



AUSTRALIAN CAPITAL TERRITORY

# **Motor Omnibus Services (Amendment) Act 1994**

**No. 93 of 1994**

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AUSTRALIAN CAPITAL TERRITORY

## **Motor Omnibus Services (Amendment) Act 1994**

No. 93 of 1994

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### **An Act to amend the *Motor Omnibus Services Act 1955***

*[Notified in ACT Gazette S280: 15 December 1994]*

The Legislative Assembly for the Australian Capital Territory enacts as follows:

#### **Short title**

1. This Act may be cited as the *Motor Omnibus Services (Amendment) Act 1994*.

#### **Commencement**

2. (1) Sections 1, 2 and 3 commence on the day on which this Act is notified in the *Gazette*.

(2) The remaining provisions commence on a day, or respective days, fixed by the Minister by notice in the *Gazette*.

(3) If a provision referred to in subsection (2) has not commenced before the end of the period of 6 months commencing on the day on which this Act is notified in the *Gazette*, that provision, by force of this subsection, commences on the first day after the end of that period.

#### **Principal Act**

3. In this Act, “Principal Act” means the *Motor Omnibus Services Act 1955*.<sup>1</sup>

**Interpretation****4.** Section 2 of the Principal Act is amended—

- (a) by omitting from the definition of “bus stop sign” in subsection (1) “authorized” and substituting “authorised”;
- (b) by omitting from the definition of “inspector” in subsection (1) “section 5” and substituting “subsection 5 (1)”;
- (c) by inserting in subsection (1) the following definitions:

“ ‘administrative charge’ means—

- (a) the amount determined by the Minister under section 23; or
- (b) if the Minister has not determined such an amount—\$25;

‘authorised officer’ means an authorised officer under section 5;

‘child’ means a person under the age of 18;

‘concession card’ means a concession card issued or approved by the Minister under subsection 4BA (1);

‘Court’ means the Magistrates Court;

‘final infringement notice’ means a notice under subsection 13 (1);

‘infringement notice’ means a notice under subsection 12 (1);

‘inspector’ means an inspector under section 5;

‘pensioner concession card’, in relation to a person, means a pensioner concession card issued to the person by the Commonwealth Department of Social Security;

‘ticket validator’ means equipment installed on an omnibus with the authority of the Minister for the purpose of encoding or printing information on tickets and scanning information previously encoded on tickets;

‘to validate’ means to insert a ticket into a ticket validator so that it may be encoded, printed or scanned;

‘zone sign’ means a sign the painting or marking of which has been authorised under paragraph 4A (1) (a).”; and

- (d) by omitting from subsection (2) “or book of tickets”.

**Motor omnibus services****5.** Section 3 of the Principal Act is amended—

- (a) by omitting from subsection (1) “Australian Capital”; and
- (b) by inserting in subsection (1) “or she” after “he”.

### **Zone signs and stopping places**

6. Section 4A of the Principal Act is amended—

- (a) by omitting from paragraph (1) (a) “authorize” and “Section” and substituting “authorise” and “Zone”, respectively;
- (b) by omitting from paragraph (1) (b) “authorize” and substituting “authorise”;
- (c) by omitting subsections (2), (3) and (4); and
- (d) by omitting from subsections (6) and (7) “section” (wherever occurring) and substituting “zone”.

### **Substitution**

7. Section 4C of the Principal Act is repealed and the following sections are substituted:

### **Concession cards**

“4BA. (1) The Minister may—

- (a) issue classes of concession cards; or
- (b) approve classes of cards or documents, entitling a person to whom a card or document in that class is issued otherwise than under paragraph (a) to particular concessions or benefits;

for use in connection with motor omnibus services.

“(2) Where the Minister issues or approves classes of cards or documents under subsection (1), he or she shall, by notice published in the *Gazette*—

- (a) notify the classes of cards or documents issued or approved; and
- (b) determine the nature of the concession for travel on a motor omnibus to which the holder of a card or document in a class is entitled.

