



AUSTRALIAN CAPITAL TERRITORY

Road Transport Legislation Amendment Act 2000

No 4 of 2000

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AUSTRALIAN CAPITAL TERRITORY

Road Transport Legislation Amendment Act 2000

No 4 of 2000

An Act to amend the *Road Transport (General) Act 1999* and the *Road Transport (Safety and Traffic Management) Act 1999*

[Notified in ACT Gazette S8: 1 March 2000]

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

PART 1—PRELIMINARY

1 Name of Act

This Act is the *Road Transport Legislation Amendment Act 2000*.

2 Commencement

This Act commences on the day it is notified in the Gazette.

PART 2—AMENDMENT OF THE ROAD TRANSPORT (GENERAL) ACT 1999

3 Act amended in pt 2

This Part amends the *Road Transport (General) Act 1999*.

4 Automatic disqualification for certain other driving offences

Section 63 is amended by inserting before paragraph (1) (a) the following paragraphs:

- “(aa) an offence against subsection 5A (1) or (5) of the *Road Transport (Safety and Traffic Management) Act 1999* (which are about races, attempts on speed records, speed trials etc);
- (ab) an offence against subsection 5B (2) or (4) of the *Road Transport (Safety and Traffic Management) Act 1999* (which are about burnouts and other prohibited conduct);”.

PART 3—AMENDMENTS OF THE ROAD TRANSPORT (SAFETY AND TRAFFIC MANAGEMENT) ACT 1999

5 Act amended in pt 3

This Part amends the *Road Transport (Safety and Traffic Management) Act 1999*.

6 Insertion

Before section 6 the following sections are inserted in Division 2.1:

“5A Races, attempts on speed records, speed trials etc (NSW s 40, MTA s 119)

“(1) A person must not, without the road transport authority’s written approval, organise, promote or take part in—

- (a) a race between vehicles on a road or road related area; or
- (b) an attempt to break a vehicle speed record on a road or road related area; or
- (c) a trial of the maximum speed or acceleration of a vehicle on a road or road related area; or
- (d) a competitive trial designed to test the skill of a driver, or the reliability or mechanical condition of a vehicle, on a road or road related area.

Maximum penalty:20 penalty units.

“(2) The road transport authority may—

- (a) give or refuse to give an approval under subsection (1); and
- (b) impose any condition (whether of general or limited application) on an approval that the authority considers necessary in the interests of public safety and convenience.

“(3) Before giving an approval under subsection (1), the road transport authority must—

- (a) consult the chief police officer; and
- (b) take reasonable steps to seek, and take into account, the views of anyone who would be, in the authority’s opinion, likely to be affected if the approval were granted or refused.

“(4) Failure to comply with paragraph (3) (b) in relation to an approval does not affect the validity of the approval.

“(5) A person taking part in (or the organiser or promoter) of a race, attempt or trial mentioned in subsection (1) must comply with any condition of an approval given under the subsection for the race, attempt or trial.

Maximum penalty: 20 penalty units.

“5B **Burnouts and other prohibited conduct** (NSW s 41, MTA s 119AA)

“(1) In this section—

burnout means—

- (a) in relation to a motor vehicle other than a motorbike—operate the vehicle in a way that causes the vehicle to undergo sustained loss of traction by 1 or more of the driving wheels; or
- (b) in relation to a motorbike—operate the motorbike in a way that causes the motorbike to undergo sustained loss of traction by the driving wheel.

other prohibited conduct means conduct that—

- (a) is associated with the operation of a motor vehicle for speed competitions or other activities prescribed under the regulations; and
- (b) is prescribed under the regulations for subsection (4).

prohibited substance, in relation to the burnout of a motor vehicle, means—

- (a) petrol, oil, diesel fuel or any other flammable liquid; or
- (b) any other substance that increases the risk of death, injury or damage to property (including damage to the surface of any road or to any prescribed traffic control device) from the burnout.

“(2) The driver of a motor vehicle must not burnout the vehicle on a road or road related area.

