

1997

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

MOTOR TRAFFIC ACT 1936

**CODE OF PRACTICE
FOR PARKING HEAVY VEHICLES
IN RESIDENTIAL AREAS**

Determination No. 194 of 1997

EXPLANATORY STATEMENT

**Circulated by the authority of
Trevor Kaine MLA
Minister for Urban Services**

MOTOR TRAFFIC ACT 1936

CODE OF PRACTICE

OUTLINE

The Motor Traffic (Amendment) Act (No. 3) 1996 inserted a new Division 4 into Part X of the Motor Traffic Act 1936 (the Act). This Division, comprising sections 150F - 150ZK, introduces regulation of heavy vehicle parking, particularly in residential areas.

Under section 150L of the Act, the parking of a heavy vehicle on residential land by a person in contravention of the Code of Practice is a controlled activity for the purposes of Schedule 5 to the Land Act.

The Minister may approve a Code of Practice relating to the parking of heavy vehicles on residential land pursuant to section 150M of the Act. This Code of Practice may include provisions relating to:

- requirements for the parking of heavy vehicles by existing operators;
- the number of heavy vehicles that may be parked on residential land at any time; and
- the operation of heavy vehicles while on residential land.

The Code of Practice is a disallowable instrument for the purposes of section 10 of the Subordinate Laws Act 1989 (section 150N) and must be published in accordance with section 150P of the Act.

Delayed commencement is provided for in the instrument of approval. This is required to ensure that the Code is not implemented until such time as alternative parking facilities are available, as per the commitment made by the previous Minister for Urban Services.

DETAILS

1. Scope

1.1 confirms that the Code of Practice is approved under section 150M of the *Motor Traffic Act 1936* (the Act).

1.2 indicates that the requirements in the Code of Practice only apply to a heavy vehicle after there have been 12 occasions where a heavy vehicle has parked on that residential lease in the relevant calendar year. The 12 occasions can be made up of 1 heavy vehicle parking 12 times or a number of different heavy vehicles parking a total of 12 times between them. The purpose of this is to reduce the burden on truck operators who only park infrequently on residential land.

1.3 explains that, under the Act, contravention of the Code of Practice is a controlled activity. Controlled activities are dealt with in Part VI of the Land (Planning and Environment) Act 1991 (the Land Act).

1.4 explains that a person can apply under the Land Act to the Minister for an order to prohibit a controlled activity being conducted.

1.5 states that, under the Land Act, contravention of such an order is an offence punishable by a fine of up to 20 penalty units. The penalty is actually found in subsection 150L (2) of the Act where it is incorporated into the Land Act.

2. Definitions

2.1 defines "existing operator" as in subsection 150F (1) of the Act; a person who is entitled to apply for, or who holds an existing operator's certificate.

2.2 explains that applications for existing operator's certificates can only be made within the first 12 months of operation of section 150Q. During that time, existing operator's certificates may be granted if the applicant had parked a heavy vehicle on residential land more than 12 times a year for the preceding 2 years. Further information about existing operators and existing operator certificates can be found in sections 150R - 150ZD of the Act.

2.3 defines "heavy vehicle" as in subsection 150F (1) of the Act; a vehicle or combination of vehicles used for commercial purposes that is more than 7.5m long (whether loaded or not) and which has a GVM of more than 4.5 tonnes.

2.4 defines "minimum setback" as in Appendix VI of the Territory Plan; the minimum distance between the house and the relevant boundary. The minimum setback line is a line drawn parallel with the boundary, touching the closest point of the house.

3. How many vehicles can be parked on a residential lease?

3.1 limits the number of heavy vehicles to one.

3.2 provides the only exception; two heavy vehicles will be allowed if one is a plant vehicle on the back of the other vehicle and the two together are not more than 3.6m high. This exception is to allow heavy vehicles transporting small plant vehicles to park on residential leases.

4. Where can I park a heavy vehicle on a residential lease?

4.1 restricts heavy vehicles to parking behind the minimum setback line of the front boundary (see definitions) and at least 1.5m from the other boundaries.

4.2 prohibits heavy vehicles with a refrigeration unit running from parking on residential leases. These vehicles are prohibited because of the potential impact on neighbours of the noise caused by the refrigeration unit.