“(3) A person who holds a concession card of a particular class is entitled to travel on a motor omnibus service at a concessional fare determined under paragraph (2) (b) in relation to that concession card.

“(4) A concession card issued to a person under paragraph (1) (a) is not transferable.

### **Suspension of concession cards**

“4BB. (1) If a person to whom a concession card is issued under paragraph 4BA (1) (a) fails to pay a prescribed penalty and administrative charge pursuant to a final infringement notice, the Chief Executive may, by notice in writing given to that person suspend his or her concession card until a day specified in the notice (being a day not later than 3 months after the date of the notice).

“(2) The Chief Executive shall not issue a concession card to a person while his or her concession card is suspended.

“(3) A person who, without reasonable excuse, uses a concession card during any period for which it is suspended is guilty of an offence punishable, on conviction, by a fine not exceeding 5 penalty units.

### **Cancellation of suspension**

“4BC. The Chief Executive shall cancel a suspension under subsection 4BB (1) on payment by the person of all amounts payable under section 13, or on the institution of proceedings to prosecute the person.

### **Validation of tickets**

“4C. (1) A person who boards an omnibus for the purpose of undertaking a journey shall not, on boarding the omnibus, without reasonable excuse, refuse or fail—

- (a) to validate his or her ticket; or
- (b) where the person does not have a ticket—to purchase a ticket.

Penalty: 5 penalty units.

“(2) A person shall not for the purposes of avoiding payment of a fare for a journey, tender to be validated a ticket—

- (a) on a day—
  - (i) other than the day; or
  - (ii) that is not within the period;  
to which the ticket is applicable; or
- (b) not being a ticket purchased by the person.

Penalty: 5 penalty units.

“(3) A person shall not for the purpose of avoiding the payment of all or part of a fare for a journey tender to the driver or an inspector, a concession card that is not a concession card issued to him or her.

Penalty: 5 penalty units.

“(4) If a driver or inspector has reasonable grounds for believing that a person has tendered—

- (a) an invalid ticket; or
- (b) a concession card that was not issued under paragraph 4BA (1) (a) for his or her use;

the driver or inspector, as the case may be, may require that ticket or card to be given to the driver or inspector.

“(5) A person shall not, without reasonable excuse, fail to comply with a requirement under subregulation (4).

Penalty: 5 penalty units.

“(6) A driver or inspector to whom a ticket or concession card is given under subsection (4) shall give a receipt to the person from whom it is received.”.

### **Signs deemed to have been erected with authority**

8. Section 4D of the Principal Act is amended—

- (a) by omitting from paragraph (a) “Section” and “section” and substituting “Zone” and “zone”, respectively; and
- (b) by omitting from paragraph (c) “section” and substituting “zone”.

### **Refunds**

9. Section 4E of the Principal Act is amended by adding at the end the following subsections:

“(4) Where—

- (a) a person holds a ticket; and
- (b) that class of ticket ceases to be so issued;

the person is entitled to a refund from the Territory calculated in accordance with subsection (5).

“(5) Where a person is entitled to a refund under subsection (4), the amount of the refund shall—

- (a) in the case of a period ticket—bear the same proportion to the price paid for the ticket as the number of whole days since the day on which period tickets ceased to be so issued bears to the number of days in the period; and
- (b) in the case of a book of tickets—bear the same proportion to the price paid for the book of tickets as the number of tickets held by the person bears to the number of tickets in the book of tickets.”.

### **Substitution**

10. Section 5 of the Principal Act is repealed and the following sections are substituted:

### **Inspectors and authorised officers**

“5. (1) There shall be 1 or more inspectors and authorised officers for the purposes of this Act.

“(2) An inspector or an authorised officer shall perform such functions for the purposes of this Act as the Chief Executive directs.

