

2010

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

ROAD TRANSPORT (GENERAL) AMENDMENT BILL 2010

EXPLANATORY STATEMENT

Circulated by authority of
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Overview

The Road Transport (General) Amendment Bill 2010 amends sections 44, 84 and 85 in the *Road Transport (General) Act 1999*. In summary, these provisions deal with the suspension of a person's driver licence, vehicle registration or right to drive for non-payment of infringement notice penalties (section 44) or suspension of driver licence or vehicle registration, or disqualification from obtaining a licence, for non-payment of court imposed fines (sections 84 and 85).

The purpose of the amendments is to clarify the requirements for giving notice to clients of the road transport authority about impending suspension action or fine enforcement action, and to provide that suspension or fine enforcement action takes effect by operation of law if payment of the outstanding amount is not received by the relevant date.

In *Davis v Jilbert* 9 July 2010 (CC 09/10917 CC 09/9584, Magistrates Court of the Australian Capital Territory), Chief Magistrate Burns found, among other matters, that a suspension under section 44 does not take effect until a suspension notice is served on the person concerned. As the specific date on which service by post is effected cannot always be predicted with certainty (noting that the presumptions regarding the date of service by post are rebuttable), the decision in *Davis v Jilbert* creates an administrative difficulty for the road transport authority, which needs to record in its database the date of effect of any suspension under section 44 pursuant to its function under section 6 of the *Road Transport (Driver Licensing) Act 1999* and sections 6 and 10 of the *Road Transport (Vehicle Registration) Act 1999*.

Accordingly, the amendments overcome this practical difficulty by enabling the road transport authority to nominate a date, which cannot be earlier than 10 days after the notice is sent, on which the suspension will occur if payment is not received. Equivalent amendments are made to section 85 of the Act, in relation to enforcement action for court imposed fines notified to the road transport authority under the *Crimes (Sentence Administration) Act 2005*.

The amendments in the Bill also provide for the road transport authority to send a confirmation notice to the person concerned advising them of the type of suspension action (section 44) or enforcement action (section 85) that was taken and when it occurred. The confirmation notice will ensure the person knows precisely what action was taken against them and when that action took effect.

It should be noted that the amendments made by the Bill do not materially alter the content of notices sent to clients nor is there any material change to the circumstances under which suspension or enforcement action will be taken. Their purpose is to provide greater certainty both for the road transport authority and clients about the date on which suspensions occur and to ensure that clients are clear about which rights are suspended and when the suspension took effect. The amendments may have a slight beneficial effect in relation to clients who are given section 84 notices, as these clients will now

be given notice before the suspension takes effect, unlike the existing section 84, which does not provide for any period of notice before the suspension takes effect. Also, the legislation does not currently require the road transport authority to send confirmation notices, and to that extent the amendments may be seen as improving clients' access to information about their rights.

It is not believed that the Bill significantly engages the human rights set out in the *Human Rights Act 2004* (the HRA). To the extent, if any, that human rights are engaged and limited by the Bill, it is believed that such a limitation would be justified by the "reasonable limits" exception referred to in section 28 of the HRA, because there is no other reasonably practicable and cost-effective way for the road transport authority to be sure when a suspension has taken effect.

Notes on clauses

Part 1 Preliminary

Clause 1 Name of Act

This is a formal provision that provides for the name of the legislation, once enacted.

Clause 2 Commencement

This clause explains when the provisions in the Bill will commence. The Minister may commence the Bill, in whole or in part, by notice. If a provision is not commenced within 6 months it will commence automatically after that time by operation of section 79 of the Legislation Act.

Clause 3 Legislation amended

This clause explains that the Bill amends the *Road Transport (General) Act 1999* and the *Road Transport (General) Regulation 2000*.