Maximum penalty:

- (a) if a prohibited substance had been placed on the surface of the road or road related area under, or near, a tyre of the vehicle—30 penalty units; or
- (b) in any other case—20 penalty units.

“(3) In a prosecution for an offence against subsection (2), it is a defence if the driver establishes that the motor vehicle, although operated in contravention of the subsection, was not deliberately operated in that way.

“(4) A person must not engage in other prohibited conduct on a road or road related area.

Maximum penalty: 20 penalty units.

“(5) This section does not apply to the operation of a motor vehicle for a race, attempt or trial carried out in accordance with an approval given under section 5A by the road transport authority.”.

7 Insertion

After Division 2.2 the following Division is inserted:

“Division 2.3—Seizure, impounding and forfeiture of vehicles for certain offences

“10A Impounding or forfeiture of vehicles used in committing certain offences (MTA s 139L, NSW RT(Gen) s 40)

“(1) If a court convicts a person, or finds a person guilty, of an offence against section 5A (Races, attempts on speed records, speed trials etc) or 5B (Burnouts and other prohibited conduct), the motor vehicle used by the person in committing the offence is—

- (a) for a first offender—to be impounded for 3 months, unless the court otherwise orders under subsection (2); or
- (b) for a repeat offender—forfeited to the Territory, unless the court otherwise orders under subsection (2).

“(2) The court may, by order, specify a shorter period of impounding, dispense with the period of impounding or commute a forfeiture to a period of impounding to avoid excessive hardship or other injustice to anyone.

“(3) In deciding whether to make an order under subsection (2), the court—

- (a) must have regard to the circumstances of the offence, including the risk to the safety of road users; and
- (b) may seek evidence from the prosecution about the circumstances of the offence.

“(4) Subsection (3) does not limit, by implication, the matters to which the court may have regard or prevent the defendant from presenting evidence about the circumstances of the offence.

“(5) Any period for which the motor vehicle was impounded under section 10B (Powers of police officers to seize and impound vehicles used in committing certain offences) counts towards a period of impounding of the motor vehicle under this section.

“(6) If—

- (a) a court convicts a person, or finds a person guilty, of an offence against section 5A or 5B; and
- (b) the motor vehicle used in committing the offence is subject to impounding or forfeiture under this section; and
- (c) the vehicle has not already been impounded under section 10B;

the court may order the responsible person for the vehicle to surrender the vehicle to the chief police officer within a stated time and in a stated way.

“(7) The court may also make an order authorising any police officer to seize the vehicle from any place if the order under subsection (6) is not complied with.

“(8) The impounding or forfeiture of a motor vehicle under this section is in addition to any other penalty imposed for the offence.

“(9) For any rights of appeal against penalty, the impounding or forfeiture of a motor vehicle under this section is, or is part of, the penalty imposed for the offence.

“(10) For this section—

- (a) a person who is convicted, or found guilty, of an offence against section 5A or 5B (the *current offence*) is a *repeat offender* in relation to the current offence if the person has been convicted, or found guilty, of an offence against section 5A or 5B within 5 years before being convicted, or found guilty, of the current offence; and
- (b) a person who is convicted, or found guilty, of an offence against section 5A or 5B is a *first offender* in relation to the offence if the person is not a repeat offender in relation to the offence.

“10B **Powers of police officers to seize and impound vehicles used in committing certain offences** (MTA s 139K, NSW RT(Gen) s 39)

“(1) A police officer may seize a motor vehicle if—

- (a) the police officer believes on reasonable grounds that the vehicle is being or has (on that day or during the past 10 days) been used by a person in committing an offence against section 5A (Races, attempts on speed records, speed trials etc) or 5B (Burnouts and other prohibited conduct); or

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(b) the vehicle is subject to impounding or forfeiture under section 10A (Impounding or forfeiture of vehicles used in committing certain offences).

“(2) The motor vehicle may be seized from—

(a) a road or road related area or any other public place; or

(b) any other place—

(i) with the consent of the owner or occupier of the place; or

(ii) under the authority of an order under subsection 10A (7) for the seizure of the vehicle.

“(3) After seizing the motor vehicle, the police officer must move the vehicle to a place decided by the chief police officer.

