

1991

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Urban Services)

**Motor Traffic (Amendment) Bill (No. 3)
1991**

A BILL

FOR

An Act to amend the *Motor Traffic Act 1936*

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

Short title

- 5 1. This Act may be cited as the *Motor Traffic (Amendment) Act (No. 3) 1991*.

Commencement

- 10 2. (1) Section 1 and this section 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*.

81142 Job No.: 1991/133 (T142/91)

(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.

5 Principal Act

3. In this Act, "Principal Act" means the *Motor Traffic Act 1936*.¹

Interpretation

4. Section 4 of the Principal Act is amended—

(a) by inserting in subsection (1) the following definition:

10 " 'traffic infringement' means an offence prescribed under section 180A."; and

(b) by inserting in the definition of "visiting motor vehicle" in subsection (1) "or 180F (1) (d) (iii) or (e) (ii)" after "or (f) (ii)".

Refusal of a licence to certain persons

15 5. Section 11 of the Principal Act is amended by inserting in paragraph (c) "or 180F" after "162E".

Special licences to drive

6. Section 13A is amended by inserting in subsection (1A) "or 180F" after "162E" and "or 180G respectively" after "162F".

20 Visiting motor drivers

7. Section 107 of the Principal Act is amended by inserting in subsection (2) "or 180F (1) (d) (iii) or (iv)" after "(iv)".

Insertion

25 8. After section 180 of the Principal Act the following heading is inserted:

"PART XIA—TRAFFIC INFRINGEMENTS".

Traffic infringement notices

9. Section 180A of the Principal Act is amended—

30 (a) by omitting paragraph (3) (d) and inserting the following paragraph:

"(d) contain a notification to the person on whom it is served that—

- 5
- (i) if the infringer pays the penalty for the alleged traffic infringement within 28 days after the date of the notice, or such further time as the Commissioner of Police allows, no further action will be taken in respect of the infringement;
- 10
- (ii) if the infringer does not pay the penalty for the traffic infringement or take action of the kind referred to in subparagraph (iii), he or she shall incur liability for the administrative charge in addition to the penalty for the traffic infringement;
- 15
- (iii) if the infringer wishes to dispute liability for the alleged traffic infringement he or she must give the Commissioner of Police notice in writing to that effect within 28 days after the date of the notice;
- (iv) if liability is disputed, the matter may be referred to the Court for determination; and
- 20
- (v) if liability is disputed and the Court finds against the infringer, he or she will be liable to pay the penalty, the administrative charge and Court costs;"; and
- (b) by omitting subsections (8), (9) and (10).

Insertion

25 **10.** After section 180A of the Principal Act, the following sections are inserted in Part XIA:

Final notice—non-payment of penalty

"180B. (1) Where—

- (a) a traffic infringement notice has been served under section 180A; and
- 30 (b) the person on whom it is served fails—
- (i) to pay the penalty for the traffic infringement; or
- (ii) to lodge a notice under subsection 180D (1);

35 the person is liable to pay to the Registrar, within 14 days after the date of service by the Registrar of a notice in accordance with this section, or within such further time (not exceeding 28 days) as the Registrar, whether before or after the expiration of that period, allows, the sum of the penalty for the traffic infringement and the administrative charge.

"(2) A notice under this section shall be in a form approved by the Minister.

"(3) A notice under this section shall contain a notification to the person on whom it is served that—

- 5 (a) the infringer has not paid the penalty for the alleged traffic infringement to which the notice relates;
- 10 (b) if the penalty for the alleged traffic infringement and the administrative charge is paid within 14 days after the date of the notice, or within such further period (not exceeding 28 days) as the Registrar allows, no further action will be taken against the infringer in respect of the alleged traffic infringement;
- (c) if the penalty for the alleged traffic infringement and the administrative charge are not paid in accordance with the notice, the Registrar will, on a date specified in the notice—
- 15 (i) cancel the infringer's driving licence or the registration of the motor vehicle in respect of which the alleged traffic infringement occurred; or
- 20 (ii) suspend the infringer's right to drive in the Territory, suspend the right to drive in the Territory the motor vehicle in respect of which the alleged traffic infringement occurred, or suspend the infringer's right to drive in the Territory and the right to drive the motor vehicle in the Territory;
- as the case requires;
- 25 (d) if the infringer wishes to dispute liability for the alleged traffic infringement he or she must give the Commissioner of Police notice in writing to that effect within 14 days after the date of notice;
- 30 (e) if liability is disputed, the matter may be referred to the Court for determination; and
- (f) if liability is disputed and the Court finds against the infringer, he or she will be liable to pay the penalty for the traffic infringement, the administrative charge and Court costs.

