

AUSTRALIAN CAPITAL TERRITORY

No. 32 of 1979

An Ordinance to amend the *Motor Traffic Ordinance* 1936

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Ordinance under the *Seat of Government (Administration) Act* 1910.

Dated this twenty-fifth day of October 1979.

ZELMAN COWEN
Governor-General

By His Excellency's Command,

R. ELLICOTT
Minister of State for the Capital Territory

MOTOR TRAFFIC (AMENDMENT) ORDINANCE 1979

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| Short title | 1. This Ordinance may be cited as the <i>Motor Traffic (Amendment) Ordinance</i> 1979. ¹ |
| Principal Ordinance | 2. In this Ordinance, "Principal Ordinance" means the <i>Motor Traffic Ordinance</i> 1936. ² |
| Commence-
ment | 3. This Ordinance shall come into operation on such date as is fixed by the Minister of State for the Capital Territory by notice in the <i>Gazette</i> . |
| Interpret-
ation | 4. Section 4 of the Principal Ordinance is amended by inserting after the definition of "approved" in sub-section (1) the following definitions:

<div style="padding-left: 20px;">" 'Australian Standard E35, Part I—1970' means the standard published by the Standards Association of Australia under the number 'E35, Part I—1970', being that standard as amended before 1 January 1978;</div> <div style="padding-left: 20px;">'Australian Standard E35, Part II—1970' means the standard published by the Standards Association of Australia under the number 'E35, Part II—1970', being that standard as amended before 1 January 1978;".</div> |

5. Part XA of the Principal Ordinance is repealed and the following Part substituted:

“PART XA—SEAT BELTS

“164A. (1) In this Part—

Interpret-
ation

‘Australian Standard 1754—1975’ means the standard published by the Standards Association of Australia under the number ‘1754—1975’, being that standard as amended before 1 January 1978;

‘child’ means a person who has attained the age of 1 year but has not attained the age of 8 years;

‘child restraint’ means a device for restraining a child travelling in a motor vehicle in the event of the motor vehicle being involved in an accident;

‘medical practitioner’ means a person registered under the *Medical Practitioners Registration Ordinance 1930*;

‘passenger’, in relation to a vehicle, does not include the driver of the vehicle;

‘prescribed vehicle’ means a motor vehicle other than—

- (a) a motor cycle;
- (b) a motor omnibus; or
- (c) a motor vehicle the mass of which, together with the mass of the maximum load that the vehicle is designed to carry, exceeds 4.50 tonnes;

‘young person’ means a person who has attained the age of 8 years but has not attained the age of 14 years.

“(2) A reference in this Part to a seat belt shall be read as a reference to a seat belt of any kind, whether or not it complies with a design rule referred to in Part II of the Second Schedule.

“164B. Subject to this Part, if, at any time while a prescribed vehicle the driving position of which is fitted with a seat belt is being driven forward, or has its engine running, on a public street, the person occupying the driving position of the vehicle does not have that seat belt securely fastened around him or, having it fastened around him, does not have it appropriately adjusted, that person is guilty of an offence punishable, on conviction, by a fine not exceeding \$20.

Driver of
prescribed
vehicle

“164C. (1) This section applies to a passenger who has attained the age of 14 years.

Adult
passengers in
prescribed
vehicles

“(2) Subject to this Part, if, at any time while a prescribed vehicle is being driven, or has its engine running, on a public street—

- (a) a passenger to whom this section applies is occupying a position in the vehicle, being a position that is equipped with a seat belt, and that seat belt is not securely fastened around him or, being fastened around him, is not appropriately adjusted; or

- (b) a passenger to whom this section applies is occupying a position in the vehicle, being a position that—

- (i) is not equipped with a seat belt; and
 - (ii) is abreast of another position in the vehicle that is so equipped and is not occupied,

that passenger is guilty of an offence punishable, on conviction, by a fine not exceeding \$20.

Children and
young
persons in
prescribed
vehicles

“164D. (1) Subject to this Part, if, at any time while a prescribed vehicle is being driven, or has its engine running, on a public street—

- (a) a young person is occupying a position in the vehicle, being a position that is equipped with a seat belt suitable for use by that young person, and that seat belt is not securely fastened around him or, being fastened around him, is not appropriately adjusted; or
- (b) a young person is occupying a position in the vehicle, being a position that—
 - (i) is not equipped with a seat belt suitable for use by that person; and
 - (ii) is abreast of another position in the vehicle that is so equipped and is not occupied,

the driver of the vehicle is guilty of an offence punishable, on conviction, by a fine not exceeding \$20.

