

**Explanatory Statement**  
**and**  
**Statement of Compatibility with Human Rights**

**Miscellaneous Transport Legislation Amendment Bill 2019**

**SERIAL NO. 98.....**

LEGISLATIVE ASSEMBLY OF THE  
NORTHERN TERRITORY

MINISTER FOR INFRASTRUCTURE, PLANNING AND LOGISTICS

**EXPLANATORY STATEMENT**

**GENERAL OUTLINE**

This Bill amends the:

- *Control of Roads Act 1953*
- *Motor Vehicles Act 1949*
- *Traffic Act 1987*
- *Traffic Regulations 1999*

This legislation contributes towards a safe, efficient and sustainable transport system that meets community needs. To ensure the legislation achieves the intended outcome, amendments are required, from time to time, to resolve issues that may hinder the effective operation of the law.

The purpose of this Bill is to remedy identified shortcomings in the legislation.

Combining the various amendments into the one Bill is intended to make Government's legislation program and parliamentary business more efficient by reducing the number of Bills that would otherwise be required to progress the various amendments being proposed.

**NOTES ON CLAUSES**

**Part 1      Preliminary matters**

**Clause 1.    Short Title.**

This is a formal clause which provides for the citation of the Bill. The Bill when passed will be cited as the *Transport Legislation Amendment Act 2019*

## **Clause 2. Commencement.**

This clause sets out how the amendment Act will be commenced. In this case the commencement date will be on the day fixed by the Administrator by Gazette notice.

## **Part 2 Amendment of Control of Roads Act 1953**

### **Clause 3. Act amended**

This Part (2) amends the *Control of Roads Act 1953*.

### **Clause 4. Section 54A inserted**

This clause inserts a new section 54A into the *Control of Roads Act 1953* to provide police with an exemption from the prohibition in section 54(a) against retarding the progress of a vehicle by means of any instrument or device which comes into contact with the surface of a road.

Subsection 54A(1) gives the Commissioner of Police a power to authorise vehicle immobilising devices to prevent people escaping from custody or avoiding arrest, and to stop vehicles involved in police pursuits.

Subsection 54A(2) excludes the operation of section 54(a) to police officers using immobilising devices in the course of their duties.

Subsection 54A(3) defines a **vehicle immobilising device** to be something that causes a vehicle to stop or which prevents it from moving. It includes devices that are designed to deflate tyres.

### **Clause 5. Section 62 amended (Regulations)**

This clause amends section 62 of the *Control of Roads Act 1953* by inserting a power to make regulations to prescribe fees for licences or permits granted under the Act.

## **Part 3 Amendment of Motor Vehicles Act 1949**

### **Clause 6. Act amended**

Part 3 of the Bill amends the *Motor Vehicles Act 1949*.

### **Clause 7 Section 5 amended (Interpretation)**

This clause removes the definition of **medical testing officer** from section five of the *Motor Vehicles Act 1949*. There is no appointed medical testing officer who examines licence applicants. The Registrar relies on medical reports prepared by various medical professionals when deciding if a person is fit to drive a vehicle.

### **Clause 8 Section 7 amended (Registrar, Deputy Registrar and other officers)**

This provision removes the power for the Registrar to appoint medical testing officers.

The other changes made reflect changes in drafting style.

**Clause 9 Section 11 amended (Physical or mental incapacity or unfitness to hold licence)**

This provision changes the power to require an examination by a medical testing officer to a power to require an examination by a registered person (as defined in subsection 11(1) of the *Motor Vehicles Act 1949*) who is approved by the Registrar.

It also inserts a new subsection 11(5) to protect medical professionals from civil or criminal liability or a breach of any professional code of conduct if, in good faith, they notify the Registrar that a patient is unfit to drive, or who otherwise provide advice or medical reports to the Registrar in relation to a person's fitness to drive.

The other changes made reflect changes in drafting style.

**Clause 10 Section 20A amended**

This clause amends section 20A of the *Motor Vehicles Act 1949* to extend the process for the transfer of registration of vehicles that have been disposed of under the *Uncollected Goods Act 2004* to include vehicles that have been abandoned on the roadside and disposed of under Part 5 of the *Traffic Regulations 1999*.

