in penalty levels reflective of the severity of the offence nor equivalent to those imposed by other jurisdictions. To accommodate this, and due to the severity of the offences being addressed, other non-strict liability ratios recommended by the GFFO have been adhered to as closely as possible. This approach has allowed the Bill to achieve a consistent and reasonable approach to the penalties recommend, and to broadly align with NSW and VIC. In some circumstances, existing penalties have been reduced to ensure the guidance is consistently applied and that rights are not unduly limited. There are not considered to be any less restrictive means available to achieve the purposes outlined in the Bill as there are no immediate remedies to drug or alcohol presence or intoxication. A person who ingests alcohol or illicit drugs may be affected by these substances based on a range of factors such as their physiology, level of ingestion, purity or concentration of the substance ingested, and time elapsed since ingestion. Operating a vehicle while under the influence of these substances, and the significantly higher personal and societal risk that arises as a result necessitates the requirement to impose the restrictive means outlined in the Bill.

These penalties will only apply to drink and drug driving offenders, or people who refuse to undergo testing for alcohol and/or drug usage. Offenders who are subject to these penalties have ingested alcohol and/or drugs and then operated a vehicle

on an ACT road or road-related area, which has significantly increased the risks for the community. People who have refused to undergo testing for alcohol and/or drug usage may have ingested alcohol and/or drugs to a dangerous level and be refusing as a mechanism to avoid detection and the associated penalties. This behaviour undermines the stability of the road transport alcohol and drugs penalty regime, deteriorating the overall efficacy of the penalty framework and its deterrent effect. The Bill also acknowledges that all road users are provided with adequate education about their obligations when they undertake driver training to obtain a driver licence, which includes education on the effects of alcohol and/or drugs on driving, along with the requirement for drug and alcohol testing of drivers.

A general summary of the penalty amendments are contained in the following table:

Penalties increased/introduced
<p>Penalty units for the following offences:</p> <ul style="list-style-type: none"> • driving while alcohol impaired (s19); • driving with a prescribed drug in oral fluid or blood (s20); • driving under the influence of an intoxicating liquor or drug (s24); and • refusal to undergo, or failing to stay for, screening testing (ss22, 22A, 22B, 22C and 23). <p>Automatic licence disqualification periods for the following offences:</p> <ul style="list-style-type: none"> • minimum periods for driving while alcohol impaired for all BAC levels (s19) for both first and repeat offenders; and • minimum periods for driving while under the influence of an intoxicating liquor or drug (s24) for first and repeat offenders. <p>Imprisonment penalties for the following offences:</p> <ul style="list-style-type: none"> • a new penalty of imprisonment for driving while alcohol impaired for BAC levels 1 and 2 for repeat offenders (s 19); • increased sentences of imprisonment for driving while alcohol impaired for BAC levels 3 and 4 for repeat offenders (s19); • increased sentences of imprisonment for driving while drug impaired for repeat offenders (s20); • increased sentences of imprisonment for driving while under the influence of an intoxicating liquor or drug for both first and repeat offenders (s24); and • increased sentences of imprisonment for both first and repeat offenders for refusal to undertake an impaired driving screening test (ss22, 22A, 22C and 23). <p>Alcohol interlocks for the following offence:</p>

- Requiring that an alcohol interlock for a driving under the influence of an intoxicating liquor or drug (s24) offence is now mandatory, whereas this was a voluntary option in previous legislation.

Penalties decreased

Automatic licence disqualification periods for the following offences:

- default periods for driving while alcohol impaired (s19) for BAC levels 3 and 4 for repeat offenders;
- minimum and default periods for driving while drug impaired (s20) for first and repeat offenders;
- default periods for driving while under the influence of an intoxicating liquor or drug (s24) for both first and repeat offenders; and
- default periods for refusing to undergo impaired driving screening testing (ss22, 22A, 22C and 23) for both first and repeat offenders.

The rationale used to amend and set consistent penalties that are proportionate and commensurate with the significant risk of drink and/or drug driving offences, is outlined in each of the following sections.

Penalty units

The increase in penalty units indicates a maximum court ordered fine only, thereby allowing courts discretion to consider a person's circumstances when determining the appropriate fine to be applied to each offender. Additionally, hardship and repayment options are available to offenders where higher penalty units may lead to a disadvantaged community member struggling to pay a large fine.

Given the severity of the offences to which the higher penalty unit levels are applied, the safeguards of discretion of courts to impose lesser financial penalties, and the repayment and hardship options, the increases in penalty levels are assessed as reasonable and necessary to achieve the legitimate purpose.

Automatic licence disqualification

In some circumstances, there may be a limitation imposed on the if a person is suspended or disqualified from driving. However, this limitation is considered proportionate given the other forms of transport available to individuals affected by licence disqualification such as walking, cycling and public transport.

While automatic licence disqualification periods have increased for some offences, they are counterbalanced by a decrease for others. For example, the current s20 drug driving automatic licence disqualification periods are disproportionately higher than most s19 drink driving automatic licence disqualification period. Although the offences do not measure impairment but rather the presence of a prescribed drug, this current approach mirror the penalties for the most severe alcohol (level 4) first and repeat offenders. The amendments reduce the s20 automatic licence

disqualification periods to align with the periods that apply to s19 – Level 2 first and repeat offenders, to offer a more balanced position.

It is expected this reduction to automatic disqualification periods for s20 will:

- bring minimum and default automatic licence disqualification periods more in line with the automatic disqualification periods imposed by the courts currently¹⁹; and
- support a ‘middle ground’ approach to drug driving licence disqualification while it remains a presence-based offence, and science to measure drug impairment levels against corresponding road safety risks remains under development.

Finally, if a person is also given an ISN relating to an impaired driving offence, the Act allows for the period of time that an ISN was in effect to be deducted from the automatic licence disqualification period, unless a court is satisfied that the person did not comply with the ISN. As such, the amendments to licence disqualification periods are assessed as reasonable and necessary to achieve the legitimate purpose. Table 1 below provides further comparison of the new default automatic disqualification periods in relation to those set in other jurisdictions.

Table 1:¹Comparison of default automatic disqualification periods			
Offence	NSW Penalty	VIC Penalty	ACT Penalty in this Bill
Mid-range drink driving	1 st offence – 12 months 2 nd offence – 3 years	1 st offence – 10 to 14 months 2 nd offence – 12 to 28 months	1 st offence – 12 months 2 nd offence – 24 months
High-range drink driving	1 st offence – 3 years 2 nd offence – 5 years	1 st offence – 15 to 24 months 2 nd offence – 2.5 to 4 years	1 st offence – 18 months 2 nd offence – 3 years
Combined drink and drug driving – mid range	1 st offence – 2 years 2 nd offence – 4 years	1 st offence – 16 to 20 months 2 nd offence – 32 to 40 months	1 st offence – 18 months 2 nd offence – 3 years

¹ Note that direct comparisons are difficult as each jurisdiction has a different approach to classification of BAC levels. Additionally, Victoria has a three tiered approach to repeat offending whilst NSW and the ACT have a two tiered approach. For the purposes of comparison mid-range is generally a BAC between 0.08 and 0.15, where high range is a BAC >0.15.

Combined drink and drug driving – high range	1 st offence – 4 years 2 nd offence – 6 years	1 st offence – 21 to 30 months 2 nd offence – 3.5 to 5 years	1 st offence – 2 years 2 nd offence – 4 years
Drug driving	1 st offence – 6 months 2 nd offence – 12 months	1 st offence – 6 months 2 nd offence – 12 months	1 st offence – 6 months 2 nd offence – 12 months
S24 – Driving under the influence	1 st offence – 3 years 2 nd offence – 5 years	1 st offence – 2 years 2 nd offence – 4 years	1 st offence – 2 years 2 nd offence – 4 years

Imprisonment

It is critical that under these amendments, a person cannot be subjected to a period of imprisonment if they receive an infringement notice. This penalty can only be applied by a court if an offender is convicted or found guilty of a repeat drink and/or drug driving offence.

The imposition of imprisonment as a penalty for an offence is a complex issue that must balance the right to liberty of the individual with the need to protect the community, including the right to life of individuals, and maintain order. This balance is particularly relevant when considering the imposition of imprisonment on repeat offenders. In determining an appropriate imprisonment penalty, it should be proportionate to the severity of the offence committed, with the length and conditions of the penalty commensurate with the gravity of the offending.

Alternatives to imprisonment are a key consideration in determining proportionality, as the intent of any penalty amendment is to reduce recidivism through deterrence.

When dealing with repeat offenders, it is important to consider proportionality carefully. Repeat offences can indicate a pattern of criminal behaviour, and the primary goal of imprisonment should therefore also include rehabilitation, reintegration into society and addressing the underlying cause of criminal behaviour. This context is factored into the design of the penalties in the Bill.

The Bill includes offences that are strict liability with high penalties and imprisonment terms. This is not recommended by the GFFO, however careful consideration has been given to the unique context of road transport legislation in the ACT and throughout Australia where serious offences are commonly strict liability. Road safety laws around drink and drug driving are extremely well known and promoted in every jurisdiction. It is beyond reasonable to assume that every driver knows that

drug or drink driving is both illegal and very dangerous. It is in this context that imprisonment penalties for strict liability offences have been set in this Bill. While every effort should be made to focus on rehabilitation over imprisonment, it is necessary for the judiciary to have the option of setting imprisonment terms for the most serious cases. These imprisonment terms must be responsive to the risk of the offence and serve as a deterrent for offenders.

Further, consideration was given to the GFFO's guidance around ratios for imprisonment penalties and the Bill largely is consistent with this approach while bringing the ACT into line with other jurisdictions, as detailed in table 2 below. This included the option for imposition of imprisonment penalties for level 1 and 2 repeat offenders as a person may be a repeat offender at any level of alcohol intoxication, which may be indicative of a pattern of criminal behaviour or wanton disregard for the dangers created through their continual decisions to drink and/or drug drive.

Table 2:²Comparison of imprisonment periods			
Offence	NSW Penalty	VIC Penalty	ACT Penalty in this Bill
Mid-range drink driving	1 st offence – 9 months 2 nd offence – 12 months	1 st offence – Nil 2 nd offence – 6 months 3 rd offence – 12 months	1 st offence – 6 months 2 nd offence – 12 months
High-range drink driving	1 st offence – 18 months 2 nd offence – 2 years	1 st offence – Nil 2 nd offence – 12 months 3 rd offence – 18 months	1 st offence – 9 months 2 nd offence – 18 months
Combined drink and drug driving – mid range	1 st offence – 18 months 2 nd offence – 2 years	1 st offence – Nil 2 nd offence – 6 months 3 rd offence – 12 months	1 st offence – 9 months 2 nd offence – 18 months

² Note that direct comparisons are difficult as each jurisdiction has a different approach to classification of BAC levels. Additionally, Victoria has a three tiered approach to repeat offending whilst NSW and the ACT have a two tiered approach. For the purposes of comparison mid-range is generally a BAC between 0.08 and 0.15, where high range is a BAC >0.15.

Combined drink and drug driving – high range	1 st offence – 2 years 2 nd offence – 2 years	1 st offence – 6 months 2 nd offence – 12 months 3 rd offence – 18 months	1 st offence – 12 months 2 nd offence - 2 years
Drug driving	1 st offence – Nil 2 nd offence – Nil	1 st offence – Nil 2 nd offence – Nil	1 st offence – Nil 2 nd offence – 6 months
S24 – Driving under the influence	1 st offence – 18 months 2 nd offence - 2 years	1 st offence – 3 months 2 nd offence - 12 years 3 rd offence – 18 months	1 st offence – 12 months 2 nd offence - 2 years

As with any imprisonment penalty, only a court can impose a sentence of imprisonment following a conviction. This safeguard requires the court to consider a range of factors and considerations set out in the *Crimes (Sentencing) Act 2005* as part of determining if a sentence of imprisonment is appropriate and whether other alternatives to imprisonment may be applied instead.

Over the 2019 to 2022 period the sentencing outcome of imprisonment has been sparingly used (145 times for the offences in question) with the judiciary generally setting periods below the maximum (67% were 1 month or less) indicating a strong degree of sensitivity in the application of this penalty type.

There are a range of existing safeguards that are currently available and remain unchanged by this Bill and the increases in penalties, such as: the defence if a person did not intend to drive a motor vehicle (section 19A), or defence for special drivers with a lower concentration of alcohol from an allowable source (section 19B), mistake of fact defences (except in certain circumstances) (section 36, *Criminal Code 2002*), medical ground defences (section 22A) and religious or other conscientious grounds defences (section 23).

