

2008

LEGISLATIVE ASSEMBLY OF THE
NORTHERN TERRITORY

MINISTER FOR INFRASTRUCTURE AND TRANSPORT

PUBLIC TRANSPORT (PASSENGER SAFETY) BILL 2008
SERIAL NO. 144

EXPLANATORY STATEMENT

GENERAL OUTLINE

The Public Transport (Passenger Safety) Bill 2008 is a new Act that creates a new statutory officer; the ‘transit officer’ is to be responsible for providing safety and security on the school and passenger bus networks. Part 1 of the Act defines the title, terms used in the Act and offences warranting arrest. Part 2 of the Act determines the appointment and other management and employment conditions placed on transit officers. Part 3 of the Act creates rules of behavior for people on buses, at bus interchanges and at bus stops. Part 4 of the Act defines the powers of transit officers including the geographical location of where their power may be exercised, officer’s power to require a person’s details of name, address and date of birth and provides officers with power of arrest, power of search, or power to use force that is reasonably necessary against another person. Part 5 of the Act creates a requirement for a complaint review process, other offences, and an infringement notice scheme and the interaction between this Act and the Youth Justice Act.

The Bill pulls together those powers and safeguards necessary in order to implement legislation that gives transit officers the necessary law enforcement powers to ensure safety and security on the bus network, and at the same time, construct a frame work of accountability and protection of the travelling public, the transit officers and the Territory. Those safeguards requirements to be implemented as part of this Bill are:

- o Only suitably trained people, employed as public servants are to be appointed by the Director Transport as transit officers.

- o Applicants for appointment as transit officers must authorise the Director Transport to obtain and consider any criminal history, including spent convictions.
- o Provision has been made for the Director Transport to create a range of disqualifying offences where a person cannot be employed or appointed as a transit officer if convicted of such an offence.
- o Provision has been made for the Director to authorise a code of conduct in regulations detailing standards of integrity and behaviour of transit officers.
- o Transit officers are required to be issued identity cards and officers are to display them for inspection prior to exercising a power or upon request.
- o Transit officers will incur no civil or criminal liability for an act or omission committed in good faith, and where such liability would exist, it attaches to the Territory.
- o Transit officer powers to arrest, search and use force are set at the same level as that of a police officer, as a transit officer is required to deliver an arrested person into the custody of a member of the police force to be dealt with under law, and as such, the standards of evidence need to be similar.

NOTES ON CLAUSES

PART 1 PRELIMINARY

Clause 1. Short Title

The Bill when passed will be cited as the *Public Transport (Passenger Safety) 2008*.

Clause 2. Commencement

The Bill will commence on a date fixed by the Administrator and notified in the Gazette.

Clause 3. Definitions

This clause defines several words and terms used in the Act. A **‘bus station’** is used to define both a bus interchange and a bus stop. A **code of conduct** is a code of conduct for transit officers prescribed in the regulations. A **‘dangerous drug’** has the same definition as defined in the *Misuse of Drugs Act*. The **‘Director’** means the person holding or acting in the position of Director Transport under the *Traffic Act*. **Disqualifying offence** has also been introduced for certain offences to be prescribed in the regulations as disqualifying offences which result in a transit officer’s appointment to be suspended or revoked. An **‘ex officio transit officer’** is used to include members of the Police Force; an inspector, or a bus driver who are not by

appointment transit officers. A ‘frisk search’ describes in what way a transit officer may search an arrested person.

Clause 4. Offences warranting arrest

This clause defines offences that if committed on a bus or at a bus station are offences warranting arrest. Certain offences against the *Summary Offences Act*; the *Trespass Act* and the *Criminal Code Act* are considered offences warranting arrest under this Act.

The offences warranting arrest under the *Summary Offences Act* include offensive conduct; violent disorder; loitering or indecent exposure. Under the *Trespass Act* an offence for trespass on premises; trespass after direction to leave or trespass to leave after directed, warrants arrest. Under the *Criminal Code Act*, an offence involving assault or criminal damage warrants arrest.

In addition, certain offences created under this Act are also considered to be offences warranting arrest. These are offences for refusing to comply with providing name, address and date of birth on request; or providing misleading information or evidence; not complying with a direction to get off a bus or to go away and stay away from a bus station; obstructing a transit officer; and a contravention of a rule of behaviour after being warned.

