

1. Introduction to Traffic Legislation and Traffic Enforcement

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1.1 Introduction

This chapter is aimed at identifying legislation applicable to police in the discharge of the traffic law enforcement functions of the Service. Brief reference is made to sections of legislation which authorise or allow officers to efficiently and effectively discharge their duties and where appropriate commence prosecutions against offenders. Service policy in relation to road policing generally is also outlined in this chapter.

1.2 Superintendent of traffic

The Commissioner is the only member of the Service who is a superintendent of traffic for the purposes of the TO(RUM)A (see Sch 4 of the TO(RUM)A).

However, whilst the Commissioner is the only superintendent of traffic, they have delegated their functions, powers and duties as a superintendent of traffic under the TO(RUM)A to other members of the Service (see Delegation D 25.2).

For the purposes of this Manual, the term superintendent of traffic is also used to refer to officers and staff members delegated the functions, powers and duties of superintendent of traffic.

Sections 124(1)(pa) and (pc): 'Facilitation of proof' of the TO(RUM)A provide that a certificate by the Commissioner regarding the accuracy of a:

- (i) radar speed detection device;
- (ii) laser-based speed detection device;
- (iii) induction loop speed detection device;
- (iv) piezo strip speed detection device; and
- (v) chassis dynamometer,

respectively is evidence of the accuracy of the devices. Assistant commissioners, commissioned officers, senior sergeants and OICs of stations who are of or above the rank of sergeant have been authorised to issue those certificates (see Delegation D 25.14).

1.3 Police powers for traffic law enforcement

In order to ensure that the TO(RUM)A (including the various regulations made under that Act) is duly observed, officers should make themselves thoroughly conversant with the laws relating to road policing and should exercise tact and discretion in the performance of their functions.

The majority of powers for enforcing transport legislation are contained in the PPRA. A small number of other powers are contained in the TO(RUM)A. The powers contained within the TO(RUM)A are affected by the PPRA.

Officers may exercise a power or perform a responsibility under the TO(RUM)A that the officer does not have under the PPRA (see ss. 11: 'Inconsistency' and 12: 'Relationship to other Acts' of the PPRA and s. 2.1.1: 'Use of Police Powers and Responsibilities Act' of the OPM).

Some transport Acts (see SMD) contain similar general powers to those in the PPRA and TO(RUM)A as well as specific powers which may be used by officers investigating offences under the particular Act. These powers should be seen as complementing the powers under the PPRA and TO(RUM)A.

Officers should:

- (i) generally use the powers contained within the PPRA and TO(RUM)A when investigating offences under transport Acts wherever such powers are applicable; and
- (ii) use the specific powers provided under the other transport Acts when a similar specific power is not provided in the PPRA or the TO(RUM)A.

1.3.1 Traffic enforcement related powers under the Police Powers and Responsibilities Act

Officers should make themselves conversant with the provisions of:

- (i) Chapter 3: 'Powers relating to vehicles and traffic';
- (ii) Chapter 4: 'Motor vehicle impounding powers and immobilising powers for prescribed offences and motorbike noise direction offences';
- (iii) Chapter 5: 'Removal powers generally for vehicles or loads or things on roads';
- (iv) Chapter 6: 'Powers relating to animals'; and
- (v) Chapter 22: 'Provisions about type 1 vehicle related offences',

of the PPRA.

When investigating offences against transport Acts (see SMD), officers may, in accordance with:

- (i) s. 40: 'Person may be required to state name and address' of the PPRA require a person to state the person's correct name and address and provide evidence of correctness of the stated name and address;
- (ii) s. 58: 'Production of driver licence' of the PPRA require a person to produce the person's driver licence for inspection;
- (iii) s. 59: 'Power for regulating vehicular and pedestrian traffic' of the PPRA give directions, signals or orders to drivers or pedestrians on or about to enter a road which the officer considers reasonably necessary for the safe and effective regulation of traffic;
- (iv) s. 60: 'Stopping vehicles for prescribed purposes' of the PPRA require the person in control of a vehicle other than an aircraft or train or a vehicle being pulled by an animal, to stop the vehicle for a prescribed purpose;
- (v) s. 63: 'Power to inspect vehicles' of the PPRA conduct an inspection or test of vehicles for compliance with a transport Act;
- (vi) s. 64: 'Power to enter vehicles etc. other than for vehicle inspection' of the PPRA enter and search a vehicle, inspect, measure, test, photograph or film a vehicle or anything in or on it, take samples of a vehicle and anything in or on it, copy a document in a vehicle or move a vehicle's load for the purpose of enforcing a transport Act under defined circumstances;
- (vii) s. 65: 'Power to require vehicle inspections' of the PPRA by written notice (F4890: 'Defect Notice' available from Richlands Supply Services), require the owner or the registered operator (see SMD) of the vehicle to have the vehicle inspected at a stated reasonable time and place (see s. 8.9: 'Defect notices' of this Manual);
- (viii) s. 66: 'Power to prohibit use of vehicles' of the PPRA by written notice (F4890: 'Defect Notice' available from Richlands Supply Services), prohibit the use of a vehicle if it is reasonably suspected to be unsafe or defective;
- (ix) s. 68: 'Power to enable effective and safe exercise of other powers' of the PPRA require persons in control of vehicles to give officers reasonable help or require persons in control of vehicles or who are in or have just left a vehicle to do or not do anything which the officer believes is reasonably necessary to enable the officer to effectively and safely exercise a power under a transport Act in relation to the vehicle;
- (x) ss. 135: 'Stopping animals for prescribed purposes' and 136: 'Power to enable effective and safe exercise of other powers' of the PPRA require the person in control of an animal, whether or not the animal is pulling a vehicle, to stop the animal for a prescribed purpose; and
- (xi) s. 196: 'Power to seize evidence generally' of the PPRA seize evidence,

subject to the limitations and requirements attached to those powers.

See also s. 1.3.4: 'Powers of arrest' of this Manual and ss. 2.4.12: 'Roadblocks' and 15.1: 'Safe Driving Policy' of the OPM.

1.3.2 Traffic enforcement powers under the Transport Operations (Road Use Management) Act

When investigating offences against transport Acts (see SMD), officers may, in accordance with:

- (i) ss. 36K to 39N of the TO(RUM)A, if the officer reasonably believes the person in control of a fatigue regulated heavy vehicle:
 - (a) has contravened a maximum work requirement;
 - (b) has contravened a minimum rest requirement;
 - (c) is impaired by fatigue; or
 - (d) does not produce their work diary or the work diary is unreliable,

by written notice (F3162: 'Prohibition Notice' available from the DTMR) require the person not to work (The use of this power should be restricted to circumstances outlined in s. 11.2.1: 'Work diary and fatigue offences' of this Manual);

- (ii) s. 49: 'Power to require documents to be produced' of the TO(RUM)A require a person to produce for inspection a document issued or required to be kept under a transport Act or corresponding law; and
- (iii) s. 80: 'Breath and saliva tests, and analysis and laboratory tests' of the TO(RUM)A require a person to supply a specimen of breath, saliva, blood or urine for analysis,

subject to the limitations and requirements attached to those powers.

1.3.3 Powers of entry

Section 19: 'General power to enter to make inquiries, investigations or serve documents' of the PPRA provides the general power for officers to enter places to make inquiries or investigate matters.

Additionally, there may be occasions when the powers of entry under s. 21: 'General power to enter to arrest or detain someone or to enforce warrant' of the PPRA may be used to provide entry to a place to arrest or detain a person (see s. 1.3.4: 'Powers of arrest' of this chapter and s. 2.8: 'Entry, Search and Seizure' of the OPM).

Section 57: 'Power of entry for ss 54-56' of the PPRA provides that an officer may enter and stay in a place for the time reasonably necessary to give effect to ss. 54: 'Power of inquiry into road use contraventions', 55: 'Power to require information about identity of drivers of vehicles etc.' or 56: 'Additional power of inquiry for relevant vehicle incidents' of the PPRA.