Additionally, the Bill does not impact or remove existing alternatives to imprisonment such as the availability of drug and alcohol treatment orders for people who plead guilty to the offence, are sentenced to imprisonment for between 1 to 4 years and the offender’s dependency on drugs and/or alcohol substantially contributed to their offending.

As a result of these increased penalties of imprisonment, referral to the Drug and Alcohol Sentencing List (DASL) will now be available for a greater range of offences. An independent review of DASL by the Australian National University has found that preliminary data indicates a significant reduction in recidivism of people who participate in DASL, regardless of whether or not they were able to complete the program.²⁰

This amendment is assessed as reasonable and necessary to achieve the legitimate purpose.

Alcohol interlocks

S24 offences are seen as the highest risk drug or alcohol related driving offence and used by police to charge drivers deemed to be a significantly higher risk on the road than a standalone alcohol related offence. As such, it is deemed reasonable, where a s24 offence is committed with an illegal prescribed concentration of alcohol, that an alcohol interlock is mandatorily applied.

While the use of an alcohol interlock device may interfere with a person's privacy and reputation in a minor way, this enforcement option supports their right to freedom of movement by allowing them to continue using their vehicle following a negative breath test.

Immediate Suspension

Where an ISN is applied, a person may apply to the Courts for a stay of the suspension notice (refer section 61F of the RT (General) Act, noting that the court must not make an order staying the notice unless satisfied that exceptional circumstances justify doing so (refer to section 61F of the RT (General) Act).

Additional safeguards are provided under section 61B of the RT (General) Act, including that a notice ceases to have effect if stayed, or where the relevant proceedings are withdrawn, discontinued or otherwise finalised and, in any case, once 90 days have elapsed. However, where a police officer issues an immediate licence suspension, the existing regulatory framework allows for a person to seek a stay of the notice through the Courts. This framework promotes the right to a fair trial by allowing a person to seek a review of the ISN.

Furthermore, an immediate suspension of a person's licence is considered reasonable and justified to achieve its legitimate purpose, given the significant risk to public safety associated with the relevant offences. Any lesser penalty would not sufficiently address the need for preventing further unsafe driving, providing a greater deterrence to prevent harms arising from offender behaviour and supporting behavioural change.

Consequential amendments (refusal / failure to stay for screening)

The new penalty levels for the consequential amendments have been increased in proportion to and consistently with penalty levels for other drink and drug driving

offences. The current approved and legislated policy position is to set penalty levels for these refusal offences equivalent to the highest penalty level of the drug and alcohol driving offences being tested for. This is so there is no advantage for an individual who knows the rules and legislation, and also knows they are committing a drink or drug driving offence, to intentionally refuse testing as a means to obtain a lower penalty level than should they agree to be tested.

These offences are integral to the operation of the ACT's drink and drug driving scheme, which has an objective of public safety. Without offences for refusal or failure to engage in a screening test, the scheme cannot be effective and cannot achieve this objective. Similarly, maximum penalties equivalent to those for the underlying drink or drug driving offences is considered important to ensure that there is no incentive to avoid screening tests, which may also endanger public safety. The approach of setting penalties for refusal or failure offences at parity with the underlying drug or alcohol driving offences is deemed the most suitable mechanism to maintain overall stability of the regime and is the most commonly adopted approach across Australian jurisdictions. This policy of penalty parity with the underlying offence is the approach currently operational and legislated with the ACT.

These offences, already attract sentences of imprisonment and no changes are being made to the offences themselves.

Although these offences also attract ISNs (see section 61A of the RT (General) Act) there are no increases to police discretion as a result of the consequentially increased penalties.

In addition to the defence of mistake of fact available under section 23 of the *Criminal Code 2002*, the following defences and safeguards are available and may be considered by the Courts:

- section 22A(4) - defence where failure to provide an oral fluid sample was based on medical grounds
- section 22C(3) - defence where failure to undergo a screening test was based on medical grounds
- section 23(3) - defence if the person charged establishes that the failure, refusal or behaviour (as the case requires) was based on religious or other conscientious grounds or on medical grounds, and
- the ability to apply to the court for stay under section 61F of the RT (General) Act.

To expand these existing defences, a defence of another reasonable excuse has been added to the refusal or failure to follow reasonable directions provided by a police officer to sections 22, 22A, 22C and 23. This defence is intended to cover possible exceptional and unforeseen scenarios where an offender may legitimately fail or refuse. This defence is not intended to cover any action or inaction taken with

the intent to avoid prosecution or the provision of information that might be used as evidence. This amendment is made to ensure that a similar scope is covered as other Australian jurisdictions (Western Australia, Tasmania, and South Australia), where a reasonable excuse defence or similar is available for comparable offences. The Bill retains a legal burden for the defences.

An additional amendment to section 22 is the inclusion of a defence on medical grounds similar to existing medical grounds defences at sections 22A, 22C and 23. This is a specific defence in situations where the person proves they are medically unable to complete the breath analysis.

Other than the currently available and now expanded defences, there are limited grounds for a person to refuse to undertake an oral fluid sample, given the overwhelming public benefit of monitoring drink and drug driving on our roads. As normal police practice, where a person refuses to comply with the request, a police officer would advise a person of the ramifications of non-compliance and provide further opportunity to comply prior to charging them with an offence.

Additionally, all licenced drivers are well aware of their obligations relating to drink and drug driving. Drivers are made aware through the road rules and licencing process that it is a condition of their licence that they may be subjected to drug or alcohol testing whilst driving.

Given the crucial role these offences play in the overall stability and functioning of the drink and drug driving scheme, the regulatory nature of the offences, the fact that drivers are aware they can be tested as a condition of their licence, and the inclusion of these new defences, there are not considered any less restrictive means reasonably available to achieve the legitimate purpose and the amendments are considered reasonable and justified.

B. Creation of a Traffic Infringement Notice (TIN) for first-time LRDD offence

The Bill amends Schedule 1 of the Road Transport (Offences) Regulation 2005 for first-time LRDD offenders to create a TIN as an alternative to attending court for offences in section 19 (Prescribed concentration of alcohol in blood or breath) of the Act. LRDD means offences with Blood Alcohol Content (BAC) levels 1 (less 0.05g) or 2 (0.05g or more but less than 0.08g) in 100mL of blood or 210L of breath respectively.

A detailed discussion of the penalty levels for section 19 level 1 and 2 offences, and the human rights engaged by those penalties, is contained in the “A. *Increasing penalties for alcohol and drug driving offences*” section.

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

This amendment engages and limits a person's rights in criminal proceedings, namely the right to be presumed innocent until proved guilty, and the right to fair trial.

This is due to automatic licence disqualification periods for these offences now being a default 6 months, initiated in the case of a TIN via application of a (180 day) Immediate Suspension Notice. This suspension will be issued immediately following the second confirmatory BAC test by Police, rather than following the matter being heard by the courts.

Where a person uses their car or licence for work this measure may result in a limitation on a person's right to work. Where a person relies on a car to care for family members, this may result in a limitation on a person's right to family and children.

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

Alcohol and drug use are known to be a main cause of road fatalities in Australia, along with other 'human factors' such as speeding, driver distraction and fatigue. The effects of alcohol impairment on driving performance, crash risk, and crash culpability are well-established and understood across the community, and there are significant public interest benefits that arise from ensuring that roads are safe for all road users. Swift and appropriate enforcement actions against a person for drink driving are essential to ensuring that drivers who pose a risk are removed from ACT roads to minimise community harms, and that they are effectively deterred from future re-offending.

The legitimate purpose of introducing a drink driving TIN is to protect the public from the dangers posed by drink driving by applying the imposition of drink driving penalties more swiftly and fairly. Establishment of a TIN for this offence provides low risk offenders with an alternative to a criminal record, whilst still deterring repeat offending with swift financial and licence disqualification penalties.

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

General deterrence theory, a widely known and used theorem on the factors that influence the efficacy of penalties, indicates that law breaking is inversely related to the certainty, severity, and swiftness of punishment²¹. The application of deterrence theory in relation to road transport offences has been well studied and supports the establishment of this TIN to improve the certainty and swiftness of punishment in relation to low range drink driving.

The proposed amendment is designed to be effective at achieving the legitimate aim of reducing road safety risk by providing a swifter and more certain alternative to the traditional process of handling drink driving offences through the court system. The limitations around presumption of innocence are balanced against a process

designed to change behaviour and reduce recidivism through a simplified and expedited process for addressing first time drink driver offences.

Infringement notice schemes are effective at changing behaviour for several reasons. The simplified and expedited process allows people to avoid lengthy and costly court appearances, as they can choose to pay a fine or take other actions (e.g. apply for a withdrawal or waiver, dispute an infringement, or extend an infringement due date), to resolve the infringement. Infringement notice schemes are also generally more efficient than court processes, reducing the backlog of cases in the courts and freeing up resources for more serious offences. Receiving a fine or penalty shortly after an offence provides immediate feedback to the offender, which reinforces the connection between the offence and the consequence, making it more likely the offender will remember and learn from the experience. Infringement notice processes are also less adversarial than court processes, which reduces stress and conflict, making it more likely for a person to accept responsibility and make changes in their behaviour.

Current drink driving offences require a charge to be prepared by ACT Policing and the Department of Public Prosecutions (DPP), and for the offender to attend court to have their matter heard. This process can take several months, delaying the deterrent effect of the offence, while also imposing legal and other costs on a person, such as the cost of missing work or family matters to attend court.

The current offence process includes the imposition of a 12-hour do not drive period that is intended to remove an intoxicated person from the road immediately. However, once the 12-hour period expires, a person can lawfully resume operating a vehicle, with any licence suspension is delayed until the offender can attend court. The amendments in the Bill will mean that a Police Officer can issue a TIN for a first-time level 1 or 2 drink driving offence 'on the spot' once confirmatory testing is completed to confirm the roadside test results. The TIN process is supported through the application of a 180-day ISN in conjunction with TIN issuance, removing offenders from the road network immediately rather than remaining on the roads until their matter can be heard by a court.

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

Issuing a TIN for first time level 1 and 2 drink driving offences can be seen as the least restrictive means for achieving the objective in certain situations, particularly when compared to more severe measures such as criminal conviction, immediate arrest or imprisonment, thereby avoiding limiting the right to liberty and security of the person.

The response to a drink driving offence should be proportionate to the severity of the offence. For relatively less serious offences, such as lower-level intoxication, issuing a TIN is a proportionate response when compared to more severe drink or drug

driving offences that require court appearances and impose penalties such as imprisonment.

Drink driving TINs are intended to result in administrative and civil penalties such as a fine and licence suspension. These penalties are generally less severe than criminal penalties and avoid the recording of a criminal conviction, which can have far-reaching negative consequences for an individual's life and employment prospects.

This amendment will support jurisdictional alignment, while also incorporating contemporary legislative and operational arrangements in the ACT. New South Wales (NSW), Victoria, Tasmania, Western Australia (WA), and the Northern Territory (NT) have introduced infringement notices for certain low-level drink and drug driving offences. Victoria has had TINs in place for drink driving since 2001. New South Wales enacted similar reforms in 2019.

The measures proposed in this Bill incorporate existing safeguards to minimise limitations on human rights to strike an essential balance between protecting public safety and upholding human rights. Intoxication levels have clear thresholds for what constitutes a drink driving offence based on objective blood alcohol content (BAC) readings. These evidence-based thresholds consider the impact of alcohol on an individual's ability to drive safely, are non-discriminatory, and outline penalties that are proportionate to the severity of the offence. This safeguard is reinforced by existing and common safeguards such as a person's right to legal representation, right to a fair trial, rehabilitation and education alternatives. Examples include, electing to have the matter heard in court rather than paying the TIN, ADAC attendance for alcohol-related offences, and privacy protections that respect an individual's right to privacy when interacting with police officers.

C. New offence for combined alcohol and drug driving

The Bill creates a new strict liability offence for combined prescribed concentration of alcohol and prescribed drug in bodily fluid while driving (new s21).

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

The creation of this new offence attracts the same range of penalties and sanctions available for the existing offences of prescribed concentration of alcohol in blood or breath (section 19) and prescribed drug in oral fluid or blood (section 20), including penalty units, automatic licence disqualification, imprisonment, alcohol interlocks and immediate suspension.

To align with the Bill's reforms to increase and standardise applicable penalty units, the new offence adopts the same approach as the amendments to section 19 –

prescribed concentration of alcohol in blood or breath and establishes a tiered approach to penalties based on four levels of alcohol concentration.

The amendment also expands the list of offences under which police may enter a premises for the purposes of alcohol or drug screening tests(s10A and s13CA), if the police believe on reasonable grounds that the offence has been committed.

