

AUSTRALIAN CAPITAL TERRITORY

MOTOR TRAFFIC (AMENDMENT) ORDINANCE (NO. 2)1983

EXPLANATORY STATEMENT

No.18,1983

The Motor Traffic (Amendment) Ordinance (No. 2) 1983 (the amending Ordinance) amends the Motor Traffic Ordinance 1936 (the principal Ordinance) so as to institute a system for the issue of traffic infringement notices by members of the Australian Federal Police. These notices will only be issued to persons reasonably believed to have committed an offence against prescribed sections of the existing Ordinance.

The Commissioner of Police is empowered to withdraw traffic infringement notices where he considers that in the circumstances no proceedings should be taken against the alleged offender or where, due to the seriousness of the matter a court action would seem more appropriate.

The amending Ordinance also increases some of the penalties for prescribed offences where this is necessary to ensure that an effective penalty may be provided by traffic infringement notices.

Details of the amending Ordinance are set out at Attachment A.

Ord. No. 92/82

ATTACHMENT A
DETAILS OF THE AMENDING ORDINANCE

Sections 1, 2 and 3 deal with interpretation and commencement.

Section 4 amends section 15 of the principal Ordinance to increase the penalty for failure to sign a driving licence from \$10 to \$40.

Section 5 amends section 22(1) of the principal Ordinance to replace the words "forty dollars" with "\$40", and amends section 22(4) of the principal Ordinance to increase the fine for failing to transfer the registration of a vehicle or trailer within 7 days of purchase, from \$40 to \$80.

Section 6 amends section 129 of the principal Ordinance by removing the offence of negligent driving from sub-section (1) of that section, and inserting the offence in a new sub-section (1A), to enable the offence to be dealt with under the proposed traffic infringement notice scheme. The more serious offences of reckless driving, and driving in a manner dangerous continue to be dealt with by the court alone.

Section 7 increases the penalty for an offence against section 130 of the principal Ordinance, dealing with driving without due care and attention, and inconsiderate driving, from \$20 to \$100.

Section 8 increases the penalty under section 164B of the principal Ordinance from \$20 to \$80, for the failure of the driver of a prescribed vehicle to wear a seat belt.

Section 9 increases the penalty under section 164C(2) of the principal Ordinance for failure by a passenger in a prescribed vehicle under the age of 14 years to wear a seat belt, from \$20 to \$80.

Section 10 increases the penalty imposed on a driver under section 164D(1) of the principal Ordinance from \$20 to \$80 where he allows a passenger over 8 but under 14 years of age to:

- (a) ride in the vehicle without wearing a seat belt; or
- (b) occupy a seat which is not equipped with a suitable seat belt when the seat next to that being occupied is vacant and fitted with a seat belt.

The section provides a similar increase to the penalty to sections 164D(2) and 164D(3) of the principal Ordinance for offences committed by the driver when he:

- (a) allows a child over 1 and under 8 years to ride without wearing a suitable seat belt, or to occupy an unequipped seat next to an equipped seat; and
- (b) allows a child to sit in an unequipped front seat rather than the back seat.

Section 11 inserts a new section 180A into the principal Ordinance instituting the traffic infringement notice system.

Section 180A(1)(a) classifies as prescribed offences, that is, offences in respect of which a traffic infringement notice may be issued:

- (i) offences against section 142 of the principal Ordinance, which imposes speed limits;
- (ii) offences against section 145 of the principal Ordinance, which imposes speed limits;
- (iii) offences against those sections of the principal Ordinance which are specified in items 1 to 6 inclusive of schedule 6 to the principal Ordinance, inserted by section 13 of the amending Ordinance;
- (iv) offences against those Motor Traffic Regulations specified in items 7 and 8 of schedule 6 to the principal Ordinance.

Section 180A(1)(b) provides that reference to a prescribed penalty in relation to an offence against section 142 of the existing Ordinance shall be read as follows:

- (i) where the speed limit is exceeded by up to 15 kilometres per hour - \$40;
- (ii) where the speed limit is exceeded by more than 15 and up to 30 kilometres per hour - \$60;
- (iii) where the speed limit is exceeded by over 30 kilometres per hour - \$80.

Section 180A(1)(c) provides that references to a prescribed penalty for an offence against section 145 of the principal Ordinance, which imposes speed limits on vehicles weighing more than 3 tonnes, shall be read as follows:

- (i) where the speed limit is exceeded by not more than 10 kilometres per hour - \$50;
- (ii) where the speed limit is exceeded by more than 10 kilometres per hour - \$80.

Section 180A(1)(d) provides that references to a prescribed penalty in relation to an offence in column 2 of Schedule 6 shall be read as a reference to the penalty specified in column 3 of that Schedule.

Section 180A(2) provides that where a member of the Police Force has reasonable grounds to believe that a person has committed a prescribed offence, (that is, an offence specified in section 180A(1)(a)), then he may serve, or cause to be served on a person, a traffic infringement notice in the form prescribed by section 180A(3), in the manner prescribed by section 180A(7).