**Clause 11 Section 95 amended (Change of address)**

This clause amends section 95 of the *Motor Vehicles Act 1949* by removing subsection 95(1) and (2) and replacing them with new subsections (1) and (2).

The effects of the change are that:

- a person who is the holder of a licence, certificate of registration or permit no longer has to produce their licence, certificate of registration or permit when notifying the Registrar of a change of address; and
- the Registrar no longer has to issue a replacement licence certificate or permit when advised of a change of address.

This amendment contemporises the process of advising the Registrar of a change of address which is increasingly undertaken by phone or email rather than face-to-face with the Motor Vehicle Registry.

**Clause 12 Section 137E inserted**

This clause inserts a new section 137E into the *Motor Vehicles Act 1949* that will allow the Registrar to disclose medical information that the Registrar has in relation to a licence applicant with anyone assisting the Registrar in assessing the applicant's fitness to drive a motor vehicle. The Registrar will consult with medical practitioners when the Registrar has concerns about an applicant's capacity to drive a motor vehicle due to medical problems, and may consult with police and the Department of Health.

This will help overcome the risk of relying on a medical report from an applicant's doctor, when the doctor may not be aware of hospital treatments that the patient has received or the full extent of the patient's driving history. The Registrar needs to be able to pass on information to any examining health practitioner, police and hospital administrators, and to seek further advice from specialists on reports received from health practitioners, hospital records and police crash records.

The clause also adds an offence for anyone who receives information shared by the Registrar under this new section, and who discloses that information to anyone, unless the disclosure

was authorised or required by the Registrar, authorised by the licensed driver or licence applicant, authorised or required by law, or the information disclosed is public knowledge.

#### **Part 4      Amendment of Traffic Act 1987**

##### **Clause 13      Act amended**

Part 4 of the Bill amends the *Traffic Act 1987*.

##### **Clause 14      Section 19 amended (Interpretation)**

This clause amends section 19 of the *Traffic Act 1987* by adding a new subsection (7) which deems a person, other than a driving instructor within the meaning of section 19(1) of the *Traffic Act 1987*) occupying the front passenger seat of a vehicle being driven by a learner driver, to be driving the vehicle for the purposes of the offences under Part 5 of the *Traffic Act 1987* (*Driving with alcohol in breath or blood or drug in blood*). This means that they can be required to undergo testing for alcohol and drugs and prosecuted for any offences they commit under Part 5 as though they were in the driver's seat.

##### **Clause 15      Section 21 amended (High range breath or blood alcohol content)**

This clause adds a failure to comply with a direction from a police officer to pull over for a breath test or a saliva test (or both) to the subsection 21(2), (4) and (5) lists of previous offences, making a high range drink driving offence a second or subsequent offence for the penalty provisions in subsections 21(1), (3), (4) and (5).

##### **Clause 16      Section 22 amended (Medium range breath or blood alcohol content)**

This clause adds a failure to comply with a direction from a police officer to pull over for a breath test or a saliva test (or both) to the subsection 22(2) list of previous offences, making a medium range drink driving offence a second or subsequent offence for the penalty provisions in subsections 22(1) and (3) and an immediate suspension offence under subsection 22(4).

##### **Clause 17      Section 23 amended (Low range breath or blood alcohol content)**

This clause adds a failure to comply with a direction from a police officer to pull over for a breath test or a saliva test (or both) to the subsection 23(2) list of previous offences making a low range drink driving offence a second or subsequent offence for the penalty provisions in subsections 23(1) and (4) and an immediate suspension offence under subsection 23(5).

##### **Clause 18      Section 24 amended (Some drivers to be zero alcohol)**

This clause adds a failure to comply with a direction from a police officer to pull over for a breath test or a saliva test (or both) to the subsection 24(3) list of previous offences making a section 24(2) zero alcohol driving offence a second or subsequent offence for the penalty provisions in subsections 24(2) and (5) and an immediate suspension offence under subsection 24(6).

##### **Clause 19      Section 25 amended (Driver of certain vehicles to be zero alcohol)**

This clause adds a failure to comply with a direction from a police officer to pull over for a breath test or a saliva test (or both) to the subsection 25(4) list of previous offences making a section 25(3) zero alcohol driving offence a second or subsequent offence for the penalty provisions in subsections 25(3), (6) and (6A) and an immediate suspension offence under subsection 25(7).