Penalty units

The penalties units for each corresponding alcohol concentration level in new section 21 are higher than those in amended section 19, which may limit the right to recognition and equality before the law by disproportionately impacting vulnerable people such as young people or people who are experiencing addiction.

Automatic licence disqualification

Automatic licence disqualification will apply to this offence, engaging and limiting the right to equality before the law by potentially disproportionately affecting vulnerable people. Where a person uses their car or licence for work this may result in a limitation on a person's right to work. Where a person relies on a car to care for family members, this may result in a limitation on a person's right to family and children.

Imprisonment

The new offence includes maximum penalties of imprisonment for level 3 and 4 offences for first time offenders, and maximum penalties of imprisonment for repeat offenders, limiting the rights to liberty and security of a person.

Alcohol interlocks

Alcohol interlocks apply to this offence and engage the right to privacy and reputation by requiring interference with a person's private vehicle to install the device and requiring that someone provide a negative blood alcohol breath reading prior to driving.

Immediate suspension

This offence will be incorporated into the ISN framework. ISNs engage rights relating to criminal proceedings, namely the right to presumption of innocence, by allowing a notice to be issued and a penalty imposed without consideration by a court.

Power to enter premises

The new combined offence (s21) will engage the right to privacy by expanding the list of offences under which police may enter a premises for the purposes of alcohol or drug screening tests, if the police believe on reasonable grounds that the offence has been committed. The right to privacy includes a person's right not to have their home interfered with unlawfully or arbitrarily.

Strict liability

The new combined offence limits rights in criminal proceedings as it removes the presumption of innocence by imposing criminal liability without the need to prove fault.

The new combined offence also limits the right to fair trial by preventing a defendant in a prosecution from relying on the mistake of fact – strict liability defence available under section 36 of the Criminal Code in certain circumstances. The mistake of fact defence is considered an inherent component of a strict liability offence.

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

The legitimate purpose of the limitations is to protect the public from the dangers posed by unsafe, impaired driving behaviours as a result of combined alcohol and drug intoxication on all transport modes and all parts of the road network. There are significant public interest benefits that arise from ensuring that roads are safe for all road users, most notably supporting the right to life of road users. Appropriate enforcement actions against a person's driver licence are essential to ensuring that drivers who pose such a risk are removed from ACT roads to minimise community harms.

Drug and/or alcohol driving is well-established and well-documented as a serious road safety issue. A person who simultaneously ingests alcohol and illicit drugs may be significantly affected by these substances based on a range of factors such as their physiology, dosage, purity or concentration of the substance ingested, and time elapsed since ingestion. There is significant evidence linking the presence of alcohol or drugs to driving performance, crash risk, and crash culpability. Additionally, research and evidence indicate that impairment caused by mixing alcohol and other illicit drugs is more of a threat to road safety than consumption of a single substance²².

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

The proposed amendments are designed to be effective in achieving the legitimate aim of reducing road safety risk that arises from the significantly more dangerous behaviour of driving whilst impaired by both alcohol and one or more prescribed drug.

Findings from a UK Drug Driving Expert Technical Panel, led by Dr Kim Wolff from Addiction Science King's College London, estimates that the combined use of alcohol and one or more illicit drugs increases the risk of being involved in crash resulting in serious injury at 32 times higher than a zero presence, and a crash resulting in fatality at 29 times higher²³. Consultation with Canberra Health, as a member on the IDC, has confirmed the general principle that alcohol use in conjunction with one or more of the prescribed drugs has a compounding effect on an intoxication and, therefore, impairment.

Penalties for the new combined drug or alcohol driving offence are intentionally designed to significantly exceed those for separate drug or alcohol driving offences and intended to support safe driving decisions by strongly disincentivising drivers from engaging in this highest-risk drink and/or drug driving behaviour. The fewer drink and/or drug drivers there are on Territory roads, the lower the overall road safety risk impaired driving behaviours pose to the community.

Penalty units and imprisonment

Introducing a combined drink and drug driving offence with higher penalty units and imprisonment periods can have a significant impact on road safety and change behaviour for several reasons. A combined drink and drug driving offence can enhance the deterrent effect through the fear of facing a higher penalty and more serious legal consequences for engaging in this risky behaviour.

A combined offence simplifies the drink and drug driving legal framework by making it clearer that driving while under the simultaneous influence of alcohol and drugs is a standalone offence with severe penalties commensurate with the higher risk attached to the offending. It also removes ambiguities that might exist when dealing with alcohol and drugs separately, making it more challenging for individuals to evade the consequences of their risky decisions.

This new offence also reinforces the idea that any form of intoxication behind the wheel is dangerous and unacceptable, and significant penalties will result. Other jurisdictions, including NSW and VIC, already have in place a similar offence that targets drivers who simultaneously use alcohol and drugs. The creation of this new offence, and the higher penalty levels proposed as compared to the existing offences of drink driving and drug driving, is designed to specifically:

- address the principle that certain drugs and alcohol in combination can create a 'multiplier' effect in terms of intoxication; and
- counteract potential community views that certain drugs, when combined with alcohol, can 'cancel' each other out.

By communicating the severity of this behaviour through higher penalty unit and imprisonment, the penalties will support drivers in making safe driving decisions and act as a greater disincentive for drivers who do engage in this high-risk drink and drug driving behaviour. The specifically significant penalties for combined drink and drug driving offences further reflect the seriousness with which the community views such behaviour, given the known risks of death and injury.

The introduction of the new combined drink and drug driving penalties will align ACT drink and drug driving enforcement mechanisms with those in NSW and VIC and reinforce that the Government views any form of intoxicated driving as dangerous and requiring the strongest deterrence.

Other penalty types (automatic licence disqualification, interlocks, immediate suspensions)

As this new offence is a combination of two already existing stand-alone offences, details of how each of these proposed penalty categories will be effective in achieving the legitimate purpose of reducing road safety risk associated with using alcohol and drugs whilst driving is available in item 3 of the “A. *Increasing penalties for alcohol and drug driving offences*” section.

Power to enter premises

There is a rational connection between the proposed amendments and the potential road safety risk it aims to combat. That is, drivers who engage in dangerous drink or drug driving behaviours, then are involved in accidents or refuse to stop when required by police, should not be able to avoid sanction simply by entering a premises and refusing to engage with police.

By expanding the list of offences under which police may enter a premises for the purposes of alcohol or drug screening tests, the legitimate purpose will be achieved by ensuring that individuals who engage in combined drink and drug driving cannot avoid sanction by entering a premises so that police are unable to conduct a drug or alcohol screening test.

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

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

In both circumstances, these drivers pose a significant road safety risk and, without this amendment, could avoid sanction by entering premises to prevent police from conducting testing. By avoiding sanction, such drivers can continue engaging in dangerous drink and drug driving behaviours and threatening the safety of all other road users.

Strict liability

Although this is a new offence, it is a combination of two existing strict liability offences (s19 and s20) designed to address the multiplier effect that simultaneous alcohol and drug use has on impairment and, therefore, road safety. The long standing and national application of strict liability to alcohol and drug driving offences is equally relevant to this new offence. When reviewing the GFFO to confirm suitability of this offence for strict liability the following was noted:

- As with standalone alcohol or drug driving, it should “*be sufficient to show the defendant did the act*”. Whether someone has the presence of alcohol and a drug in their system is measured objectively through five separate tests (2 alcohol tests, and 3 drug tests). If the presence of alcohol and a prohibited drug is detected, then the offence can be deemed to have been committed, without the need for a fault element.
- The GFFO states that “*it is essential that strict liability offences are crafted to address unlawful behaviour in a context where the person knows, or ought to know, their legal obligations*”. Licenced drivers should be well aware of their obligations to not drive whilst impaired as impaired driving is an essential part of knowledge testing for driver licences across jurisdictions²⁴ – in the ACT, these questions must be answered correctly to pass²⁵. Further, risks and offences are well publicised across state and territory agency websites²⁶, and across the social support (e.g., Legal Aid²⁷) and legal spheres²⁸.
- The absence of a fault element places burden upon the defendant to challenge the prosecution case. Given the defendant is the best, and likely the only, individual able to accurately prove what they did or did not consume prior to driving, and that the defendant would know it is illegal to drink and do drugs and then drive, it seems reasonable that the defendant should be the one to present evidence in relation to their behaviours prior to the offence.

The GFFO notes that strict liability offences are primarily aimed at conduct on the less serious side of the criminal spectrum. Despite the severity of drink and drug driving and the risks it poses to the community, the above assessment against the GFFO and the fact that all other related drink and drug driving offences are strict liability, deems it reasonable that strict liability be applied in the context of this new offence.

Noting the complex circumstance of strict liability being applied to these offences, ratios recommended by the GFFO for strict liability offences would not result in penalty levels reflective of the severity of the offence nor equivalent to those imposed by other jurisdictions. To accommodate this, and due to the severity of the offences being addressed, other non-strict liability ratios recommended by the GFFO have been adhered to as closely as possible. This approach has allowed the Bill to achieve a consistent and reasonable approach to the penalties recommend, and to broadly align with NSW and VIC.

New section 21 excludes the defence of mistake of fact in two circumstances:

- where the defendant claims to have:
 - considered, and been under a mistaken belief about, the identity of the prescribed drug; and
 - believed that the prescribed drug was a controlled drug, and
- in relation to having delta-9-tetrahydrocannabinol (THC) in the defendant’s oral fluid or blood if the defendant’s mistake relates to the effect of consumption of

a cannabis food product on the presence of THC in the defendant's oral fluid or blood.

The exclusion of mistake of fact in these circumstances mirrors those excluded from the existing section 20 drug driving offences to ensure consistency in the way a drug driving offence is prosecuted. The Government's policy intent is that no illicit drug is acceptable to drive on while acknowledging that roadside testing can only detect prescribed drugs (currently THC, methamphetamine, MDMA).

As the availability of the mistake of fact defence is considered an inherent part of a strict liability offence, excluding mistake of fact limits the rights to fair trial.

The defence exclusion relating to mistake of fact in relation to the identity of a prescribed drug was inserted into section 20 through the *Road Transport (Alcohol and Drugs) Amendment Act 2014*, and was justified in the relevant explanatory statement as follows:

The offence in section 20 is a strict liability offence, which means that no criminal intent or fault element is required to be proven. As this offence is a strict liability offence, drivers are able to rely on section 36 of the Criminal Code 2002, which provides that a person is not criminally responsible for a strict liability offence if the person was under a mistaken but reasonable belief about the facts, and, had the facts existed as believed, the conduct would not have been an offence.

This amendment would prevent drivers from seeking to rely on this defence where they knowingly took a prohibited substance which they thought was not a prescribed drug which in fact turned out to be a prescribed drug. The defence in section 36 of the Criminal Code 2002 would still be available to a driver in other circumstances (e.g. they had a mistaken but reasonable belief that they were not consuming an illicit drug at all, but rather a prescription drug or some other over-the-counter medication such as aspirin).

It is possible that this amendment may engage human rights, particularly the right to a fair trial and rights in criminal proceedings. Any limitation on these rights is reasonable and proportionate, noting the public interest benefits from addressing the risks to community safety associated with driving whilst alcohol or drug affected, and the need to protect the human rights of other road users and the broader community.

There is clear evidence that the use of illicit, non-prescribed, drugs can cause drivers to become impaired and reduce their ability to safely operate a motor vehicle. Drivers who operate a vehicle whilst knowingly under the influence of a prohibited substance potentially pose a greater safety risk than drivers who have consumed a legal drug. Illicit drug users consume these drugs specifically for their mood/perception altering effects, which directly impacts on their driving skills. While certain over-the-counter or prescription drugs can also cause driver impairment, those

drugs are required to display warnings to inform users of the risks associated with driving whilst under the influence of that drug. Illicit drugs, by their very nature, are not subject to the same requirements as legal drugs and so users are not made aware of the impact of the drug on their ability to operate a vehicle safely. In addition, the strength and potency of prohibited substances varies and is impossible for a user to determine prior to taking the drug (unlike legal medication, which is required to clearly display this information), making it more likely that a driver may consume a higher concentration than they expected. Finally, the chance of a person taking a different illicit drug to the one that they believed that they were taking is far higher than in the case of legal drugs because of the lack of regulation, packaging and warning labels.

The rationale for excluding mistake of fact in this circumstance remains the same.

