

1989

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

MOTOR TRAFFIC (AMENDMENT) BILL (NO.4) 1989

EXPLANATORY MEMORANDUM

(Circulated by the Authority of Mrs Elnor Grassby MLA  
Minister for Housing and Urban Services)

15058/89 Cat. No. 89 5139 1

Authorised by the ACT Parliamentary Counsel—also accessible at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)

## MOTOR TRAFFIC (AMENDMENT) BILL (NO.4) 1989

### OUTLINE

The Motor Traffic Act 1936 (the Principal Act) provides that where a parking infringement occurs the infringer commits an offence. When an infringer does not pay the prescribed penalty within the specified time the matter is then dealt with in the Magistrates Court. The ultimate sanction for failure to pay any fine levied by the Court is a gaol term.

The Motor Traffic (Amendment) Bill (No.4) 1989 (the Bill) amends the Principal Act to provide for a scheme of civil enforcement of parking fines and replaces the gaol term sanction with cancellation of a driving licence or registration.

The current offences in Part X of the Principal Act will be converted into prohibitions.

Where a parking infringement occurs, a notice will be issued requiring payment of the penalty within 14 days. If the penalty is not paid then a final notice is issued requiring payment of the penalty, an administrative charge (\$20.00 or such amount as is determined by the Minister and notified in the Gazette) within 14 days of that notice. Default in respect of that notice allows the Registrar to cancel the infringer's driving licence or motor vehicle registration in respect of persons licensed or vehicles registered in the ACT or, where not, suspend the infringer's right to drive in the ACT, and drive the motor vehicle involved in the infringement in the ACT.

If the infringer pays the relevant amounts within the time specified in the infringement notice or final notice, no further action will be taken.

A person who was not in charge of the motor vehicle when the infringement occurred can lodge a statutory declaration to that effect with the Registrar within 14 days of the issue of the parking infringement notice or within 14 days of the issue of the final notice. Further, the Bill provides that the infringer can dispute liability for the infringement within 14 days of the issue of either notice. When liability is disputed the matter may be referred to the Court for deliberation.

Where a persons licence or registration has been cancelled, the person may apply to the Court for a declaration that he or she is not liable in respect of the infringement. Where the Court makes such a declaration the licence is reissued or motor vehicle re-registered.

The Registrar shall not reissue the licence to drive, cancel the suspension to drive in the ACT or register or renew the registration of a motor vehicle until all outstanding amounts are paid.

The Bill also includes increases to certain parking infringement penalties.

#### **FINANCIAL STATEMENT**

The approximate increase in revenue from the proposed scheme is \$1.5m per year. Outstanding amounts owing under the present regime are \$1.5m, expected to be recovered in the first year of operation. Additional revenue from increases to certain penalties is \$360,000.

Costs include approx \$500,000 for systems development in first year and \$1.5 million in the following year to complete development and to install new equipment for this purpose as well as upgrading other Registrar functions such as vehicle registration.

**MOTOR TRAFFIC (AMENDMENT) BILL (NO.4) 1989**

**CLAUSE NOTES**

**Clause 1: Short Title**

Clause 1 cites the short title of the Act as being the Motor Traffic (Amendment) Act (No.4) 1989.

**Clause 2: Commencement**

Clause 2 makes commencement of the Act on a date fixed by the Minister by notice in the Gazette.

**Clause 3: Principal Act**

This clause defines the "Principal Act" as being the Motor Traffic Act 1936.

**Clause 4: Interpretation**

Clause 4 amends section 4 of the Principal Act which defines visiting motor vehicle, to the effect that a visiting motor vehicle does not include a motor vehicle in respect of which the Registrar has suspended the right to drive in the Territory under subparagraph 162E(1)(e)(iii) or (f)(ii).

**Clause 5: Refusal of a licence to certain person**

Clause 5 amends subsection 11(c) of the Principal Act which provides grounds for the Registrar to refuse a licence or licence renewal to a person who had previously had a licence suspended or cancelled. This clause will amend the ground to a cancellation otherwise than by section 162E.

**Clause 6: Special licences to drive**

Clause 6 amends section 13A of the Principal Act which provides for the issue by the Magistrates Court of special licences to a person whose driving licence has been suspended or who has been disqualified from holding a licence.