Part 2 Road Transport (General) Act 1999

Clause 4 Suspension for nonpayment of infringement notice penalties Section 44 (2)

This clause omits section 44 (2) and inserts new sections 44 (2), (2A) and (2B). New section 44 (2) (a) provides that the road transport authority must send the person a suspension notice containing the information required by new subsection (2A). Paragraph 44 (2) (b) provides that if the person does not pay the outstanding infringement notice penalty before the date specified in the notice (this date will be the suspension date), the road transport authority must take suspension action against the person on that date.

New section 44 (2A) sets out the matters to be included in a suspension notice. These matters include details of the relevant infringement notice and

reminder notice to which the suspension notice relates; that the road transport authority will take suspension action under section 44 (3), (4) or (5) if the infringement notice penalty is not paid by the suspension date; any information prescribed by the regulations; and any information that the road transport authority considers appropriate.

Suspension action is action of a type mentioned in existing sections 44 (3), (4) or (5) of the Act. As there is a period of at least 10 days between the printing of the notice and the suspension date, it is not possible to know with certainty which type of suspension action will be taken by the road transport authority on the suspension date, because it is possible that the rights held by person may alter during the intervening period. For example, the person's licence may expire, the person may move interstate, or be disqualified from driving by the Courts; the vehicle's registration may expire, the vehicle may be sold or the vehicle may be written-off in an accident.

Accordingly, the suspension notice cannot specify the particular type of suspension action that will be taken on the suspension date; it can only advise the person that suspension action generally will be taken if payment is not forthcoming. For ACT residents, in the majority of instances the person will be the holder of a driver licence and that right will be affected by the suspension action. It should be noted that the person will be sent a confirmation notice advising them of the suspension action that was taken. It is also the practice of the road transport authority to include in the suspension notice a telephone number that the person can call to check the person's driver licence, vehicle registration or right to drive status - the person does not need to wait until the confirmation notice arrives if he or she is uncertain about which rights have been suspended.

New section 44 (2B) provides that the suspension date specified in the suspension notice must not be earlier than 10 days after the day the notice is sent to the person (the *Road Transport (General) Regulation 2000* contains provisions for determining when a notice or other document under the road transport legislation is presumed to have been sent by pre-paid post: see section 9B). This notice period gives the person a further opportunity to pay the outstanding penalty to avoid suspension action being taken.

Clause 5 Section 44 (7) and (8)

This clause substitutes replacement sections 44 (7) and (8). Replacement section 44 (7) provides that a suspension under section 44 takes effect on the suspension date. Replacement section 44 (8) requires the road transport authority to send the person a suspension confirmation notice, advising the person of the suspension action that was taken and when it was taken. The existing section 44 does not require a confirmation notice to be sent, but as explained previously, the road transport authority has adopted the practice of sending letters to advise clients of the type of suspension action that was taken and when the suspension came into effect, including information about how a suspension may be lifted by paying the outstanding amount.

Clause 6 **New section 84A**

This clause inserts new section 84A before section 84. This new section contains a definition of the term **revocation notice**, which is used in several provisions in part 6 of the Act. At present, this term is defined in section 86 (1). It is consistent with current drafting conventions to relocate the definition to the beginning of the part.

The opportunity has also been taken to correct incorrect references within the definition to the *Crimes (Sentence Administration) Act 2005*. At present, section 86 (1) of the Act contains references to section 116N (2) and (3) of the *Crimes (Sentence Administration) Act 2005*, which deals with notices to credit reporting agencies. These references were included by the *Crimes (Sentence Administration) Amendment Act 2010*.

The correct references are to section 116M(2) of the *Crimes (Sentence Administration) Act 2005*. That provision states:

- “(2) *The chief executive must give the road transport authority written notice if—*
- (a) the outstanding fine is paid; or*
 - (b) the chief executive approves an arrangement under section 116K for payment of the outstanding fine; or*
 - (c) the outstanding fine is remitted under section 116ZO (Remission of fine by chief executive) or section 313 (Remission of penalties); or*
 - (d) the outstanding fine is discharged because the fine defaulter has completed a voluntary community work order under division 6A.3.7 or served a period of imprisonment under an order under division 6A.3.8; or*
 - (e) the conviction or order that gave rise to the liability to pay the fine is quashed or set aside.”*

Clause 7 **Suspension of driver licence, registration etc** **Section 84**

This clause replaces section 84, which deals with the suspension of driver licences, vehicle registration etc for persons in default of court imposed fines, with a new provision that more closely parallels the process in section 44 of the Act, while retaining the main elements of the existing section 84.