The defence exclusion relating to mistake of fact in relation to the consumption of a cannabis food product (e.g. hemp seeds) was inserted into section 20 through the *Crimes Legislation Amendment Act 2019* to prevent a defendant from running a defence that could never be successful. The relevant explanatory statement discusses this exclusion:

The unavailability of the defence reflects the strong scientific basis for concluding that the consumption of any reasonable amount of these food products would not lead to THC being present in the oral fluid or blood²⁹. It is therefore not factual to claim that consuming cannabis food products would have sufficient THC to cause a person to be charged with an offence under section 20 of the RT (AD) Act. Circumstances of mistakenly consuming actual cannabis would still permit the defence.

The purpose of the limitation is to exclude the defence in circumstances where it would ultimately not be successful. The nature and extent of the limitation is minimal, since these amendments merely avoid cumbersome procedures which would bear the same outcome. The Bill places the least restrictive limitation on this right as it is limited to clarifying the state of the law as supported by scientific evidence. Section 23 (3) of the Criminal Code provides that other defences may also be available for use for strict liability offences, which includes the defence of intervening conduct or event, as provided by section 39 of the Criminal Code.

Again, the rationale for excluding mistake of fact in this circumstance remains the same.

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

There are not considered to be any less restrictive means available to achieve the purposes outlined in the Bill as there are no immediate remedies to drug or alcohol intoxication. Road safety is a matter of public interest and welfare and the right to life

is one of the most fundamental human rights. Operating a vehicle while under the combined influence of these substances, and the significantly higher personal and societal risk that arises as a result, necessitates the requirement to create this new offence.

Although the amendment replicates the ‘presence’ test in section 20 rather than adopting an impairment test, it is important to note that oral testing generally only detects recent consumption. For example, there is some evidence to suggest that THC in cannabis is unlikely to be detected in oral fluid after a period of 12 hours from smoking, depending on the individual’s particular circumstances. There is an extensive body of academic work underway in Australia and internationally to refine testing of drugs and looking towards a method for understanding impairment. The ACT will consider this work as it develops in the context of future road safety legislation.

The Bill replicates existing safeguards that are currently available for the drink and drug driving offences under sections 19 and 20 and applies them to new section 21, namely:

- the defence if a person did not intend to drive a motor vehicle (section 19A),
- the defence for special drivers with a lower concentration of alcohol from an allowable source (section 19B), and
- mistake of fact under section 36 of the Criminal Code (except in the two very narrow circumstances outlined above).

Penalty units

The new penalty levels result in significant maximum court-imposed fines, prison alternatives, and disqualification, however, are consistently applied, appropriately tiered in relation to the severity of the offence and in comparison to other drug and alcohol driving offences, and are jurisdictionally aligned where possible.

The penalty units indicate a maximum court ordered fine only, thereby allowing courts discretion to take into account a person’s circumstances when determining the appropriate fine to be applied to each offender. Additionally, hardship and repayment options are available to offenders where higher penalty units may lead to a disadvantaged community member struggling to pay a large fine.

Given the severity of the offences to which the higher penalty unit levels are applied, the safeguards of discretion of courts to impose lesser financial penalties, and the repayment and hardship options, the increases in penalty levels are assessed as reasonable and necessary to achieve the legitimate purpose.

Imprisonment

The imposition of imprisonment as a penalty for an offence is a complex issue that must balance the right to liberty of the individual with the need to protect the community, including the right to life of individuals, and maintain order. In determining an appropriate imprisonment penalty, it should be proportionate to the severity of the offence committed, with the length and conditions of the penalty commensurate with the gravity of the offending. Alternatives to imprisonment are a key consideration in determining proportionality, as the intent of any penalty is to reduce recidivism through deterrence.

It is important to note that the tiered approach to penalties means that a penalty of imprisonment does not apply to first offenders who present with a lower level of alcohol concentration. Imprisonment penalties are linked to both the severity of offending, based on an objective measure of alcohol concentration, and repeat offending.

While the presence of prescribed drugs contributes to the seriousness of the offence overall, it is not linked to specific penalties noting the limitations around calculating intoxication through currently available testing mechanisms.

When dealing with repeat offenders, it is important to consider proportionality carefully. Repeat offences can indicate a pattern of criminal behaviour, and the primary goal of imprisonment should therefore also include rehabilitation, reintegration into society and addressing the underlying cause of criminal behaviour. This context is factored into the design of the penalties in the Bill.

Noting the complexities around strict liability being applied to offences of this severity and that this offence exceeds the GFFO's recommendation of maximum 6 months imprisonment for strict liability offences, the proposed penalties are designed to respond appropriately to the risk of harm the offence creates, in line with other jurisdictions. This results in the option for imposition of imprisonment penalties for level 3 and 4 first offenders as simultaneous use of drugs and alcohol and driving breaks two laws any licenced driver would be aware of, and significantly increases their level of physiological and cognitive impairment, thereby presenting a much more severe road safety risk. It also includes an imprisonment sentencing option for repeat offenders at any level of alcohol intoxication, which may be indicative of a pattern of criminal behaviour or wanton disregard for the dangers created through their continual decisions to drink and/or drug drive.

As with any imprisonment penalty, only a court can impose a sentence of imprisonment following a conviction. This requires the court to take into account a range of factors and considerations set out in the *Crimes (Sentencing) Act 2005* as part of determining if a sentence of imprisonment is appropriate and whether other alternatives to imprisonment may be applied instead.

As with the amendments to penalties set out above, the Bill does not impact or remove alternatives to imprisonment such as the availability of drug and alcohol treatment orders for people who plead guilty to an offence, are sentenced to

imprisonment for between 1 to 4 years and the offender's dependency on drugs and/or alcohol substantially contributed to their offending.

Referral to the Drug and Alcohol Sentencing List (DASL) will be available for repeat offenders sentenced to the maximum penalties of imprisonment, and for first offenders with a level 4 alcohol concentration level sentenced to a maximum penalty of imprisonment.

This amendment is assessed as reasonable and necessary to achieve the legitimate purpose.

Other penalty types (automatic licence disqualification, interlocks, immediate suspensions)

There will be a limitation imposed on the right to movement if a person is suspended or disqualified from driving. However, this limitation is considered proportionate given the other forms of transport available to individuals affected by licence disqualification such as walking, cycling and public transport. As with penalty units and imprisonment, the periods of default and minimum automatic licence disqualifications are proportionally higher than the standalone alcohol or drug offences to reflect the higher level of risk this behaviour creates. The proposed automatic licence disqualification periods are broadly in line with those in Victoria for this offence, and below those in NSW.

The new combined offence is seen as a higher risk drug or alcohol related driving offence than a standalone alcohol or drug related offence. As such, it is deemed reasonable that an alcohol interlock is mandatorily applied. While the use of an alcohol interlock device may interfere with a person's privacy and reputation in a minor way, this enforcement option supports their right to freedom of movement by allowing them to continue using their vehicle following a negative breath test.

As with other alcohol and drug driving offences an ISN will be applied. A person may apply to the Courts for a stay of the suspension notice (refer section 61F of the RT (General) Act, noting that the court must not make an order staying the notice unless satisfied that exceptional circumstances justify doing so (refer section 61F of the RT (General) Act). Additional safeguards are provided under section 61B of the RT (General) Act, including that a notice ceases to have effect if stayed, or where the relevant proceedings are withdrawn, discontinued or otherwise finalised and, in any case, once 90 days have elapsed. This framework promotes the right to a fair trial by allowing a person to seek a review of the ISN.

Furthermore, an immediate suspension of a person's licence is considered reasonable and justified to achieve its legitimate purpose, given the significant risk to public safety associated with the relevant offences. Any lesser penalty would not sufficiently address the need for preventing further unsafe driving, providing a greater deterrence to prevent harms arising from offender behaviour and supporting behavioural change.

Power to enter premises

The inclusion of this new offence (s21) in the list under which police may enter a premise, while engaging the right to privacy of some individuals, will enhance ACT Policing's abilities to protect all road users, by ensuring that individuals who drink or drug drive are detected and appropriately sanctioned and prevented from continuing their dangerous behaviours. Any limitation of the right is reasonable and proportionate, noting the public interest benefits that arise from improving road safety in this manner.

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

A police officer who enters premises under section 10A or 13CA also remains subject to the existing restrictions on testing contained within section 14 of the RT (A&D) Act, including the time limits relating to how long after a person ceases to drive or is involved in an accident, a screening test can be undertaken.

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

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

Given the temporal nature of the crucial evidence in drink and drug driving offences (i.e. a driver's blood alcohol concentration, or a prescribed drug in a driver's blood or oral fluid), it is essential that in the limited and important circumstances outlined above, police are empowered to collect the evidence, and that drivers are not permitted to frustrate the existing drink and drug driving regime simply by entering premises and refusing to engage with police. Without this amendment, police are limited in the steps they can take with respect to drink and drug driving offences committed by individuals who are able to enter premises before police can require testing.

D. Addition of cocaine to the roadside drug testing regime

The Bill expands the existing list of prescribed drugs for the purposes of a s20 and the new s21 offences to include cocaine. Expansion of the roadside testing regime is

intended to include drugs that present significant risks within ACT's community and on our roads.

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

This amendment engages a person's right to privacy by introducing cocaine to the existing list of prescribed drugs that are tested by way of an oral sample for the purposes of determining whether a person has committed a drug driving offence.

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

Introducing cocaine into the ACT's roadside drug testing regime serves a legitimate purpose through the protection of the right to life while promoting road safety. Introducing cocaine as a prescribed drug promotes road safety by removing cocaine-affected drivers from ACT roads, which can put other drivers, road users such as cyclists and pedestrians at risk of injury or death.

Adding cocaine to the list of drugs screened for by ACT Policing at the roadside is in response to a noticeable and measurable increase in the use of this drug within our community. Cocaine is the second highest illicit drug used in the ACT, after Cannabis, with 3.5% of Canberra's over the age of 14 saying in 2019 they had used the drug in the last 12 months. Recently, ACT wastewater reporting indicates high levels of cocaine use in the ACT³⁰, and the importation and use of cocaine has been increasingly reported in the media throughout 2023, with evidence showing an upward trend in the amount being illegally imported, sold, and used throughout Australia.

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

Cocaine use has been associated with risky driving behaviours such as aggressive driving and speeding, which can pose a significant risk to road safety. Cocaine is also sometimes used in conjunction with other drugs, such as alcohol, with the combined effect leading to more significant and risky driving behaviours.

Research has shown that cocaine is a stimulant drug that can impair various cognitive and motor functions³¹. Cocaine use can lead to impaired attention, reaction time and decision-making, all of which are crucial for safe driving. Various studies have examined the relationship between drug use and traffic accidents. These studies have found a significant association between drug use and increased accident risk³². Specific data regarding cocaine and its impact on driving behaviour may vary based on various factors such as the level of cocaine consumed, individual tolerance and interactions with other substances.

While the dose-response relationship between the amount of cocaine consumed and the degree to which the drug affects a person cannot be quantified into an objective measure of driver impairment at this point, there is evidence that cocaine affects driving ability³³. Further, laboratory studies and driving simulator experiments have

demonstrated that cocaine use can impair psychomotor performance, which includes tasks essential for safe driving³⁴.

Adding cocaine to the list of drugs screened for by ACT Policing will bring the ACT in line with other jurisdictions. Since 2018, NSW have been screening drivers for the presence of cocaine, with Queensland recently amending legislation to include roadside testing for cocaine in July 2023. Both the Northern Territory and Tasmania have also prescribed cocaine for roadside testing purposes.

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

The amendments in the Bill underpin a proportionate response to the dangers of driving while under the influence of cocaine. Working to achieve Vision Zero through roadside drug testing for cocaine is a legitimate and necessary responsibility that forms part of the Government's duty to protect the right to life that is balanced against other rights through existing privacy and operational safeguards.

The right to life is one of the most fundamental human rights. Roadside drug testing in the ACT is aimed at preventing drug driving which poses a significant risk to life by reducing the likelihood of accidents caused by impaired drivers. Roadside drug testing is implemented with proportionality in mind: it targets individuals who may pose a real risk to road safety due to drug use, and it uses evidence-based criteria, such as positive drug test results, to determine if a person has used drugs.

Road safety is also a matter of public interest and welfare. Protecting the right to life necessitates measures to minimise the risk of harm to individuals and the community. Roadside drug testing therefore acts as a measure to deter drug driving, potentially saving lives before accidents occur. Expanding the existing list of prescribed drugs to include cocaine is intended to lower the risk of harm to individuals and the community by allowing ACT Police to act swiftly to remove this cohort of high-risk and potentially dangerous drivers from ACT roads.