“(2) Subject to this Part, if, at any time while a prescribed vehicle is being driven, or has its engine running, on a public street—

- (a) a child is occupying a position in the vehicle, being a position that is equipped with a seat belt or child restraint suitable for use by that child, and—
 - (i) in the case of a position fitted with a seat belt—that seat belt is not securely fastened around the child or, being fastened around him, is not appropriately adjusted; or
 - (ii) in the case of a position fitted with a child restraint—the child is not restrained by that child restraint; or
- (b) a child is occupying a position in the vehicle, being a position that—
 - (i) is not equipped with a seat belt or child restraint suitable for use by that child; and
 - (ii) is abreast of another position in the vehicle that is equipped with a seat belt or child restraint suitable for use by that child and is not occupied.

the driver of the vehicle is guilty of an offence punishable, on conviction, by a fine not exceeding \$20.

“(3) Subject to this Part, if, at any time while a prescribed vehicle is being driven, or has its engine running, on a public street—

- (a) a child is occupying a position in the vehicle abreast of the driving position of the vehicle, the first-mentioned position being a position that is not equipped with a seat belt or child restraint suitable for use by that child; and
- (b) there is an unoccupied position to the rear of that driving position or to the rear of the position occupied by the child,

the driver of the vehicle is guilty of an offence punishable, on conviction, by a fine not exceeding \$20.

“(4) For the purposes of this section, a child restraint is not suitable for use by a particular child unless—

- (a) the child restraint is marked—
 - (i) with the letters and number ‘AS 1754’; or
 - (ii) with the certification trade mark registered under the *Trade Marks Act* 1955 in respect of child restraints and Australian Standard 1754—1975; and
- (b) the child restraint is, within the meaning of Australian Standard 1754—1975, suitable for use by a child of the age, size and mass of that child.

“(5) For the purposes of this section, a seat belt fitted in a motor vehicle in accordance with the requirements of Part II of the Second Schedule shall be taken to be suitable for use by a child.

“164E. (1) It is a defence to a prosecution for an offence against section 164B that— Defences

- (a) the Registrar has certified in writing that it is impracticable, by reason of the physical characteristics of the defendant, for the defendant to drive with safety a prescribed vehicle, or a prescribed vehicle of a kind specified in the certificate, if he is wearing a seat belt;
- (b) where the certificate is given in relation to prescribed vehicles of the kind or kinds specified in the certificate—the vehicle in which the offence is alleged to have been committed is a prescribed vehicle of a kind specified in the certificate; and
- (c) at the time at which the offence is alleged to have been committed, that certificate had not been revoked or, if that certificate was expressed to have effect for a specified period, that period had not expired.

“(2) It is a defence to a prosecution for an offence against section 164B that, at the time at which the offence is alleged to have been committed, the vehicle in which the offence is alleged to have been committed was stationary and about to be driven backwards or was stationary immediately after having been driven backwards.

“(3) It is a defence to a prosecution for an offence against section 164B or 164C that—

- (a) a medical practitioner had issued to the defendant a certificate in writing that, in the opinion of the medical practitioner, it is undesirable—

- (i) on medical grounds; or

- (ii) by reason of the physical characteristics of the defendant,

for the defendant to wear a seat belt, being a certificate that was effective at the time at which the offence is alleged to have been committed;

- (b) if at the time at which the offence is alleged to have been committed, the vehicle in which the offence is alleged to have been committed had been in a State or another Territory the defendant, by reason of being the holder of a certificate or other document issued under or for the purposes of a law of that State or Territory that corresponds generally with the provisions of this Part, would not have been guilty of an offence against that law;
- (c) at the time at which the offence is alleged to have been committed, the vehicle in which the offence is alleged to have been committed was stationary and its engine was running for a purpose other than the purpose of putting the vehicle into motion;
- (d) at the time at which the offence is alleged to have been committed, the vehicle in which the offence is alleged to have been committed, being a vehicle that was, at that time, being used by the defendant in the course of work that required the defendant to alight from the vehicle at frequent intervals, was being driven at a speed not exceeding 20 kilometres per hour or was stationary; or
- (e) the act or omission of the defendant alleged to constitute the offence was, in the circumstances, not unreasonable.

