



LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

Economic Policy Scrutiny Committee

**Inquiry into the Transport
Legislation Amendment Bill 2019**

October 2019

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Chair's Preface

This report details the Committee's findings regarding its examination of the Transport Legislation Amendment Bill 2018. The Bill amends the *Control of Roads Act 1953* (NT), the *Motor Vehicles Act 1949* (NT), the *Traffic Act 1987* (NT) and the Traffic Regulations 1999 (NT).

This Bill implements Tranche 2 of three tranches of work arising from a legislative review undertaken by the Department of Infrastructure, Planning and Logistics. The main purpose of the Bill is to remedy identified shortcomings in the legislation relating to road safety, police enforcement and clarification of statutory obligations.

The Committee received one submission to its inquiry from the Australian Medical Association Northern Territory Inc. which supported the recommended changes. In reviewing the Bill the Committee identified a number of potential issues with several of the proposed amendments and sought legal advice to clarify whether these amendments have sufficient regard to the rights and liberties of individuals and are unambiguous and drafted in a sufficiently clear and precise way.

The Committee has recommended a number of amendments which are detailed in the report. Recommendation 3 relates to clause 14 which deems a licence holder who occupies the front passenger seat next to a learner driver (other than a driving instructor under s 19(1) of the *Traffic Act*) to be the driver for the purposes of the offences under Part V of the *Traffic Act*. The Department advised the Committee that this provision is aimed at supervising drivers not learner and provisional licence holders. While the Committee agrees with the intention of this provision it notes that the current wording could inappropriately result in the holders of learner and provisional licences being treated as supervising drivers.

Recommendation 5 relates to clause 28 which enables a police officer to require a person to provide a blood sample where they have been required to submit to a breath test or breath analysis but the breath analysis instrument is malfunctioning. This is an invasive procedure and it is questionable that a blood sample should be requested without the officer having cause to believe that there is a relevant concentration of alcohol in the person's breath or blood. Communication with the Department indicated that this provision is only aimed at a person who is required to submit to a breath analysis. A breath analysis may be required after a person fails a breath test, fails to give a sufficient sample for a breath test, or where police had a reasonable cause to suspect that a driver was impaired by alcohol.

Other amendments recommended by the Committee relate to: the absence of provisions for breath or drug testing of driving instructors when they are supervising a learner driver (Rec 2); inconsistencies in offence provisions for driving instructors (Rec 4); and exemptions from provisions of the Act (Rec 6).

On behalf of the Committee I would like to thank the Australian Medical Association Northern Territory for their submission and the Department of Infrastructure, Planning and Logistics for their advice. I also thank my fellow Committee members for their bipartisan commitment to the legislative review process.

A handwritten signature in black ink that reads "Tony Sievers". The signature is written in a cursive style and is underlined with a single horizontal line.

Mr Tony Sievers MLA
Chair

Committee Members

	Tony Sievers MLA Member for Brennan	
	Party:	Territory Labor
	Committee Membership	
	Standing:	House, Public Accounts
	Sessional:	Economic Policy Scrutiny
	Chair:	Economic Policy Scrutiny
	Kate Worden MLA Member for Sanderson	
	Party:	Territory Labor
	Parliamentary Position	Government Whip
	Committee Membership	
	Standing:	Public Accounts, Standing Orders and Members' Interests
Sessional:	Economic Policy Scrutiny Social Policy Scrutiny	
	Lia Finocchiaro MLA Member for Spillett	
	Party:	Country Liberals
	Parliamentary Position:	Deputy Leader of the Opposition
	Committee Membership	
	Standing:	Privileges
Sessional:	Economic Policy Scrutiny Social Policy Scrutiny	
	Lawrence Costa MLA Member for Arafura	
	Party:	Territory Labor
	Committee Membership	
	Standing:	Public Accounts
	Sessional:	Economic Policy Scrutiny
	Jeff Collins MLA Member for Fong Lim	
	Party:	Independent
	Committee Membership	
	Sessional:	Economic Policy Scrutiny

Committee Secretariat

Committee Secretary: Jennifer Buckley

Administration Assistant: Kim Cowcher

Contact Details: GPO Box 3721 DARWIN NT 0801
Tel: +61 08 8946 1485
Email: EPSC@nt.gov.au

Acknowledgements

The Committee acknowledges the Australian Medical Association of the Northern Territory Inc. for its submission and the Department of Infrastructure, Planning and Logistics for its advice.

