

Serial 144
Public Transport (Passenger Safety) Bill 2008
Ms Lawrie

A Bill for an Act to provide for the safety of passengers on public transport

NORTHERN TERRITORY OF AUSTRALIA

PUBLIC TRANSPORT (PASSENGER SAFETY) ACT 2008

Act No. [] of 2008

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NORTHERN TERRITORY OF AUSTRALIA

Act No. [] of 2008

An Act to provide for the safety of passengers on public transport

[Assented to [] 2008]
[Second reading [] 2008]

The Legislative Assembly of the Northern Territory enacts as follows:

Part 1 Preliminary

1 Short title

This Act may be cited as the *Public Transport (Passenger Safety) Act 2008*.

2 Commencement

This Act commences on the date fixed by the Administrator by *Gazette* notice.

3 Definitions

In this Act:

bus station includes:

- (a) a bus stop; and
- (b) a bus interchange; and
- (c) a bus zone.

bus zone means a length of road to which a bus zone sign applies (see *Australian Road Rules*).

code of conduct means the code of conduct for transit officers prescribed by regulation.

dangerous drug, see the *Misuse of Drugs Act*.

Director means the person holding, or acting in, the office of Director of Transport under the *Traffic Act*.

disqualifying offence means an offence classified by the regulations as a disqualifying offence.

ex officio transit officer means a person who is a transit officer under section 6 (i.e. because the person is a member of the Police Force, an inspector or a bus driver and not because of an appointment as a transit officer).

frisk search means a search conducted by feeling clothing from the outside for objects concealed in or beneath the clothing (but not involving a search of any bodily orifice).

inspector means an inspector appointed under Part 9 of the *Commercial Passenger (Road) Transport Act*.

offence warranting arrest, see section 4.

relevant offence means an offence committed on a bus or at a bus station.

route service means a bus service provided on an established route according to a particular timetable.

rule of behaviour means any of the provisions of sections 12 to 20.

4 Offences warranting arrest

- (1) The following offences, if committed on a bus or at a bus station, are **offences warranting arrest**:
 - (a) an offence against section 47 (offensive conduct), 47AA (violent disorder), 47A (loitering) or 50 (indecent exposure) of the *Summary Offences Act*;
 - (b) an offence against section 5, 7 or 8 of the *Trespass Act*;
 - (c) an offence against the Criminal Code involving an assault;
 - (d) an offence against section 251 of the Criminal Code (criminal damage).

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- (2) The following offences against this Act are also **offences warranting arrest**:
- (a) an offence against section 23(3) or (4), 25(4), 31 or 32;
 - (b) an offence consisting of the contravention of a rule of behaviour if committed or continued after a transit officer has warned the offender that commission or continuance of the offence may lead to arrest.

Part 2 Transit officers

5 Appointment of transit officers

- (1) The Director may appoint transit officers.
- (2) A person is not eligible for appointment as a transit officer unless the person:
 - (a) has been suitably trained to exercise the powers of a transit officer under this Act; or
 - (b) is appointed on condition that the person will, until successfully completing his or her training as a transit officer, only exercise powers as a transit officer while in the company, and under the direct supervision, of a transit officer who has successfully completed training as such.
- (3) A person is not eligible for appointment as a transit officer if the person has a previous conviction for a disqualifying offence.
- (4) A transit officer appointed under this section is an employee for the purposes of, and holds office subject to, the *Public Sector Employment and Management Act*.
- (5) Despite the *Criminal Records (Spent Convictions) Act* and the *Anti-Discrimination Act*:
 - (a) an applicant for appointment as a transit officer must authorise the Director to obtain from the Commissioner of Police a criminal history including spent convictions; and
 - (b) the Director may take the criminal history (including the spent convictions) into account in deciding the application; and
 - (c) if the application is successful, the Director may retain the criminal history for as long as the successful applicant holds an appointment as a transit officer.

6 Ex officio transit officers

- (1) Each of the following is a transit officer by virtue of his or her office or position:
 - (a) a member of the Police Force;
 - (b) an inspector;
 - (c) a bus driver.
- (2) However:
 - (a) an inspector or bus driver is not authorised to exercise a transit officer's power of arrest, power of search, or power to use force against another; and
 - (b) a person is not authorised to exercise powers as an ex officio transit officer while those powers are under suspension; and
 - (c) a person who holds an office or position mentioned in subsection (1) is not an ex officio transit officer if disqualified from exercising the powers of a transit officer.