This clause inserts new subsection 13A(1A) to provide that such a special licence is not available to a person whose licence is cancelled under section 162E and who is disqualified from holding a licence under section 162F. The clause also amends subsection 13A(2) to substitute the reference to "the last preceding subsection" with "subsection (1)". This is required because of the addition of subsection 13A(1A).

**Clause 7: Visiting motor drivers**

Clause 7 amends subsection 107(2) of the Principal Act to include a person who has had his or her right to drive a motor vehicle in the Territory suspended under sub-paragraph 162E(1)(e)(iii) or

(iv), as a one who is not deemed to be licensed to drive a motor vehicle as a visiting motor driver. The clause also inserts a comma after Territory (last occurring).

#### Clause 8: Interpretation

Clause 8 amends the definitions found in section 149 which relate to Part X of the Principal Act.

In subsection (1) of section 149 the definition of parking infringement is amended by excluding a contravention of sections 150, 163G, 163H, 163J, 163K, 163MA. These are to remain offences and do not fall within the new scheme.

This clause also provides for increases in certain penalties. It provides that the penalty in relation to contraventions of section 153 (parking in bus stops) or subsection 154(1) (parking in a taxi rank) or 157(3) (parking in a loading zone) or subsection 152(5) or 155(5) (where the relevant sign refers to disabled persons) is to be \$50.00.

This clause further provides that in respect of the contravention of subsection 151(3) (parking or stopping immediately adjacent to a boundary); subsections 152(1), (2) (3A) or (4) (parking in public streets regulated by traffic signs); subsections 155(1), (2), (2A) or (4) (parking in public places); subsection 157(4) (parking in a loading zone without appropriate label); subsection 158(1); subsection 163E(1); (voucher parking) or section 163M (parking where the meter is covered) the penalty is \$40.00.

This clause also provides for a penalty of \$40.00 in respect of a contravention of subsection 152(5) or 155(5) of the Principal Act where the relevant sign refers to district nurses, medical practitioners, Red Cross vehicles or members of the Commonwealth Parliament.

This clause provides a \$30.00 penalty for a contravention of subsection 151(1) and (2) (stopping on a carriageway of a public street); subsection 152(3) (stopping on a carriageway outside time period permitted by a relevant sign); subsection 154(2) (taxi parked in public street outside taxi rank); subsection 154(3) (parking of private hire cars in a public street); subsection 155(3) (parking in a public place outside time period permitted by relevant sign); subsection 158(2); subsection 163D (more than one vehicle in designated parking place); subsection 163E(2) (parking after expiry of voucher); and subsection 163F(1) (parking at expired parking meter). A \$30.00 penalty is also provided for a contravention of subsections 152(5) and 155(5) where the contravention is not one previously referred to.

This clause also inserts new subsection 149(1A) which provides that the administrative change is to be \$20.00 or such other charge as determined by the Minister and notified in the Gazette.

New subsection (1B) inserted by this clause provides that such a determination is a disallowable instrument.

**Clause 9: Stopping etc adjacent to a boundary**

Clause 9 amends section 151 of the Principal Act by:

- omitting the penalties from subsections (1) and (2);
- re-expressing the terminology of the infringing conduct in subsection (3), which is currently an offence, into a prohibition; and
- omitting the words which create an offence and setting out a penalty.

**Clause 10: Parking etc in public streets regulated by traffic signs**

Clause 10 amends section 152 of the Principal Act by:

- omitting the penalty from subsection (1);
- re-expressing the terminology of the infringing conduct in subsection (1A), which is currently an offence, into a prohibition;
- omitting the penalties set out in subsections (2), (3) (3A) (4) and (5); and
- amending the wording of subsection (6) to reflect that the infringement is no longer an offence.

**Clause 11: Bus stops**

Clause 11 amends section 153 of the Principal Act by omitting the penalty.

**Clause 12: Taxis and hire cars**

Clause 12 amends section 154 of the Principal Act by:

- omitting the penalties in subsections (1), (2) and (3); and
- amending subsection (4) to reflect that the prohibited conduct is no longer an offence.