Terms of Reference

Sessional Order 13

Establishment of Scrutiny Committees

- (1) Standing Order 178 is suspended.
- (2) The Assembly appoints the following scrutiny committees:
 - (a) The Social Policy Scrutiny Committee
 - (b) The Economic Policy Scrutiny Committee
- (3) The Membership of the scrutiny committees will be three Government Members and one Opposition Member nominated to the Speaker in writing by the respective Whip and one non-party aligned Member to be appointed by motion.
- (4) The functions of the scrutiny committees shall be to inquire and report on:
 - (a) any matter within its subject area referred to it:
 - (i) by the Assembly;
 - (ii) by a Minister; or
 - (iii) on its own motion.
 - (b) any bill referred to it by the Assembly;
 - (c) in relation to any bill referred by the Assembly:
 - (i) whether the Assembly should pass the bill;
 - (ii) whether the Assembly should amend the bill;
 - (iii) whether the bill has sufficient regard to the rights and liberties of individuals, including whether the bill:
 - (A) makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review; and
 - (B) is consistent with principles of natural justice; and
 - (C) allows the delegation of administrative power only in appropriate cases and to appropriate persons; and
 - (D) does not reverse the onus of proof in criminal proceedings without adequate justification; and
 - (E) confers powers to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer; and
 - (F) provides appropriate protection against self-incrimination; and
 - (G) does not adversely affect rights and liberties, or impose obligations, retrospectively; and

- (H) does not confer immunity from proceeding or prosecution without adequate justification; and
 - (I) provides for the compulsory acquisition of property only with fair compensation; and
 - (J) has sufficient regard to Aboriginal tradition; and
 - (K) is unambiguous and drafted in a sufficiently clear and precise way.
- (iv) whether the bill has sufficient regard to the institution of Parliament, including whether the bill:
- (A) allows the delegation of legislative power only in appropriate cases and to appropriate persons; and
 - (B) sufficiently subjects the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly; and
 - (C) authorises the amendment of an Act only by another Act.
- (5) The Committee will elect a Government Member as Chair.
- (6) Each Committee will provide an annual report on its activities to the Assembly.

Adopted 24 August 2017

Recommendations

Recommendation 1

The Committee recommends that the Legislative Assembly pass the Transport Legislation Amendment Bill 2019 with the proposed amendments set out in recommendations 2 to 7.

Recommendation 2

The Committee recommends that the Bill be amended to provide for driving instructors who occupy a front passenger seat in a vehicle being driven by a learner driver to be tested for alcohol and prohibited drugs.

Recommendation 3

The Committee recommends that proposed section 19(7) be amended so that it only applies to a person who is over 18 years of age and is the holder of a licence (not being a learner licence under section 9, or a licence that is provisional under section 10A, of the *Motor Vehicles Act 1949*) to drive the type of vehicle.

Recommendation 4

The Committee recommends that through either an amendment of the Bill or a later amendment of the *Traffic Act 1987*, the language used in sections 26(1), 28(1) and 29AAA(1) be amended to ensure consistency across these three sections.

Recommendation 5

The Committee recommends that proposed section 29AAG(1)(ab) be amended to remove the words 'breath test or'.

Recommendation 6

The Committee recommends that proposed section 43B be amended by reframing sub-section (2) to provide that an exemption under sub-section (1) is confined to provisions dealing with a particular vehicle or class of vehicle.

Recommendation 7

The Committee recommends that proposed section 53(2)(za) be amended so that it only refers to licence holders (not being a learner or provisional licence) who are over 18 years of age.

1 Introduction

Introduction of the Bill

- 1.1 The Transport Legislation Amendment Bill 2019 (the Bill) was introduced into the Legislative Assembly by the Minister for Infrastructure, Planning and Logistics, the Hon Eva Lawler MLA, on Wednesday 7 August 2019. The Assembly subsequently referred the Bill to the Economic Policy Scrutiny Committee for inquiry and report by Tuesday 15 October 2019.¹

Conduct of the Inquiry

- 1.2 On 9 August 2019 the Committee called for submissions by 4 September 2019. The call for submissions was advertised via the Legislative Assembly website, Facebook, Twitter feed and email subscription service. In addition, the Committee directly contacted a number of individuals and organisations.
- 1.3 The Bill, associated *Explanatory Statement*, and *Statement of Compatibility with Human Rights* was also forwarded to Professor Ned Aughterson for review of fundamental legislative principles under Sessional Order 13(4)(c).
- 1.4 The Committee received only one submission to its inquiry. The Committee held a public briefing with the Department of Infrastructure, Planning and Logistics on 21 August 2019.

