

1991

**THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN
CAPITAL TERRITORY**

MOTOR TRAFFIC (AMENDMENT) BILL 1991

EXPLANATORY MEMORANDUM

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The *Motor Traffic Act 1936* (the Act) regulates various motor vehicle and motor traffic matters such as vehicle registration, driving licences, road safety rules, speed limits, parking rules and insurance.

A large number of decision making powers is conferred upon the Registrar of Motor Vehicles under the Act. Currently some of these decisions are reviewed by the ACT Administrative Appeals Tribunal (the Tribunal), some are heard in the Magistrates Court, some are heard in the Supreme Court and others do not attract a right of appeal. Not only is the present situation inconsistent, but it limits the now well established entitlement of an affected member of the community to seek review of administrative decisions.

The Act also confers a number of decision making powers of an administrative nature on the Minister. Many of the decision making powers of the Minister are not reviewable or if reviewable, reviewable by the Supreme Court.

The Motor Traffic (Amendment) Bill 1991 amends the Act to provide for review by the Tribunal of administrative decisions and discretions under the Act. This allows review on the merits of decisions which affect the interests of applicants.

The increase in the number of decisions from which an appeal may be made and the transfer of existing appeals from the courts to the Tribunal can be expected to result in an increase in the number of persons exercising their right to seek a review of decisions. This will result in some increase in the costs associated with administering the Act together with increased direct costs relating to appearances before the Tribunal.

Details of the Bill are included in the Attachment.

ATTACHMENT

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Clause 1 deals with the short title and provides that the Bill, once enacted, may be cited as the *Motor Traffic (Amendment) Act 1991*.

Clause 2 deals with commencement.

Subclause 2(1) provides that clause 1 and this clause will commence on the day on which the Act is notified in the *Gazette*.

Subclause 2 provides that, subject to subclause 3, the remaining provisions of the Act will commence on a day or days fixed by the Minister by notice in the *Gazette*.

Subclause 3 provides that where a provision referred to in subclause 2 has not commenced within 6 months after the day on which the Act is notified in the *Gazette*, the provision shall, by virtue of this subsection, commence 6 months after the Act is so notified.

Clause 3 defines Principal Act to be the *Motor Traffic Act 1936*.

Clause 4 repeals sections 7B, 7C, 26P, 27A, 27B, 39A and 39B of the Principal Act. These sections provide appeals to the Tribunal. These sections are consolidated by the provisions of proposed new sections 217C and 217D of the Act.

Clause 5 amends section 59 of the Principal Act which deals with authorised insurers. Clause 5 amends section 59 by omitting from subsection (5) the words "Sub-section 11 of this section" and substituting "section 217D", by omitting the words "by the court" from subsection (5), and by omitting subsections (11) and (12). The right to appeal to the Supreme Court against a decision of the Minister under this section is replaced by the right to appeal to the Tribunal and as such subsections 59(11) and (12) are no longer necessary.

Clause 6 amends section 104 of the Principal Act which deals with the refusal, cancellation or suspension of licences or registrations. Subsections (6), (7), (8), (9), (10) and (11) are omitted. Those subsections provide a mechanism for appealing to the Supreme Court against a decision of the Registrar to refuse to grant or renew a licence or registration, to grant a licence subject to conditions, to cancel or suspend a licence or registration. They deal with the role of Registrar, the powers of the Court and the standing of a decision which has been appealed. These provisions are no longer necessary with the provision of appeal rights to the Tribunal under this amendment. Clause 6 also inserts a new subsection 104(6) which preserves the effect of the repealed subsection 104(11) by providing that, where an appeal is brought against a decision of the Registrar to refuse to renew, cancel or suspend a licence or registration, then the licence or registration is deemed to continue in force pending the determination of the appeal.

Clause 7 amends section 128G of the Principal Act which provides that a motorist shall not drive past a "no exit" or "no entry" sign and into the area which the sign indicates.

The Minister may by notice in writing declare a specified motor vehicle (paragraph 128G(3)(a)) or a specified class of vehicles (paragraph 128G(3)(b)) exempt from the prohibition on entry and exit. The section is amended by the insertion of a new subsection 128G(4) which provides that a notice exempting a specified class of vehicles under paragraph 128G(3)(b) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*. This means that the notice must be tabled in the Assembly and may be disallowed. It allows for greater control by the Assembly of a Ministerial discretion. A decision under paragraph 128G(3)(a) to refuse to exempt a specific vehicle is appealable to the Tribunal.

Clause 8 amends section 149E of the Principal Act, which prescribes the circumstances in which the Registrar may cancel the certificate which allows the vehicle specified in the certificate to park in loading zones, by omitting subsection 149E(4) and substituting new subsections 149E(4) and (5).