ORDER

Officers who enter any place to make an inquiry, investigation or serve a document under the provisions of any Act are to comply with Chapter 20: 'Other standard safeguards' of the PPRA and record any 'enforcement acts' in the relevant QPRIME occurrence.

Officers intending to enter to arrest or detain a person under s. 21 of the PPRA are to, if reasonably practicable, seek permission from and give the occupier reasonable opportunity to allow the entry before using force that may cause damage to a place to gain entry to the place (see s. 635 of the PPRA and s. 2.8: 'Entry, Search and Seizure' of the OPM).

Officers are only to use force to enter a place under the authority of s. 57 of the PPRA if the entry is authorised by an officer of at least the rank of inspector.

1.3.4 Powers of arrest

The powers of arrest applicable to traffic related offences are contained in s. 365: 'Arrest without warrant' of the PPRA.

Officers should be conversant with their powers and responsibilities relating to the arrest, and discontinuing the arrest, of a person under ss. 365, 376, 377 and 380 of the PPRA.

Officers are to consider alternatives for dealing with offences committed by a child (see s. 5.2.2: 'Alternatives for dealing with child offenders' of the OPM).

Officers are to comply with the provisions of s. 3.5.9: 'Justification for arrest' and s. 3.5.10: 'Notification of arrest to person arrested' of the OPM.

When an offender is arrested for an offence against the TO(RUM)A or associated regulations, proceedings for any other offence arising out of the same incident or circumstances should be instituted at or about the same time (see s. 3.5.2: 'Responsibility to prefer all charges' of the OPM).

1.3.5 Police officer is an authorised officer

Officers are authorised officers under the following Acts:

- (i) s. 20(1): 'Appointment of authorised officers' of the TO(RUM)A, subject to the limitations of s. 20(4); and
- (ii) s. 111(1): 'Appointment of authorised persons generally' of the *Transport Operations (Passenger Transport) Act*.

Prior to exercising the powers of an authorised officer, officers are to ensure they are approved to exercise the powers under s. 14: 'Declaration of police officers as public officials' of the PPRA. Instruments of approval made under the PPRA are published in the Delegations and Authorities Library on the Service intranet.

1.4 Officers in charge to ensure attention to traffic law enforcement

OICs of stations and establishments should ensure that in appropriate cases traffic enforcement activities including ITAS taskings are included in operational shift plans for officers under their control (see s. 1.4.5: 'Responsibilities of officers in charge of stations or establishments' of the OPM).

1.5 Role of police in reducing number of traffic crashes

All officers, whether detailed for road policing duty or otherwise, should do everything within their power to reduce the cost to the community of traffic crashes. To this end, each officer should ensure that the traffic laws are properly observed, and be constantly on the alert to detect and take appropriate action against persons committing breaches of the TO(RUM)A and various regulations made under that Act.

Additionally, officers can also assist with reducing traffic crashes by ensuring relevant ITAS taskings are attended to whenever practicable.

Life endangering offences

Particular attention should be given to life endangering offences (see Appendix 1.1: 'Life endangering offences' of this chapter) to reduce the risk of traffic crashes occurring. Officers should commence enforcement action when a life endangering offence is detected.

1.6 Signals for traffic regulation by police

Section 59: 'Power for regulating vehicular and pedestrian traffic' of the PPRA provides the authority for officers to give to a driver of a vehicle or animal or to a pedestrian on or about to enter a road, or to a passenger in a vehicle, any direction, signal or order the officer considers necessary for the safe and effective regulation of traffic on the road.

Section 17: 'Directing vehicular and pedestrian traffic' of the Police Powers and Responsibilities Regulation describes how an officer may give a direction to the driver of a vehicle or to a pedestrian under s. 59 of the PPRA. Schedule 7: 'Traffic signals' of the Police Powers and Responsibilities Regulation illustrates ways that an officer may give a direction to a driver or pedestrian by hand signals.