Outcome of Committee's Consideration

- 1.5 Sessional order 13(4)(c) requires that the Committee after examining the Bill determine:
- (i) whether the Assembly should pass the bill;
 - (ii) whether the Assembly should amend the bill;
 - (iii) whether the bill has sufficient regard to the rights and liberties of individuals; and
 - (iv) whether the bill has sufficient regard to the institution of Parliament.
- 1.6 Following examination of the Bill, and consideration of the evidence received, the Committee is of the view that the Legislative Assembly should pass the Bill with proposed amendments as set out in recommendations 2 to 7.

Recommendation 1

The Committee recommends that the Legislative Assembly pass the Transport Legislation Amendment Bill 2019 with the proposed amendments set out in recommendations 2 to 7.

¹ Hon. Eva Lawler MLA, Minister for Infrastructure, Planning and Logistics, *Draft - Daily Hansard – Day 2 – 7 August 2019*, p. 5, <http://hdl.handle.net/10070/753831>.

Report Structure

- 1.7 Chapter 2 provides an overview of the policy objectives of the Bill and the purpose of the Bill as contained in the Explanatory Statement.
- 1.8 Chapter 3 considers the main issues raised in evidence received.

2 Overview of the Bill

Background to the Bill

- 2.1 The Department of Infrastructure, Planning and Logistics is implementing amendments to a number of pieces of legislation through three tranches of work. Tranche 1, which included amendments to various regulations, commenced on 1 August 2019 and adopted four packages of Australian Road Rules into Northern Territory (NT) law. In addition, it implemented a number of actions identified in the Towards Zero Road Safety Action Plan.²
- 2.2 This Bill implements Tranche 2 and its primary emphasis is on road safety, police enforcement and clarification of statutory obligations.
- 2.3 Tranche 3 of the legislative review 'will further amend various acts and regulations to improve road and marine safety and the operation of these acts and regulations'.³

Purpose of the Bill

- 2.4 As noted in the Explanatory Statement, the purpose of this Bill is to 'remedy identified shortcomings in the legislation'. The Bill amends the:
 - *Control of Roads Act 1953*
 - *Motor Vehicles Act 1949*
 - *Traffic Act 1987*
 - *Traffic Regulations 1999*.⁴

² Committee Transcript, Public Briefing, 21 August 2019, p. 2, <https://parliament.nt.gov.au/committees/EPSC/98-2019>.

³ Committee Transcript, Public Briefing, 21 August 2019, p. 2, <https://parliament.nt.gov.au/committees/EPSC/98-2019>.

⁴ Explanatory Statement and Statement of Compatibility with Human Rights, *Transport Legislation Amendment Bill 2019* (Serial 98), p. 1, <https://parliament.nt.gov.au/committees/EPSC/98-2019>.

3 Examination of the Bill

Introduction

- 3.1 The Committee received one submission to its inquiry, with this expressing support for the proposed amendments.⁵
- 3.2 As potential issues were identified with several of the amendments proposed in the Bill, the Committee sought legal advice to clarify whether they have sufficient regard to the rights and liberties of individuals and are unambiguous and drafted in a sufficiently clear and precise way. These clauses are discussed in detail below.

Clause 14 – Section 19 amended (Interpretation)

- 3.3 New sub-section 19(7) provides that:

This Part applies to a person, other than a driving instructor, who holds a licence and is occupying a front passenger seat in a vehicle being driven by a learner driver as if the person is also a driver.

The Part referred to is Part V: Driving with alcohol in breath or blood or drug in blood.