PART 2 TRANSIT OFFICERS

Clause 5. Appointment of transit officers

This clause details how the Director may appoint people to be transit officers. To be eligible for appointment, a person must have been suitably trained to exercise the powers of a transit officer. A person can also be appointed to be a transit officer on the condition that they will only exercise their powers in the company and under the direct supervision of an already appointed transit officer. This allows for transit officers in training to carry out on-the-job training until they successfully complete their own training and receive appointment in their own right.

A person that is appointed as a transit officer under this clause is to be an employee under the *Public Sector Employment and Management Act*. This is to ensure that only public servants and not private security guards will be appointed as transit officers.

This ensures that despite the *Criminal Records (Spent Convictions) Act*, an applicant must authorise the Director to obtain from the Commissioner of Police any criminal history including spent convictions. The Director is able to take the criminal history including any spent convictions into account in determining a person's application and to retain that history for successful applicants while they are appointed transit officers.

This clause ousts the *Anti-Discrimination Act* as that Act relates to considering spent convictions as an irrelevant criminal record in the area of work. This is considered necessary so that the Director can consider any spent conviction before making a decision as to a person's suitability in terms of their character for employment and appointment as a transit officer.

Clause 6. *Ex officio* transit officers

This clause allows for a member of the Police Force, an inspector appointed under the *Commercial Passenger (Road) Transport Act*, or a bus driver to be considered a transit officer by virtue of their office or position. The clause goes on to state that an inspector or a driver is not authorised to exercise a transit officer's power of arrest, power of search, or power to use force. A member of the Police Force by default is allowed to use such powers.

This clause is used to preserve the powers of an inspector or a bus driver under the *Passenger Bus Regulations* to give directions to passengers in terms of behaviour and being able to board or alight from a bus, and for an inspector to issue infringement notices for an offence under the Act.

Clause 7. Identity cards

This clause requires the Director to issue an identity card to each transit officer (but not ex officio transit officer). Each card must contain a photograph of the officer, and the officer's name; and a statement that the person whose name and photograph that appear on the card is a transit officer; and the transit officer's unique identity number, and a statement that the card is issued under the Director's authority.

A person that was issued an identity card under this section is required within 14 days of

ceasing to be a transit officer, to return the card to the Director or they commit an offence. An offence provision has been created with a fault element of strict liability with a maximum penalty of 20 penalty units (\$2200).

Clause 8. Obligations with regard to an identity card

This clause outlines the conditions under which the identity card may be used. That is to say, transit officers cannot exercise a power under this Act unless they hold an identity card and they must where practicable, produce the identity card for inspection of a person against whom a power is being exercised.

A person charged with non-compliance has a defence in the circumstance where a transit officer has failed to comply with these provisions and not produced identification.

Clause 9. Disqualifying offences

This clause compels transit officers to advise the Director if they have been charged or convicted of a disqualifying offence. It also outlines the penalties that may be imposed and action that may be taken against a transit officer in the event they are charged or convicted of such an offence.

These actions include a maximum penalty of up to 100 penalty units (\$11 000) for failing to advise; suspension until such time as the matter has been dealt with; and revoking an appointment in case where the transit officer has been found guilty.

Disqualifying offences will be prescribed in the Regulations.

Clause 10. Code of Conduct

This clause compels a transit officer to comply with the code of conduct that has been prescribed in the regulations and outlines the action that may be taken against the transit officer in the event that s/he does not comply.

Clause 11. Immunities of transit officers

This clause provides for immunities for transit officers whereby an officer incurs no civil or criminal liability for an act or omission in good faith, in the exercise or purported exercise of their powers or functions under this Act. The clause also provides that where a liability would have attached to a transit officer, but for the existence of this clause, has the liability instead attached to the Territory.

PART 3 RULES OF BEHAVIOUR

Clause 12 Animals

This clause details that people must not bring an animal onto a bus unless that animal is a guide-dog or hearing-dog, and a person who has impaired sight or hearing intending to board a bus requires the assistance of such a dog.

Clause 13 Smoking

This clause details that people must not smoke on a bus or 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). A bus station includes a bus interchange and a bus stop.

Clause 14 Liquor and drugs

This clause details that people may not consume alcoholic liquor or a dangerous drug (as defined in the *Misuse of Drugs Act*) while on a bus or at a bus station.