**Clause 13: Parking in public places**

Clause 13 amends section 155 of the Principal Act by:

- omitting the penalties in subsection (1) to (5) inclusive; and

- amending subsection (6) to reflect that the prohibited conduct is no longer an offence.

**Clause 14: Off street parking and loading zones - further regulation**

Clause 14 amends section 156 of the Principal Act by omitting the penalty.

**Clause 15: Parking in loading zones**

Clause 15 amends section 157 of the Principal Act by omitting the penalty.

**Clause 16: Other parking etc offences**

Clause 16 amends section 158 of the Principal Act by:

- omitting the penalty from subsection (1);
- amending subsection (2) to re-express the infringement to be a prohibition;
- omitting the words which create an offence and set out a penalty.

**Clause 17: Parking infringements: liability**

This clause adds subsections 159(1A), (1B) and (1C) which extend the current arrangement deeming the owner of a private vehicle to be liable where a parking infringement occurs. This deeming arrangement will extend to:

- the last registered owner where a vehicle is unregistered at the time of the infringement;
- drivers of Commonwealth or Territory cars; and
- persons named in notices of disposal where the infringement occurs after the date of the sale or disposal of the vehicle stated in the notice.

Clause 17 recasts subsection 159(2) and removes the references to penalties.

The remainder of Clause 17 re-expresses the terminology in section 159 to reflect the abolition of criminal offences in the following ways:

- references to summonses are removed and replaced with references to the final notice under s 162A;
- the words "at the hearing of a prosecution for" are omitted and replaced with the words "In proceedings in respect of";

- the words "of this section the Court shall dismiss the charge" are replaced in one case with "the Court shall not find the owner liable for the parking infringement" and in another with "the Court shall not find the body corporate liable for the parking infringement";
- subsections 159(10) and (11) are omitted as they relate to evidentiary matters in criminal proceedings.

**Clause 18: Substitution**

Clause 18 deletes the current section 160 which provides that a copy of a statutory declaration be furnished to the person named in it, along with the summons for the parking infringement. This is because summonses of this kind will no longer be served. The clause provides for a new section 160 which states that a person on whom a parking infringement notice is served is liable to pay the penalty for the infringement within 14 days after the date of the notice.

**Clause 19: Evidence of registration of motor vehicle**

This clause amends section 161 to reflect the abolition of criminal offences.

**Clause 20: Parking Infringement**

This clause amends subsection 162(2) by removing paragraph (d) which provided that a parking infringement notice should be served on a person named as being in charge of the vehicle at the time of the parking infringement in a statutory declaration made by the owner under section 159(4) or (5). This amendment means there will be no statutory requirement for such a person to be served with a parking infringement notice under section 162.

Clause 20 provides a new subsection 162(5). This subsection details the matters which must be contained in a parking infringement notice including:

- details of the alleged parking infringement;
- the consequences of payment and non-payment in accordance with the notice;
- action which may be taken to dispute liability;
- action which may be taken by the owner where he or she was not the driver of the vehicle when the alleged infringement occurred.

Clause 20 deletes subsection 162(6) which contains the prescribed penalties for parking infringements. These penalties will be included in section 149 of the Act. The clause also deletes subsection 162(7) which details the consequence of a fine being

paid in accordance with the parking infringement notice. Such consequences will be in section 162B. The remainder of section 162 has been amended by clause 20 in the following ways:

- subsection 162(7A) has been amended to reflect the abolition of criminal offences;
- subsection 162(8) has been amended to refer to new subsection 162B rather than the deleted subsection 162(7);
- subsection 162(9) has been amended by substituting the words "penalty for a parking infringement" for "prescribed penalty"; and
- subsections 162(10) and (11) have been omitted to reflect the abolition of criminal offences.

#### Clause 21: Substitution

Clause 21 provides that section 163 which deals with the liability of Commonwealth drivers is repealed and replaced with new sections 162A to 163.

#### Section 162A - Final notice - non-payment of penalty

This section provides that where a person has failed within 14 days of the date of the service of the parking infringement notice to do one of the following:

- pay the penalty;
- furnish a statutory declaration under section 159; or
- dispute liability under subsection 162C(1);

the person is liable to pay to the Registrar the penalty and an administrative charge within 14 days.