“(3) The Chief Executive may create and maintain 1 or more offices in the Government Service the duties of which include performing the functions of an inspector or an authorised officer.

“(4) An inspector or an authorised officer shall be any public servant for the time being performing the duties of a Government Service office referred to in subsection (3).

### **Identity cards**

“6. (1) The Chief Executive shall issue to an inspector an identity card that specifies the inspector’s name and office, and on which appears a recent photograph of the inspector.

“(2) On ceasing to occupy, or act in, an office of inspector, a person shall not, without reasonable excuse, fail to return his or her identity card to the Chief Executive.

Penalty: 1 penalty unit.

“(3) A person, in relation to whom an inspector is exercising a power or performing a duty under this Act or the regulations, may request the inspector to display his or her identity card to the person.

“(4) Where a person makes a request in accordance with subsection (3), the inspector shall not, without reasonable excuse, fail to display his or her identity card to the person.

Penalty: 2 penalty units.

“(5) In subsections (1) and (2)—

‘office’ means an office referred to in subsection 5 (3).

### **Inspection of tickets**

“7. (1) The driver of an omnibus or an inspector may request a person travelling on an omnibus to produce to the driver or inspector for inspection—

- (a) a ticket validated or purchased in accordance with section 4C; and
- (b) any concession card issued to the person.

“(2) A person shall not, without reasonable excuse, refuse or fail to comply with a request under subsection (1).

Penalty: 2 penalty units.

### **Removal of certain offenders**

“8. (1) The driver of an omnibus, a police officer, an inspector, an authorised officer, and any person requested by the driver, police officer, inspector or authorised officer to assist him or her, may remove from an omnibus a person whom the driver, police officer, inspector or authorised officer has reasonable grounds for believing has committed an offence against this Act or the regulations.

“(2) Where a person is removed from an omnibus under this section after payment of his or her fare, the person is not entitled to a refund of that fare or a part of that fare.

**Demand for name and address**

“9. (1) Where the driver of an omnibus, an inspector or an authorised officer has reasonable grounds for believing that a person has committed an offence against this Act or the regulations, the driver, police officer, inspector or authorised officer may request the person to give to him or her the person’s full name and address.

“(2) A person shall not, without reasonable excuse, refuse or fail to comply with a request under subsection (1).

“(3) Any information given by a child to a driver, an inspector or an authorised officer, that is information other than the child’s name and address, is not admissible in evidence in a prosecution for an offence under this or any other Act.

**Power to apprehend and detain**

“10. (1) Where—

- (a) a person can not by the use of reasonable force be removed from an omnibus pursuant to section 8;
- (b) a person contravenes subsection 9 (2); or
- (c) the driver of an omnibus, an inspector or an authorised officer has reasonable grounds for believing that a person has provided a false name and address;

the driver, inspector or authorised officer may apprehend and detain the person until he or she can be delivered into the custody of a police officer to be dealt with according to law.

“(2) The driver of an omnibus, an inspector or an authorised officer shall not, for the purposes of delivering a person into the custody of a police officer in accordance with subsection (1), detain the person for more than 1 hour.

“(3) Subsection (1) does not authorise the apprehension and detention of a child unless another person who is the driver of an omnibus, an inspector or an authorised officer is present.

**Obstruction of drivers, inspectors or authorised officers**

“11. A person shall not, without reasonable excuse, hinder or obstruct a driver of an omnibus, an inspector or an authorised officer in the exercise of his or her powers or the performance of his or her duties under this Act or the regulations.

Penalty: 50 penalty units or imprisonment for 6 months, or both.

**Infringement notices**

“12. (1) Where a police officer or an inspector has reasonable grounds for believing that a person has committed a prescribed offence, the police officer or inspector may serve an infringement notice on the person.

