

Serial 36
Transport Legislation Amendment Bill 2021
Ms Lawler

A Bill for an Act to amend the Criminal Code, the *Marine Act 1981*, the *Motor Vehicles Act 1949*, the *Motor Vehicles Regulations 1977*, the *Ports Management Act 2015*, the *Public Transport (Passenger Safety) Act 2008*, the *Rail Safety (National Uniform Legislation) Act 2012*, the *Rail Safety (National Uniform Legislation) Regulations 2013*, the *Traffic Act 1987* and the *Traffic Regulations 1999* and for related purposes

NORTHERN TERRITORY OF AUSTRALIA

TRANSPORT LEGISLATION AMENDMENT ACT 2021

Act No. [] of 2021

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NORTHERN TERRITORY OF AUSTRALIA

Act No. [] of 2021

An Act to amend the Criminal Code, the *Marine Act 1981*, the *Motor Vehicles Act 1949*, the *Motor Vehicles Regulations 1977*, the *Ports Management Act 2015*, the *Public Transport (Passenger Safety) Act 2008*, the *Rail Safety (National Uniform Legislation) Act 2012*, the *Rail Safety (National Uniform Legislation) Regulations 2013*, the *Traffic Act 1987* and the *Traffic Regulations 1999* and for related purposes

[Assented to [] 2021]

[Introduced [] 2021]

The Legislative Assembly of the Northern Territory enacts as follows:

Part 1 Preliminary matters

1 Short title

This Act may be cited as the *Transport Legislation Amendment Act 2021*.

2 Commencement

- (1) Subject to subsection (2), this Act commences on the day fixed by the Administrator by *Gazette* notice.
- (2) If a provision of this Act does not commence before 1 November 2023, it commences on that day.

Part 2 Amendment of Criminal Code

3 Act amended

This Part amends the Criminal Code.

4 Section 174F amended (Driving motor vehicle causing death or serious harm)

After section 174F(5)

insert

- (6) The trier of fact may find the person not guilty of an offence against subsection (1) but guilty of an offence against section 30B(1) of the *Traffic Act 1987* if the trier of fact:
- (a) is not satisfied beyond reasonable doubt that the person committed the offence against subsection (1); and
 - (b) is satisfied beyond reasonable doubt that the person committed an offence against section 30B(1) of the *Traffic Act 1987*.
- (7) The trier of fact may find the person not guilty of an offence against subsection (2) but guilty of an offence against section 30B(2) of the *Traffic Act 1987* if the trier of fact:
- (a) is not satisfied beyond reasonable doubt that the person committed the offence against subsection (2); and
 - (b) is satisfied beyond reasonable doubt that the person committed an offence against section 30B(2) of the *Traffic Act 1987*.

Part 3 Amendment of Marine Act 1981**5 Act amended**

This Part amends the *Marine Act 1981*.

6 Section 8 amended (Shipping inspectors)

- (1) Section 8(3)

omit

all words from "Where" to "being"

insert

If a shipping inspector is required to report under subsection (2) or believes on reasonable grounds that a vessel was used, is being used or is about to be

- (2) Section 8(3)(b) and (6)

omit

his or her

insert

the shipping inspector's

7 Section 108 repealed (Application of Division)

Section 108

repeal

8 Section 112 replaced

Section 112

repeal, insert

112 False distress signals

- (1) A person must not use or exhibit a distress signal unless a vessel or a person is in distress and requires assistance.
- (2) A person commits an offence if:
- (a) the person uses or exhibits, or causes to be used or exhibited, a distress signal; and
 - (b) neither a vessel nor any person are in distress or require assistance when the person engages in the conduct specified in paragraph (a); and
 - (c) the person had no reasonable cause for engaging in the conduct specified in paragraph (a).

Maximum penalty: 50 penalty units.

- (3) A person commits an offence if:
- (a) the person uses or makes, or causes to be used or made, a signal; and
 - (b) the signal is likely to be interpreted as a distress signal; and
 - (c) neither a vessel nor any person are in distress or require assistance when the person engages in the conduct specified in paragraph (a); and

- (d) the person had no reasonable cause for engaging in the conduct specified in paragraph (a).

Maximum penalty: 50 penalty units.

- (4) An offence against subsection (2) or (3) is an offence of strict liability.
- (5) To avoid doubt, this section applies to conduct whether it occurs on water or land.
- (6) In this section:

distress signal means:

- (a) an emergency position indicating radio beacon (EPIRB); or
- (b) any signal specified as indicating distress in the Uniform Shipping Laws Code, Annex IV, item 1.

9 Section 115B replaced

Section 115B

repeal, insert

115B Person not to obstruct or endanger safe passage

- (1) A person commits an offence if:
- (a) the person engages in conduct; and
- (b) the conduct results in any of the following:
- (i) the unreasonable obstruction or likely unreasonable obstruction of the passage of a vessel;
- (ii) the unreasonable hindrance or likely unreasonable hindrance of the passage of a vessel;
- (iii) the endangerment or likely endangerment of the safe passage of a vessel.

Maximum penalty: 100 penalty units or imprisonment for 1 year.