**Clause 20 Section 26 amended (Driving Inspector)**

This clause adds a failure to comply with a direction from a police officer to pull over for a breath test or a saliva test (or both) to the subsection 26(2) list of previous offences making a driving instructor zero alcohol offence a second or subsequent offence for the penalty provisions in subsections 26(1) and (4) and an immediate suspension offence under subsection 26(5).

**Clause 21 Section 28 amended (Driving with certain drugs in body)**

This clause adds a failure to comply with a direction from a police officer to pull over for a breath test or a saliva test (or both) to the subsection 28(2) list of previous offences making a drug driving offence a second or subsequent offence for the penalty provisions in subsections 28(1) and (4) and an immediate suspension offence under subsection 28(5).

**Clause 22 Section 29AAA amended (Driving under influence)**

This clause amends section 29AAA of the *Traffic Act 1987* to add a failure to comply with a direction from a police officer to pull over for a breath test or a saliva test (or both) to the subsection 29AAA(2) list of previous offences, making a driving under the influence offence a second or subsequent offence for the penalty provisions in subsections 29AAA(1), (3), and (3A), and an immediate suspension offence under subsection 29AAA(4)

**Clause 23 Section 29AAB amended (When police can pull driver over at random)**

This clause amends section 29AAB of the *Traffic Act 1987* to make the penalty for a failure to comply with a direction to pull over for a breath test or a saliva test (or both) consistent with the penalties for a section 21 high range drink driving offence and the section 29AAE and 29AAH offences of failing to submit to breath analysis or to provide a blood sample.

**Clause 24 Section 29AAC amended (Breath test and breath analysis)**

This clause amends subsection 29AAC(1) of the *Traffic Act 1987* to allow police to require a person who is driving a motor vehicle and who they suspect off having committed an offence against any provision of the *Traffic Act 1987* and Regulations and the *Motor Vehicles Act 1949* and regulations, to submit to a breath test or a breath analysis (or both) to determine whether there is alcohol in the driver's breath.

This is in addition to the ability to test a driver who is directed to pull over specifically for the purpose of undertaking a breath or saliva test, and is in contrast to the provision being replaced that allows testing of a driver who Police suspect has committed a drink driving offence.

This change will allow a driver who was been pulled over for another reason, such as a speeding offence or a faulty tail light, to be tested.

**Clause 25 Section 29AAE amended (Offence of failing to submit to breath analysis)**

This clause adds a failure to comply with a direction from a police officer to pull over for a breath test or a saliva test (or both) to the subsection 29AAE(2), (4) and (5) lists of previous offences, making an offence of failing to submit to a breath analysis, a second or subsequent offence for the penalty provisions in subsections 29AAE(1), (3), (4) and (5), and an immediate suspension offence under subsection 29AAE(6).

**Clause 26 Section 29AAF (Requirement for saliva test)**

This clause amends subsection 29AAF(1) of the *Traffic Act 1987* to allow police to require a person who is driving a motor vehicle and who they suspect off having committed an offence against any provision of the *Traffic Act 1987* and Regulations and the *Motor Vehicles Act 1949*

and regulations, to submit to one or more saliva tests to determine whether there is a prohibited drug in their body.

This is in addition to the ability to test a driver who is directed to pull over specifically for the purpose of undertaking a breath or saliva test, and is in contrast to the provision being replaced that allows testing of a driver who Police suspect has committed a drug driving offence.

The provision being replaced did not allow a driver who was directed to pull over for another reason, such as a speeding offence or a faulty tail light, to be tested for prohibited drugs.

**Clause 27 Section 29AFA amended (Offence of failing to submit to saliva test)**

This clause adds a failure to comply with a direction from a police officer to pull over for a breath test or a saliva test (or both) to the subsection 29AFA(2) list of previous offences making a failure to submit to a saliva test offence a second or subsequent offence for the penalty provisions in subsections 29AFA(1) and (4) and an immediate suspension offence under subsection 29AFA(5).