“(2) A notice under this section shall be in a form approved by the Chief Executive and shall—

- (a) state the number of the police officer or inspector serving the notice;
- (b) specify—
  - (i) the full name, or surname and initials, and address of the person to whom it is directed;
  - (ii) the nature of the alleged offence;
  - (iii) the day on which and time at which the offence is alleged to have been committed;
  - (iv) specify the place at which, or the registration number of the omnibus in respect of which, the offence is alleged to have been committed; and
  - (v) specify the place at which, and the manner in which, the prescribed penalty may be paid; and
- (c) contain a notification in accordance with subsection (3).

“(3) A notice under this section shall contain notification to the person to whom it is directed—

- (a) that if the person pays the prescribed penalty for the alleged offence within 28 days after the date of the notice, or such further time as the Chief Executive allows, no further action will be taken in respect of the offence;
- (b) that if the person does not pay the prescribed penalty for the offence or take action of the kind referred to in paragraph (d), he or she shall incur liability for the administrative charge in addition to the prescribed penalty for the alleged offence and may, in default of a final infringement notice in relation to the offence, be prosecuted for the alleged offence;
- (c) in the case of a person to whom a concession card has been issued under paragraph 4BA (1) (a)—that if the prescribed penalty for the alleged offence and the administrative charge are not paid in accordance with the notice, the Chief Executive may, on a day specified in the notice, suspend the person’s concession card;
- (d) that if the person wishes to dispute liability for the alleged offence and seek the withdrawal of the infringement notice on the ground that—

- (i) the person did not commit the offence;
- (ii) the offence could not have been avoided by the reasonable efforts of the person; or
- (iii) it would be unreasonable in the circumstances to prosecute the person for the commission of the offence;

he or she must give the Chief Executive notice in writing to that effect within 28 days after the date of the notice; and

- (e) that, where a person holds a pensioner concession card, he or she may, within 28 days after the date of the notice—
  - (i) seek an extension of time within which to pay the prescribed penalty for the alleged offence; or
  - (ii) apply to the Chief Executive to make arrangements for the payment of the prescribed penalty by instalments.

#### **Final infringement notices**

“13. (1) Where a person in respect of whom an infringement notice has been served fails—

- (a) to pay the prescribed penalty for the alleged offence in accordance with the notice; or
- (b) to lodge a notice under section 16;

the Chief Executive may serve a final infringement notice on the person.

“(2) A final infringement notice shall contain a notification to the person to whom it is directed that—

- (a) the person has not paid the prescribed penalty for the alleged offence to which the notice relates;
- (b) if the prescribed penalty for the alleged offence and the administrative charge is paid within 14 days after the date of the final infringement notice, or such further time as the Chief Executive allows, no further action will be taken against the person in respect of the alleged offence;
- (c) where the person has been issued with a concession card—if the prescribed penalty for the alleged offence and the administrative charge are not paid in accordance with the notice, the Chief Executive may, on a date specified in the notice, suspend the person’s concession card;
- (d) if the person wishes to dispute liability for the alleged offence and seek the withdrawal of the infringement notice on the ground that—
  - (i) the person did not commit the offence;

- (ii) the offence could not have been avoided by the reasonable efforts of the person; or
  - (iii) it would be unreasonable in the circumstances to prosecute the person for the commission of the offence;
- he or she must give the Chief Executive notice in writing to that effect within 14 days after the date of the notice;
- (e) if the person fails to pay the prescribed penalty and the administrative charge, he or she may be prosecuted for the alleged offence; and
  - (f) that, where a person holds a pensioner concession card, the person may, within 14 days after the date of the notice—
    - (i) seek an extension of time within which to pay the prescribed penalty for the alleged offence; or
    - (ii) apply to the Chief Executive to make arrangements for the payment of the prescribed penalty by instalments.

### **Service of notices**

“14. (1) In subsection (2)—

‘notice’ means—

- (a) an infringement notice;
- (b) a final infringement notice; and
- (c) a notice under section 17.