Proposed section 84 (1) provides that section 84 applies if the court notifies the road transport authority under section 116M (1) of the *Crimes (Sentence Administration) Act 2005* about a fine defaulter.

Proposed section 84 (2) provides that the road transport authority must send the person a fine enforcement notice, and that the authority must take fine enforcement action if the person does not pay the fine by the enforcement date mentioned in the fine enforcement notice.

Proposed section 84 (3) details the matters to be included in the fine enforcement notice, and proposed section 84 (4) provides that the fine enforcement date cannot be earlier than 10 days after the notice is sent to the person. These provisions are substantially similar to proposed sections 44 (2A) and (2B), discussed previously. The purpose of these provisions is to ensure that the person is given proper notice about the enforcement action before it occurs, including a further opportunity to pay the fine and avoid the consequences outlined in the enforcement notice (noting that by the time the road transport authority has been notified of the fine by the court under section 116M of the *Crimes (Sentence Administration) Act 2005*, the fine defaulter would already have been afforded several opportunities to pay the fine).

Proposed new section 84 (5) replicates the content of existing paragraphs 84 (a) to (c), and lists the types of fine enforcement action that may be taken in respect of a fine defaulter. The first option is to suspend the person's driver licence; if the person does not hold a driver licence, the road transport authority is required to take enforcement action in respect of any vehicle registrations for which the person is the sole operator. If the person is not the sole registered operator of a motor vehicle, then the road transport authority must disqualify the person from obtaining a driver licence.

Clause 8 Section 85 heading

This is a formal provision to amend the heading to section 85 so that it better reflects the content of that section, as amended by clause 8 of the Bill.

Clause 9 Section 85 (1)

This clause omits section 85 (1) and replaces it with new sections 85 (1) and (1A).

New section 85 (1) provides that the enforcement action takes effect on the enforcement date specified in the notice, while section 85 (1A) requires the road transport authority to give the person concerned a confirmation notice about the fine enforcement action. These provisions are equivalent to new sections 44 (7) and (8) for suspension action in relation to unpaid infringement notice penalties, discussed previously.

Clause 10 Revocation of suspension of driver licence, registration etc Section 86 (1)

This clause omits section 86 (1) the Act. This amendment is consequential to the insertion of new section 84A by clause 6.

Clause 11 Dictionary, definition of *revocation notice*

This clause is a consequential amendment related to clause 6, and explains that the definition of the term revocation notice is found in section 84A.

Part 3 Amendments to Road Transport (General) Regulation 2000

This part contains consequential amendments to sections 9 and 9A of the Regulation, which deal with notices of suspension.

Clause 12 Section 9

This clause inserts replacement section 9, setting out matters relating to the form and content of suspension notices for section 44 of the Act. This amendment is consequential on the inclusion of requirements about the form and contents of suspension notices in section 44 by the amendments in this Bill. The matters listed in section 9 are additional to the matters listed in amended section 44 and any matters considered appropriate by the road transport authority.

Clause 13 Section 9A

This clause inserts replacement section 9A, setting out matters relating to the form and content of suspension notices for section 84 of the Act. Former section 9A referred to notices under section 85, but the obligation to send a notice now arises under section 84. The amendments are consequential on the listing of requirements about the form and contents of fine enforcement notices in section 84 as a result of the amendments in this Bill. The matters listed in section 9A are additional to the matters listed in section 84 as amended by the Bill and any matters considered appropriate by the road transport authority.