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

This clause amends section 29AAG of the *Traffic Act 1987* by inserting a new paragraph (c) in subsection 29AAG(1) to give Police the power to require a person to undergo blood testing in the circumstances where a breath analysis machine has malfunctioned or failed to provide a result because the person's breath alcohol concentration is too high to measure.

**Clause 29 Section 29AAH amended (Offence of failing to provide blood sample)**

This clause adds a failure to comply with a direction from a police officer to pull over for a breath test or a saliva test (or both) to the subsection 29AAH(2), (4) and (5) lists of previous offences, making a failure to provide blood sample offence a second or subsequent offence for the penalty provisions in subsections 29AAH(1), (3), (4) and (5), and an immediate suspension offence under subsection 29AAH(6).

**Clause 30 Section 30 amended**

This clause amends section 30(4) of the *Traffic Act 1987* to expand the police exemption for driving at a dangerous speed to include any form of dangerous driving, in circumstances where:

- (a) they are acting in the execution their duties; and
- (b) the manner of driving is in accordance with any general orders as defined in the *Police Administration Act 1978*; and
- (c) they reasonably believe that:
  - (i) the manner of driving is necessary to prevent a serious risk to public safety; and
  - (ii) the need to drive in a dangerous manner outweighs the risk to public safety posed by the manner of driving.

It also removes reference to "riding" and "ride" in the heading and in subsection 30(1) to make it consistent with the wording of other offences in the Act (a driver of a vehicle includes someone who is riding).

**Clause 31 Section 30A amended (Driving at dangerous speed)**

This clause amends section 30A of the *Traffic Act 1987* to make the conditions attached to the police exemption for driving at a dangerous speed consistent with the conditions applying to the exemption for dangerous driving in section 30(5) of the Act.

**Clause 32 Section 43B replaced**

This clause 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.

In determining whether to grant an exemption, the Registrar must have regard to the speed capacity of the vehicle being used by the person, the frequency of use of the vehicle on streets and in public places, and anything else the Registrar considers appropriate.

**Clause 33 Section 44AA amended (Requirements for the approval of a device)**

Subsection 44AA(4) of the *Traffic Act 1987* requires an image and other information to be held in an electronic file in an unalterable format and be transferable to a printed form that contains the unaltered image and information.

Files are currently protected by a security algorithm. It is debatable, that this does not satisfy the requirement that the information be held in an unalterable format.

Subsection 44AA(4) requires the image and other information recorded by the device to be held in an electronic file that complies with the new subsection 44AA(5), and which is transferable to a printed form that contains the recorded image and other information.

The Bill inserts subsection 44AA(5) which maintains unalterable format as a protective measure, and provides an alternative to that requirement. Files may now be protected by any means that will detect whether the image, or other information, have been altered or the file has been tampered with, and will prevent the image or other information to be used should the data be altered or tampered with. This could mean technological protective measures, or other measures such as a chain of custody protocol to track files through the evidential lifecycle of collection, transfer, storage and use, or a combination of different measures.

**Clause 34 Section 53 amended (Regulations)**

This clause amends the regulation making power in section 53 of the *Traffic Act 1987* to allow regulations to be made to:

1. make a person supervising a learner driver responsible for traffic offences committed by the learner while under their supervision (this relates to the changes made to subregulation 12(10) of the *Traffic Regulations 1999* in clause 36) to overcome the lack of the necessary regulation making power identified by the Supreme Court in *O'Neil v Brumby* [2016] NTSC 10);
2. make vehicle owners liable for traffic offences committed through the use of their vehicles where the driver cannot be identified (to remove any doubt over the validity of regulation 53 of the *Traffic Regulations 1999*);
3. prescribe fees payable under the *Traffic Act 1987* and Regulations; and
4. give the Commissioner of Police the power to approve means of notifying police of motor vehicle crashes (this relates to the changes made to regulation 19 of the *Traffic Regulations 1999* in clause 37).

**Part 5          Amendment of Traffic Regulations 1999**

**Clause 35      Regulations amended**

Part 5 of the Bill amends the *Traffic Regulations 1999*.