- 3.4 As noted in legal advice received by the Committee:

The effect of the new s 19(7) is that the person (who holds any licence to drive) in the front passenger seat in a vehicle driven by a learner driver is deemed also to be the driver of the vehicle for the purposes of obligations and offences arising under Part V.⁶

- 3.5 There are two issues with regard to this provision:

- The exclusion of driving instructors from the provision; and
- The application of the provision to any licence holder, including those holding a learner's licence and a provisional licence.

These issues are discussed separately below.

Driving instructor

- 3.6 The term “driving instructor” is used to differentiate between professional instructors and non-professional instructors, such as family or friends, and is defined as a person approved under section 25B of the *Motor Vehicles Act 1949* (s 19, *Traffic Act 1987*). The Department of Infrastructure, Planning and Logistics (the Department) advised that the rationale for differentiating between driving instructors and others, rather than applying the same provisions to both, was due to the higher duty of care placed on a driving instructor, with their breath alcohol level prescribed as zero:

Non-professional supervising drivers are subject to whatever the alcohol level applies to them having regard to their age and experience or the type of vehicle involved, i.e. zero if the vehicle is over 12 tonnes or is capable of seating more

⁵ Submission 1 – Australian Medical Association Northern Territory, p. 1.

⁶ Professor Ned Aughterson, Legal Advice on the Transport Legislation Amendment Bill 2019 (unpublished), 1 September 2019, p. 1.

than 12 persons, or if the supervising driver is under 25 years old and has not held a full licence for three years, otherwise, 0.05 blood/alcohol level.⁷

- 3.7 Sections 26(1), 28(1) and 29AAA(1) provide for it to be an offence for a driving instructor to instruct a person if their breath or blood contains alcohol, however, the exclusion of driving instructors in proposed s 19(7) means that the sections which provide for a person to be tested for alcohol or drugs (29AAB, 29AAC, 29AAF) do not apply to driving instructors while they are supervising a learner driver.

Committee's comments

- 3.8 The Committee is satisfied with the Department's rationale for differentiating between driving instructors and others.
- 3.9 The Committee notes that the absence of provisions for testing driving instructors while they are supervising a learner driver means that the offence provisions (sections 26(1), 28(1) and 29AAA(1)) cannot be implemented. Accordingly, the Committee recommends that the Bill be amended to resolve this issue.

Recommendation 2

The Committee recommends that the Bill be amended to provide for driving instructors who occupy a front passenger seat in a vehicle being driven by a learner driver to be tested for alcohol and prohibited drugs.

Application of new section 19(7) to any licence holder including learner and provisional licence holders

- 3.10 Proposed s 19(7) applies to any person who holds 'a' licence and who occupies the seat next to the learner driver. Consequently it applies to persons holding a learner or provisional licence as well as those holding an open licence.

- 3.11 Professor Aughterson noted that:

While the holder of a learner or provisional licence cannot supervise a learner driver and a learner driver cannot drive without the supervision of the holder of an open licence (*Traffic Regulations* reg 12 and reg 11 definition of 'licence holder'), there may be occasions where the holder of a learner or provisional licence unwittingly sits in the front seat with a learner driver (for example, they may accept a lift after a function).⁸

- 3.12 Under proposed s 19(7), learner and provisional licence holders would be treated as if they were a supervising driver and be subject to the same penalties as older more experienced drivers. By contrast, comparable legislation in New South Wales (NSW) and Queensland (Qld) excludes learner and provisional licence holders from liability, with s 112(1) of the *Road Transport Act 2013* (NSW) stating that:

(1) A person must not, while under the influence of alcohol or any other drug:

⁷ Department of Infrastructure, Planning and Logistics, *Responses to Written Questions*, 26 September 2019, p.2, <https://parliament.nt.gov.au/committees/EPSC/98-2019>.

⁸ Professor Ned Aughterson, Legal Advice on the Transport Legislation Amendment Bill 2019 (unpublished), 1 September 2019, p. 2.

- (a) drive a vehicle, or
- (b) occupy the driving seat of a vehicle and attempt to put the vehicle in motion, or
- (c) if the person is the holder of an applicable driver licence (other than an applicable provisional licence or applicable learner licence) – occupy the seat in or on a motor vehicle next to a learner driver who is driving the vehicle.