- (2) An offence against subsection (1) is an offence of strict liability.

10 Section 188CA inserted

After section 188C

insert

188CA Exemption from closed waters for police officers

- (1) A police officer acting in the course of the officer's duties may enter waters closed under section 188B or 188C if:
 - (a) the officer believes on reasonable grounds that it is necessary to do so; and
 - (b) the officer takes reasonable care when doing so.
- (2) A police officer who enters closed waters in accordance with subsection (1) does not commit an offence against section 188B(3) or 188C(3) in respect of those waters.

Part 4 Amendment of motor vehicles legislation

Division 1 Motor Vehicles Act 1949

11 Act amended

This Division amends the *Motor Vehicles Act 1949*.

12 Section 5 amended (Interpretation)

- (1) Section 5(1), definitions *motor car*, *motor cycle*, *motor vehicle* and *powered cycle*

omit

- (2) Section 5(1)

insert

motor cycle does not include any vehicle excluded by regulation.

motor vehicle means any vehicle for use on land that is designed to be wholly or partly self-propelled and includes any trailer attached to it, but does not include any vehicle excluded by regulation.

13 Section 7B inserted

After section 7A, in Part 1

insert

7B Approvals

- (1) The Minister may, in writing, approve devices, methods and other matters for the purposes of this Act.
- (2) The Registrar may, in writing, approve forms, devices, vehicles, persons, matters and things for the purposes of this Act.

14 Section 33Y repealed (Immunity from liability)

Section 33Y

repeal

15 Section 121 replaced

Section 121

repeal, insert

121 Protection from liability

- (1) A person is not civilly or criminally liable for an act done or omitted to be done by the person in good faith in the exercise of a power or performance of a function as any of the following:
 - (a) the Registrar;
 - (b) a Deputy Registrar;
 - (d) an inspector or officer who is a public sector employee.
- (2) Subsection (1) does not affect any liability the Territory would, apart from that subsection, have for the act or omission.
- (3) In this section:

exercise of a power includes the purported exercise of the power.

performance of a function includes the purported performance of the function.

16 Section 137E amended (Information sharing)

After section 137E(2)

insert

- (3) The Minister may, by *Gazette* notice, authorise the Registrar to share information, of a type or class specified in the notice and held by the Registrar, with the person, body or entity specified in the notice.
- (4) Despite anything to the contrary in the *Information Act 2002*, the Registrar may be authorised to share information under subsection (3) that would be considered personal and confidential information under that Act.
- (5) The Registrar may share or give prescribed information to a prescribed person or class of persons in accordance with the regulations.

Division 2 Motor Vehicles Regulations 1977

17 Regulations amended

This Division amends the *Motor Vehicles Regulations 1977*.

18 Regulation 4D inserted

After regulation 4C

insert

4D Excluded vehicles

For section 5(1) of the Act, definitions ***motor cycle*** and ***motor vehicle***, the following vehicles are excluded:

- (a) a motorised wheelchair that is not capable of travelling at a speed greater than 10 km/h;
- (b) a motorised scooter as defined in rule 244A(1) of the *Australian Road Rules*;
- (c) a bicycle that is designed to be propelled by pedals and an engine, motor or other device with a power output not exceeding 200 W;
- (d) a bicycle that meets European product safety standard EN 15194, published in 2009 and amended in 2011, entitled *Cycles - Electrically power assisted cycles - EPAC bicycle*;

- (e) a vehicle that is used on a railway.

Part 5 Amendment of Ports Management Act 2015

19 Act amended

This Part amends the *Ports Management Act 2015*.

20 Section 40C inserted

After section 40B

insert

40C Direction to pay prior costs and remove vessel, hull or hulk

- (1) The port operator, or regional harbourmaster, of a designated port may give a direction to take action specified under subsection (2) if:
- (a) a direction was made under section 40A or 40B in relation to a vessel, hull or hulk; and
 - (b) in the case of the port operator – action was taken under section 40A(6)(a) or (8)(a); and
 - (c) in the case of the regional harbourmaster – action was taken under section 40B(6)(a) or (8)(a).
- (2) The direction may require the following actions:
- (a) payment of the reasonable costs associated with the prior action taken under section 40A(6)(a) or (8)(a) or 40B(6)(a) or (8)(a);
 - (b) removal of the vessel, hull or hulk to a place outside the port or a specified place inside the port.
- (3) The direction must include the following:
- (a) the day by which the direction must be complied with;
 - (b) a warning that action may be taken under subsection (5) and that the owner, master and occupier of the vessel, hull or hulk may be liable to pay the reasonable costs of that action.
- (4) The direction must:
- (a) be given orally to any person apparently in control of the vessel, hull or hulk; and