**Clause 36      Regulation 12 amended (Learners driving motor vehicles)**

This clause replaces subregulation 12(10) of the *Traffic Regulations 1999* with new subregulations 12(10) and (11). The liability of a licence holder supervising a learner driver for offences committed by the learner driver is now limited to offences committed against the *Traffic Regulations 1999*, and the person supervising the learner driver has a defence if they can show that they took reasonable steps to prevent the learner driver from offending.

**Clause 37      Regulation 19 amended (Duties of driver after crash)**

This clause amends subregulation 19(2) of the *Traffic Regulations 1999* to allow other means of notifying police of crashes that do not involve any personal injury. The Commissioner of Police will approve the means of reporting crashes.

**Clause 38      Repeal of Act**

This is a standard clause that ensures that this Bill will not remain on the statute book once it has completed its task of amending other legislation.



## STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with the Thirteenth Assembly Sessional Orders (part 12.3) as adopted on 24 August 2017.

This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth).

### Overview of the Bill

The Bill will amend the *Control of Roads Act 1953*, *Motor Vehicles Act 1949*, *Traffic Act 1987* and *Traffic Regulations 1999* to address issues that have been identified by NT Police, the Department of Infrastructure, Planning and Logistics employees involved in road safety, the operations of the Motor Vehicle Registry and the management of road infrastructure, the Coroner, and the Australian Medical Association Northern Territory.

The *Control of Roads Act 1953* is being amended to:

- clarify police powers to use vehicle immobilising devices, like tyre spikes, without committing an offence against section 54(a) of that Act; and
- create a power to make regulations prescribing fees for the issue of a licence or permit or the giving of an approval granted under the Act.

The *Motor Vehicles Act 1949* is being amended to:

- provide an indemnity for medical practitioners who give information and advice to the Registrar of Motor Vehicles about the fitness of a person to drive a motor vehicle;
- allow the Registrar of Motor Vehicles to disclose medical information that the Registrar has in relation to a licenced driver or applicant for a licence with any registered person assisting the Registrar in assessing the applicant's fitness to drive a motor vehicle;
- provide a process for the transfer of registration of vehicles abandoned on road and roadsides; and
- remove the need for a person to produce their licence, certificate of registration or permit whenever they change their address and for the Registrar of Motor Vehicles to have to reissue a new licence certificate or permit.

The *Traffic Act 1987* is being amended to:

- deem a person, other than a professional driving instructor, supervising a learner driver to be driving a vehicle for the purposes of the drink and drug driving offences in Part V of the Act;

- change the maximum penalty for a failure to pull over to undertake a breath or saliva test from 200 penalty units or imprisonment for 12 months to a range of penalties consistent with the high range drink driving offence (section 21 of the *Traffic Act 1987*) and the failing to submit to breath analysis and failing to provide blood sample offences (sections 29AAE and 29AAH of the *Traffic Act 1987*);
- remove the link between the exercise of the section 29AAB power to pull a driver over to undertake a breath or saliva test, and the ability to require a driver to undertake a breath or saliva test under section 29AAC or 29AAF of the *Traffic Act 1987*, so that drivers can be required to undergo breath or saliva testing (or both) regardless of the reason why they were directed to pull over;
- allow police to require a person to provide a blood sample for analysis when a breath analysis machine malfunctions or failed to provide a result because the person's breath alcohol content is too high to measure;
- provide police with an exemption from the dangerous driving offence (section 30 of the *Traffic Act 1987*) for any form of dangerous driving in the course of their duties, not just dangerous speed, and where the manner of driving is necessary to prevent a serious risk to the public;
- change the exemption power (section 43B of the *Traffic Act 1987*) to exempt people rather than vehicles;
- allow infringement detection devices, cameras, to be approved under section 44AA(4) of the *Traffic Act 1987*, if they store the data recorded by the device in an electronic file that is unalterable, or a file protected by a security algorithm, system or protocol that allows the detection of any tampering with the contents of the file, and prevent any image and data held on an altered file from being used;
- expand the regulation making power to allow regulations to be made regarding the liability of people supervising learner licence holders while driving, the liability of owners for offences committed using their vehicles by drivers who cannot be identified, to prescribe fees for the issue of a licence or permit or giving an approval, and for the Police Commissioner to approve the method for reporting crashes.