Officers performing duty which involves regulating traffic should:

- (i) give definite signals, directions, or orders to drivers in such a way as to eliminate any misunderstanding;
- (ii) as far as practicable, stand in the centre of any intersection and see that vehicles, etc., proceed in their turn in a proper manner at a reasonable rate of speed;
- (iii) ensure that traffic control light signals at any intersection where it is necessary for police to regulate traffic are turned off or are turned to flashing amber; and
- (iv) ensure that any signals, directions or orders given to drivers do not create a dangerous situation for the officer or other road users.

1.7 General prosecution policy for traffic related matters

All offences against the TO(RUM)A and the various regulations made under that Act may be prosecuted summarily under the Justices Act, on the complaint of any police officer or of any other person authorised by the Minister.

Proceedings for all offences under the TO(RUM)A and the various regulations made under that Act against a person may be commenced by way of notice to appear, complaint and summons or, where justified, arrest (see s. 3.5: 'The institution of proceedings' of the OPM).

In accordance with s. 56(2)(a) to (c): 'Service of summonses' of the *Justices Act*, where a prosecution of a transport Act offence is commenced, a notice to appear may be sent by registered mail to the defendant's address as recorded on the:

- (i) defendant's driver licence; or
- (ii) involved vehicle's certificate of registration.

Officers are to consider alternatives to proceedings against a child (see s. 5.2.2: 'Alternatives for dealing with child offenders' of the OPM).

The provisions of s. 3.4: 'General prosecution policy' of the OPM applies in respect to offences under the TO(RUM)A and other traffic related legislation contained in this Manual.

ORDER

Prosecutions should only be commenced by complaint and summons where the use of a notice to appear would not be effective.

Court brief required for traffic prosecutions

Officers commencing or continuing a proceeding against an offender by way of notice to appear, complaint and summons or, where justified, arrest for traffic offences are to ensure that a court brief (QP9) is prepared (see s. 3.7.2: 'Documentation at first appearance' of the OPM).

1.8 Police officer to supply officer's particulars

Members of the community, upon request, will be provided with particulars of officers who attend to complaints or otherwise have dealings with them.

Particulars include supplying an officer's station, name, rank, and registered number.

ORDER

Where appropriate, officers are to comply with s. 637: 'Supplying police officer's details' of the PPRA.

1.9 Traffic enforcement duty in uniform

Unless special circumstances apply, all traffic enforcement duty, including speed detection operations and random breath testing, should be performed by officers in uniform. The existence of special circumstances which justify the wearing of plain clothes, e.g. special targeting of particular groups or classes of offenders is to be determined by a commissioned officer.

Officers performing enforcement duty including the stopping or diverting of vehicles and pedestrians at a road block or static or mobile interception sites are to establish a safe method for performing interceptions of vehicular and pedestrian traffic (see ss. 3.2.1: 'Establishing a static interception site', 3.2.6: 'Responsibilities of officers at a static interception site' and 3.2.7: 'Combined operations' of this Manual).

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Appendix 1.1 Life endangering offences

(s. 1.5)

Transport Operations (Road Use Management) Act

Driving of vehicles and animals

Section	Short Title
79	Driving etc. whilst under influence of liquor or drugs or with prescribed concentration of alcohol in blood or breath
83	Careless driving of motor vehicles
84	Dangerous driving of vehicles (other than motor vehicles) etc.
85	Racing and speed trials on roads

Transport Operations (Road Use Management–Road Rules) Regulation

Speed limits

Section	Short Title
20+21	Exceed Speed Limit in speed zone
20+22	Exceed Speed Limit in speed limited area
20+23	Exceed Speed Limit in school zone
20+24	Exceed Speed Limit in shared zone
20+24A(2)(a)	Tractor with sugar cane trailer exceed 50 km/h
20+24A(2)(b)	Oversize vehicle requiring escort exceed 80 km/h
20+24A(2)(c)	Road train exceed 90 km/h
20+24A(2)(d)	Bus with GVM > 5 t or vehicle with GVM > 12 t exceed 100 km/h
20+25(2)(a)	Exceed 50 km/h (lower default speed limit BUA)
20+25(2)(b)	Exceed 100 km/h (default speed limit)