Subsection 162A(2) provides that a notice under section 162A must be in a form approved by the minister.

Subsection 162A(3) provides for the requirements of the final notice which include notifying the person of:

- the infringer's non-payment of the penalty;
- the consequence of payment of the penalty and the administrative charge within 14 days;
- the consequence of non-payment of the penalty and administrative charge in accordance with the notice;
- the action which may be taken if the infringer wishes to dispute liability; and

- the owner's option to provide a statutory declaration if the owner was not the driver of the vehicle when the infringement occurred.

Subsection 162A(4) provides that where a person is named as the infringer in a statutory declaration under subsection 159(4) or (5), no action shall be taken against that person until he or she has been served with a final notice.

Subsection 162A(5) provides for the methods of service of a final notice under section 162A and a parking infringement notice under section 162.

#### Section 162B: Discharge of liability

This section gives the Registrar a discretion to grant further time (not exceeding 28 days), either before or after the expiration of the 14 day period after the date of either of the notices, for payment of the penalty or the penalty and the administrative charge.

The section provides that, where the person makes payment in accordance with the notice or within such further time as the Registrar allows, their liability will be discharged and no further proceedings shall be taken in respect of the infringement.

#### Section 162C: Disputing liability under parking infringement notice or final notice

This section provides that a person who has been served with a parking infringement notice or a final notice may dispute liability for the alleged infringement by notice in writing to the Registrar within 14 days after the date of the notice. Such a notice shall set out the grounds on which the person relies.

#### Section 162D: Disputed notices - application to Court for declaration

This section provides that where a person furnishes a statutory declaration in accordance with section 159 or lodges a notice disputing liability in accordance with subsection 162C(1), the Registrar may make an application to the Court for a declaration that the person is liable to pay the penalty for the parking infringement or the penalty and the administrative charge as the case requires. Such an application must be made within 60 days of the date of the notice.

Subsection 162D(2) provides that a copy of any statutory declaration furnished under section 159 should accompany the application.

Subsection 162D(3) provides that where the Registrar has made an application to the Court for a declaration but the person wishes to pay the penalty for the infringement, the person is liable to pay the Registrar the sum of:

- the penalty for the parking infringement;
- the administrative charge; and
- the costs and disbursements of the Registrar (if any) incurred by commencing the proceedings up to the date of payment.

Where the person makes these payments, subsection 162D(4) provides that the Registrar shall discontinue the proceedings.

If the Registrar does not make an application to the Court for a declaration under this section within 60 days of the date of the notice, the Registrar shall notify the person that no further action will be taken on the matter.

Section 162E: Cancellation of licences, registration etc

This section provides for the action which may be taken by the Registrar where:

- the person fails to pay the penalty and administrative charge in accordance with the final notice;
- the person has failed to furnish a statutory declaration under section 159, or a notice disputing liability under subsection 162(1), within 14 days of the parking infringement notice or final notice;
- the person fails within 14 days, or such further time as the court allows, to comply with a declaration made by the Court in relation to the infringement;
- a copy of an order under subsection 147A(2), 150(1) or 150B(1) of the Magistrates Court Ordinance 1930 has been forwarded to the Registrar.

Where one of the above has occurred, the Registrar will take action under subsection 162E(1)(e) or (f). Where the infringer is a natural person, the Registrar may do one of the following:

- if the person is licensed in the ACT - cancel the person's driving licence;
- if the person is not licensed in the ACT but the motor vehicle in respect of which the infringement occurred is registered in the ACT in the name of the infringer - cancel the registration of the person's vehicle;

- if the person is not licensed in the ACT and the motor vehicle in respect of which the infringement occurred is not registered in the ACT - suspend the person's right to drive in the ACT and the person's right to drive that vehicle in the ACT; or
- if the person is not licensed in the ACT and the motor vehicle in respect of which the infringement occurred is owned by the Territory or the Commonwealth - suspend the person's right to drive a motor vehicle in the ACT.

