

2003

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

ROAD TRANSPORT (GENERAL) AMENDMENT BILL 2003

EXPLANATORY STATEMENT

Circulated by authority of

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Overview

The Road Transport (General) Amendment Bill 2003 (the Bill) amends section 48 of the *Road Transport (General) Act 1999* (the Act).

Part 3 of the Act provides a scheme for the issue of infringement notices for certain offences. Special provisions apply in relation to offences involving vehicles. Under section 36, the infringement notice is served on “the person responsible for the vehicle” (i.e. the registered owner or owners).

If a person to whom an infringement notice is issued fails to respond by either paying the penalty or providing an explanation to the administering authority as to why he or she is not liable for the offence the Act authorises enforcement action, including the suspension of the registration of the vehicle involved in the offence or the suspension of the driving licence of the person responsible for the vehicle.

Section 48 of the Act enables a person whose vehicle registration or licence has been suspended to apply to the Magistrates Court for an order revoking the suspension.

The Bill amends section 48 to provide that the court may only make a declaration revoking the suspension if the person is able to establish that one of the following circumstances apply:

- the vehicle had been stolen or illegally taken at the time of the offence;
- the person has made a “know user declaration” identifying the person who was the driver at the time of the offence;
- the vehicle had been sold to someone else; or
- the person was not the driver at the time of the offence and does not know, and could not have found out, who was driving the vehicle.

This is consistent with the provisions of section 37 of the Act which provide that these same circumstances are a defence to a prosecution under the Act.

The onus of establishing that an offence was committed still rests with the prosecuting authority.

Notes on Clauses

Clauses 1, 2, 3 and 7

These clauses are formal provisions that set out the name of the Act, commencement provisions, the name of the Act amended, and provide for the renumbering of the subsections when next published under the Legislation Act.

Clause 4

This clause removes the words “if the offence involved a vehicle” from subsection 48(2)(b). These words are unnecessary and misleading in that they imply that suspensions could result from non-vehicle offences and that orders to revoke such suspensions under section 48 can be made. Section 44 provides that a suspension can only occur if the offence involves a vehicle.

Clauses 5

Clause 5 removes the requirement that the administering authority prove that the person actually committed the offence. In practice, it is impossible for the administering authority to prove that a person who claims not to have been driving when, for instance, a camera detected the vehicle speeding, was in fact driving.

The administering authority must still prove that an offence was committed, and that an infringement notice for the offence was served on the person under section 36.

Clause 6

Clause 6 provides that the court may only make a declaration revoking a suspension if the administering authority fails to prove that an offence was committed or the person is able to establish that one of the following circumstances apply:

- the vehicle had been stolen or illegally taken at the time of the offence;
- the person has made a “know user declaration” identifying the person who was the driver at the time of the offence;
- the vehicle had been sold to someone else; or
- the person was not the driver at the time of the offence and does not know, and could not have found out, who was driving the vehicle.