Discharge of liability

- 35 "180C. Where a traffic infringement notice under section 180A, or a notice under section 180B, has been served on a person, and, before the time for payment, or any extension of that time, expires, the penalty for the infringement, or the penalty and the administrative charge, as the case requires, is paid in accordance with the relevant notice—

- (a) any liability of a person in respect of the alleged traffic infringement shall be deemed to be discharged; and
- (b) no further proceedings shall be taken in respect of the infringement.

5 Disputing liability under traffic infringement notice or final notice

“180D. (1) A person on whom—

- (a) a traffic infringement notice under section 180A; or
- (b) a notice under section 180B;

10 is served may, by notice in writing lodged with the Commissioner of Police within 28 or 14 days (respectively) after the date of the notice, dispute liability for the alleged traffic infringement to which the notice relates.

“(2) A notice under subsection (1) shall set out the grounds on which the person relies.

15 Disputed notices—application to Court for declaration

“180E. (1) If a person to whom section 180D applies lodges a notice in accordance with that section, the Commissioner of Police may, within 60 days after the date of the relevant notice, apply to the Court for a declaration that the person is liable to pay the penalty for the traffic infringement or the
20 penalty for the traffic infringement and the administrative charge (as the case requires) to which the notice relates.

“(2) Where a person referred to in subsection (1)—

- (a) disputes liability; and
- (b) before the hearing of proceedings in respect of the alleged traffic
25 infringement commences wishes to pay the penalty for the traffic infringement;

the person is liable to pay to the Registrar the sum of—

- (c) the penalty for the traffic infringement;
- (d) the administrative charge; and
- 30 (e) the prescribed costs (if any) in commencing the proceedings, and disbursements (if any) incurred by the Commissioner of Police up to the date of the payment.

“(3) Where a person referred to in subsection (1) pays the sum referred to in subsection (2), the Commissioner of Police shall discontinue the
35 proceedings in respect of the traffic infringement.

- 5 “(4) If the Commissioner of Police does not make application to the Court under subsection (1) within the period referred to in that subsection, the Commissioner of Police shall notify the person referred to in that subsection that no further action will be taken in relation to that person in respect of the traffic infringement.

Cancellation of licences, registration etc.

“180F. (1) Where—

- 10 (a) a person on whom a notice under section 180B has been served—
- 15 (i) fails to pay to the Registrar the penalty for the traffic infringement and the administrative charge in accordance with the notice; or
- 20 (ii) fails to lodge a notice under subsection 180D (1) in accordance with the notice;
- (b) on application to the Court by the Commissioner of Police under subsection 180E (1), the Court makes the declaration sought and the person fails to comply with the declaration within 14 days after the date of the declaration or such further time as the Court allows; or
- (c) pursuant to an order under subsection 147A (2), 150A (1) or 150B (1) of the *Magistrates Court Act 1930*, a copy of the conviction or order has been forwarded to the Registrar;

the Registrar shall—

- 25 (d) if the infringer or the person against whom that conviction or order is made is a natural person and, at the time the Registrar takes action under this subsection, the person—
- 30 (i) is licensed in the Territory—cancel any driving licence issued to that person;
- (ii) is not licensed in the Territory but the motor vehicle in respect of which the infringement occurred is registered in the Territory in the name of the infringer—cancel the registration of that motor vehicle;
- 35 (iii) is not licensed in the Territory and the motor vehicle in respect of which the infringement occurred is not registered in the Territory—suspend the person’s right to drive a motor vehicle in the Territory and suspend the right to drive that motor vehicle in the Territory; or
- (iv) is not licensed in the Territory and the motor vehicle in respect of which the infringement occurred is owned by the

Territory or the Commonwealth—suspend the person's right to drive a motor vehicle in the Territory; or

(e) if the infringer or the person against whom that conviction or order is made is a body corporate and, at the time the Registrar takes action under this subsection—

(i) the motor vehicle is registered in the Territory—cancel the registration of that motor vehicle; or

(ii) if the motor vehicle is not registered in the Territory—suspend the right to drive that motor vehicle in the Territory.