“(4) The motor vehicle may, subject to the regulations, be impounded at the place where it is moved under subsection (3), or may be moved to and impounded at any other place decided by the chief police officer.

“(5) To seize or move the motor vehicle, the police officer, or someone acting under the police officer’s direction, may remove, dismantle or neutralise any locking device or other feature of the vehicle and may, if the driver or anyone else will not surrender the keys to the vehicle or the keys are not available to the police officer for any other reason, start the vehicle in another way.

“(6) The motor vehicle may be moved—

(a) by being driven (whether or not under power) or by being towed or pushed, or in any other way whatever; and

(b) by the police officer or someone acting under the police officer’s direction.

“(7) In this section—

public place includes any place that members of the public are entitled to use.

“10C **Registered operator and interested persons to be notified**

(MTA s 139N (1)-(2), NSW RT(Gen) sch 1, cl 2)

“(1) If a motor vehicle is seized under paragraph 10B (1) (a) (Powers of police officers to seize and impound vehicles used in committing certain offences), the chief police officer must give notice of the seizure to the registered operator of the vehicle.

“(2) If a prosecution is begun against a person for an offence against section 5A (Races, attempts on speed records, speed trials etc) or 5B

(Burnouts and other prohibited conduct) involving a motor vehicle, the chief police officer must give notice of the prosecution to—

- (a) if the prosecution is against a person other than the registered operator (or a registered operator) of the vehicle—the registered operator; or
- (b) if the vehicle may be subject to forfeiture if the person is convicted or found guilty of the offence—the holder of any registered interest in the vehicle.

“(3) The notice must be given within 7 days after the seizure or the beginning of the prosecution.

“(4) The notice must—

- (a) state—
 - (i) the short description prescribed under the *Road Transport (General) Act 1999* for the offence for which the motor vehicle has been seized or the prosecution begun (or the provision of this Act contravened by the person); and
 - (ii) the place where the offence was committed and the date and approximate time of the offence; and
 - (iii) the particulars that are, under the regulations under the *Road Transport (General) Act 1999*, identifying particulars for the vehicle; and
- (b) for a notice under subsection (1)—tell the registered operator that an application may be made to the chief police officer or the Magistrates Court for the release of the vehicle; and
- (c) for a notice under subsection (2)—tell the person that the vehicle may be subject to impounding or, if appropriate, forfeiture under section 10A.

“10D **Keeping of vehicles seized under par 10B (1) (a)**

(MTA s 139N (3), NSW RT(Gen) sch 1, cl 3)

“(1) If a motor vehicle is seized under paragraph 10B (1) (a) by a police officer because the police officer believes the vehicle has been used by a person in committing an offence, the chief police officer must keep the vehicle until the earliest of the following happens:

- (a) the person is dealt with by a court for the offence;
- (b) an infringement notice is served on the person for the offence;
- (c) if a prosecution for the offence is not begun within 28 days after the seizure—the 28 days end;

unless the vehicle is sooner released under section 10F (Release of vehicles by chief police officer) or 10G (Release of vehicles by order of Magistrates Court).

“(2) If the person is convicted, or found guilty of, the offence, the chief police officer must keep the vehicle as required under section 10E.

“10E **Keeping of vehicles impounded or forfeited under s 10A**
(MTA s 139N (4), NSW RT(Gen) sch 1, cl 4)

“(1) A motor vehicle impounded under section 10A (Impounding or forfeiture of vehicles used in committing certain offences) must be kept by the chief police officer for the period for which the vehicle is subject to impounding.

“(2) A motor vehicle subject to forfeiture under section 10A must be kept by the chief police officer until the road transport authority directs that the vehicle be disposed of.

“(3) A direction under subsection (2) may be given in relation to a motor vehicle not earlier than 28 days after the vehicle becomes subject to forfeiture.

“10F **Release of vehicles by chief police officer** (MTA s 139P,
NSW RT(Gen) sch 1, cl 5)

“(1) A person may apply to the chief police officer for the release to the person of a motor vehicle that has been seized under paragraph 10B (1) (a).