7 Identity cards

- (1) The Director must issue an identity card to each transit officer (other than an ex officio transit officer).
- (2) The identity card must contain:
 - (a) a photograph of the officer; and
 - (b) the name of the officer; and
 - (c) a statement that the person whose name and photograph appear on the card is a transit officer; and
 - (d) the officer's identity number; and
 - (e) a statement that the card is issued under the Director's authority.
- (3) A person to whom an identity card was issued under this section must, within 14 days after ceasing to be a transit officer, return the identity card to the Director.

Fault element: This is an offence of strict liability.

Maximum penalty: 20 penalty units.

8 Obligations with regard to identity card

- (1) A transit officer (other than an ex officio transit officer) must not exercise a power under this Act unless the transit officer holds an identity card issued under this Act.
- (2) Before exercising a power under this Act against a person, such a transit officer must, wherever practicable, produce the identity card for the inspection of that person (but the card need only be produced once even though 2 or more powers are exercised against the person).
- (3) Non-compliance by a transit officer with subsection (2) is a defence to a charge based on non-compliance by the person to whom the identity card should have been produced with a requirement or request made by the transit officer under this Act.

9 Disqualifying offences

- (1) If a transit officer is charged with, or convicted of, a disqualifying offence, the transit officer must report the fact to the Director as soon as practicable.

Fault elements: This is an offence of strict liability.

Maximum penalty: 100 penalty units.

- (2) If a transit officer is charged with a disqualifying offence, the Director may:
 - (a) suspend the transit officer from office until the charge has been dealt with by a court; or
 - (b) in the case of an ex officio transit officer – suspend the officer's powers under this Act until the charge has been dealt with by a court.
- (3) If a transit officer is convicted of a disqualifying offence, the Director may:
 - (a) revoke the officer's appointment as a transit officer; or
 - (b) in the case of an ex officio transit officer – disqualify the person from exercising powers as a transit officer.

10 Code of conduct

- (1) A transit officer must not contravene the code of conduct.

- (2) If a transit officer appointed under this Act contravenes the code of conduct, the matter may be dealt with as a breach of discipline under the *Public Sector Employment and Management Act*.
- (3) If an ex officio transit officer contravenes the code of conduct, the Director may disqualify the person from exercising powers as a transit officer.

11 Immunities of transit officers

- (1) A transit officer incurs no civil or criminal liability for an act or omission in good faith in the exercise or purported exercise of powers or functions under this Act.
- (2) A liability that would, but for subsection (1), attach to the transit officer attaches instead to the Territory.

Part 3 Rules of behaviour

12 Animals

- (1) A person must not bring an animal onto a bus.
- (2) However, a person who has impaired sight or hearing, and requires the assistance of a guide-dog or a hearing-dog, may bring such a dog onto a bus.

13 Smoking

A person must not smoke:

- (a) on a bus; or
- (b) in a bus station, or part of a bus station, that is enclosed or partially enclosed (except within an area designated as an area where smoking is permitted).

14 Liquor and drugs

A person must not consume alcoholic liquor or a dangerous drug while on a bus or at a bus station.

15 Consumption of food

If a bus is on a route service, a person must not consume food while on the bus.

16 Damage or interference

- (1) A person must not, without proper authority, damage or interfere with:
 - (a) a bus; or
 - (b) a bus station; or
 - (c) a sign or equipment on or in a bus or at a bus station.
- (2) In this section, damage includes the soiling of, or the painting or marking of graffiti on, a bus, bus station, sign or equipment.

17 Nuisance or inconvenience

A person must not cause a nuisance or inconvenience to others on a bus or at a bus station.

18 Offensive language

A person must not use offensive language while on a bus or at a bus station.

19 Passenger management

- (1) A person who is asked by a transit officer to move or keep away from a part of the bus not intended for the conveyance of passengers must immediately comply with the request.
- (2) A person who is reasonably asked by a transit officer to vacate a particular seat must comply with the request as soon as reasonably practicable.
- (3) A person who causes any part of his or her body, or an object, to project from a bus and who is asked by a transit officer to cease doing so must immediately comply with the request.
- (4) A person must comply with a reasonable direction given by a transit officer, about how (and by which door) the person is to board or get off the bus.

20 Passenger to hold valid ticket

- (1) A person must not travel as a passenger on a bus, on a route service, without a valid ticket for the carriage of the passenger for the whole of the journey.
- (2) A ticket will not be regarded as a valid ticket if it has been defaced so that it is no longer legible.

- (3) A passenger travelling on a bus on a route service must, if required to do so by a transit officer, produce the passenger's ticket for inspection.

21 Offence to contravene rule of behaviour

A person who contravenes a rule of behaviour is guilty of an offence.

Fault element: This is an offence of strict liability.

Maximum penalty: 20 penalty units.