Clause 15 Consumption of food

This clause details that where a bus is on a route service, a person must not consume food while

on the bus. This clause does not prevent people from consuming food at a bus station or on a bus that is not on a route service. This clause does not prevent people from consuming a drink on a bus that is on a route service providing that the drink is not alcoholic liquor as in clause 14.

Clause 16 Damage or interference

This clause details that a person must not without the proper authority damage or interfere with a bus; or bus station; or a sign or equipment on a bus or at a bus station. This clause also details that damage extends to the soiling of or painting or marking of graffiti on a bus, bus station, sign or equipment.

Clause 17 Nuisance or inconvenience

This clause details that a person must not cause a nuisance or inconvenience to others on a bus or at a bus station.

Clause 18 Offensive language

This clause details that a person must not use offensive language while on a bus or at a bus station.

Clause 19 Passenger management

This clause details situations where a transit officer (and ex officio transit officers, bus drivers and inspectors) can direct people to comply with his or her directions to assist in safe passenger management practices.

A person that is asked by a transit officer to move or keep away from a part of the bus that is not intended for the conveyance of passengers must immediately comply with the request. This request is in the context of public safety.

A person that is reasonably asked by a transit officer to vacate a particular seat must immediately comply with the request. This request is in the context of reserved seating on a bus for disabled or pregnant passengers etc.

A person that causes any part of their body or an object to project from a bus and who is asked by a transit officer to cease doing so, must comply immediately with the request. This request is in the context of public safety.

A person must comply with a direction given by a transit officer regarding how and by which door the person is to board or get off the bus. This request is mainly in the context of public safety.

Clause 20 Passenger to hold valid ticket

This clause details that 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. It also details that ticket will not be regarded as a valid ticket if it has been defaced so that it is no longer legible.

This clause details that a passenger traveling on a bus on a route service must, if required to do so by a transit officer (including a bus driver or an inspector as ex officio transit officers), produce the passenger's ticket for inspection.

Clause 21 Offence to contravene rule of behaviour

This clause details that a person who contravenes a rule of behaviour is guilty of an offence. The fault element for a rule of behaviour offence is one of strict liability with a maximum penalty of 20 penalty units (\$2200).

PART 4 POWERS OF TRANSIT OFFICERS

Clause 22 Geographical extent of transit officer's powers

This clause details that a transit officers powers are only exercisable on or in the vicinity of a bus; or at or in the vicinity of a bus station. It is not intended that a transit officer is able to exercise their power in the same way as would a police constable who is able to exercise their power anywhere in the Northern Territory.

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

This clause details that a transit officer may require a person to state their name, address and date of birth if the transit officer believes on reasonable grounds that the person has committed, is committing, or is about to commit a relevant offence; or the person may be in position to assist in the investigation of a relevant offence. This clause will enable transit officers, amongst other things to effectively enforce the issue of infringement notices.

Under this clause, a transit officer may require a person that has been required to give their name, address and date of birth details to provide specific evidence of their identity such as a driver's licence, or other evidence of identity document.

A person must not refuse or fail to comply with a requirement under this clause, and an offence is created with a fault element of strict liability and a maximum penalty of 20 penalty units (\$2200).

A person must not provide misleading information or misleading evidence in response to a request by a transit officer under this clause, and an offence is created with a fault element of an intention to mislead with a maximum penalty of 100 penalty units (\$11 000) or imprisonment for six months.

Clause 24**Power of direction**

This clause details that 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 may direct the person to comply with the rules of behaviour in relevant respects. The transit officer may also give incidental directions that may be appropriate in the circumstances.

A person must comply with a direction under this clause and an offence is created with a fault element of strict liability and a maximum penalty of 20 penalty units (\$2200).

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

This clause details that if a person contravenes a transit officer's direction while on a bus or at a bus station the transit officer may direct the person to either get off the bus or to go away, and keep away from the bus station as the case requires; and the transit officer may give the person incidental directions that may be appropriate in the circumstances.

An example is provided to illustrate the workings of this clause where a transit officer may direct a person not to board the same or another bus, or not to return to the bus station, for a specified period not exceeding 24 hours. This clause enables transit officers to manage problems between passengers and groups of passengers.

Where a Transit Officer gives a direction to a person it must, if practicable, be given in writing, but if providing a written direction is not practicable, it may be given orally.