Roadside drug testing in the ACT already implements a range of safeguards to protect human rights. For example, safeguards protect a person's privacy during the testing process by conducting tests in a way that minimises intrusion. A person is only required to undertake an oral swab screening test during an initial interaction with a police officer for the purposes of roadside drug testing and will only be required to provide a sample of oral fluid or blood for confirmatory testing by an approved laboratory if the screening test returns a positive result.

A person's dignity is also respected as confirmatory drug testing is undertaken away from public view to protect a person's right to privacy, with informed consent sought whenever possible. In circumstances where informed consent is not possible, for example, an unconscious patient in a hospital following a traffic accident, current road transport legislation sets out the specific circumstances under which a blood sample may be obtained and includes safeguards to protect police officers and medical staff who undertake specified procedures to obtain blood samples. Current

legislation also sets out a person may object based on religious or other conscientious grounds, or on medical grounds, to undertaking of further confirmatory testing.

Testing accuracy is a further safeguard designed to protect human rights. Testing equipment and methods used in the ACT are accurate, repeatable and reliable to avoid false positives. Individuals have the right to challenge drug testing results and request retesting, and approved laboratories are required to keep the preserved part of oral fluid until at least 1 year has passed since the sample was taken from the tested person, or if the DPP requests that a sample is kept until the end of the proceeding to which the sample relates.

Roadside drug testing also safeguards human rights by; not limiting in any way a person's right to legal representation, being based on a process with objective criteria that does not rely on police discretion and does not discriminate based on factors such as race, ethnicity, age or gender, and that roadside drug testing is subject to appropriate review and accountability mechanisms such as reporting, oversight, accountability for abuses and errors and options for individuals to file complaints.

Road Safety Legislation Amendment Bill 2023

Human Rights Act 2004 - Compatibility Statement

In accordance with section 37 of the *Human Rights Act 2004* I have examined the **Road Safety Legislation Amendment Bill 2023**. 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

Clause 1 Name of Act

This clause states that the name of the Act is the *Road Safety Legislation Amendment Act 2023*.

Clause 2 Commencement

This clause sets out that the Act will commence on the day after its notification day and that Sections 5, 39 and 60 will commence on 1 January 2025 to allow sufficient time for administrative implementation.

Clause 3 Legislation amended

This clause sets out the legislation that is amended by this Act, being the *Road Transport (Alcohol and Drugs) Act 1977*, *Road Transport (Alcohol and Drugs) Regulation 2000*, *Road Transport (Driver Licensing) Regulation 2000*, *Road Transport (General) Act 1999*, *Road Transport (Offences) Regulation 2005*, *Road Transport (Road Rules) Regulation 2017*, and the *Road Transport (Safety and Traffic Management) Act 1999*. This Act also amends other legislation as listed at Schedule 1.

Part 2 Road Transport (Alcohol and Drugs) Act 1977

This part of the Bill amends Parts 1, 1A, 2, 3, 4, 7 and 9 to amend penalties and penalty levels for drug and alcohol-related road transport offences, introduce a drink driving infringement notice scheme, and make consequential amendments as necessary.

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

This clause amends Note 1 at section 4 to insert a reference to the new combined drug and alcohol offence created at section 21 of this Act.

This technical amendment is intended to clarify that *the Criminal Code 2002* applies to the new combined drug and alcohol offence created at section 21.

Clause 5 Meaning of *first offender* and *repeat offender* New section 4F (2) (d)

This clause amends the meaning of first and repeat offender at section 4F to clarify that a person will be considered a repeat offender if, at any time before a disqualifying offence was committed, the person was issued with an infringement notice for a relevant offence, and has not disputed the infringement notice within the time allowed to dispute the notice.

For the purposes of section 4F, **disqualifying offences** are defined in the dictionary to be offences against:

- section 19 (Prescribed concentration of alcohol in blood or breath);
- section 20 (Prescribed drug in oral fluid or blood—driver or driver trainer);

- section 21 (Prescribed concentration of alcohol and prescribed drug in bodily fluid)
- section 22 (Refusing to provide breath sample);
- section 22A (Refusing to provide oral fluid sample);
- section 22C (Refusing to undergo screening test);
- section 23 (Refusing blood test etc);
- section 24 (Driving under the influence of intoxicating liquor or a drug); or
- another provision of this Act prescribed by regulation.

Relevant offences are defined at section 4F(3) of the *Road Transport (Alcohol and Drugs) Act 1977* and include:

- disqualifying offences;
- corresponding offences (which are defined in the dictionary as offences against a law of another jurisdiction that corresponds to a disqualifying offence, and includes any offence against the law of another jurisdiction arising out of the driving of a motor vehicle by a person who is or may be affected by alcohol, a drug or both); and
- offences against section 29 of the *Crimes Act 1900* (Culpable driving of a motor vehicle), in which the person who committed the offence was incapable of having proper control of the vehicle involved in the offence because of the influence of alcohol or a drug on the person.

The intent of this amendment is to clarify the Government's policy intent that persons who have previously been issued with an infringement notice for a Level 1 or 2 prescribed concentration of alcohol (PCA) drink driving offence are repeat offenders for the purposes of imposing appropriate penalties if a person commits a second or subsequent relevant offence. This does not imply that a person was convicted for an infringement, nor does it imply that a criminal record entry must be created to record the previous infringement. These amendments reflect that only a person whose driving record is completely clean for these offences will be treated as a first offender if convicted by a court. In conjunction with the amendments to the *Road Transport (Offences) Regulation 2005*, these amendments will also achieve the intention that infringement notices may only be given to the same category of people whose records are (relevantly) clean.

Clause 6 Power to enter premises for alcohol screening test **Section 10A (1) (b)**

This clause amends subsection 10A(1)(b) to add new section 21 combined drug and alcohol offence to the list of current offences prescribed for the purposes of this section and to make a minor structural amendment to this subsection that improves readability.

The intent of incorporating new section 21 into section 10A(1)(b) is to allow a police officer to enter premises, using the force that is necessary and reasonable for the circumstances, for the purpose of requiring a person to undergo 1 or more alcohol screening tests if they suspect on reasonable grounds that a person has committed a combined drug and alcohol offence.

New section 21 is incorporated at section 10A to maintain consistency and alignment with how testing is carried out for other relevant offences, and also to ensure that a person cannot enter a premises with the intent to avoid an alcohol screening test for the purposes of determining whether they have committed an offence against new section 21.

Clause 7 Power to enter premises for drug screening test Section 13CA (1) (b)

Similar to clause 6, this clause amends s13CA(1)(b) to add new section 21 combined drug and alcohol offence to the list of current offences prescribed for the purposes of this section and to make a minor structural amendment to this subsection that improves readability.

Also similar to clause 6, the intent of incorporating new section 21 into s13CA(1)(b) is to allow a police officer to enter premises, using the force that is necessary and reasonable for the circumstances, for the purpose of requiring a person to undergo 1 or more drug screening tests if they suspect on reasonable grounds that a person has committed a combined drug and alcohol offence.

New section 21 is incorporated at s13CA to maintain consistency and alignment with how testing is carried out for other relevant offences, and also to ensure that a person cannot enter a premise with the intent to avoid a drug screening test for the purposes of determining whether they have committed an offence against new section 21.

Clause 8 Prescribed concentration of alcohol in blood or breath Section 19 (1), new penalty

This clause amends section 19(1) to incorporate the existing penalties for first and repeat offenders who commit prescribed concentration of alcohol in blood or breath offences into the offence section.

The intent of incorporating new maximum penalties into section 19(1) is to maintain consistency and alignment with modern legislative standards and improve readability.

Clause 9 Section 19 (3)

This clause amends subsection 19(3) to remove the reference to section 26, and instead substitutes that a driver trainer convicted of a section 19 PCA offence cannot be punished with imprisonment for this offence.

The reference to section 26 in subsection 19(3) is no longer required following the amendments made at clause 8, as the penalties for this offence are now incorporated into the offence provision. Instead, subsection 19(3) now clarifies the existing policy position that driver trainers are not to be subjected to the same penalty as drivers given they are not operating a vehicle when they commit the offence.

Clause 10 New table 19

This amendment inserts the existing table of penalties for first and repeat section 19 PCA offenders into the offence at section 19, and also amends the maximum penalties for first and repeat offenders.

Penalties in Table 19 are amended as follows:

- For levels 1 and 2 alcohol concentrations, the maximum penalties for first offenders are increased to 25 penalty units. Repeat offender penalties are increased to 50 penalty units, imprisonment for 6 months, or both on conviction.
- For level 3 alcohol concentrations, the maximum penalty for first offenders is increased to 50 penalty units. Repeat offender penalties are increased to 100 penalty units, imprisonment for 12 months, or both on conviction.
- For level 4 alcohol concentrations, the maximum penalty for first offenders is increased to 75 penalty units. Repeat offender penalties are increased to 150 penalty units, imprisonment for 18 months, or both on conviction.

Penalty units for section 19 offences were last amended in 1997. These penalties are increased to reflect the seriousness of this offence and ensure they are proportionate to the significant road safety risk associated with drink driving.

Clause 11 Section 19A heading

This clause substitutes the existing heading of section 19A with ‘19A Defence if person did not intend to drive motor vehicle— s 19’.

The addition of ‘—s19’ is to improve readability by clearly indicating the defence in section 19A only applies to section 19 offences, and to clearly distinguish this from the analogous new section 21A, which would otherwise have the same heading.

Clause 12 Section 19A

This clause makes a minor and technical amendment to section 19A to omit the word ‘establishes’ and substitute it with the word ‘proves’.

The intent of this amendment is to clarify that a legal burden is imposed by aligning the language used with that of the *Criminal Code 2002*, section 59(b). This amendment is deemed to have no substantive effect and is purely to update the language for explicit consistency with the code.

Clause 13 Section 19A, new note

This clause inserts a new note into section 19A of the *Road Transport (Alcohol and Drugs) Act 1977*.

The note clarifies the legal burden imposed on an individual charged with a PCA offence under section 19 who claims in their defence that they did not intend to drive a motor vehicle, with reference to section 59 of the *Criminal Code 2002*.

Section 59 of the *Criminal Code 2002* makes it clear that a burden of proof that a law imposes on the defendant is a legal burden if, and only if, the law expressly specifies that the burden of proof in relation to the matter in question is a legal burden, or requires the defendant to prove the matter, or creates a presumption that the matter exists unless the contrary is proved.

Clause 14 Section 19B heading

This clause substitutes the existing heading of section 19A with ‘19A Defence if special driver with lower concentration of alcohol from allowable source — s 19’.

The addition of ‘—s19’ is to improve readability by clearly indicating the defence in section 19B only applies to section 19 offences, and to clearly distinguish this from the analogous new section 21B, which would otherwise have the same heading.

Clause 15 Prescribed drug in oral fluid or blood—driver or driver trainer
Section 20 (1), penalty

This clause amends the maximum penalties at section 20(1) of the *Road Transport (Alcohol and Drugs) Act 1977* for first and repeat offenders who commit prescribed drug in oral fluid or blood offences.

Penalties for section 20 offences are amended as follows:

- For a first offender, regardless of whether they are a driver or driver trainer, the maximum penalty is increased to 25 penalty units on conviction.
- For a repeat offender who is the driver, the maximum penalty is increased to 50 penalty units, imprisonment for 6 months, or both on conviction.
- For repeat offenders who are driver trainers, the maximum penalty is increased to 50 penalty units on conviction.

The intentional separation of penalties between drivers and driver trainers is intended to maintain the existing policy position that driver trainers are not to be subjected to the same penalty as a driver as they are not operating a vehicle when they commit the offence.

Penalty units for section 20 offences have not been adjusted since their introduction in 2010. These penalties are increased to reflect the seriousness of this offence and ensure they are proportionate to the significant road safety risk associated with drug driving.

Clause 16 Section 20 (6), definition of *relevant period*

This clause makes a minor and technical amendment to subsection 20(6) to omit the word ‘may’ and to substitute it with the word ‘could’.

The intent of this amendment is to align the language used in the meaning of *relevant period* in sections 19 and 20 to make it consistent. The section 19 definition of relevant period uses the word “could” after the words “a breath analysis of the person” at subsection 19(5)(a), whereas the section 20 definition of relevant period uses the word “may” after the words “a breath or oral fluid analysis of the person” at subsection 20(6)(a) and after the words “a sample of the person’s blood” at subsection 20(6)(b). This language inconsistency is remedied through this minor and technical amendment.

Clause 17 New sections 21 to 21C

This clause creates a new combined drug and alcohol driving offence at new section 21. This clause also inserts alcohol-related defences at new sections 21A and 21B to mirror the defences at sections 19A and 19B, and also inserts section 21C to provide for alternative verdicts in circumstances where the trier of fact is satisfied that a person has committed an offence against sections 19 or 20, but is not satisfied that a person committed an offence against new section 21.