- (b) be given, in writing, to the owner, master and occupier of the vessel, hull or hulk, if known; and
 - (c) be published on the website of the port operator or regional harbourmaster, as the case may be.
- (5) If the direction is not complied with by the day specified in the direction, the port operator or regional harbourmaster may:
- (a) move the vessel, hull or hulk to a place outside the port or a specified place inside the port; or
 - (b) sell the vessel, hull or hulk; or
 - (c) dispose of, other than by sale, or destroy the vessel, hull or hulk if:
 - (i) if it is unseaworthy; and
 - (ii) the cost of repairing it to make it seaworthy, or the cost of its storage and sale, exceeds its value.
- (6) Before selling, disposing or destroying the vessel, hull or hulk, written notice must be given to the following persons of the proposed sale, disposal or destruction 28 days in advance:
- (a) the owner, master and occupier of the vessel, hull or hulk, if known;
 - (b) any person with a registered interest in the vessel, hull or hulk;
 - (c) any other person with an interest in the vessel, hull or hulk, if known.
- (7) The notice under subsection (6) must also be:
- (a) published on the website of the port operator or regional harbourmaster, as the case may be; and
 - (b) affixed in a prominent position on the deck of the vessel, hull or hulk.
- (8) The owner, master and occupier of the vessel, hull or hulk are, jointly and severally liable to pay all reasonable costs incurred by the port operator or regional harbourmaster for taking any action under subsection (5).
- (9) The reasonable costs that a person is liable to pay under subsection (8) may be recovered as a debt due and payable to:
- (a) the port operator; or

(b) in the case of action by regional harbourmaster – the Territory.

21 Section 44 amended (Sale of vessel or wreck by port operator)

Section 44(1), after "section"

insert

40C,

22 Section 44A amended (Sale of vessel or wreck by regional harbourmaster)

Section 44A(1), after "section"

insert

40C or

Part 6 Amendment of Public Transport (Passenger Safety) Act 2008

23 Act amended

This Part amends the *Public Transport (Passenger Safety) Act 2008*.

24 Section 3 amended (Definitions)

(1) Section 3, definitions ***bus station***, ***ex officio transit officer***, ***inspector***, ***relevant offence*** and ***route service***

omit

(2) Section 3

insert

banning notice means a notice issued under section 28A.

bus means a bus that carries passengers on a route service.

bus station includes a bus interchange.

bus stop means any of the following:

(a) if there is a bus zone – the area between the bus zone and the boundary of the land adjacent to the bus zone (including any paths in that area);

- (b) if there is no bus zone but there is a sign indicating a bus stop – the area between the curb, or the edge of the road, and the boundary of the land adjacent to the road that extends 15 m in either direction;
- (c) if there is no bus zone and no sign indicating a bus stop – any area beside a road, when a bus stops to pick up or let off a passenger, and the boundary of the land adjacent to the road that extends 10 m from the end of the bus to 10 m from the front of the bus.

*Note for definition **bus stop**, paragraph (c)*

This bus stop only exists while the bus is stopped to pick up or let off a passenger along the road.

ex officio transit officer means a person who is a transit officer by virtue of the person's office or position under section 7(1).

relevant offence means the following:

- (a) an offence committed on a bus, at a bus stop, at a bus station or in a bus zone;
- (b) an offence referred to in section 4(1).

route service means the service of providing, under contract with the Territory, a bus to carry prospective passengers along a specific route at specific times.

transit safety vehicle means a vehicle marked as a transit safety vehicle and used by transit officers under this Act.

25 Section 4 amended (Offences warranting arrest)

Section 4(1)

omit, insert

- (1) Each of the following offences is an **offence warranting arrest**:
 - (a) an offence against section 47, 47AA, 47A or 50 of the *Summary Offences Act 1923* if committed on a bus, at a bus stop, at a bus station or in a bus zone;
 - (b) an offence against section 5, 7 or 8 of the *Trespass Act 1987* if committed on a bus, at a bus stop, at a bus station or in a bus zone;

- (c) an offence against section 241 of the Criminal Code, or an attempt to commit that offence, in relation to a bus stop, a bus station, a bus or a transit safety vehicle;
- (d) any offence against the Criminal Code involving an assault if:
 - (i) committed on a bus, at a bus stop, at a bus station or in a bus zone; or
 - (ii) committed against a person on a bus, at a bus stop, at a bus station or in a bus zone; or
 - (iii) committed in the vicinity of a bus, a bus stop, at a bus station or in a bus zone against a transit officer exercising a power under this Act.

26 Section 7 amended (Ex officio transit officers)

(1) Section 7(1)(b)

omit, insert

(b) a security officer who:

- (i) holds a licence or provisional licence as a security officer under the *Private Security Act 1995*; and
- (ii) is engaged by a security firm that is licensed under that Act and engaged by the Territory to carry out the functions of a security officer on buses, at bus stops, at bus stations or in bus zones;

(2) Section 7(2)(a)

omit

an inspector

insert

a security officer

(3) Section 7(2)(c)

omit, insert

- (c) an ex officio transit officer who is found guilty of a disqualifying offence ceases to hold office as a transit officer.

27 Section 10 replaced

Section 10

repeal, insert

10 Disqualifying offences

- (1) If a transit officer is charged with, or found guilty of, a disqualifying offence, the transit officer must report that fact to the Director as soon as practicable.
- (2) The Director may suspend any transit officer who is charged with a disqualifying offence while the charge is being dealt with by a court.
- (3) The Director must revoke the appointment of a transit officer, other than an ex officio transit officer, who is found guilty of a disqualifying offence.
- (4) A transit officer commits an offence if the officer fails to comply with subsection (1).