3.13 Section 79AA of the Queensland *Transport Operations (Road Use Management) Act 1995* includes a similar provision and makes a non-instructor liable where the person is “the supervisor” of a learner, which, within ‘the terms of the legislation excludes a person who is a learner or provisional licence holder’.⁹

3.14 Professor Aughterson further noted that:

the broad effect of s 19(7) means that a front seat passenger who is a learner driver must have a zero-alcohol level (see obligation of learners under s 24 of the Act) – that is because they are treated as though they are the driver. Their liability would arise even if the actual driver has zero alcohol and is not liable under s 24.¹⁰

3.15 Although the definition of “licence holder” in regulation 11 excludes learner and provisional licence holders, the Committee has been advised that:

the regulation cannot be used to interpret the provisions in the Act. If it were intended to exclude learner and provisional licence holders from the application of s 19(7) a provision similar to regulation 11 might be included in the Act.¹¹

3.16 The Committee sought clarification from the Department regarding the effect on the operation of the Bill of including a provision in the Act that defines “licence holder” in a similar way to its definition in regulation 11 and was advised that:

There would be no adverse effect because the offence is aimed at people who undertake the responsibility of supervising a learner driver, not learner and provisional licence holders who are legally incapable of supervising learner drivers.¹²

Committee’s comments

3.17 The Committee considers the approach adopted in the NSW and Qld legislation to be reasonable, particularly as learner and provisional licence holders are likely to be a similar age to a learner driver, have less control over the driver and, in group situations, may have less knowledge of the status of the driver’s licence. Accordingly, it recommends that the Bill be amended to make it clear that proposed s 19(7) does not apply to learner and provisional licence holders.

⁹ Professor Ned Aughterson, Legal Advice on the Transport Legislation Amendment Bill 2019 (unpublished), 1 September 2019, p. 2.

¹⁰ Professor Ned Aughterson, Legal Advice on the Transport Legislation Amendment Bill 2019 (unpublished), 1 September 2019, p. 3.

¹¹ Professor Ned Aughterson, Legal Advice on the Transport Legislation Amendment Bill 2019 (unpublished), 1 September 2019, p. 3.

¹² Department of Infrastructure, Planning and Logistics, *Responses to Written Questions*, 26 September 2019, p. 3, <https://parliament.nt.gov.au/committees/EPSC/98-2019>.

Recommendation 3

The Committee recommends that proposed section 19(7) be amended so that it only applies to a person who is over 18 years of age and is the holder of a licence (not being a learner licence under section 9, or a licence that is provisional under section 10A, of the *Motor Vehicles Act 1949*) to drive the type of vehicle.

Sections 26(1), 28(1) and 29AAA(1) of the Act

- 3.18 While there are no provisions for testing driving instructors for alcohol or drugs, sections 26(1), 28(1) and 29AAA(1) set out the offence provisions for driving instructors who supervise learner drivers while affected by these substances. However, there are substantial differences in the wording of these sections which could lead to uncertainty of interpretation. For example, s 26(1) provides that a driving instructor with alcohol in their breath or blood must not 'permit' a person to drive a motor vehicle if the instructor is occupying the front passenger seat for the purpose of providing instruction to drive, while sections 28(1) and 29AAA(1) state that a person commits an offence if the person has prohibited drugs in their body or is driving under the influence of alcohol and drugs and 'is a driving instructor occupying a passenger seat in a vehicle for the purpose of instructing another person to drive the vehicle'.
- 3.19 The Committee sought clarification from the Department regarding the difference in wording and why the term 'permit' is used in s 26(1) but not in sections 28(1) and 29AAA(1) and was advised that:

The subsection 26(1)(b) offence is a similar offence to the new offence being created for other people supervising learner drivers. It seeks to make the instructor who has been drinking, liable for an offence whether he or she is driving, or instructing a pupil to drive.

The difference in language between subsection 26(1)(b) and subsections 28(1)(b) and 29AAA(1)(b) reflects the fact that the original driver instructor offence was contained in the *Traffic Act 1987* when it came into force on 20 June 1998, and sections 28 and 29AAA were rewritten or inserted into the Act in 2008. These differences reflect different drafting styles.

It is suggested that building consistency in language between sections 26(1), 28(1) and 29AAA(1) could be addressed in subsequent amendments to the *Traffic Act 1987*.¹³

Committee's comments

- 3.20 The Committee is satisfied with the Department's advice and considers that an amendment should be considered to ensure consistency across these three sections.