“(2) A notice may be served on the person to whom it is directed—

- (a) by delivering the notice to the person personally;
- (b) by sending the notice to the person by post addressed to the person at his or her last known place of residence or business; or
- (c) by leaving the notice at the last known place of residence or business of the person with some other person who is apparently over the age of 16 years and apparently an occupant of or employed at that place.

“(3) Nothing in this section prevents the service of more than 1 infringement notice in respect of the same offence, but it is sufficient for the application of section 15 to a person on whom more than 1 such notice has been served for that person to pay the relevant prescribed penalty in accordance with any 1 of the notices so served on him or her.

“(4) Where an infringement notice is served on a child and the person serving the notice believes, on reasonable grounds, that the child is residing with a person who stands in *loco parentis* to that child, the person shall serve a copy of the notice on that person.

### **Discharge of liability**

“15. (1) This section applies where an infringement notice or a final infringement notice has been served on a person and, before the expiration of the period of 28 or 14 days, respectively, after the date of the relevant notice, or within such further time as the Chief Executive allows under section 17 or 18—

- (a) the prescribed penalty or the prescribed penalty and the administrative charge, as the case requires, is paid in accordance with the notice; or
- (b) the relevant notice is withdrawn.

“(2) Where this section applies—

- (a) any liability of a person in respect of the alleged offence to which the notice relates shall be discharged;
- (b) no further proceedings shall be taken in respect of the alleged offence to which the notice relates; and
- (c) the person the subject of the notice shall not be regarded as having been convicted of the alleged offence.

“(3) Where a cheque is tendered in payment of the prescribed penalty or the prescribed penalty and the administrative charge, as the case requires, in respect of an offence, payment of the penalty shall not be taken to have been made unless and until the cheque is honoured on presentation.

### **Disputing liability under infringement notice or final infringement notice**

“16. A person on whom an infringement notice or a final infringement notice is served may, by notice in writing given to the Chief Executive within 28 or 14 days, respectively, after the date of the notice, dispute liability for the offence and seek the withdrawal of the notice on the ground that—

- (a) the person did not commit the offence;
- (b) the offence could not have been avoided by the reasonable efforts of the person; or
- (c) it would be unreasonable in the circumstances to prosecute the person for the commission of the offence.

### **Withdrawal of infringement notices**

“17. (1) The Chief Executive may, on receipt of a notice under section 16, withdraw the infringement notice or final infringement notice to which the notice under that section relates.

“(2) If the Chief Executive withdraws an infringement notice or final infringement notice, the Chief Executive shall give the person written notice of the decision.

“(3) A notice under subsection (2) shall—

- (a) specify the infringement notice or final infringement notice that is withdrawn; and
- (b) contain a statement that no further proceedings will be taken against the person on whom the specified notice was served in respect of the alleged offence to which the specified notice relates.

“(4) If the Chief Executive does not withdraw an infringement notice or final infringement notice under subsection (1), the Chief Executive shall—

- (a) give the person written notice of the decision; and
- (b) without application, extend the period within which a prescribed penalty, or the prescribed penalty and the administrative charge, as the case requires, shall be paid, by a period of 28 or 14 days, respectively, commencing on a date to be specified in the notice.

“(5) If the Chief Executive does not give notice under subsection (2) or (4) within 60 days after the receipt of a notice under section 16, the infringement notice or final notice, as the case requires, is to be taken to have been withdrawn.

### **Extension of time**

“18. The Chief Executive may, on application in writing by a person on whom an infringement notice or a final infringement notice has been served being made before the expiration of 28 or 14 days, respectively, after the date of service of the notice, extend the period within which a prescribed penalty shall be paid in the case of a person who is the holder of a pensioner concession card by a period not exceeding 90 days.