U-turns

Section	Short Title
38	Fail to give way when making U-turns

Traffic lights and twin red lights

Section	Short Title
56(1)	Fail to stop at red traffic light
56(2)	Fail to stop at red traffic arrow
57(1)	Fail to stop at yellow traffic light

Giving way

Section	Short Title
68(2)	Fail to stop at 'STOP' sign at a place
68(3)	Fail to give way to vehicle at 'stop' sign at a place
68(3)	Fail to give way to pedestrian at 'stop' sign at a place
69(2)	Fail to give way to vehicle at 'GIVE WAY' sign at intersection not roundabout
69(2A)	Fail to give way when turning left using slip lane to vehicle on a road or turning right that driver is entering or vehicle or pedestrian on slip lane
69(3)	Fail to give way to pedestrian when turning at 'GIVE WAY' sign at intersection not roundabout
69A	Fail to give way to driver if two or more drivers face a mixture of various signs or lines at an intersection
70	Fail to give way at 'GIVE WAY' sign on narrow road
70	Fail to give way at 'GIVE WAY' sign on bridge
71(1)	Fail to give way at 'GIVE WAY' sign at a place

Section	Short Title
72(1)	Fail to give way at an intersection (not T-intersection or roundabout) as required
73(1)	Fail to give way at T-intersections as required
79(1)	Fail to give way to police/emergency vehicle
79A(1)	Fail to give way to oversize vehicle under escort
80(2)(a)	Fail to stop at a children's crossing when STOP sign displayed
80(2)(b)	Fail to stop at children's crossing while pedestrian on crossing
80(3)	Proceed contrary to 'STOP' sign at children's crossing
80(4)	Proceed while pedestrian is on or entering children's crossing
81(2)	Fail to give way to pedestrian on pedestrian crossing
82	Overtake vehicle stopped at a children's crossing/pedestrian crossing

Traffic signs and road markings

Section	Short Title
101(1)	Fail to stop at hand-held 'STOP' banner
101(2)	Proceed contrary to hand-held 'STOP' banner

Roundabouts

Section	Short Title
114(1)(a)	Fail to give way to vehicle when entering roundabout

Level crossings

Section	Short Title
121(a)	Fail to stop at 'STOP' sign at level crossing
123(a)	Enter level crossing while warning lights or bells operating
123(d)	Enter level crossing while train approaching crossing and collision likely

Keeping left, overtaking and other driving rules

Section	Short Title
129	Fail to keep left side of road (not multi-lane road)
132(1)	Fail to keep left of the centre
132(2)	Fail to keep left of centre dividing line
133(3)	Fail to keep left of double continuous dividing lines
138(1)	Cross continuous line (s) beside painted island
140	Overtake when not safe to do so
152(1)+(2)	Disobey overhead lane control – red diagonal cross
152(1)+(3)	Disobey overhead lane control – flashing red diagonal cross

Rules for pedestrians

Section	Short Title
238(1)	Pedestrian fail to use footpath
238(2)(a)	Pedestrian fail to keep to side of road
238(2)(b)	Pedestrian on road travelling not more than 2 abreast

Rules for persons travelling in or on vehicles

Section	Short Title
264(1)	Driver fail to wear seat belt
265(1)+(2)	Passenger 16 years old or older occupy position without seat belt when one available
265(1)+(3)	Passenger 16 years or older fail to wear seat belt
265(1)+(4)	Passenger 16 years old or older if in front seat when no seat belt fitted and other seating available

Section	Short Title
266(1)+(2)	Drive motor vehicle while < 1 year old unrestrained
266(1)+(3)	Drive motor vehicle while passenger 1 < 16 years old unrestrained
266(1)+(4)	Drive taxi not fitted with child restraint whilst passenger < 1 year old in front seat
270(1)(a)	Motor bike rider fail to wear helmet
270(1)(b)	Ride motor bike with passenger not wearing helmet
270(2)	Passenger on motor bike fail to wear helmet