“(2) A person whose licence to drive in the Territory, or the registration in the Territory of his or her vehicle, has been cancelled under subsection (1), is not entitled to a refund of fees for the remaining period for which the licence or registration was granted.

“(3) Where, under subsection (1), the Registrar—

(a) cancels a driving licence or the registration of a motor vehicle; or

(b) suspends a person's right to drive in the Territory or the right to drive a motor vehicle in the Territory;

the Registrar shall notify the person, in writing, of the cancellation or suspension.

“(4) A notice under subsection (3) shall be served by post on the person at his or her last known place of residence or business.

Issue of fresh licence or registration

“180G. (1) Where the Registrar takes action under subparagraph 180F

(1) (d) (i), (iii) or (iv) in relation to a person, the Registrar shall not—

(a) issue to that person a licence to drive in the Territory; or

(b) cancel the suspension under subparagraph 180F (1) (d) (iii) or (iv) in respect of that person;

unless any amount payable under section 180B or 180E or subsection 180K (1) (as the case requires) has been paid to the Registrar.

“(2) Where the Registrar takes action under subparagraph 180F (1) (d) (ii) or (iii) or (e) (i) or (ii) in relation to a person, the Registrar shall not—

(a) register, or renew the registration of, a motor vehicle in the name of that person; or

(b) cancel the suspension under subparagraph 180F (1) (d) (iii) or (e) (ii) in respect of that motor vehicle;

unless any amount payable under section 180B or 180E or subsection 180K (1) has been paid to the Registrar.

Reinstatement of licences, registration etc.

"180H. (1) A person—

- 5 (a) whose licence to drive in the Territory, or the registration in the Territory of whose vehicle, has been cancelled; or
- (b) in respect of whom, or in respect of whose motor vehicle, a suspension under subparagraph 180F (1) (d) (iii) or (iv) or (e) (ii) is in force;

10 may apply to the Court for a declaration that he or she is not liable in respect of the traffic infringement.

"(2) For the purposes of subsection (1), the onus of proving that a traffic infringement occurred is on the Commissioner of Police.

15 "(3) The Court may, on sufficient cause being shown, make or refuse to make the declaration sought.

"(4) Where—

- (a) the Court makes the declaration sought under subsection (1); or
- 20 (b) pursuant to section 23 of the *Magistrates Court Act 1930*, a conviction or order of that court for a traffic offence within the meaning of Division 2 of Part IX of that Act is set aside;

the Registrar shall, subject to subsection (5)—

- (c) re-issue to the person a driving licence for the remainder of the period for which it would have remained in force had it not been cancelled;
- 25 (d) re-register the motor vehicle the registration of which has been cancelled under section 180F for the remainder of the period for which it would have remained in force had it not been cancelled; or
- (e) by notice in writing served on the applicant, cancel the relevant suspension under subparagraph 180F (1) (d) (iii) or (iv) or (e) (ii);

30 as the case requires.

"(5) The Registrar shall not take action under paragraph (4) (c), (d) or (e) or in pursuance of an order under subsection 23 (7A) of the *Magistrates Court Act 1930* if the Registrar is satisfied that, if the licence or registration were in force or a suspension under subsection 180F (1) were not in force, there exists a ground on which the Registrar may—

- 35 (a) cancel the licence or registration under this Act; or

(b) suspend—

- (i) the person's right to drive in the Territory;
- (ii) the right to drive the motor vehicle in the Territory; or
- (iii) the person's right to drive in the Territory and the right to drive the motor vehicle in the Territory;

as the case requires.