Maximum penalty: 100 penalty units.

- (5) An offence against subsection (4) is an offence of strict liability.

28 Section 11 amended (Code of conduct)

- (1) Section 11(1), after "officer"

insert

, other than an ex officio transit officer who is a member of the Police Force,

- (2) Section 11(2), after "officer"

insert

, other than an ex officio transit officer,

- (3) Section 11(3), after "officer"

insert

, other than a member of the Police Force,

29 Section 12 replaced

Section 12

repeal, insert

12 Protection from liability

- (1) A person is not civilly or criminally liable for an act done or omitted to be done by the person in good faith in the exercise of a power or performance of a function as a transit officer.
- (2) Subsection (1) does not affect any liability that the following persons or entities would, apart from that subsection, have for the act or omission:
 - (a) in the case of a transit officer, other than an ex officio transit officer – the Territory;
 - (b) in the case of an ex officio transit officer who is a member of the Police Force – the Territory;
 - (c) in the case of an ex officio transit officer who is a security officer – the employer of the security officer;
 - (d) in the case of an ex officio transit officer who is a bus driver – the employer of the bus driver.
- (3) This section is subject to Part VIIA of the *Police Administration Act 1978* to the extent that it relates to the civil liability of an ex officio transit officer who is or was a member of the Police Force at the time of the act or omission.
- (4) In this section:

exercise of a power includes the purported exercise of the power.

performance of a function includes the purported performance of the function.

30 Section 14 amended (Smoking)

Section 14(b)

omit, insert

- (b) in any part of a bus station, or any part of bus stop that is not part of a footpath, unless it is within an area designated as an area where smoking is permitted.

31 Section 15 amended (Liquor and drugs)

Section 15, after "on a bus"

insert

, at a bus stop

32 Section 16 replaced

Section 16

repeal, insert

16 Consumption of food

A person must not consume food while on a bus.

33 Section 17 amended (Damage or interference)

(1) Section 17(1)(c)

omit, insert

(c) a bus stop; or

(d) a sign or equipment on a bus, at a bus station or at a bus stop.

(2) Section 17(2), after "a bus,"

insert

bus stop,

34 Section 18 amended (Nuisance or inconvenience)

Section 18, after "on a bus"

insert

, at a bus stop

35 Section 19 amended (Offensive language)

Section 19, after "on a bus"

insert

, at a bus stop

36 Section 21 amended (Passenger to hold valid ticket)

Section 21(1)

omit

, on a route service,

37 Section 23 amended (Geographical extent of transit officer's powers)

Section 23(b), after "station"

insert

, bus stop or bus zone.

38 Section 26 amended (Power to require a person to get off bus and, on non-compliance, to remove forcibly)

(1) Section 26(1)

omit

direction while on a bus or at a bus station

insert

direction or banning notice while on a bus, at a bus stop or at a bus station

(2) Section 26(1)(a)(ii), after "the bus"

insert

stop or the bus

(3) Section 26(1), example, after "*the bus*"

insert

stop or the bus

39 Sections 28A to 28F inserted

After section 28, in Part 4

insert

28A Power to issue banning notice

- (1) The Director may, in writing, authorise a transit officer, other than an ex officio transit officer, to exercise the power to issue banning notices.
- (2) A transit officer, authorised by the Director, may issue a banning notice to a person if the officer believes on reasonable grounds that the person:
 - (a) engaged in offensive, threatening, violent or disorderly conduct on a bus, at a bus stop, in a bus zone or at or in the vicinity of a bus station; or
 - (b) damaged a bus, a transit safety vehicle, a bus stop or a bus station; or
 - (c) damaged property on a bus, in a transit safety vehicle, at a bus stop or at a bus station.
- (3) A banning notice must be served personally on the person.

28B Requirements before giving banning notice

- (1) If a transit officer intends to issue a banning notice to a person, the officer must inform the person of the officer's intention of issuing the notice.
- (2) A contravention of subsection (1) by a transit officer does not constitute an offence.

28C Contents of banning notice

A banning notice must include the following:

- (a) the name of the banned person;
- (b) a description of the conduct for which the person is being issued the notice and the grounds for the transit officer's belief that the person engaged in that conduct;
- (c) the name of the transit officer issuing the notice;
- (d) a description of the places to which the ban applies;

- (e) the date and time when the notice is served on the person and the period of the ban;
- (f) a statement that it is an offence to contravene the notice;
- (g) an explanation of how the ban can be varied or revoked.

28D Effect of banning notice

- (1) A banning notice, according to its terms, bans the person from entering or remaining:
 - (a) in or on a bus; or
 - (b) in or at bus stop or bus station.
- (2) A banning notice has no effect in relation to a public footpath that is part of a bus stop.
- (3) The notice may ban a person for a period not exceeding the following:
 - (a) if the person was not previously issued a banning notice – 90 days;
 - (b) if the person was previously issued a banning notice – 180 days.
- (4) The ban starts from the time the banning notice is served on the person.
- (5) To enforce a banning notice, a transit officer may give a copy of the notice and a photograph of the banned person to:
 - (a) the Director and other transit officers; and
 - (b) bus operators and their employees.