Section 180A(3) prescribes the content of a traffic infringement notice, which shall -

- (a) state the name of the member of the Police Force who serves the traffic infringement notice, or who causes it to be served;
- (b) specify the day, time and place of the alleged prescribed offence;
- (c) specify the nature of the alleged prescribed offence;
- (d) notify the person on whom the traffic infringement notice is served that, if he does not wish the matter to be dealt with by the court, he may pay the prescribed penalty in relation to the prescribed offence, which amount must be specified in the notice, and must pay within 28 days after the date of the notice, unless the notice is sooner withdrawn;
- (e) specify the place and manner in which the prescribed penalty may be paid;
- (f) state the procedures relating to, and consequences of the withdrawal of a traffic infringement notice.

In addition, the traffic infringement notice may contain such other particulars as the Minister considers necessary.

Section 180A(4) empowers the Commissioner for Police to withdraw a traffic infringement notice by notice in writing (served in accordance with section 180A(7)) within the 28 day period after the date of traffic infringement notice.

Section 180A(5) provides that, where a traffic infringement notice has been served, and before -

- (a) the expiration of the 28 day period after the date of the traffic infringement notice, or the expiration of any further period (not exceeding 28 days) allowed by the Commissioner of Police; or
- (b) the notice is withdrawn,

whichever first occurs, the prescribed penalty has been paid in accordance with the notice, then -

- (c) any liability of the alleged offender in respect of the alleged prescribed offence shall be deemed to be discharged;
- (d) no further proceedings shall be taken in respect of the prescribed offence;
- (e) the alleged offender shall not be regarded as having been convicted of the alleged prescribed offence.

Section 180A(6) requires the Commissioner of Police to refund to a person the amount that person has paid in respect of a prescribed penalty in a traffic infringement notice which has been served on that person, and which the Commissioner has subsequently withdrawn pursuant to proposed section 180A(4).

Section 180A(7) prescribes the methods of serving traffic infringement notices, and notices of withdrawal. A notice may be served -

- (a) by delivering it to the alleged offender personally;
- (b) by sending it by post to the last known place of residence or business of the alleged offender; or,
- (c) by leaving the notice at the last known place of residence or business of the alleged offender, with a person apparently over the age of 16 years and apparently resident or employed at that place.

Section 180A(8) is an evidentiary provision providing that at the hearing of a prosecution for an offence in respect of which a traffic infringement notice has been served, a certificate signed by the Commissioner or his delegate, stating -

- (a) that the Commissioner or his delegate, did not allow an extended period for payment of the prescribed penalty (pursuant to the power in section 180A(5)); and,
- (b) that the penalty was not paid within the 28 day period,

shall be evidence of those matters.

Section 180A(9) is also an evidentiary provision, and provides that at the hearing for a prescribed offence in respect of which a traffic infringement notice has been issued, a certificate signed by the Commissioner of Police or his delegate, stating that -

- (a) the Commissioner or his delegate allowed a further period specified in the certificate for the payment of the prescribed penalty (pursuant to the power in section 180A(5)), and
- (b) the penalty was not paid within the 28 day period, or the further period allowed,

shall be evidence of the matters so stated.

Section 180A(10) is a further evidentiary provision providing that a certificate signed by the Commissioner of Police or his delegate, stating that a traffic infringement notice was withdrawn on the date specified in the certificate (pursuant to the power in section 180A(4)), shall be evidence of those matters.

Section 180A(11) provides that a document purporting to be signed by the Commissioner of Police, or his delegate, shall be taken to have been so signed, unless the contrary is proved.

Section 180A(12) provides that more than one traffic infringement notice may be served in respect of any one offence. However, the payment of any one of those penalties within the 28 day period specified in one of the traffic infringement notices, or within such further period as the Commissioner for Police or his delegate may

have allowed for the payment of one of those penalties, will bring section 180A(5) into operation in respect of that alleged offence. Additionally only one prosecution may be undertaken in respect of the one offence.

Section 180A(13) provides that where a prescribed penalty is paid by cheque there will be no payment until the cheque is presented and honoured.

Section 180A(14) provides that nothing in section 180A requires that a traffic infringement notice must be served in respect of an alleged offence for which a traffic infringement notice has not been served, or in respect of which a traffic infringement notice has been served and withdrawn pursuant to the power of withdrawal in section 180A(4).

Further, the section provides that nothing in section 180A affects the institution or prosecution of proceedings in respect of an alleged prescribed offence for which a traffic infringement notice has not been served, or in respect of which a traffic infringement notice has been served and withdrawn pursuant to section 180A(4).

Section 180A(15) empowers the Commissioner to delegate his power of allowing an extended period for payment of a prescribed penalty under section 180A(5), and his power of withdrawing a traffic infringement notice under section 180A(4).

Section 180A(16) deems the exercise by a delegate of the powers of granting extended periods for the payment of prescribed penalties under section 180A(5), and of withdrawing traffic infringement notices under section 180A(4), to be an exercise by the Commissioner of Police.

Section 180A(17) provides that a delegation of the powers of the Commissioner of Police pursuant to section 180A(15) does not prevent the exercise of the delegated power by the Commissioner.

Section 12 amends section 190A(2) of the existing Ordinance by increasing the penalty for failing to wear a safety helmet from \$20 to \$80.

Section 13 inserts Schedule 16 into the principal Ordinance. The Schedule contains the prescribed offences and penalties referred to in section 180A(1).