When a transit officer gives a direction to a person to get off a bus and the bus is in motion, the direction to get off the bus requires the person to get off the bus when the bus next stops.

A person must comply with a direction from a transit officer under this clause, and an offence provision is created with a fault element of strict liability and a maximum penalty of 20 penalty units (\$2200).

If a person does not comply immediately with a direction from a transit officer under this clause the transit officer may use such force as is reasonably necessary to remove the person from the bus or the bus station as the circumstances require.

Clause 26**Arrest and detention**

This clause details that if a transit officer believes on reasonable grounds that a person has committed an offence warranting arrest (as defined in clause 4), the transit officer may (without warrant) arrest and detain the person. A person that is arrested and detained under this clause 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.

This clause enables a transit officer to arrest and detain a person and where it is determined appropriate by the officer, release them without delivering them into the custody of a police officer.

This clause also includes a note that explains that a transit officer will take an arrested person to a police station to be delivered into the custody of a member of the Police Force; or the transit officer can 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.

Clause 27**Search and seizure of dangerous articles**

This clause details that a person arrested and detained under Part 4 may be subject to a frisk search. A frisk search is defined under clause 3 of the Act. The search may be carried out by the transit officer if the transit officer is of the same sex as the person under arrest. If the transit officer is not of the same sex as the person under arrest, the search can be carried out by a person acting under the direction of the transit officer, providing that the person searching is of the same sex as the person under arrest.

Under this clause, the person carrying out the search may seize, using such force as may be reasonably necessary, anything that could cause harm to the person under arrest or anyone else. Such an article is defined as a '*dangerous article*'.

A person that carries out a frisk search at the direction of a transit officer has the same immunities from civil and criminal liability as a transit officer.

A transit officer must hand over any dangerous article seized in the course of a search, to a member of the Police Force who takes custody of the person arrested and detained under Part 4.

PART 5**MISCELLANEOUS****Clause 28****Internal review**

This clause requires that the Director must establish a system of administrative review for the purposes of dealing effectively with complaints about the conduct of transit officers. Complaints of a criminal nature will be referred to the Police for investigation.

The clause also requires that the Director publishes on the agency website the procedures for the public to make a complaint about a transit officer's conduct and the procedures for a review of that decision.

Clause 29**No entitlement to refund of fare**

This clause specifies that if a person is required to get off a bus, or is forcibly removed from a bus under this Act, that they are not entitled to a refund of their fare. This would not stop the

Director from refunding a fare to a person that was required to get off a bus or forcibly removed from a bus, if that action by a transit officer was subsequently found to be unreasonable or unlawful.

Clause 30 Declared offence for Criminal Code

This clause specifies that Part IIAA of the *Criminal Code Act* (Criminal Responsibility for Schedule 1 Offences and declared Offences) applies to an offence against this Act. There is a note in this clause that explains that Part IIAA of the Criminal Code states the general principles of criminal responsibility, establishes general defenses, and deals with the burden of proof. The notes goes on to say it also defines, or elaborate on certain concepts commonly used in the creation of offences.

The clause states that if a provision in this Act that creates an offence contains a statement identifying certain fault elements of the offence, the fault elements identified in that statement are the only fault elements of the offence. It also states that the statement operates to the exclusion of fault elements that might otherwise be implied under provisions of the Criminal Code. There is also an accompanying note that states that it follows that fault elements that might otherwise be implied under section 43AM of the Criminal Code (Offences that do not provide fault elements) are excluded by the statement.

The clause also states that if a provision creating an offence contains a statement classifying an offence as one of strict liability, thus excluding fault elements, section 43AN(1) of the Criminal Code (Strict liability) applies to the offence.

Where an offence has a fault element stated, only that fault element will apply, and where an offence contains a statement that an offence is one of strict liability, no fault elements will apply.

Clause 31 Obstruction of a transit officer

In this clause, a person must not obstruct or hinder a transit officer who is carrying out official functions, or incite or encourage another to obstruct or hinder a transit officer who is carrying out official functions. An offence provision is created with a fault element of intention and a

maximum penalty of 100 penalty units (\$11 000) or imprisonment for six months.