28E Variation or revocation of banning notice

- (1) A person who is the subject of a banning notice may apply to the Director for it to be varied or revoked.
- (2) The application must be in writing and state the reasons for the variation or revocation.
- (3) The Director may, on application or on the Director's own initiative, vary or revoke a banning notice at any time by written notice given to the banned person stating the variation or revocation.

- (4) A variation may include adding, varying or removing the terms or conditions of a banning notice.

Example for subsection (4)

The variation could add or remove places to which the banning notice applies.

- (5) A banning notice cannot be varied to extend the period for which the notice applies.
- (6) The Director may delegate any of the Director's powers and functions under this section to a person, other than the transit officer who issued the banning notice.

28F Offence to contravene banning notice

- (1) A person commits an offence if:
- (a) the person is served with a banning notice; and
 - (b) the person attempts to enter, enters or remains in, on or at a place contrary to the banning notice.

Maximum penalty: 20 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.
- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant has a reasonable excuse.

Note for subsection (3)

The defendant has an evidential burden in relation to this defence (see section 43BU of the Criminal Code).

40 Section 33 amended (Security cameras or surveillance devices)

Section 33, after "on a bus,"

insert

at a bus stop

41 Section 34 amended (Prosecution)

Section 34(2)

omit, insert

- (2) In a proceeding for an offence against this Act, a certificate signed by the Director certifying any of the following matters is evidence of the matter:
- (a) 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;
 - (b) that a person named in the certificate was authorised to issue banning notices;
 - (c) that a person named in the certificate was served with a banning notice and the details of the banning notice.

Part 7 Amendment of rail safety legislation

Division 1 Rail Safety (National Uniform Legislation) Act 2012

42 Act amended

This Division amends the *Rail Safety (National Uniform Legislation) Act 2012*.

43 Section 3 amended (Definitions)

Section 3(2), definition *local regulations*

omit

or 47

44 Section 5 amended (Meaning of generic terms in *Rail Safety National Law (NT)* for purposes of this jurisdiction)

Section 5(1), definition *public sector auditor*

omit

45 Section 10 amended (Interpretation)

(1) Section 10(1), definitions **analyst** and **oral fluid analysis**

omit

(2) Section 10(1)

insert

analyst means a person, Agency, administrative unit, entity or organisation authorised to be an analyst under section 33A or the *Traffic Act 1987*.

oral fluid analysis means the analysis of saliva conducted in accordance with subsection (5).

(3) After section 10(4)

insert

(5) For the purposes of oral fluid analysis:

(a) a device approved by the Commissioner of Police under section 27B(1) of the *Traffic Act 1987* must be used; and

(b) the device must be used by a person authorised by:

(i) the Commissioner of Police under section 27B(2) of the *Traffic Act 1987*; or

(ii) the Regulator under section 124(1) of the *Rail Safety National Law (NT)*; and

(c) the analysis must follow the procedures for the proper use of the device prescribed under the *Traffic Act 1987*.

46 Section 30 amended (Use of test or analysis result in court proceedings)

After section 30(4)

insert

(4A) If a sample of a rail safety worker's oral fluid is taken under this Part, any prohibited drug detected by an analysis of the sample is taken to have been present in the person's body at the relevant time.

47 Section 30A inserted

After section 30

insert

30A Application for additional analysis of oral fluid sample

- (1) A person from whom a sample of oral fluid was taken under this Part may request the authorised analyst to whom the sample was sent to provide a portion of the sample, at the person's own expense, to a medical practitioner or laboratory nominated by the person.
- (2) A request under subsection (1) must be made within 6 months of the person being served with an infringement notice or a summons for an offence in relation to which the sample was taken.

48 Section 31 amended (Evidence by certificate)

- (1) Section 31(1)(b), before "authorised"

insert

analyst or

- (2) After section 31(1)(c)(vii)

insert

- (viii) an oral fluid analysis was conducted in accordance with section 10(5);
- (ix) an oral fluid sample of a rail safety worker named in the certificate was provided for the purpose of oral fluid analysis;
- (x) a prohibited drug was detected by a blood test, a drug screening test or an oral fluid analysis to have been present in oral fluid or blood of the rail safety worker named in the certificate on the day and at the time specified in the certificate;

49 Section 33A inserted

After section 33

insert

33A Analysts

The Commissioner of Police or the Regulator may, in writing, authorise a person or organisation to be an analyst for the purposes of this Act.

**Division 2 Rail Safety (National Uniform Legislation)
Regulations 2013**

50 Regulations amended

This Division amends the *Rail Safety (National Uniform Legislation) Regulations 2013*.

51 Regulation 8 repealed (Prescribed analysts)

Regulation 8

repeal

Part 8 Amendment of traffic legislation

Division 1 Traffic Act 1987

52 Act amended

This Division amends the *Traffic Act 1987*.