New section 21 contains the elements that lead to a person committing a combined drug and alcohol driving offence, and incorporates the penalties for first and repeat offenders on conviction. As with section 20, an offence under this section is committed if a person has, along with the relevant level of alcohol concentration, the presence of a prescribed drug in their fluid.

Strict liability applies to this offence, and new subsection 21(3) clarifies the existing policy position that driver trainers are not to be subjected to the same penalty as drivers given they are not operating a vehicle when they commit the offence.

New subsections 21(4) and 21(5) set out that a defendant in a prosecution for an offence against this section cannot rely on section 36 of the *Criminal Code 2002* (mistake of fact – strict liability) in relation to this offence. These provisions are incorporated into new section 21 to mirror the policy effect that applies to subsections 20(3) and 20(4) currently, and to maintain consistency in the way drug driving offences are prosecuted in the ACT.

New subsections 21(6) and 21(7) set out the requirements for evidence that may be given in a proceeding for a new section 21 offence. As with the previous paragraph, these provisions are incorporated into new section 21 to mirror the policy intent that applies to subsections 19(4) and 20(5) currently, and to maintain consistency in the way evidence is given for drink and drug driving offences in the ACT.

New subsection 21(8) sets out the meanings of the terms cannabis food product, controlled drug and relevant period for the purposes of new section 21. These meanings are intended to mirror the policy intent and structure of relevant meanings at subsections 19(5) and 20(6), with the difference being that both alcohol and drug tests must be carried out under this Act to charge a person with a new section 21 offence.

Table 21 sets out the penalties for a new section 21 offence. The policy intent underpinning these significantly increased penalties is to reflect the severity that is accorded to an offence where alcohol and a drug (or drugs) are present in a person's fluid, and the significantly increased road safety risk attached to driving under the influence of alcohol and a drug (or drugs).

New section 21A outlines an available defence for a person charged with an offence against new section 21, provided that they can prove they did not intend to drive a motor vehicle until such a time the concentration of alcohol in a person's blood or breath was no longer the prescribed concentration for the person. The policy effect of new section 21A is to mirror the existing defence at section 19A for persons who are charged with section 19 PCA offences, and to ensure that procedural fairness continues to be attached to the combined offence insofar as the matter relates to the prescribed concentration of alcohol.

New section 21B creates a defence for special drivers for 'innocently' consumed alcohol. The defence in new section 21B applies if a special driver is charged with an offence against new section 21 and driver's alcohol concentration is not more than 0.02 g in the relevant amount of breath or blood. It is a defence if the special driver proves that the concentration of alcohol in the person's blood or breath was caused by—

(a) the consumption of an alcoholic beverage that formed part of a religious observance; or

(b) the consumption or use of a substance that was not, entirely or partly, consumed or used for its alcohol content.

The new section includes as an example of a substance for paragraph (b) food or medicine that contains alcohol. The defendant has the burden of proof because the defence arises from matters peculiarly in the defendant's knowledge. The note explains that under section 59, the defendant bears a legal burden in relation to this matter. This means that the defendant is required to establish this matter on the balance of probabilities, under section 60 of the *Criminal Code 2002*. The defendant is better placed than the prosecution to know and obtain evidence about items that he or she had consumed prior to driving and the purpose for which the substance was consumed.

As with new section 21A, the policy effect of new section 21B is to mirror the existing defence at section 19B for persons who are charged with section 19 PCA offences, and to ensure that procedural fairness continues to be attached to the combined offence insofar as the matter relates to the prescribed concentration of alcohol.

Section 21C provides for alternative verdicts for prescribed concentration of alcohol and prescribed drug in bodily fluid offences. This will allow for a court to convict a person for a section 19 or section 20 offence if the trier of fact is not satisfied the person committed a new section 21 offence, but is satisfied beyond reasonable doubt that a person committed an offence against section 19 or section 20. It is a requirement of this clause that procedural fairness must be afforded to an offender in relation to that finding of guilt.

Clause 18 Refusing to provide breath sample **Section 22**

This clause makes a minor and technical amendment to subsection 22(b) to omit the current penalty from section 22. A new penalty for section 22 is then inserted at clause 19.

Clause 19 Section 22, new penalty

This clause amends section 22 to remake the penalty applicable to section 22 to incorporate current penalties for first and repeat offenders who refuse to provide breath samples, while also increasing the penalty levels.

Penalties for section 22 offences are increased as follows:

- For a first offender, the maximum penalty is increased to 100 penalty units, imprisonment for 12 months, or both on conviction.
- For a repeat offender, the maximum penalty is increased to 200 penalty units, imprisonment for 2 years, or both on conviction.

The intent of the increased penalty levels for both first and repeat offenders who refuse to provide breath samples is to maintain the deterrent effect of the newly proposed penalty levels of sections 19, 20, and 24. It also aims to incorporate a stronger deterrent within the existing framework to address the prevalence of dangerous driving behaviours in the ACT, including those behaviours that allow prescribed concentration of alcohol in blood or breath offences to occur without appropriate enforcement.

Clause 20 New section 22 (2)

This clause inserts a medical grounds defence for section 22(1)(d) to align with the existing medical grounds defence that is currently available at sections 22A, 22C and 23. The medical grounds in this case is a specific defence if the person proves they are medically unable to provide sufficient breath sample to complete the breath analysis. The new clause also includes 'another reasonable excuse' defence for in circumstances where a person fails or refuses to provide a breath sample in accordance with the reasonable directions of a police officer.

Some jurisdictions have provided in similar defences that any excuse or reason does not include a reason of a person's desire to avoid incriminating themselves. This was not necessary to specify here, on the basis that any such claims would not be "reasonable" excuses. Furthermore, such an interpretation would be contradictory to the legislative purpose of the provision, which is to deter attempts to escape prosecutions under the Act.

Clause 21 Refusing to provide oral fluid sample Section 22A (2), penalty

This clause amends section 22A(2) to increase the penalty levels for first and repeat offenders who refuse to provide an oral fluid sample.

Penalties for section 22A offences are amended as follows:

- For a first offender, the maximum penalty is increased to 100 penalty units, imprisonment for 12 months, or both on conviction.
- For a repeat offender, the maximum penalty is increased to 200 penalty units, imprisonment for 2 years, or both on conviction.

The intent of the increased penalty levels for both first and repeat offenders who refuse to provide oral fluid samples is to maintain the deterrent effect of the newly proposed penalty levels of sections 19, 20, and 24. It also aims to incorporate a stronger deterrent within the existing framework to address the prevalence of dangerous driving behaviours in the ACT, including those behaviours that allow prescribed concentration of alcohol in blood or breath offences to occur without appropriate enforcement.

Clause 22 Section 22A (4), except note

This clause amends the existing defence to include 'another reasonable excuse' for subsection 22A(2)(b) in circumstances where a person fails or refuses to provide an oral fluid sample in accordance with the reasonable directions of a police officer. The existing medical grounds defence is maintained in this amendment.

Some jurisdictions have provided in similar defences that any excuse or reason does not include a reason of a person's desire to avoid incriminating themselves. This was not necessary to specify here, on the basis that any such claims would not be "reasonable" excuses. Furthermore, such an interpretation would be contradictory to the legislative purpose of the provision, which is to deter attempts to escape prosecutions under the Act.

Clause 23 Failing to stay for screening test Section 22B (1), penalty

This clause amends section 22B(1) to increase the penalty levels for offenders who fail to stay for screening tests from 20 penalty units to 100 penalty units. As per current policy, no imprisonment penalty is attached to this offence.

The intent of the increased maximum penalty for offenders who fail to stay for screening tests is to maintain the deterrent effect of the newly proposed penalty levels of sections 19, 20, and 24. It also aims to incorporate a stronger deterrent within the existing framework to address the prevalence of dangerous driving behaviours in the ACT, including those behaviours that allow prescribed concentration of alcohol and prescribed drug in bodily fluid offences to occur without appropriate enforcement.

Clause 24 Refusing to undergo screening test Section 22C (1), penalty

This clause amends section 22C(1) to increase penalty levels for first and repeat offenders who refuse to undergo screening tests.

Penalties for section 22C(1) offences are amended as follows:

- For a first offender, the maximum penalty is increased to 100 penalty units, imprisonment for 12 months, or both on conviction.
- For a repeat offender, the maximum penalty is increased to 200 penalty units, imprisonment for 2 years, or both on conviction.

The intent of the increased penalty levels for both first and repeat offenders who refuse to undergo screening tests is to maintain the deterrent effect of the newly proposed penalty levels of sections 19, 20, and 24. It also aims to incorporate a stronger deterrent within the existing framework to address the prevalence of dangerous driving behaviours in the ACT, including those behaviours that allow prescribed concentration of alcohol and prescribed drug in bodily fluid offences to occur without appropriate enforcement.

Clause 25 New section 22C (3), except note

This clause amends the existing defence to include 'another reasonable excuse' for section 22C in circumstances where a person fails or refuses to undergo a screening test in accordance with the reasonable directions of a police officer. The existing medical grounds defence is maintained in this amendment.

Some jurisdictions have provided in similar defences that any excuse or reason does not include a reason of a person's desire to avoid incriminating themselves. This was not necessary to specify here, on the basis that any such claims would not be "reasonable" excuses. Furthermore, such an interpretation would be contradictory to the legislative purpose of the provision, which is to deter attempts to escape prosecutions under the Act.

Clause 26 Refusing blood test etc Section 23 (1), penalty

This clause amends section 23(1) to increase penalty levels for first and repeat offenders who refuse blood tests.

Penalties for section 23(1) offences are amended as follows:

- For a first offender, the maximum penalty is increased to 100 penalty units, imprisonment for 12 months, or both on conviction.
- For a repeat offender, the maximum penalty is increased to 200 penalty units, imprisonment for 2 years, or both on conviction.

The intent of the increased penalty levels for both first and repeat offenders who refuse blood tests is to maintain the deterrent effect of the newly proposed penalty levels of sections 19, 20, and 24. It also aims to incorporate a stronger deterrent within the existing framework to address the prevalence of dangerous driving behaviours in the ACT, including those behaviours that allow prescribed concentration of alcohol and prescribed drug in bodily fluid offences to occur without appropriate enforcement.

Clause 27 New section 23 (1A)

This clause inserts a new section that applies the existing defence at subsection 3 and inserts ‘another reasonable excuse’ specifically to subsection 1 in circumstances where a person fails or refuses to provide a blood sample if required by a police officer under section 15, or where a doctor or nurse is required to take a sample from a person (other than a pedestrian) under section 15AA.

Clause 28 Section 23 (2)

This clause makes a minor and technical amendment to section 23(2) to omit the current penalty from section 23. A new penalty for section 23 is then inserted at clause 25.

Clause 29 Section 23 (2), new penalty

This clause amends section 23(2) to increase penalty levels for first and repeat offenders who fail or refuse to submit to a medical examination or to give or permit the taking of a blood sample from their body for analysis.

Penalties for section 23(2) offences are amended as follows:

- For a first offender, the maximum penalty is increased to 100 penalty units, imprisonment for 12 months, or both on conviction.
- For a repeat offender, the maximum penalty is increased to 200 penalty units, imprisonment for 2 years, or both on conviction.

The intent of the increased penalty levels for both first and repeat offenders who fail or refuse to submit to a medical examination or to give or permit the taking of a blood sample from their body for analysis is to maintain the deterrent effect of the newly proposed penalty levels of sections 19, 20, and 24. It also aims to incorporate a stronger deterrent within the existing framework to address the prevalence of dangerous driving behaviours in the ACT, including those behaviours that allow

prescribed concentration of alcohol and prescribed drug in bodily fluid offences to occur without appropriate enforcement.

Clause 30 Section 23 (3)

This clause amends existing subsection 3 so that it applies only to subsection 2.

Clause 31 Section 23 (3)

This clause amends the existing defence to include 'another reasonable excuse' defence where a person is required to undergo a medical examination under section 16 and either fails or refuses to submit to the medical examination, or fails or refuses to give or permit the taking of a sample of their blood where required by the doctor or nurse practitioner conducting the examination. The existing religious or other conscientious grounds or on medical grounds defences are maintained in this amendment.

Some jurisdictions have provided in similar defences that any excuse or reason does not include a reason of a person's desire to avoid incriminating themselves. This was not necessary to specify here, on the basis that any such claims would not be "reasonable" excuses. Furthermore, such an interpretation would be contradictory to the legislative purpose of the provision, which is to deter attempts to escape prosecutions under the Act.