The *Traffic Regulations 1999* are being amended to:

- replace subregulation 12(10) which makes a person supervising a learner while they are driving responsible for any offence committed by the learner with a provision that limits their responsibility to offences committed against the *Traffic Regulations 1987*, and which provides them with a reasonable steps defence; and
- allow a driver involved in a crash where no one suffers any injury to report the crash without the need to personally attend at a police station and report to a member of the police force.

## Human Rights Implications

This Bill engages the following rights or freedoms.

### The right to privacy and attacks on reputation - Article 17 of the International Covenant on Civil and Political Rights (ICCPR)

Article 17 of the ICCPR provides that 'no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation'.

Clause 12 of the Bill engages this article as it removes any uncertainty as to whether the Registrar of Motor Vehicles has the power under the Information Privacy Principles in the *Information Act 2002* to share private information relating to driver licence holders and applicants for driver licences, with medical practitioners who are assisting the Registrar in assessing the applicant's fitness to drive a motor vehicle.

To a limited extent, clause 9 of the Bill also engages this article in providing protection for medical practitioners who in meeting their mandatory reporting requirements under section 11(4) of the *Motor Vehicles Act 1949*, provide their patient's personal medical information to the Registrar of Motor Vehicles without the patient's consent.

The sharing of information is necessary to ensure that anyone called upon to assist the Registrar of Motor Vehicles in determining whether a person is medically fit to hold a driver licence has all necessary available information.

An offence has been added for anyone who discloses information provided by the Registrar without the authorisation of the Registrar. This limits the sharing of information in a proportionate way in order to achieve the objective of ensuring that only people who are medically fit to drive are granted driver licences, thereby enhancing the safety of other road users.

This change is made in response to the recommendation of the Coroner in the *Inquest into the death of Benjamin Leigh Wilton [2014] NTMC 09*. Mr. Wilton died when his vehicle was hit by another vehicle while stopped at an intersection. The driver of the other vehicle was charged with dangerous driving causing death, but the prosecution was terminated when it became apparent that the defendant had a lawful defence of medical impairment. The driver of the other vehicle had previously had his licence suspended after the Registrar of Motor Vehicles was notified by Royal Darwin Hospital that he had been involved in a motor vehicle accident caused by a blackout and that this was the second blackout he had suffered while driving. After the suspension of his licence, he was examined by a doctor who assessed him as fit to drive. Neither the doctor nor the Registrar of Motor Vehicles were aware of the full extent of his medical and driving history.

As a result of the failure of the relevant agencies to communicate with one another in this case, the Registrar of Motor Vehicles now consults with police, and medical professionals when making decisions about the medical fitness of licence holders and licence applicants. This engagement process necessarily entails the sharing of information between the various parties involved.

In the Wilton case, no one had engaged in a detailed neurological assessment of the other driver. He was later diagnosed as having epilepsy and a dementing illness. Each of those issues meant that he should not have been driving.

### **Right to the presumption of innocence – Article 14(2) of the ICCPR**

Article 14(2) of the ICCPR provides that everyone charged with a criminal offence shall have the right to be presumed innocent until proven guilty according to law. The right to presumption of innocence is also a fundamental common law principle.

Clause 14 of the Bill makes a person, other than a driving instructor, supervising or teaching a learner driver to drive, a driver for the purposes of the various alcohol and drug driving offences under Part V of the *Traffic Act 1987*. All of those offences are regulatory offences.

Clause 34 of the Bill amends section 53 of the *Traffic Act 1987* to provide the necessary regulation making power for Clause 36 of the Bill, which makes a person supervising or teaching a learner to drive responsible for any offences against the *Traffic Regulations 1999* (which include the Australian Road Rules) committed by the learner driver while under their supervision. Most of those offences are regulatory offences.

Clause 34 of the Bill also amends section 53 of the *Traffic Act 1987* to provide a regulation power in support of Regulation 53 of the *Traffic Regulations 1999*. That regulation makes vehicle owners responsible for infringement offences when the name of the offender is not known when the infringement notice is issued. This regulation was made on the basis that it was necessary in order for infringement notices to be issued for camera detected offences.