### **Institution of prosecutions**

“19. (1) Nothing in section 12 or 13 shall be construed as—

- (a) affecting the liability of a person to be prosecuted in the Court in respect of an alleged offence in relation to which an infringement notice or final infringement notice has not been served;
- (b) subject to subsection (2), prejudicing or affecting the institution or prosecution of proceedings in respect of an alleged offence; or
- (c) subject to subsection (3), limiting the amount of the fine that may be imposed by the Court in respect of an offence.

“(2) Where an infringement notice has been served on a person in relation to an alleged offence, the Chief Executive shall not institute proceedings to prosecute the person for the offence—

- (a) until the expiration of the period of 14 days after the date of service of a final infringement notice in relation to that offence; or

- (b) if the period has been extended under paragraph 17 (4) (b) or section 18—until that extended period has expired.

“(3) In determining the amount of fine to be imposed by the Court, the Court shall not have regard to any alleged offence in respect of which an infringement notice has been issued—

- (a) if a final infringement notice has not been issued in respect of that offence;
- (b) where a final infringement notice has been issued in respect of that offence—
  - (i) if the period of 14 days after the date of service of a final infringement notice in relation to that offence has expired; or
  - (ii) if that period has been extended under paragraph 17 (4) (b) or section 18—if that extended period has expired; or
- (c) if, in respect of the notice, liability has been discharged under section 15.

### **Refund of payments**

“20. Where an infringement notice or final infringement notice is withdrawn under section 17, the Chief Executive shall refund to the person the amount of any prescribed penalty or administrative charge paid by the person in relation to the matter to which the notice under that section relates.

### **Evidence**

“21. (1) For the purposes of this Act a document that purports to have been signed by the Chief Executive shall be taken to have been so signed unless the contrary is proved.

“(2) Where an infringement notice or a final infringement notice is served under section 14 in respect of an alleged offence, a certificate signed by the Chief Executive stating that the prescribed penalty was not paid in accordance with the infringement notice or final infringement notice, as the case may be, within 28 or 14 days, as the case requires, after the date of the notice is evidence of the matters so stated.

“(3) In proceedings under this Act, a certificate signed by the Chief Executive stating any of the following matters is evidence of the matters so stated:

- (a) that an infringement notice or final infringement notice was served on a specified person on a specified date;
- (b) in proceedings in respect of an offence in respect of which an infringement notice or final infringement notice has been served, that—

- (i) further time was allowed under section 17 or 18 for the payment of the prescribed penalty in respect of the offence, or the prescribed penalty for the offence and the administrative charge, as the case requires; and
  - (ii) the prescribed penalty in respect of the offence, or the prescribed penalty for the offence and the administrative charge, as the case requires, was not paid in accordance with the notice or within such further time as allowed by the Chief Executive under section 17 or 18;
- (c) that an infringement notice or final infringement notice was not withdrawn.

“(4) In proceedings under this Act, a print out of information encoded on a ticket is evidence of the matters encoded on the ticket.

### **Defences**

“22. It is a defence to a prosecution under this Act or the regulations if the defendant proves that the alleged offence could not have been avoided by the reasonable efforts of the defendant.

### **Determined amount**

“23. (1) The Minister may, by notice in writing determine an amount as the administrative charge for the purposes of this Act.

“(2) A determination under subsection (1) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.”.

### **Regulations**

**11.** Section 7 of the Principal Act is amended—

- (a) by omitting from paragraph (b) “and conductors”; and
- (b) by omitting from paragraph (d) “\$100” and substituting “10 penalty units”.

### **Renumbering**

**12.** Section 7 of the Principal Act as amended is renumbered as section 24.

### **Transitional**

**13.** Notwithstanding the amendment effected by paragraph 6 (c) of this Act, the painting or marking of a sign to which subsection 4A (3) of the Principal Act as in force immediately before the commencement of this Act relates, is to continue to be taken to have been authorised by the Minister under paragraph 4A (1) (a) of the Principal Act as amended by this Act.

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**NOTE**

1. Reprinted as at 31 May 1991.

*[Presentation speech made in Assembly on 10 November 1994]*

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