Transport Operations (Road Use Management–Driver Licensing) Regulation

Section	Short Title
228(2)	Driver holding class C learner licence (under 25 years) granted or renewed after 30 June 2007 use mobile phone when vehicle moving or stationary not parked
228(2)	Driver holding class C P1 provisional licence (under 25 years) use mobile phone when vehicle moving or stationary not parked
228(2)	Driver holding class C P1 probationary licence (young driver disq. offence) use mobile phone when vehicle moving or stationary not parked
228(2)	Driver holding class C P1 restricted licence (young driver disq. offence) use mobile phone when vehicle moving or stationary not parked
229(2)	Passenger not to use mobile phone in loudspeaker mode in a car (moving or stationary not parked) driven by person holding class C learner licence (under 25 years)
229(2)	Passenger not to use mobile phone in loudspeaker mode in a car (moving or stationary not parked) driven by person holding class P1 provisional licence (under 25 years)
229(2)	Passenger not to use mobile phone in loudspeaker mode in a car (moving or stationary not parked) driven by person holding class P1 probationary licence (young driver disq. offence)
229(2)	Passenger not to use mobile phone in loudspeaker mode in a car (moving or stationary not parked) driven by person holding class P1 restricted licence (young driver disq. offence)
230(2)	Driver holding P1 provisional licence (under 25 years) drive high powered vehicle without current certificate of exemption or non-compliance with certificate
230(2)	Driver holding P2 provisional licence (under 25 years) drive high powered vehicle without current certificate of exemption or non-compliance with certificate
230(2)	Driver holding P1 probationary licence (young driver disq. offence) drive high powered vehicle without current certificate of exemption or non-compliance with certificate
230(2)	Driver holding P2 probationary licence (young driver disq. offence) drive high powered vehicle without current certificate of exemption or non-compliance with certificate
230(2)	Driver holding P1 restricted licence (young driver disq. offence) drive high powered vehicle without current certificate of exemption or non-compliance with certificate
230(2)	Driver holding P2 restricted licence (young driver disq. offence) drive high powered vehicle without current certificate of exemption or non-compliance with certificate
243	Person who satisfies s. 72(1) unless exempted by s. 72(2) drive a motor vehicle between 11pm and 5am for 1 year without current certificate of exemption or non-compliance with certificate
248(2)	Driver holding class C P1 provisional licence (under 25 years) between 11pm and 5am carry more than 1 passenger under 21 not person who is in their immediate family
248(2)	Driver holding class C P1 probationary licence between 11pm and 5am carry more than 1 passenger under 21 not person who is in their immediate family (young driver disq. offence)

Section	Short Title
248(2)	Driver holding class C P1 restricted licence between 11pm and 5am carry more than 1 passenger under 21 not person who is in their immediate family (young driver disq. offence)

Transport Operations (Road Use Management–Vehicle Standards and Safety) Regulation

Vehicle standards

Section	Short Title
8(1)	Drive or park or permit drive/park a vehicle not fitted with equipment required by the vehicle standards
8(1)	Drive or park or permit drive/park a vehicle if equipment does not comply with the vehicle standards
8(1)	Drive or park or permit drive/park a vehicle if not constructed or loaded to comply with the vehicle standards
8(1)	Drive or park or permit drive/park a vehicle if its parts or equipment are not in safe condition
8(1)	Drive or park or permit drive/park a vehicle fitted with optional equipment which does not comply with the vehicle standards
8(1)	Drive or park or permit drive/park a vehicle with stationary noise level of less than 10 dB(A) of the vehicle standards
8(1)	Drive or park or permit drive/park a vehicle with stationary noise level 10 or more dB(A) of the vehicle standards
8(1)	Drive or park or permit drive/park a defective vehicle

Criminal Code

Section	Short Title
328A	Dangerous operation of a vehicle