53 Section 3 amended (Interpretation)

- (1) Section 3(1), definitions ***authorised analyst***, ***bicycle***, ***motor vehicle*** and ***powered cycle***

omit

- (2) Section 3(1)

insert

authorised analyst means a person, Agency, administrative unit or entity authorised under section 19C to be an analyst.

bicycle means any of the following:

- (a) a 2 or 3 wheeled vehicle with pedals designed to be propelled by human power;
- (b) a 2 or 3 wheeled vehicle with pedals designed to be propelled by an engine, motor or other device with a power output not exceeding 200 W;
- (c) a bicycle that meets European product safety standard EN 15194, published in 2009 and amended in 2011, entitled *Cycles - Electrically power assisted cycles - EPAC bicycle*.

motor vehicle, see section 5(1) of the *Motor Vehicles Act 1949*.

54 Section 9 amended (Appointment of inspectors, &c.)

After section 9(2)

insert

- (3) The Director may, in writing, appoint a person to be an authorised person under the *Australian Road Rules*.

55 Sections 10A and 10B inserted

After section 10, in Part II

insert

10A Powers of Registrar

- (1) For this Act, the Registrar may, in writing, approve types or classes of the following:
 - (a) helmets for use by riders and passengers of motor cycles;
 - (b) helmets for use by riders of bicycles;
 - (c) seatbelts for use by drivers and passengers in motor vehicles;
 - (d) seats, restraints, harnesses and other safety equipment used by children in motor vehicles.
- (2) The Registrar may, in writing, authorise a person or a class of persons to be an emergency worker under the *Australian Road Rules*.

10B Exemption of persons or vehicles

- (1) On application, the Registrar may, in writing, grant an exemption from any provision of the Regulations if satisfied that the exemption will not result in danger or undue inconvenience to other persons.
- (2) The exemption may be issued in relation to:
 - (a) a person or class of persons; or
 - (b) a vehicle or class of vehicles.
- (3) The exemption must specify the following:
 - (a) the provision of the Regulations for which the exemption is given;
 - (b) the person, class of persons, vehicle or class of vehicles for which the exemption is given;
 - (c) the reason for the exemption;
 - (d) the conditions of the exemption, including the period of time for which it is given.
- (4) To use and benefit from an exemption under this section, a person must comply with any conditions on the exemption.

56 Sections 19C and 19D inserted

After section 19B

insert

19C Authorised analyst

The Commissioner may, by *Gazette* notice, authorise the following to be an analyst for the analysis of saliva or blood under this Act:

- (a) a person;
- (b) an Agency or an administrative unit within an Agency;
- (c) an entity in a State or another Territory similar to an Agency or an administrative unit in an Agency.

Example for paragraph (c)

The forensic laboratory of the police force of a State or another Territory.

19D Previous offences for determining second or subsequent offence

An offence against this Part is taken to be a second or subsequent offence if the person was previously found guilty of any of the following offences:

- (a) an offence against section 19(2), as in force before its repeal by the *Transport Legislation (Drug Driving) Amendment Act 2008*, of driving with a concentration of alcohol in the person's blood equal to:
 - (i) 80 mg or more per 100 ml of blood; or
 - (ii) 150 mg per 100 ml of blood;
- (b) an offence against section 8(2) of the *Traffic Ordinance 1949*, as enacted by section 6 of the *Traffic Ordinance (No. 3) 1973*, of driving with a concentration of alcohol in the person's blood equal to 80 milligrams or more of alcohol per 100 millilitres of blood;
- (c) an offence against a law of a State or another Territory for driving a vehicle with a concentration of alcohol in the person's blood equal to 80 mg or more per 100 ml of blood.

57 Section 28 amended (Driving with certain drugs in body)

Section 28(2)(b)

omit

blood

insert

body contrary to subsection (1), as in force both before and after 1 February 2016

58 Section 29AAM amended (Licence suspension for up to 24 hours)

Section 29AAM(2)

omit, insert

- (2) The notice has the following effect:
 - (a) the person's licence is suspended for the period commencing immediately on the person receiving the notice and ending not more than 24 hours later, as specified in the notice;

(b) the person is disqualified from driving for the same period.

(2A) The notice must:

- (a) be in a form approved by the Commissioner; and
- (b) inform the person of the suspension and disqualification.

59 Section 29AAN amended (Notice of immediate licence suspension and disqualification from driving)

Section 29AAN(3)

omit, insert

(3) The notice has the following effect:

- (a) the person's licence is suspended immediately on the person receiving the notice;
- (b) the person is immediately disqualified from driving.

(3A) The notice must:

- (a) be in a form approved by the Commissioner; and
- (b) inform the person of the suspension and disqualification; and
- (c) include a statement of the person's right to appeal to the Local Court against the suspension and disqualification.

(3B) On receiving the notice, the person must surrender to a police officer any licence document the person holds.

(3C) The suspension and disqualification continue until the earlier of the following:

- (a) any day the notice is revoked;
- (b) any day the charge of the immediate suspension offence is withdrawn;
- (c) any day a court:
 - (i) finds the person not guilty of the offence; or
 - (ii) discharges the person without conviction for the offence; or
 - (iii) sentences the person for the offence.