“(6) Where—

- (a) a licence is re-issued to a person under paragraph (4) (c); or
- (b) a motor vehicle is re-registered under paragraph (4) (d);

the person shall be taken for all purposes to have been licensed, and the motor vehicle shall be taken for all purposes to have been registered, during the period between the date of cancellation of the licence or registration and the date of re-issue or re-registration, as the case may be.

“(7) Where a suspension under section 180F is cancelled pursuant to paragraph (4) (e) then—

- (a) in the case of a suspension under subparagraph 180F (1) (d) (iii) or (iv)—the person shall be taken for all purposes to have been deemed to be licensed to drive a motor vehicle in pursuance of subsection 107 (1) during the period for which the suspension was in force; and
- (b) in the case of a suspension under subparagraph 180F (1) (d) (iii) or (e) (ii)—the motor vehicle shall be taken for all purposes to have been a visiting motor vehicle during the period for which the suspension was in force.

“(8) A person aggrieved by a decision of the Registrar under subsection (5) may apply to the Court for an order setting aside the decision.

“(9) The Court may, on sufficient cause being shown, affirm or set aside the decision of the Registrar under subsection (5).

“(10) The Registrar shall be the respondent to an application under this section.

Bodies corporate—recovery of penalties etc.

“180J. (1) Where a suspension is in force under subparagraph 180F (1) (e) (ii), an amount payable by the body corporate under section 180B, 180E or 180K may be recovered as a debt due to the Territory.

“(2) Where the amount referred to in subsection (1) is recovered, the Registrar shall cancel the suspension under subparagraph 180F (1) (e) (ii).

Costs of applications to Court

"180K. (1) If the Court—

- (a) makes a declaration under section 180E; or
- (b) refuses to make a declaration under section 180H;

5 unless the Court otherwise orders, the applicant shall pay the prescribed costs of the Commissioner of Police or the Registrar (as the case may be).

"(2) If the Court—

- (a) refuses to make a declaration under section 180E; or
- (b) makes a declaration under section 180H;

10 unless the Court otherwise orders, the Commissioner of Police or the Registrar (as the case may be) shall pay the applicant's costs of the application.

Evidentiary provision

15 **"180L. (1) In proceedings in respect of a traffic infringement in respect of which a traffic infringement notice under section 180A, or a notice under section 180B, has been served, a certificate signed by the Commissioner of Police and stating—**

(a) that—

- 20 (i) the Commissioner of Police did not allow further time, under section 180C, for the payment of the penalty in respect of the traffic infringement, or the penalty for the traffic infringement and the administrative charge, as the case requires; and
- 25 (ii) the penalty in respect of the traffic infringement, or the penalty for the traffic infringement and the administrative charge, as the case requires, was not paid in accordance with the notice; or

(b) that—

- 30 (i) the Commissioner of Police allowed, under section 180C, the further time specified in the certificate for the payment of the penalty in respect of the traffic infringement, or the penalty for the traffic infringement and the administrative charge, as the case requires; and
- 35 (ii) the penalty in respect of the traffic infringement, or the penalty for the traffic infringement and the administrative charge, as the case requires, was not paid in accordance

with the notice or within the further time allowed by the Commissioner of Police for the purposes of section 180C;

is evidence of the matter so stated.

- 5 “(2) For the purposes of subsection (1) a document that purports to have been signed by the Commissioner of Police shall be taken to have been so signed unless the contrary is proved.

Applications—how made

- 10 “180M. An application under section 180E or 180H shall be made pursuant to subsection 20 (2) of the *Magistrates Court (Civil Jurisdiction) Act 1982*.”.

Suspension or cancellation of driving licence

11. Section 193A of the Principal Act is amended by inserting in subsection (10) “or 180F” after “162E”.

Application

- 15 12. The Principal Act as amended by this Act applies to a traffic infringement committed on or after the day on which this Act commences.

NOTE

1. Ordinance No. 45, 1936 as amended to date. For previous amendments see Note 1 to Act No. 42, 1991 and see also Acts Nos. 42, 44 and , 1991.