New subsection 149E(4) preserves the effect of the subsection 149H(4) (which is repealed by clause 9) so that where an appeal is brought against a decision of the Registrar to cancel the certificate, the certificate is deemed to continue in force pending the determination of the appeal.

- New subsection 149E(5) preserves the effect of the repealed subsection 149E(4) by providing that the cancellation of a certificate by the Registrar under subsection 149E(1) takes effect 14 days after the day on which the Registrar gives the certificate holder notice in writing of the cancellation under new subsection 217C(1) of the Act.

Clause 9 repeals sections 149G and 149H of the Principal Act. Sections 149G and 149H of the Principal Act respectively provide for the giving of notice of decisions under sections 149B, 149C and 149E of the Act and confer a right of appeal to the Magistrates Court against those decisions. These provisions are no longer necessary in light of the appeal scheme provided by this amendment.

Clause 10 amends section 150B of the Principal Act which deals with applications for approved labels. Subsections (5), (6), (7) and (8) are repealed. These subsections detail the notice to be given where the Registrar refuses an application for an approved label and the appeal process with respect to that decision. These subsections are consolidated by the provisions of proposed new sections 217C and 217D of the Act.

Clause 11 amends section 150C of the Principal Act which deals with the cancellation of an approved label. Subsections 150C(2), (3), (4) and (5) are omitted. These provisions detail the notice to be given where the Registrar cancels an approved label and the appeal process with respect to that cancellation. They are no longer necessary in light of the appeal scheme provided by this amendment.

Subsection 150C(7) provides that where an approved label is cancelled or ceases to be in force because ownership of the vehicle has changed, the person to whom the label was issued shall destroy or surrender the label within 7 days of notice of cancellation in accordance with subsection 150C(2) or within 7 days of the licence ceasing to be in force. As subsection 150C(2) is omitted by this clause, paragraph (b) of the clause omits the reference to subsection 150C(2) from subsection 150C(7) and substitutes "notice of a decision under subsection (1)". Under proposed section 217C(1) the Registrar will be required to give notice of the decision.

Clause 12 repeals section 164G of the Principal Act which allows for an application to the Tribunal for a review of a decision of the Registrar to refuse to certify that it is impracticable, by reason of the physical characteristics of a person

for that person to drive with safety a prescribed vehicle if that person is wearing a seat belt, or a decision to revoke such a certificate. This section is not necessary with the provision of an appeal mechanism provided by this amendment.

Clause 13 inserts two new sections into the Principal Act after section 217B.

Proposed new section 217C deals with notice of a decision.

New subsection 217C(1) provides that where the Minister or Registrar makes a decision of a kind specified in Schedule 7, she or he shall give notice in writing of the decision to the person affected. Schedule 7 lists decisions under the Principal Act which involve the exercise of a discretion.

New subsection 217C(2) provides that a notice under subsection (1) shall include a statement that an application may be made to the Tribunal for a review of the decision to which the notice relates, subject to the *Administrative Appeals Tribunal Act 1989*. Except where subsection 26(11) of the *Administrative Appeals Tribunal Act 1989* applies, the notice shall also include a statement that a person whose interests are affected by the decision may request a statement pursuant to section 26 of that Act. A statement pursuant to section 26 of that Act sets out the findings on material questions of fact, refers to the evidence or other material on which those findings were based and gives the reasons for the decision. If a decision contains this information, or the information has been provided to the applicant by means of a statement in writing, then subsection 26(11) of the *Administrative Appeals Tribunal Act 1989* provides that an applicant is not entitled to a statement of reasons.

New subsection 217C(3) provides that the validity of a decision referred to in subsection 217C(1) shall not be taken to have been affected by a failure to comply with subsection 217C(2).

Proposed section 217D provides that an application may be made to the Tribunal for a review of a decision referred to in subsection 217C(1), that being a decision which involved the exercise of a discretion by the Minister or Registrar and which is set out in Schedule 7.

Clause 14 amends the Principal Act by adding the new Schedule 7 set out in the Schedule to this Bill at the end of the Principal Act. The Schedule has two parts, which list decisions of the Minister (Part I) and decisions of the Registrar (Part II), which involve the exercise of a discretion and from which a right of appeal to the Tribunal is provided by the Act. The Schedule gives a brief description of each decision.

Clause 15 is a transitional provision for the *Motor Traffic (Amendment) Act 1991*. Clause 15 provides that where a person has an appeal to the Supreme Court or Magistrates Court in respect of a decision under the Principal Act which is pending but has not been determined, or a person has a right to bring such an appeal, immediately before the commencement of the *Motor Traffic (Amendment) Act 1991* then that person may make an application to the Tribunal for a review of that decision as if new section 217D had been in operation when the decision was made. Clause 15 also provides that, where the appeal is pending, no fee is payable in respect of an application to the Tribunal.