Part 4 Powers of transit officers

22 Geographical extent of transit officer's powers

The powers of a transit officer are exercisable:

- (a) on, or in the vicinity of, a bus; or
- (b) at, or in the vicinity of, a bus station.

23 Power to require statement of name, address and date of birth

- (1) A transit officer may require a person to state the person's name, address and date of birth if the transit officer believes on reasonable grounds that the person:
- (a) has committed, is committing, or is about to commit, a relevant offence; or
 - (b) may be in a position to assist in the investigation of a relevant offence.
- (2) A transit officer may require a person who has been required to give details under subsection (1) to provide specified evidence of identity.
- (3) A person must not refuse or fail to comply with a requirement under this section.

Fault element: This is an offence of strict liability.

Maximum penalty: 20 penalty units.

- (4) A person must not provide misleading information, or misleading evidence, in response to a requirement under this section.

Fault element: An intention to mislead.

Maximum penalty: 100 penalty units or imprisonment for 6 months.

24 Power of direction

- (1) If a transit officer believes on reasonable grounds that a person has committed, is committing, or is about to commit a contravention of a rule of behaviour, the transit officer:

- (a) may direct the person to comply with the rules of behaviour in relevant respects; and
- (b) may give incidental directions that may be appropriate in the circumstances.

- (2) A person must comply with a direction under subsection (1).

Fault element: This is an offence of strict liability.

Maximum penalty: 20 penalty units.

25 Power to require a person to get off bus and, on non-compliance, to remove forcibly

- (1) If a person contravenes a transit officer's direction while on a bus or at a bus station, the transit officer:

- (a) may direct the person (as the case requires):
- (i) to get off the bus; or
- (ii) to go away, and keep away, from the bus station; and
- (b) may give the person incidental directions that may be appropriate in the circumstances.

Example

The transit officer might direct the person under subsection (1)(b) not to board the same or another bus, or not to return to the bus station, for a specified period (not exceeding 24 hours).

- (2) A direction under subsection (1) must, if practicable, be given in writing but, if it is not practicable to give a written direction, it may be given orally.

(3) If a bus is in motion when a direction to get off the bus is given under subsection (1), the direction requires the person to get off the bus when the bus next stops.

(4) A person must comply with a direction under subsection (1).

Fault element: This is an offence of strict liability.

Maximum penalty: 20 penalty units.

(5) If a person does not comply with a direction under subsection (1), the transit officer may use such force as is reasonably necessary to remove the person from the bus or the bus station (as the case requires).

26 Arrest and detention

(1) If a transit officer believes on reasonable grounds that a person has committed an offence warranting arrest, the officer may (without warrant) arrest and detain the person.

(2) A person arrested and detained under this section must (unless released beforehand) be delivered as soon as practicable into the custody of a member of the Police Force to be dealt with according to law.

Note

The transit officer will take the arrested person to a police station to be delivered into the custody of a member of the Police Force or arrange with the Police for the person to be collected by a member of the Police Force at the place of arrest or some other convenient place.

27 Search and seizure of dangerous articles

(1) A person arrested and detained under this Part may be subjected to a frisk search.

(2) The search may be carried out:

(a) by the transit officer if the transit officer is of the same sex as the person under arrest; or

(b) if not, by a person, acting at the direction of the transit officer, of the same sex as the person under arrest.

(3) The person who carries out the frisk search may also search anything apparently in the possession of the person subjected to the search.

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- (4) The person who carries out the search may seize anything that could cause harm to the person under arrest or anyone else (a ***dangerous article***).
 - (5) The person who carries out the search may use such force as is reasonably necessary for the search or the seizure of dangerous articles.
 - (6) A person who carries out a search at the direction of a transit officer has the same immunities from civil and criminal liability as the transit officer.
 - (7) The transit officer must hand over any dangerous article seized in the course of a search to the member of the Police Force who takes custody of the person arrested and detained under this Part.

Part 5 Miscellaneous

28 Internal review

- (1) The Director must establish a system of administrative review for the purposes of dealing effectively with complaints about the conduct of transit officers.
- (2) The procedures for making a complaint, and the procedures on review, must be published on the Agency's website.

29 No entitlement to refund of fare

If a person is directed to get off a bus, or is forcibly removed from a bus, under this Act, no entitlement to a refund of fare arises.

30 Declared offences for Criminal Code

- (1) Part IIAA of the Criminal Code applies to an offence against this Act.

Note

Part IIAA of the Criminal Code states the general principles of criminal responsibility, establishes general defences, and deals with burden of proof. It also defines, or elaborates on, certain concepts commonly used in the creation of offences.