60 Section 29AAP amended (Offences)

After section 29AAP(2)

insert

- (3) A person who is given a notice under section 29AAM or 29AAN must not, while the person's licence is suspended, drive a motor vehicle in the Territory or elsewhere.

Maximum penalty: Imprisonment for 12 months.

- (4) An offence against subsection (3) is an offence of strict liability.

61 Section 29AW repealed (Protection from liability)

Section 29AW

repeal

62 Section 30 amended (Dangerous driving)

- (1) Section 30(1)

omit

negligently or

- (2) Section 30(4)

omit, insert

- (4) A member of the Northern Territory Fire and Rescue Service, as defined in section 5(1) of the *Fire and Emergency Act 1996*, who drives a vehicle at a speed dangerous to the public does not commit an offence against subsection (1) if:

(a) the vehicle is being driven to a place in answer to a call for the services of the Northern Territory Fire and Rescue Service, or while it is in use at a fire or other emergency; and

(b) the driver is taking reasonable care in the manner of driving; and

(c) the necessity for the speed of driving outweighs the risk to public safety posed by that speed; and

(d) the vehicle is displaying a blue or red flashing light or sounding an alarm or siren.

- (4A) A driver of an ambulance who drives a vehicle at a speed dangerous to the public does not commit an offence against subsection (1) if:
- (a) the ambulance is being driven in the execution of the driver's duties; and
 - (b) the driver is taking reasonable care in the manner of driving; and
 - (c) the necessity for the speed of driving outweighs the risk to public safety posed by that speed; and
 - (d) the vehicle is displaying a blue or red flashing light or sounding an alarm or siren.

63 Section 30A amended (Driving at dangerous speed)

Section 30A(3)

omit, insert

- (3) A member of the Northern Territory Fire and Rescue Service, as defined in section 5(1) of the *Fire and Emergency Act 1996*, who drives a vehicle at a speed dangerous to the public does not commit an offence against subsection (1) if:
- (a) the vehicle is being driven to a place in answer to a call for the services of the Northern Territory Fire and Rescue Service, or while it is in use at a fire or other emergency; and
 - (b) the driver is taking reasonable care in the manner of driving; and
 - (c) the necessity for the speed of driving outweighs the risk to public safety posed by that speed; and
 - (d) the vehicle is displaying a blue or red flashing light or sounding an alarm or siren.
- (3A) A driver of an ambulance who drives a vehicle at a speed dangerous to the public does not commit an offence against subsection (1) if:
- (a) the ambulance is being driven in the execution of the driver's duties; and
 - (b) the driver is taking reasonable care in the manner of driving; and

- (c) the necessity for the speed of driving outweighs the risk to public safety posed by that speed; and
- (d) the vehicle is displaying a blue or red flashing light or sounding an alarm or siren.

64 Section 30B inserted

After section 30A

insert

30B Careless driving

- (1) A person commits an offence if:
- (a) the person drives a motor vehicle; and
 - (b) the manner of that driving does not meet the standard of care and attention that is expected of a prudent and competent driver who would drive with the level of caution appropriate in the circumstances of the driver; and
 - (c) the manner of that driving results in the death of a person.

Maximum penalty 60 penalty units or imprisonment for
2 years.

- (2) A person commits an offence if:
- (a) the person drives a motor vehicle; and
 - (b) the manner of that driving does not meet the standard of care and attention that is expected of a prudent and competent driver who would drive with the level of caution appropriate in the circumstances of the driver; and
 - (c) the manner of that driving results in serious harm to a person.

Maximum penalty 40 penalty units or imprisonment for
18 months.

- (3) A person commits an offence if:
- (a) the person drives a vehicle; and

- (b) the manner of that driving does not meet the standard of care and attention that is expected of a prudent and competent driver who would drive with the level of caution appropriate in the circumstances of the driver.

Maximum penalty 20 penalty units or imprisonment for 6 months.

- (4) An offence against subsection (1), (2) or (3) is an offence of strict liability.
- (5) It is a defence to a prosecution for an offence against subsection (1), (2) or (3) if:
- (a) the defendant, before or while driving, considered whether or not facts existed and was under a mistaken but reasonable belief about those facts; and
- (b) the mistaken belief was of a kind that a prudent and competent driver may have made driving with the level of caution appropriate in the same circumstances as the defendant; and
- (c) had those facts existed, the manner of that driving would not have constituted an offence.

Note for subsection (5)

The defendant has an evidential burden in relation to this defence (see section 43BU of the Criminal Code).

- (6) For subsection (5), a person may be regarded as having considered whether or not facts existed if:
- (a) the person considered, on a previous occasion, whether those facts existed in the circumstances surrounding that occasion; and
- (b) the person honestly and reasonably believed that the circumstances surrounding the present occasion were the same, or substantially the same, as those surrounding the previous occasion.
- (7) Despite section 43AN(1)(b) and (2)(b) of the Criminal Code, section 43AX of the Criminal Code does not apply to an offence against subsection (1), (2) or (3).