“(4) A certificate is effective for the purpose of paragraph (3) (a)—

- (a) if the certificate is expressed to have effect for a period specified in the certificate—until the expiration of that period; and
- (b) in any other case—until the certificate is revoked.

“(5) It is a defence to a prosecution for an offence against section 164C that, at the time at which the offence is alleged to have been committed, the defendant had attained the age of 71 years.

“(6) Sub-section (3) applies to, and in relation to, a prosecution for an offence against sub-section 164D (1) or (2) as if—

- (a) a reference to the defendant were a reference to the child or young person in relation to whom the offence is alleged to have been committed; and

- (b) in the case of a prosecution for an offence against sub-section 164D (2), a reference to a seat belt were a reference to a seat belt or child restraint.

“(7) It is a defence to a prosecution for an offence against sub-section 164D (1) or (2) that the defendant had taken reasonable steps to avoid contravention of section 164D in relation to the child or young person to whom the alleged offence relates.

“164F. Notwithstanding any other law of the Territory, in civil proceedings in respect of the death of, or bodily injury to, a child or young person arising out of the use of a motor vehicle, damages recoverable by the plaintiff shall not be reduced by reason only that an act or omission of the driver of the motor vehicle constituted an offence against section 164D.

Offence against this Part not to affect damages in respect of death of, or injury to, child

“164G. (1) In this section, ‘Tribunal’ means the Administrative Appeals Tribunal established by the *Administrative Appeals Tribunal Act 1975*.

Appeal

“(2) Application may be made to the Tribunal for a review of a decision of the Registrar—

- (a) refusing to give a certificate for the purpose of paragraph 164E (1) (a); or
- (b) revoking a certificate given for the purpose of that paragraph.”.

6. The Second Schedule to the Principal Ordinance is amended by inserting the following items in Part II after item 4:

Amendment of Second Schedule, Part II

“4A Motor vehicle manufactured on or after 1 January 1965 and before 1 January 1970, being a vehicle that is a prescribed vehicle within the meaning of Part XA

The equipping of the seating provided for the driver of the motor vehicle with a seat belt that—

- (a) being a seat belt not fitted with a retractor—complies with the requirements of Australian Standard E35, Part I—1970;
- (b) being a seat belt fitted with a retractor—complies with the requirements of Australian Standard E35, Part II—1970;
- (c) where the seating provided for the driver of the motor vehicle is adjacent to a side wall of the vehicle—consists of lap and chest straps; and
- (d) is securely attached to anchorage points that are themselves securely fixed to the body of the vehicle.

4B Motor vehicle referred to in item 4A, being a vehicle in which seating is provided for a passenger or passengers abreast of the seating referred to in item 4A

The equipping of the seating so provided with at least one seat belt that, if the seating were the seating referred to in item 4A, would comply with the conditions specified in that item.”.

NOTES

1. Notified in the *Commonwealth of Australia Gazette* on 31 October 1979.
2. Ordinance No. 45, 1936 as amended by Nos. 25 (as amended by No. 35, 1938) and 41, 1938; No. 16, 1941; No. 14, 1942; Nos. 2 and 13, 1943; No. 3, 1945; Nos. 6 and 13, 1947; No. 7, 1950; No. 17, 1951; Nos. 1 and 7, 1955; No. 6, 1956; No. 19, 1957; Nos. 10 and 15, 1958; Nos. 7 and 21, 1959; No. 11, 1960; Nos. 16 and 17, 1962; No. 21, 1963; No. 8, 1964; Nos. 9 and 13, 1965; No. 19, 1966 (as amended by No. 36, 1967); No. 2, 1968; Nos. 27 and 29, 1969; No. 27, 1970; Nos. 13, 17, 37 and 39, 1971; Nos. 3 and 10, 1972; Nos. 1, 32, 38, 41, 42 and 57, 1973; Nos. 4, 12, 23, 37, 48 and 49, 1974; Nos. 3, 16, 23, 31, 52 and 54, 1976; Nos. 16, 23, 30, 37, 51 and 59, 1977; and Nos. 2, 31 and 46, 1978.