Clause 32 Driving under the influence of intoxicating liquor or a drug Section 24 (1), penalty

This clause amends section 24(1) to increase penalty levels for first and repeat offenders driving under the influence of intoxicating liquor or drug.

Penalties for section 24(1) offences are amended as follows:

- For a first offender, the maximum penalty is increased to 100 penalty units, imprisonment for 12 months, or both on conviction.
- For a repeat offender, the maximum penalty is increased to 200 penalty units, imprisonment for 2 years, or both on conviction.

The intent of this amendment is to increase penalty levels to reflect the seriousness of this offence and ensure they are proportionate to the significant road safety risk associated with driving under the influence of alcohol or a drug to the extent where a person is incapable of having proper control of a vehicle.

Clause 33 Part 4 heading

This clause makes a minor and technical amendment to the current heading at Part 4. This Part was previously where all penalties for offences under this Act resided, however, these penalties are now incorporated into the relevant offences where possible. Automatic licence disqualification penalties were not incorporated into the relevant offences as this decreased readability and will continue to sit within the Act under Part 4 with the amended heading of 'Automatic driver licence disqualification'.

Clause 37 Section 41A (5), definition of *relevant offence*, new paragraph (ba)

This clause amends subsection 41A(5) to incorporate the new section 21 combined drug and alcohol driving offence.

The policy rationale behind incorporating relevant offences into section 41A is discussed at clause 31.

Clause 38 Dictionary, definition of *disqualifying offence*, new paragraph (ba)

This clause amends the Dictionary section to insert the new section 21 combined drug and alcohol driving offence into the definition of *disqualifying offence*.

Clause 39 Dictionary, definition of *prescribed drug*

This clause makes a structural amendment to the existing definition of *prescribed drug* in the dictionary to move the existing list of prescribed drugs, these being, delta-9-tetrahydrocannabinol, methylamphetamine and N,α-Dimethyl-3,4-(Methylenedioxy)phenylethylamine (MDMA), into the *Road Transport (Alcohol and Drugs) Regulation 2000*. The list of prescribed drugs is reinserted by clause 34.

The intent of this structural amendment is to improve readability by listing all prescribed drugs in one location in the *Road Transport (Alcohol and Drugs) Regulation 2000*, rather than having a partial list in the *Road Transport (Alcohol and Drugs) Act 1977* and another partial list in the *Road Transport (Alcohol and Drugs) Regulation 2000*.

Part 3 Road Transport (Alcohol and Drugs) Regulation 2000

Clause 40 New section 5A

This is a minor structural amendment to move the existing list of drugs found under the definition of 'prescribed drug' in the *Road Transport (Alcohol and Drugs) Act 1977* into the *Road Transport (Alcohol and Drugs) Regulation 2000*. This clause inserts new section 5A to list the prescribed drugs that were omitted by clause 33.

The following are the prescribed drugs inserted into the *Road Transport (Alcohol and Drugs) Regulation 2000* by this clause, which mirror the prescribed drugs omitted at clause 33:

- (a) delta-9-tetrahydrocannabinol;
- (b) methylamphetamine;
- (c) N, α-Dimethyl-3,4-(Methylenedioxy)phenylethylamine (MDMA).

The intent of this structural amendment is to improve readability by listing all prescribed drugs in one location in the *Road Transport (Alcohol and Drugs) Regulation 2000*, rather than having a partial

list in the *Road Transport (Alcohol and Drugs) Act 1977* and another partial list in the *Road Transport (Alcohol and Drugs) Regulation 2000*.

**Clause 41 Prescribed drugs—Act, dict, def *prescribed drug*
New section 5A (d)**

This clause amends new section 5A to add cocaine to the list of prescribed drugs inserted by clause 35. The policy rationale for including cocaine in the list of prescribed drugs is found in the human rights compatibility statement.

**Part 4 Road Transport (Driver
Licensing) Regulation 2000**

**Clause 42 Eligibility to apply to Magistrates Court for order authorising
issue of restricted licence Section 45 (2), note 1, 3rd dot point**

This clause is a minor clarifying amendment to note 1 at section 45 to clarify that section 67A of the *Road Transport (General) Act 1999* applies to first offenders.

Clause 43 Section 45 (2), note 2

This clause is a technical amendment to remove note 2 at section 45 as the note does not clarify the application of section 67A of the *Road Transport (General) Act 1999* and the provision would still need to be referred to for interpretation.

**Clause 44 Definitions—div 3.14
Section 73K, definition of *drug-related disqualifying offence*, new paragraph (aa)**

This clause amends section 73K to add new section 21 combined drug and alcohol offence to the list of current drug-related disqualifying offences.

The intent of incorporating new section 21 into section 73K is to list the new section 21 offence as an offence for which a person may be required to complete a drug awareness course.

**Clause 45 Mandatory interlock condition
New section 73T (1) (a) (i) (AA)**

This clause amends subsection 73T(1)(a)(i) to include the new section 21 combined drug and alcohol driving offence.

The policy rationale for imposing a mandatory alcohol interlock condition on new section 21 offenders is found in the human rights compatibility statement.

Clause 46 New section 73T (1) (a) (i) (E)

This clause amends subsection 73T(1)(a)(i) to require that persons convicted of a section 24 offence under the *Road Transport (Alcohol and Drugs) Act 1977* are subject to the mandatory alcohol interlock condition, so long as the offence is related to alcohol. Mandatory alcohol interlock conditions will not be imposed under this amendment for offences relating to drug intoxication.

The policy rationale for imposing a mandatory alcohol interlock condition on new section 24 offenders is found in the human rights compatibility statement.

Clause 47 Dictionary, definition of *alcohol-related disqualifying offence*, new paragraph (a) (ia)

This clause amends the Dictionary section to incorporate the new section 21 combined alcohol and drug driving offence into the definition of *alcohol-related disqualifying offence*.

The intent of incorporating new section 21 into the definition of *alcohol-related disqualifying offence* is to list the new section 21 offence as an offence for which a person may be required to complete an alcohol awareness course.

**Part 5 Road Transport (General)
Act 1999**

**Clause 48 Regulations about infringement notice offences
New section 23 (6)**

This clause amends section 23 to insert a new subsection (6) to limit the ability of any relevant regulation to calculate an infringement amount based on repeat offender penalty unit levels.

This amendment applies to Schedule 1 of the *Road Transport (Offences) Regulation 2005* where infringement penalty amounts are set out. This amendment reflects the position that, where there is a legislative distinction between first and repeat offenders, an authorised person is not the correct decision-maker to determine a person's previous criminal history (that task being properly left to the courts). As such, this amendment provides that where there are separate offence penalties for first and repeat offenders, there can only be an infringement notice in the case of a first offender.

**Clause 49 Infringement notices
New section 24 (2A)**

This clause amends subsection 24(2A) to insert a new subsection to clarify that if section 23 (6) applies to an infringement notice offence (other than a heavy vehicle infringement notice offence), the person who has committed that offence is taken to be a first offender.

This amendment works together with the amendment in clause 40. It reflects that it is not the task of an authorised person to be determining a person's criminal history. To still enable a person to be given an infringement notice, it provides the authorised person the presumption that the person is a first offender. This presumption only exists for the purpose of giving the infringement notice.

This amendment does not exclude consideration of a person's criminal history - it merely provides that the authorised person need not form a conclusive view. The intent is that, in cases where an authorised person's view is that a person would, if convicted, be a repeat offender, they would exercise their discretion not to give an infringement notice, and would be free to initiate proceedings.

**Clause 50 Meaning of *first offender* and *repeat offender*—s 60
Section 60A (2) (a)**

This clause is a technical amendment to rectify a legislative deficiency identified in *R v Subasic* [2022] ACTSC 380 relating to the definition of repeat offenders. In this judgement, Justice Refshauge identified that the definition of “repeat offender” at section 5AB of the *Road Transport (Safety and Traffic Management) Act 1999* was defective as it lacks the word “committed” after the words “the person has been convicted or found guilty of a failing to stop offence”. This amendment remedies this legislative deficiency.

Clause 51 Definitions—div 4.2

**Section 61A, definition of *automatic disqualification provision*,
paragraphs (d) to (f) (a)**

This clause is a consequential amendment that inserts references to the remade automatic licence disqualification provisions from clause 28 into section 61A.

**Clause 52 Definitions—div 4.2
Section 61A, definition of driver trainer**

This clause is a minor and technical amendment to modernise the definition style to refer directly to the definition source, rather than to the other Act's dictionary first. The meaning of *driver trainer* is found at section 4BA of the *Road Transport (Alcohol and Drugs) Act 1977*.

**Clause 53 Section 61A, definition of *immediate suspension offence*,
paragraph (b)**

This clause substitutes paragraph (b) in section 61A for three relevant offences found in the *Road Transport (Alcohol and Drugs) Act 1977*, which are the drink driving, drug driving and combined drug and alcohol driving offences.

This amendment remakes the existing paragraph (b) to remove the prescribed concentration of alcohol thresholds of 0.05 mg or more per 100mL of blood or 210L of breath for special drivers, or 0.1g or more per 100mL of blood or 210L of breath for drivers other than special drivers, as these thresholds do not align with the alcohol concentration levels set at section 4E of the *Road Transport (Alcohol and Drugs) Act 1977*.

The remade paragraph (b), and new paragraphs (ba) and (bb), specify that an immediate suspension offence means drivers who commit offences against sections 19 (prescribed concentration of alcohol), section 20 (prescribed drug in oral fluid or blood) and section 21 (prescribed concentration of alcohol and prescribed drug in bodily fluid) of the *Road Transport (Alcohol and Drugs) Act 1977*.

The amendment intentionally excludes driver trainers from the meaning of *immediate suspension offences* for sections 19, 20, and 21 of the *Road Transport (Alcohol and Drugs) Act 1977*, to maintain the existing policy position that driver trainers are not to be subjected to the same penalty as a driver given they are not operating a vehicle when they commit the offence.

Clause 54 Section 61A, definition of *special driver*

This clause is a minor and technical amendment to update the reference to the meaning of *special driver* for the purposes of Division 4.2 of this Act. The meaning of *special driver* is found at section 4B of the *Road Transport (Alcohol and Drugs) Act 1977*.

Clause 55 Immediate suspension of licence Section 61B (5) and (6)

This clause is consequential amendment to omit existing ISN cessation powers. These powers are remade at clause 47.

Clause 56 New section 61BA to 61BC

This clause substitutes sections 61B(5) and (6) with new sections 61BA to 61BC to remake the conditions under which an ISN given under subsection 1 are ceased. This clause also inserts powers for cessation of ISNs given to persons who are issued with a relevant infringement notice. For the purposes of this Bill, the policy intent of what constitutes a relevant infringement notice is one given to a first offender for a section 19 of the *Road Transport (Alcohol and Drugs) Act 1977*. However, it is acknowledged that the policy intent behind this amendment is to be applied to future road transport offences that may also be brought within the scope of section 61B.

The 180-day period of immediate suspension applicable to a section 19 first offender is intended to mirror the amended automatic licence disqualification periods set out at Table 27 in clause 29 of this Bill, specifically the lowest default disqualification period at column 4, which is six months. The policy intent behind a 180-day ISN was to ensure that a person who is issued an ISN for a first time section 19 offence did not have their drivers licence suspended for a lesser period than the automatic default disqualification period, unless the matter is heard before a court and an order is made for a lesser period of automatic licence disqualification.

This clause also addresses the penalty disparity where an automatic licence disqualification penalty can only be applied if a person is convicted of an offence against section 19 (1) of the *Road Transport (Alcohol and Drugs) Act 1977*, however, a person who is issued with a TIN for a first time section 19 offence would never go before a court unless charges were brought or the person disputed the TIN. The clause also addresses situations where a person may unilaterally cease an ISN by lodging a written notice to dispute liability for an infringement by setting out the actions the administering authority must first take before an ISN is ceased in these circumstances.

Currently, the maximum period that an ISN can be in effect is 90 days. This maximum period would mean that a person who commits a section 19 offence could potentially experience a disadvantage if they went to court to dispute the TIN, as a court could theoretically order a longer period of licence disqualification (6 months) than the currently legislated maximum ISN period (90 days) if a dispute was unsuccessful. This amendment ensures that a person experiences no disadvantage by electing to dispute their TIN, noting that the ISN will remain in effect until the matter is heard in court or the administering authority provides notice under section 53 of the *Road Transport (General) Act 1999* that they will not bring a proceeding for the offence.