65 Section 51 replaced

Section 51

repeal, insert

51 Offences

(1) Subject to subsection (2), an offence against, a contravention of or a failure to comply with a provision of this Act, other than the following sections, is a regulatory offence:

- (a) section 29AAYD(2);
- (b) section 29AF(4) and (5);
- (c) section 29AT(1), (2), (4) and (5);
- (d) section 29AU(2);
- (e) section 30(1);
- (f) section 30A(1);
- (g) section 31(1);
- (h) section 49(1) and (2).

(2) Part IIAA of the Criminal Code applies to an offence against the following:

- (a) section 29AAP(3);
- (b) section 30B(1), (2) or (3);
- (c) a regulation that provides that Part IIAA applies to it.

Note for subsection (2)

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.

51A Protection from liability

(1) A person is not civilly or criminally liable for an act done or omitted to be done by the person in good faith in the exercise of a power or performance of a function as any of the following under this Act:

- (a) the Director;

- (b) the Deputy Director;
 - (c) the Commissioner;
 - (d) the Registrar;
 - (e) an inspector or officer who is a public sector employee;
 - (f) police officer;
 - (g) a person assisting a police officer.
- (2) Subsection (1) does not affect any liability the Territory would, apart from that subsection, have for the act or omission.
- (3) This section is subject to Part VIIA of the *Police Administration Act 1978* to the extent that it relates to the civil liability of a person who is or has been a police officer at the time of the act or omission.

- (4) In this section:

exercise of a power includes the purported exercise of the power.

performance of a function includes the purported performance of the function.

66 Part X inserted

After section 60

insert

Part X Transitional matters for Transport Legislation Amendment Act 2021

61 Definition

In this Part:

commencement means the commencement of section 69 of the *Transport Legislation Amendment Act 2021*.

62 Validation of authorised analysts

The authorisation of a person, Agency, administrative unit, entity or organisation to be an analyst, under regulation 60 of the *Traffic Regulations 1999* as in force before the commencement, is valid, and is taken to have been valid, on and from the date it was made.

63 Validation of authorised persons

The appointment by the Director of a person to be an authorised person for the purposes of the *Australian Road Rules* or a provision of the *Australian Road Rules*, made under regulation 81B of the *Traffic Regulations 1999* as in force before the commencement, is valid, and is taken to have been valid, on and from the date it was made.

Division 2 Traffic Regulations 1999

67 Regulations amended

This Division amends the *Traffic Regulations 1999*.

68 Regulation 18 amended (Careless walking or riding)

(1) Regulation 18, heading

omit

or riding

insert

and disorderly driving

(2) Regulation 18(1)

omit

, or drive a vehicle,

69 Regulations 60 and 81B repealed

Regulations 60 and 81B

repeal

70 Regulation 81C amended (Meaning of *emergency worker* in *Australian Road Rules*)

(1) Regulation 81C(1)(f)

omit

subregulation (2)

insert

section 10A(2) of the Act

- (2) Regulation 81C(2) and (3)

omit

71 Regulation 87A amended (Form of traffic control device)

- (1) Regulation 87A, heading

omit

Form of traffic

insert

Traffic

- (2) Regulation 87A(2)

omit, insert

- (2) A person commits an offence if:

- (a) the person erects, establishes, places, displays, operates, uses, maintains, alters or removes a worksite traffic control device; and
- (b) that conduct results in the worksite traffic control device not complying with the Standard of that kind of device.

Maximum penalty: 20 penalty units or imprisonment for 6 months.

- (3) An offence against subregulation (2) is an offence of strict liability.
- (4) Part IIAA of the Criminal Code applies to an offence against subregulation (1).

Note for subregulation (4)

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.

- (5) In this regulation:

Standard means Australian Standard AS 1742.3:2019 – Manual of uniform traffic control devices, Part 3 Traffic control for works on roads.

work site traffic control device means a traffic control device that:

- (a) is a sign, delineation device or other kind of device; and
- (b) provides essential information to warn, instruct and guide road users around, through or past work sites.

72 Regulation 90 repealed (Exemption of persons or vehicles)

Regulation 90

repeal

73 Regulation 92 replaced

Regulation 92

repeal, insert

92 Regulatory offences

An offence against these Regulations is a regulatory offence other than the following:

- (a) regulation 9(4), (5) and (6);
- (b) regulation 26(3)(a) and (c);
- (c) regulation 87A(2).

74 Schedule 1 amended (Traffic infringement notice offences)

(1) Schedule 1, item 23

omit

| | | |
|--|----------|-----|
| Drive without due care and cause minor (non-injury) accident | TR 18(1) | 150 |
|--|----------|-----|

insert

| | | |
|------------------------------|-----------|-----|
| Drive carelessly (no injury) | TA 30B(3) | 150 |
|------------------------------|-----------|-----|

(2) Schedule 1, item 26, at the end

insert

| | | |
|--------------------------------|-----------|--------------------------------|
| Traffic control device offence | TR 87A(2) | 400 for individual |
| | | 2 000 for body corporate |

Part 9 Repeal

75 Repeal of Act

This Act is repealed on the day after it commences.