“(2) The chief police officer must release the vehicle to the person if—

- (a) the chief police officer is satisfied that the person is entitled to possession of the vehicle; and
- (b) the period for which the chief police officer is required under section 10D to keep the vehicle has ended; and
- (c) any fee or other amount payable under the *Road Transport (General) Act 1999* in relation to the impounding and seizure of the vehicle has been paid.

“(3) The chief police officer may release the vehicle to the person if—

- (a) the chief police officer is satisfied that the person is entitled to possession of the vehicle; and
- (b) the chief police officer is satisfied that—
 - (i) the offence for which the vehicle was impounded was not committed by, or with the consent of, the person; and

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- (ii) the person did not know, and could not reasonably be expected that have known, that the vehicle would be used for the commission of the offence; and
- (c) any fee or other amount payable under the *Road Transport (General) Act 1999* in relation to the seizure and impounding of the vehicle has been paid.

“(4) The chief police officer must ensure that an impounded vehicle is available for collection by a person as soon as practicable after the person becomes entitled to possession of it.

“(5) If a motor vehicle is released to a person under this section, the person must acknowledge in writing receiving the vehicle.

“10G **Release of vehicles by order of Magistrates Court** (MTA s 139Q, NSW RT(Gen) sch 1, cl 6)

“(1) A person may apply to the Magistrates Court for an order for the release to the person of a motor vehicle that has been seized under paragraph 10B (1) (a), whether or not an application has been made to the chief police officer under section 10F for the release of the vehicle.

“(2) The court may order the release of the motor vehicle to the person if satisfied that—

- (a) the person is entitled to the possession of the vehicle; and
- (b) either—
 - (i) the offence for which the vehicle was impounded was not committed by, or with the consent of, the person and the person did not know, and could not reasonably be expected to have known, that the vehicle would be used for the commission of an offence; or
 - (ii) keeping the vehicle would cause excessive hardship or other injustice to anyone.

“(3) The court may also remit all or part of any fee or other amount payable under the *Road Transport (General) Act 1999* in relation to the seizure and impounding of the vehicle.

“(4) If a motor vehicle is released to a person under this section, the person must acknowledge in writing receiving the vehicle.

“10H **Safekeeping of vehicles** (MTA s 139M (2), NSW RT(Gen) sch 1, cl 7)

The chief police officer must take reasonable steps to secure an impounded vehicle against theft or damage while impounded.

“10I **Failure to prosecute** (NSW RT(Gen) sch 1, cl 8)

A proceeding does not lie against the Territory, the chief police officer or a police officer in relation to the seizure or impounding under paragraph 10B (1) (a) (Powers of police officers to seize and impound vehicles used in committing certain offences) of a vehicle for an offence merely because a prosecution is not begun for the offence.

“10J **Disposal of vehicles** (MTA s 139N (5), NSW RT(Gen) sch 1, cl 9)

“(1) The chief police officer may cause an impounded or forfeited vehicle to be offered for sale, by public auction or public tender, in the circumstances prescribed under the regulations.

“(2) The vehicle may be disposed of otherwise than by sale if the chief police officer believes on reasonable grounds that the vehicle has no monetary value or that the proceeds of the sale would be unlikely to exceed the costs of sale.

“(3) If the vehicle offered for sale is not sold, the chief police officer may dispose of the vehicle otherwise than by sale.

“(4) The regulations may make provision for or with respect to the disposal of the proceeds of any such sale, including provisions for or with respect to entitling persons to seek to be paid any such proceeds.”.

8 Dictionary

The following definitions are inserted in the dictionary:

“**registered interest**, in relation to a motor vehicle, means an interest in the vehicle that is registered under the *Registration of Interests in Goods Act 1986* (NSW).

registered operator—see the *Road Transport (Vehicle Registration) Act 1999*, dictionary.”.

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Endnotes

Act amended in pt 2

- 1 Act 1999 No 77 (not republished).

Act amended in pt 3

- 2 Act 1999 No 80 (not republished).

[Presentation speech made in Assembly on 8 December 1999]

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