- (2) If a provision creating an offence contains a statement identifying certain elements as fault elements of the offence:
 - (a) the fault elements identified in the statement are the only fault elements of the offence; and

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- (b) the statement operates to the exclusion of fault elements that might otherwise be implied under provisions of the Criminal Code.

Note

It follows that fault elements that might otherwise be implied under section 43AM of the Criminal Code are excluded by the statement.

- (3) If a provision creating an offence contains a statement classifying the offence as one of strict liability (and thus excluding fault elements), section 43AN(1) of the Criminal Code applies to the offence.

31 Obstruction of transit officer

A person must not:

- (a) obstruct or hinder a transit officer who is carrying out official functions; or
- (b) incite or encourage another to obstruct or hinder a transit officer who is carrying out official functions.

Fault element: Intention.

Maximum penalty: 100 penalty units or imprisonment for 6 months.

32 Security cameras or surveillance devices

A person must not, without proper authority, damage or interfere with a security camera or a surveillance device on a bus, or at a bus station.

Fault element: This is an offence of strict liability.

Maximum penalty: 100 penalty units or imprisonment for 6 months.

33 Prosecutions

- (1) Proceedings for an offence against this Act may be commenced by:
- (a) a member of the Police Force; or
- (b) a transit officer; or
- (c) a person authorised by the Director.

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- (2) In proceedings for an offence against this Act, a certificate that appears to have been signed by the Director certifying that a person named in the certificate was, on a particular day or for a particular period, a transit officer or a person authorised to commence proceedings for an offence against this Act is admissible as proof of the matters so certified.

34 Infringement notice offences

- (1) An authorised officer may serve an infringement notice on a person if the officer believes that the person has committed an infringement notice offence.
- (2) An infringement notice must contain the following particulars:
- (a) the name and address of the alleged offender, if known;
 - (b) the date of the infringement notice and date, time and place of the alleged offence;
 - (c) the nature of the offence, the amount of the infringement notice penalty for the offence and a statement that the offence may be expiated by payment of the infringement notice penalty to a person whose name and address are stated in the notice within 28 days of the date of the notice;
 - (d) a statement that the alleged offender may elect to be charged with, and dealt with by a court for, the alleged offence by completing and returning the relevant part of the notice to a person whose name and address are stated in the notice within 28 days of the date of the notice.
- (3) If the infringement notice penalty for an alleged offence is paid under this section, the alleged offender is not liable to any further proceedings for the alleged offence unless the infringement notice is withdrawn under subsection (4).
- (4) An authorised officer may withdraw the infringement notice by serving a written notice of withdrawal (accompanied, if the infringement notice penalty has been paid, by the amount of the penalty) within 28 days of the date of the infringement notice.
- (5) Service of an infringement notice, or a notice of withdrawal of an infringement notice, is effected:
- (a) by serving it personally on the alleged offender; or
 - (b) by posting it to the alleged offender at his or her last known address; or

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- (c) by leaving it for the alleged offender at his or her last known place of residence or business with a person who appears to be at least 16 years of age and to be resident or employed there.
- (6) Payment under this section does not imply any admission of civil liability, nor does it affect or prejudice any civil claim, action or proceeding arising out of the same occurrence.
- (7) The *Fines and Penalties (Recovery) Act* applies to an infringement notice issued under this section if the amount payable under the infringement notice is not paid within the time specified in the notice.
- (8) In this section:

authorised officer means:

- (a) a transit officer; or
- (b) some other person authorised in writing by the Director to exercise the powers of an authorised officer under this section.

infringement notice offence means:

- (a) an offence against this Act; or
- (b) an offence against the regulations prescribed as an infringement notice offence.

infringement notice penalty means:

- (a) for an offence against this Act – an amount equivalent to 3% of the maximum monetary penalty prescribed for the offence;
- (b) for an offence against the regulations – an amount fixed by the regulations as the infringement notice penalty for the offence.

paid – if a cheque is given in purported payment of an infringement notice penalty, the penalty is not paid unless and until the cheque is honoured.

35 Interaction between this Act and the *Youth Justice Act*

A transit officer who is doing, or is about to do, anything to which the *Youth Justice Act* would apply if it were to be by a member of the Police Force must comply with the obligations imposed by that Act on a member of the Police Force.

36 Regulations

The Administrator may make regulations under this Act.

37 Amendment of *Passenger Bus Regulations*

The Schedule has effect.

Schedule Amendment of the Passenger Bus Regulations

section 37

Provision	Amendment	
	omit	substitute
regulation 10(1)	(1)	
regulation 10(2)	whole subregulation	
regulations 11, 13 to 15 and 18	whole regulation	