5. When can I operate a heavy vehicle on a residential lease?

5.1 limits operation of heavy vehicles on residential leases to between 6.00 am and 10.00 pm.

5.2 provides the only exception; existing operators can operate a heavy vehicle on a residential lease between 5.30 am and midnight. The extended operating hours for existing operators are aimed at reducing the burden of the new restriction on those heavy vehicle operators who have been operating in Canberra for at least two years.

6. Related provisions in the *Motor Traffic Act 1936*

6.1 indicates that, under the Act, the three provisions result only in parking infringements, not criminal proceedings and that the penalties are located in the Motor Traffic Regulations.

6.2 describes how the Minister can suspend the operation of these three provisions if their application would cause excessive inconvenience.

6.3 lists three situations in which a person will not be considered to have contravened the three provisions:

- if acting to avoid contravening the Act or the Traffic Act 1937 or carrying out a manoeuvre required or not prohibited by the Act or the Traffic Act 1937;
- if the vehicle is broken down or involved in an accident or if the person is acting to avoid danger or a collision;
- if the vehicle is stopped or parked because of the nature of the traffic.

Prohibited vehicles - section 150G

6.4 describes subsection 150G (1) of the Act which prohibits the parking of stock trucks, semi-trailer pantechnicons and commercial vehicles over 3.6 metres high on residential land because of their excessive size or particularly offensive nature. The Motor Traffic Regulations prescribe the parking infringement penalty for this provision as \$110.

6.5 describes subsection 150G (2) of the Act which creates two exceptions. The first is if the vehicle is parked to avoid contravening the Act or another Act and was only parked for as long as was reasonable. The second is if the vehicle is parked to allow people or goods to be delivered or collected or for services to be provided, and it was only parked for as long as was reasonable.

Land adjoining residential land including public streets - section 150H

6.6 describes subsections 150H (1) and (3) of the Act which prohibit the parking for more than 1 hour of heavy vehicles, including those not used for commercial purposes, on land adjoining or adjacent to residential land. The Motor Traffic Regulations prescribe the parking infringement penalty for this provision as \$61.

6.7 describes subsection 150H (2) which creates three exceptions. The first is if the vehicle is parked to avoid contravening the Act or another Act and was only parked for as long as was reasonable. The second is if the vehicle is parked to allow people or goods to be delivered or collected or for services to be provided, and it was only parked for as long as was reasonable. The third is if the vehicle is parked on land that is used for residential or commercial purposes. The exception for commercial land is to avoid restricting vehicles on commercial land. The exception for residential land is because the controlled activity provision in clause 150L or the prohibition in clause 150J of the Act will apply.

6.8 lists some examples of where heavy vehicles will be prohibited from parking for more than one hour under this section. The list includes places such as most residential streets, footpaths, nature strips, driveways, laneways and unleased land in residential areas.

Residential land with multi-unit developments - section 150J

6.9 describes subsection 150J (1) of the Act which prohibits the parking of loaded or unloaded commercial vehicles which are more than 6 metres long, 2.6 metres high or have a GVM of more than 3.75 tonnes, on residential land that contains a multi-unit development.

"Multi-unit development" has the same meaning as it does in the Territory Plan at the time of the commencement of this provision. The Territory Plan defines multi-unit development as development involving attached houses, apartments or more than one detached house on a block. "Development", "attached houses", "apartments", "detached house" and "block" are also defined in the Territory Plan. The Motor Traffic Regulations prescribe the parking infringement penalty for this provision as \$110.

6.10 describes subsection 150J (2) of the Act which creates two exceptions. The first is if the vehicle is parked to avoid contravening the Motor Traffic Act or another Act and was only parked for as long as was reasonable. The second is if the vehicle is parked to allow people or goods to be delivered or collected or for services to be provided, and it was only parked for as long as was reasonable.

7. Related provisions in the *Roads and Public Places Act 1937*

7.1 describes section 7 of the *Roads and Public Places Act 1937* which makes it an offence to wilfully or negligently damage a Territory property in a public place. The penalty is a fine of up to 50 penalty units, imprisonment for up to 6 months or both.

7.2 describes section 14 of the *Roads and Public Places Act 1937* which provides that the cost of repairs for damage to a public place must be paid by the perpetrator.