Recommendation 4

The Committee recommends that through either an amendment of the Bill or a later amendment of the *Traffic Act 1987*, the language used in sections 26(1),

¹³ Department of Infrastructure, Planning and Logistics, *Responses to Written Questions*, 26 September 2019, pp. 2-3, <https://parliament.nt.gov.au/committees/EPSC/98-2019>.

28(1) and 29AAA(1) be amended to ensure consistency across these three sections.

Clause 28 – Section 29AAG amended (Requirement to give blood sample)

3.21 Proposed s 29AAG(1)(ab)(i) allows a police officer to require a person to give a sample of blood where the officer:

(ab) has required the person to submit to a breath test or breath analysis under section 29AAC but the breath analysis instrument has failed to provide a result because of one of the following reasons:

- (i) the breath analysis instrument is malfunctioning;
- (ii) the person's BrAC is too high for the breath analysis instrument to measure;

3.22 Given the invasive nature of such a procedure, it is questionable that a blood sample should be requested without the officer having cause to believe that there is a relevant concentration of alcohol in the person's breath or blood, something that does not appear to be required in this provision. A malfunctioning breath analysis instrument does not provide sufficient reason to require a blood test as it should be no more difficult to take a person to a station where there is a functioning breath analysis machine than it would be to take them to a hospital or clinic to have a blood test.

3.23 Communication with the Department indicated that this provision is only aimed at when a person is required to submit to a breath analysis. A breath analysis may be required after a person fails a breath test, fails to give a sufficient sample for a breath test, or where police had a reasonable cause to suspect that a driver was impaired by alcohol. The provision is not intended or expected to be applied in circumstances where a person has been required to submit to a breath test under s 29AAC(1)(a). This is consistent with the proposed provision's reference to the breath analysis instrument malfunctioning.

Committee's comments

3.24 The Committee considers that the words "breath test or" in proposed s 29AAG(1)(ab) are redundant because the intent of s 29AAG(1)(ab) is for it to only apply to breath analysis. Further, the inclusion of those words may misleadingly suggest that a person could be compelled to give a blood sample because of an instrument failure with a random breath test.

Recommendation 5

The Committee recommends that proposed section 29AAG(1)(ab) be amended to remove the words 'breath test or'.

Clause 32 – Section 43B replaced – Exemptions

3.25 As noted in the Explanatory Statement, clause 32:

replaces section 43B of the Act to provide a power for the Registrar to grant exemptions to a person or class of persons who are defined by reference to a vehicle or a class of vehicle being driven by them. The current exemption power allows for vehicle exemptions but the *Traffic Act 1987* regulates the owners and drivers of vehicles, not vehicles.¹⁴

- 3.26 The vehicles referred to typically include segways, pedelecs, golf buggies and quad bikes or similar vehicles.
- 3.27 Legal advice provided to the Committee identified several issues with the proposed provisions, noting that:

The difficulty is that unlike the existing provision, which clearly links the sub-sections and clearly confines the exemptions to provisions dealing with motor vehicles and classes of motor vehicles, the new provision could be construed as having a much broader ambit. The new sub-section (1), read in isolation, seems to allow exemption of a person from any provision of the Act. Arguably, that is not cured by sub-section (2), which simply provides that an exemption 'may' apply to a particular vehicle or class of vehicle. In other words, an exemption may apply to vehicles but is not limited to such exemptions. Sub-section (3) is also concerned with determinations in relation to a class of vehicles, but again, seemingly does not exclude exemptions in relation to other matters.¹⁵

- 3.28 The Committee sought clarification from the Department regarding the effect on the operation of the Bill of reframing sub-section (2) to provide that an exemption under sub-section (1) is confined to provisions dealing with a particular vehicle or class of vehicle and was advised that:

It would prevent an exemption from being granted to an individual that was not limited to their use of a particular vehicle or class of vehicle, however the Registrar of Motor Vehicles cannot recall ever having given such an exemption.¹⁶

Committee's comments

- 3.29 The Committee is of the view that no clear rationale has been provided for allowing the Registrar to exempt a person from any provision of the Act as would be the case if sub-section (2) remains as written. Given that such a power would be both broad and unusual, the Committee recommends that the clause be amended to limit the exemptions to provisions dealing with a particular vehicle or class of vehicle.