Unlike regulation 12(10), that was found to be outside the regulation making power in section 53 of the *Traffic Act 1987*, regulation 53 allows a vehicle owner to avoid liability for an infringement offence by providing police with a declaration stating the name and address of the person who was in control of the vehicle at the time the offence was committed. A person who expiates an infringement notice avoids prosecution, without admitting guilt.

It is therefore unlikely that a court would find regulation 53 to be outside the regulation making power. This amendment removes any doubt.

When an offence is prescribed as a regulatory offence, the prosecution is only required to prove the physical elements of an offence, and not the fault elements, in order for the defendant to be found guilty. The only defences available under Part II of the *Criminal Code Act 1983* are:

1. If the act, omission or event was done, made or caused –
  - in obedience to the order of a competent authority whom the person doing, making or causing it is bound by law to obey, unless the order is manifestly unlawful (see section 26(1)(c) of the *Criminal Code Act 1983*); or
  - pursuant to authority, permission or licence lawfully granted (see section 26(1)(d) of the *Criminal Code Act 1983*).

2. In the case of an act, omission or event done, made or caused in contravention of a statutory instrument, if, at the time of doing, making or causing it, the statutory instrument was not known to the person and had not been published or otherwise reasonably made available or known to the public or those persons likely to be affected by it (see section 30(3) of the *Criminal Code Act 1983*).
3. The person is under 10 (see section 38(1) of the *Criminal Code Act 1983*).

Regulatory offences are used in circumstances where there is public interest in ensuring that regulatory schemes are observed and it can reasonably be expected that the person was aware of their duties and obligations. Regulatory offences can be considered a limitation of the presumption of innocence because the defendant can be found guilty without the prosecution being required to prove fault.

Regulatory offences will not necessarily be inconsistent with the presumption of innocence, provided that removal of the presumption of innocence pursues a legitimate objective and is reasonable, necessary and proportionate to achieving that objective. Whether a regulatory offence impermissibly limits the right to the presumption of innocence will depend on the circumstances of the case and the particular justification for an offence being a regulatory offence.

Whilst this Bill does not create any new regulatory offences, clauses 14 and 37 expand the ambit of the existing offences to include people supervising and teaching learner drivers.

Clause 14 means that a person supervising a learner driver is subject to the drink and drug driving offences in the *Traffic Act 1987* as though they were physically driving the vehicle. It will no longer be acceptable for a person who is over the legal breath alcohol limit or who has recently taken prohibited drugs, to supervise a learner driver. They are expected to be sober and actively engaged in the task of supervision.

Clause 36 also engages this Article because it makes a person liable for someone else's acts, in this case, a person supervising a learner driver is liable for offences committed by the learner while under their supervision. A reasonable steps defence is available to the supervisor so that they can avoid being liable for offences that they could not reasonably prevent.

This places a positive obligation on a person supervising a learner driver to take reasonable steps to prevent the learner driver from breaching the law and endangering other road users.

It impacts on the presumption of innocence because it places the onus on the supervisor to establish what steps they took to prevent the learner driver from offending. This is justified because those steps are only known by the supervisor and the learner driver. The prosecution is not in a position to prove what was or was not done by a person before an offence was committed by the learner driver under the person's supervision.

## **Right to freedom of movement – Article 12 of the ICCPR**

Article 12(1) of the ICCPR provides that everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence. However, it should be noted that this right is subject to Article 12(3), which provides that this right may be restricted by laws that are necessary to protect public order, public health, and the rights and freedoms of others.

Clause 4 of the Bill provides an exemption for police under the *Control of Roads Act 1953* to the prohibition against retarding the progress of a vehicle by means of any instrument or device which comes into contact with the surface of a road. It is necessary for Police to use devices to immobilise vehicles in circumstances where the vehicle is being used by a person to escape lawful custody or avoid arrest, or where the driver of a vehicle has been directed to pull over by police and has failed to do so and flees. This restriction on movement is necessary to protect public order by restricting the ability of people to escape lawful arrest, and to cut short police motor vehicle pursuits that pose a danger to the public.

### **CONCLUSION**

The provisions in this Bill have been drafted to ensure that they are reasonable, proportionate and necessary to achieve the policy objectives of the Bill. The Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011 (Cth)*.