Clause 32 Security cameras or surveillance devices

In this clause, 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. An offence provision is created with a fault element of strict liability with a maximum penalty of 100 penalty units (\$11 000) or imprisonment for six months. Security cameras and surveillance devices are an important element in the detection and prosecution of criminal activity and anti-social behaviour. For that reason, any damage or interference with such devices is treated as a serious offence.

Clause 33 Prosecutions

In this clause, proceedings for an offence against this Act may be commenced by a member of the Police Force; or a transit officer; or a person authorised by the Director of Transport. In any proceedings for an offence against this Act, a certificate that has been signed by the Director certifying that the person named in the certificate was on a particular day or period, a transit officer or person authorised to commence proceedings for an offence against this Act, and the certificate is admissible as proof of the matters certified.

Clause 34 Infringement notice offences

In this clause, an authorised officer may serve an infringement notice on a person if it appears to the officer that the person has committed an infringement notice offence.

In this clause, an infringement notice must contain the name and address of the alleged offender, if it is known, and the date of issue for the infringement notice, and the date, time and place of the alleged offence.

The notice must also contain 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 notice penalty to a person whose name and address are stated in the notice, within 28 days of the date of the notice.

The notice must also contain 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 on the notice, within 28 days of the date of the notice.

The clause also states that if the infringement notice for an alleged offence is paid under this clause, the alleged offender is not liable to any further proceedings for the alleged offence.

The clause allows an infringement notice to be withdrawn by an authorised officer by written notice served on the alleged offender withdrawing the notice (accompanied, if the infringement notice penalty has been paid, by the amount of the penalty).

The clause also details how the service or withdrawal of an infringement notice is effected by personal service, posting to their last known address, or by leaving it at their last known place of residence or business, with a person that appears to be at least 16 years of age, and to be resident or employed there.

The clause states that payment under this clause 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.

This clause applies the *Fines and Penalties (Recovery) Act* to an infringement notice issued under this clause, if the amount payable under the notice is not paid within the time specified on the notice.

The clause also defines that within this clause, an authorised officer is a transit officer or other person authorised by the Director to exercise the powers of an authorised officer under this clause. Such an authorised officer would be an inspector under the *Commercial Passenger (Road) Transport Act*.

The clause defines that an infringement notice offence is an offence against this Act or an offence against the regulations designated as an infringement notice offence.

The clause defines an infringement notice penalty as being for an offence against this Act, an amount equivalent to 1% of the maximum monetary penalty prescribed for the offence. In the case of an offence against a rule of behaviour, the infringement notice penalty would be \$55 for a maximum penalty of 50 penalty units (\$5 500). The clause also states that for an offence

against a regulation, it will be an amount fixed by the regulations as the infringement notice penalty for the offence (at present, there is no proposal to create any offences in Regulations).

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

This clause provides that a transit officer who is doing or is about to do anything to a juvenile must comply with the obligations placed on a Police Officer under the *Youth Justice Act* as if the transit officer was a Police Officer.

Clause 36 **Regulations**

This clause provides for the Administrator to make regulations under this Act.

Schedule **AMENDMENT OF THE PASSENGER BUS REGULATIONS**

This schedule amends the *Passenger Bus Regulations*.

Clause 10(2) **Repeal**

This clause repeals the regulation relating to where a person shall not bring onto a bus any animal other than a guide-dog or hearing dog.

Clause 11 **Repeal**

This clause repeals the regulation relating to certain conduct by a passenger or prospective passenger, where that passenger is apparently suffering from an infectious disease or under the influence of drugs or intoxicating liquor. Also, if the passenger soils or damages, or is likely to soil or damage a bus, or causes or is likely to cause a nuisance on a bus. Also if a passenger is carrying an article or thing that is causing or likely to cause inconvenience to other passengers, or they are smoking or consuming intoxicating liquor, or they are using profane or objectionable language. In these cases of prohibited conduct, the bus driver or an inspector may direct the person to either alight from the bus or not to board the bus.

Clause 13 to 15 Repeal

This clause repeals the regulations relating to persons not smoking on a bus; consuming intoxicating liquor or a prohibited substance in a bus, or if the bus is on an urban route service, from consuming food while on the bus. That passengers are not to travel on a bus route service as a passenger without a valid ticket, and a passenger is to produce on demand by a driver or an inspector their ticket.

Clause 18 Repeal

This clause repeals the regulation that a person shall not damage or interfere with a bus without authorisation.