Recommendation 6

The Committee recommends that proposed section 43B be amended by reframing sub-section (2) to provide that an exemption under sub-section (1) is confined to provisions dealing with a particular vehicle or class of vehicle.

¹⁴ Explanatory Statement, *Transport Legislation Amendment Bill 2019* (Serial 98), p. 7, <https://parliament.nt.gov.au/committees/EPSC/98-2019>.

¹⁵ Professor Ned Aughterson, Legal Advice on the Transport Legislation Amendment Bill 2019 (unpublished), 1 September 2019, p. 5.

¹⁶ Department of Planning, Infrastructure and Logistics, *Responses to Written Questions*, 26 September 2019, p. 6, <https://parliament.nt.gov.au/committees/EPSC/98-2019>.

Clause 34 – Section 53 amended (Regulations)

3.30 Clause 34 amends the regulation making power in s 53 of the *Traffic Act 1987*. Under proposed s 53(2)(za) the regulations may provide for:

(za) the liability of a licence holder occupying the front seat of a motor vehicle that is being driven by the holder of a learner licence for an offence committed against the Regulations by the learner.

3.31 This provision relates to the changes made to sub-regulation 12(10) of the Traffic Regulations 1999 in clause 36 of the Bill.¹⁷ The provision raises the same difficulty as for proposed s 19(7) in that there is potential for liability to extend ‘to learner and provisional licence holders who would not see themselves as supervising the learner driver’.¹⁸ At present, this difficulty does not arise because the definition of “licence holder” under the current regulations (Regulation 11) excludes learner and provisional licence holders. However, as noted by Professor Aughterson, ‘regulations can be altered from time to time and there is a question of whether such protections should be included in the Act itself’.¹⁹

3.32 Providing that one person should be criminally liable for the acts of another person is a serious matter that should be controlled by the Parliament. A power to make regulations to create such a liability should therefore be restricted to circumstances where Parliament considers that to be appropriate. If Parliament intends that liability should only be deemed in circumstances where the person seated in the front passenger seat of a learner driver ‘is over 18 years of age and is the holder of a licence (not being a learner licence under section 9, or a licence that is provisional...),’ then that is what the regulation making power in the Act should provide.

Recommendation 7

The Committee recommends that proposed section 53(2)(za) be amended so that it only refers to licence holders (not being a learner or provisional licence) who are over 18 years of age.

¹⁷ Explanatory Statement and Statement of Compatibility with Human Rights, *Transport Legislation Amendment Bill 2019* (Serial 98), p. 7, <https://parliament.nt.gov.au/committees/EPSC/98-2019>.

¹⁸ Professor Ned Aughterson, Legal Advice on the Transport Legislation Amendment Bill 2019 (unpublished), 1 September 2019, pp. 5-6.

¹⁹ Professor Ned Aughterson, Legal Advice on the Transport Legislation Amendment Bill 2019 (unpublished), 1 September 2019, p. 6.

Appendix 1: Submissions Received and Public Briefing

Submissions Received

1. Submission 1 – Australian Medical Association Northern Territory.

Public Briefing – 21 August 2019

Department of Infrastructure, Planning and Logistics

- Andrew Kirkman, Chief Executive
- Nick Papandonakis, Executive Director Strategy, Policy and Legislation
- Guy Riley, Legal Policy Officer
- Paula Timson, Director Legislation and Reform

Note

The submission, public briefing transcript, and tabled paper are available at:
<https://parliament.nt.gov.au/committees/EPSC/98-2019>.

Bibliography

Explanatory Statement and Statement of Compatibility with Human Rights, *Transport Legislation Amendment Bill 2019* (Serial 98), <https://parliament.nt.gov.au/committees/EPSC/98-2019>.

Hon Eva Lawler MLA, Minister for Infrastructure, Planning and Logistics, *Draft - Daily Hansard – Day 2 – 7 August 2019*, <http://hdl.handle.net/10070/753831>

Professor Ned Aughterson, Legal Advice on the Transport Legislation Amendment Bill 2019 (unpublished), 1 September 2019

Road Transport Act 2013 (NSW)

Traffic Act 1987 (NT)

Traffic Regulations 1999 (NT)

Transport Operations (Road Use Management) Act 1995 (Qld)