New section 61BA introduces *maximum suspension time* as a qualifier of the period relating to which an ISN is served. This reflects the pre-existing default period of 90 days, as well as introducing the 180-day period for when an infringement notice is given. Different provision is made for more specific circumstances, to give effect to the substantive policy that 180 days is appropriate for

infringement notices. The most general infringement notice provision is made under paragraph (a). Paragraph (b) deals with the circumstance where the person has been given an infringement notice, disputed it, and then still discharged liability under the infringement notice framework, rather than through the courts, and as such the disqualification period also defaults back to the infringement notice approach.

However, paragraph (b) only applies where the suspension period wasn't broken by the expiry of 90 days in the interim. In that case the first suspension notice does expire, as at that point the person is governed by the court process framework. To avoid ambiguity about the period re-initiating itself, section 61BB supplements the function by allowing for the imposition of an additional up-to-90-day suspension period.

An additional suspension notice under new section 61BB does not require the police officer to have a particular state of mind, reflecting the policy position that this was only required at the time the notice was first given. However, once an additional notice is given, it is taken to have been given under section 61B (1), so that all the requirements for the form of the notice, as well as any subsequent procedures, attach as normal.

New section 61BC contains the effect of current section 61B (6), but has been relocated to maintain the logical flow of the provisions.

Other minor and technical amendments have been made to improve the structure and style of this section with the intention of improving readability and clarifying the exact application of each subsection.

Clause 57 Eligibility of disqualified first offender for restricted licence—automatic disqualification provisions Section 67A (2) (a)

This clause is a consequential amendment that updates the reference to the relevant automatic licence disqualification provisions created by clause 28.

Clause 58 Section 67A (4)

This clause is a consequential amendment that updates the reference to the relevant automatic licence disqualification provisions created by clause 28.

Clause 59 Section 67A (5), example 2

This clause is a consequential amendment to update the example to reference the relevant automatic licence disqualification provision created by clause 28.

Clause 60 Section 67A (5), note

This clause is a consequential amendment to update the note to reference the relevant automatic licence disqualification provision created by clause 28.

Clause 61 Section 67A (6)

This clause is a consequential amendment that removes a redundant definition. Section 61A already provides the definition for the whole division.

Traffic Management) Act 1999 was defective as it lacks the word “committed” after the words “the person has been convicted or found guilty of a failing to stop offence”. This amendment remedies this legislative deficiency.

Clause 67 Definitions—pt 6 Section 22A, definition of mobile device

The amendments in this clause are minor and technical, without substantive effect. They are made in the anticipation of amendments to the *Road Transport (Road Rules) Regulation 2017* (the Road Rules), so that the cross-referenced definition of *mobile device* remains effective even if section 300 (4) of the Road Rules is amended or moved.

Clause 68 Dictionary, definition of mobile device

The amendments in this clause are minor and technical, without substantive effect. They are made in the anticipation of amendments to the *Road Transport (Road Rules) Regulation 2017* (the Road Rules), so that the cross-referenced definition of *mobile device* remains effective even if section 300 (4) of the Road Rules is amended or moved.

Schedule 1 Consequential Amendments

Part 1.1 Lakes Act 1976

Amendment [1.1] Section 73 (2) (d)

This clause amends section 73(2)(d) to incorporate a reference to the new section 21 offence created by clause 17.

Part 1.2 Motor Accident Injuries Act 2019

Amendment [1.2] Section 41, definition of *driving offence*, new paragraph (c) (ia)

This clause amends section 41 to insert a new paragraph that references the new section 21 offence created by clause 17.

Amendment [1.3] Section 48 (6), definition of *serious offence*, new paragraph (b) (ia) (ia)

This clause amends section 48(6) to insert a new paragraph that references the new section 21 offence created by clause 17.

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- ¹ ACT Government. New laws to tackle dangerous driving, 7 June 2023. https://www.cmtedd.act.gov.au/open_government/inform/act_government_media_releases/chris-steel-mla-media-releases/2023/new-laws-to-tackle-dangerous-driving
- ² ACT Government. City Services, Road Safety. <https://www.cityservices.act.gov.au/roads-and-paths/road-safety>
- ³ ACT Policing. Road Safety. <https://www.police.act.gov.au/road-safety>
- ⁴ Infrastructure and Transport Ministers. National Road Safety Action Plan 2023-25, p. 23. https://www.roadsafety.gov.au/sites/default/files/documents/National%20Road%20Safety%20Action%20Plan%202023-25_0.pdf
- ⁵ NSW, Roads and Traffic Authority, Drink Driving: Problem Definition and Countermeasure: Summary (2000) 2
- ⁶ ACT Courts and Tribunal data provided to TCCS by Courts Business Intelligence Team
- ⁷ ACT Government. City Services, Drink and drug driving. <https://www.cityservices.act.gov.au/roads-and-paths/road-safety/drink-and-drug-driving#:~:text=Dangers%20of%20drug%20driving,view%20of%20time%20and%20distance>.
- ⁸ For example: New South Wales (NSW) Government. Driver Knowledge Test, pp. 21-24. <https://www.nsw.gov.au/sites/default/files/2021-08/driver-knowledge-test-questions-car.pdf>; VicRoads. Road to Solo Driving, p. 51. https://www.vicroads.vic.gov.au/-/media/files/formsandpublications/licences/road_to_solo_driving_handbook.ashx.
- ⁹ ACT Government. Safe Plate Testing. <https://safeplatestesting.act.gov.au/c/spt?a=apps&ap=mobikt&m=knowledgetest<=>
- ¹⁰ For example: ACT Policing. Alcohol and drug impaired driving. <https://www.police.act.gov.au/road-safety/safe-driving/alcohol-and-drug-impaired-driving>; South Australian Government. Drink driving and immediate loss of licence. <https://www.sa.gov.au/topics/driving-and-transport/offences/disqualification-and-suspension/types-of-disqualification/drink-driving>; NSW Government. Drink and drug driving penalties. <https://www.nsw.gov.au/driving-boating-and-transport/demerits-penalties-and-offences/offences/alcohol-and-drug-offences/drink-and-drug-driving-penalties>
- ¹¹ For example: Legal Aid ACT. Have you been charged with a drink driving offence? https://www.legalaidact.org.au/sites/default/files/files/publications/Drink_Driving_Offences_September2020.pdf; Legal Aid Queensland. Drugs and driving. <https://www.legalaid.qld.gov.au/Find-legal-information/Cars-and-driving/Drink-driving-and-drug-driving/Drugs-and-driving>
- ¹² For example: Clarity Law. First time drug driving offence in Queensland: Understanding the consequences. <https://www.drivinglaw.com.au/blog/item/62-first-time-drug-driving-offence-in-queensland-understanding-the-consequences.html>; Armstrong Legal. Penalties for high range drink driving. <https://www.armstronglegal.com.au/traffic-law/nsw/penalties-sentencing/what-penalty-high/>
- ¹³ Timing dependent on ACT Policing and ACTGAL operational capacity and processes.
- ¹⁴ Salter, E. and Stallard, P. (2004), Posttraumatic growth in child survivors of a road traffic accident. *J. Traum. Stress*, 17: 335-340. <https://doi.org/10.1023/B:JOTS.0000038482.53911.01>
- ¹⁵ Roadside drug testing scoping study 2017. The Centre for Accident Research and Road Safety. <https://www.roadsafety.gov.au/sites/default/files/2019-11/roadside-drug-testing.pdf>
- ¹⁶ ACT Police Traffic Offender Analysis 2003 - 2022, repeat offender analysis by ANCO code
- ¹⁷ Evaluation of the ACT Alcohol Interlock Program, Monash University, Accident Research Centre, 2017
- ¹⁸ https://www.legislation.act.gov.au/View/es/db_48868/20140513-57790/html/db_48868.html
- ¹⁹ Courts sentencing outcomes data from the period 2019 – 2022 indicates that more than 85% of s20 charges result in an automatic disqualification period of 12 months or less.
- ²⁰ https://www.courts.act.gov.au/_data/assets/pdf_file/0003/2054640/ACT-Drug-and-Alcohol-Sentencing-List_Final-Report.pdf.
- ²¹ Davey JD, Freeman JE. Improving Road Safety through Deterrence-Based Initiatives: A review of research. *Sultan Qaboos Univ Med J*. 2011. [Improving Road Safety through Deterrence-Based Initiatives - PMC \(nih.gov\)](https://doi.org/10.1186/1745-2875-11-11)
- ²² Roadside drug testing scoping study 2017. The Centre for Accident Research and Road Safety. <https://www.roadsafety.gov.au/sites/default/files/2019-11/roadside-drug-testing.pdf>
- ²³ Wolff, K, Brimblecombe, R, Forrest AR, et al. (2013). *Driving Under the Influence of Drugs: Report from the Expert Panel on Drug Driving*. Department for Transport, London. Queens Printer and Controller of Her Majesty's Stationary Office.
- ²⁴ For example: New South Wales (NSW) Government. Driver Knowledge Test, pp. 21-24. <https://www.nsw.gov.au/sites/default/files/2021-08/driver-knowledge-test-questions-car.pdf>; VicRoads. Road

to Solo Driving, p. 51. https://www.vicroads.vic.gov.au/-/media/files/formsandpublications/licences/road_to_solo_driving_handbook.ashx.

²⁵ ACT Government. Safe Plate Testing.

<https://safeplatetesting.act.gov.au/c/spt?a=apps&ap=mobikt&m=knowledgetest<=>

²⁶ For example: ACT Policing. Alcohol and drug impaired driving. <https://www.police.act.gov.au/road-safety/safe-driving/alcohol-and-drug-impaired-driving>; South Australian Government. Drink driving and immediate loss of licence. <https://www.sa.gov.au/topics/driving-and-transport/offences/disqualification-and-suspension/types-of-disqualification/drink-driving>; NSW Government. Drink and drug driving penalties. <https://www.nsw.gov.au/driving-boating-and-transport/demerits-penalties-and-offences/offences/alcohol-and-drug-offences/drink-and-drug-driving-penalties>

²⁷ For example: Legal Aid ACT. Have you been charged with a drink driving offence?

https://www.legalaidact.org.au/sites/default/files/files/publications/Drink_Driving_Offences_September2020.pdf; Legal Aid Queensland. Drugs and driving. <https://www.legalaid.qld.gov.au/Find-legal-information/Cars-and-driving/Drink-driving-and-drug-driving/Drugs-and-driving>

²⁸ For example: Clarity Law. First time drug driving offence in Queensland: Understanding the consequences. <https://www.drivinglaw.com.au/blog/item/62-first-time-drug-driving-offence-in-queensland-understanding-the-consequences.html>; Armstrong Legal. Penalties for high range drink driving.

<https://www.armstronglegal.com.au/traffic-law/nsw/penalties-sentencing/what-penalty-high/>

²⁹ See Amie C Hayley et al, 'Detection of delta-9-tetrahydrocannabinol (THC) in oral fluid, blood and urine following oral consumption of low-content THC hemp oil' (2018) 284 *Forensic Science International* 101.

³⁰ [https://www.acic.gov.au/sites/default/files/2023-](https://www.acic.gov.au/sites/default/files/2023-07/National%20Wastewater%20Drug%20Monitoring%20Program%20-%20Report%2019_0.pdf)

[07/National%20Wastewater%20Drug%20Monitoring%20Program%20-%20Report%2019_0.pdf](https://www.acic.gov.au/sites/default/files/2023-07/National%20Wastewater%20Drug%20Monitoring%20Program%20-%20Report%2019_0.pdf), p.67

³¹ Alberto Blandino, Rosy Cotroneo, Stefano Tambuzzi, Domenico Di Candia, Umberto Genovese, Riccardo Zoja, Driving under the influence of drugs: Correlation between blood psychoactive drug concentrations and cognitive impairment. A narrative review taking into account forensic issues, *Forensic Science International: Synergy*, Volume 4, 2022, <https://doi.org/10.1016/j.fsisyn.2022.100224>.

³² Olaf H. Drummer, Dimitri Gerostamoulos, Matthew Di Rago, Noel W. Woodford, Carla Morris, Tania Frederiksen, Kim Jachno, Rory Wolfe: Odds of culpability associated with use of impairing drugs in injured drivers in Victoria, Australia, *Accident Analysis & Prevention*, Volume 135, 2020.

³³ Alberto Blandino, Rosy Cotroneo, Stefano Tambuzzi, Domenico Di Candia, Umberto Genovese, Riccardo Zoja, Driving under the influence of drugs: Correlation between blood psychoactive drug concentrations and cognitive impairment. A narrative review taking into account forensic issues, *Forensic Science International: Synergy*, Volume 4, 2022, <https://doi.org/10.1016/j.fsisyn.2022.100224>

³⁴ Ibid.