Subsection 162E(1)(f) makes provision for action to take against a body corporate in the following ways:

- if the vehicle in respect of which the infringement occurred is registered in the ACT - cancel the registration of that vehicle; or
- if the vehicle in respect of which the infringement occurred is not registered in the ACT - suspend the right to drive that vehicle in the ACT.

Subsection 162E(2) provides that a person whose licence or registration has been cancelled is not entitled to a refund of fees for the remaining period for which the licence or registration was granted.

Subsection 162E(3) provides that the Registrar shall notify a person in writing of any action taken under subsection 162E(1), and subsection 162E(4) provides for the service of such notification.

#### Section 162F: Issue of fresh licence or registration

This section provides that where the Registrar has taken action under subsections 162C(1)(e) or (f), the Registrar shall not

- issue a fresh licence;
- renew the registration of the vehicle; or
- cancel the suspension of the right to drive in the ACT or the right to drive a particular car in the ACT;

until the person has paid the full amount owed in relation to the parking infringement.

#### Section 162G: Statutory Declarations - general

This section provides the following regarding statutory declarations made under subsection 159(4) or (5):

- the Registrar shall make a copy of a statutory declaration available to the person named in it when that person makes an oral or written request for a copy;

- a statutory declaration is admissible in evidence in proceedings in respect of the infringement and is evidence that the person was in charge of the vehicle at the time;
- a document purporting to be a statutory declaration shall, unless the contrary is shown, be taken to be a duly made and furnished statutory declaration.

Section 162H: Reinstatement of licences, registration etc

This section gives a person the right to apply to the Court for a declaration that he or she is not liable in respect of a parking infringement where action has been taken against him or her under subsection 162E(1)(e) or (f). The Registrar has the onus of proving that the parking infringement occurred. The Court has a discretion whether or not to make the declaration on sufficient cause being shown.

Subsection 162H(4) provides that where the Court makes the declaration, or where a person has successfully applied for a conviction for a parking offence to be set aside under the Magistrates Court Ordinance 1930, the Registrar shall reinstate the licence, registration, right to drive in the ACT or right to drive a particular car in the ACT as the case requires.

Subsection 162H(5) provides that the Registrar is not required to make any reinstatement under subsection 162H(4) if the Registrar is satisfied that other grounds exist for which action under 162E(1)(e) or (f) could be taken.

Subsections 162H(6) and (7) provide that where there has been reinstatement under subsection 162H(4), the person shall be taken for all purposes to have been registered or licensed or have had the right to drive in the ACT, or that particular vehicle could be legally driven in the ACT, during the period of the cancellation or suspension.

Subsection 162H(8) allows a person aggrieved by a decision of the Registrar under subsection 162H(5) not to make a reinstatement, to apply to the Court to set that decision aside. Subsection 162H(9) gives the Court the power to affirm or set aside that decision of the Registrar.

Subsection 162H(10) provides that the Registrar will be the respondent to an application under this section.

Section 162J: Bodies Corporate - recovery of penalties etc

This section provides that where a suspension is in force under subsection 162E(1)(f)(ii), an amount payable by the body corporate may be recovered as a debt due to the Territory. Where it is so recovered the suspension shall be cancelled.

#### Section 162K: Cost of applications to the Court

This section prescribes which party is liable to pay Court costs in relation to applications under sections 162D and 162H.

#### Section 162L: Evidentiary Provision - General

New Section 162L provides for certain certificates to be evidence of the matters stated.

Subsection 162L(1) provides that in proceedings in respect of a parking infringement, where a section 162 parking infringement notice has been served or a section 162A notice has been served, a certificate signed by the Registrar or Deputy Registrar stating that further time has not been allowed by the Registrar under section 162B for payment of the parking infringement penalty or for the parking infringement penalty and administrative charge and that payment has not been made within the 14 days allowed, is evidence of the matter stated.

Subsection 162L(2) provides that in proceedings in respect of a parking infringement, where a section 162 parking infringement notice has been served or a section 162A notice has been served, a certificate from the Registrar or Deputy Registrar stating that the Registrar allowed, under section 162B, further time as stated for payment of the penalty or penalty and administrative charge, and that payment was not made within the 14 days of the notice or within the further time allowed, is evidence of the matter stated.

Subsection 162L(3) provides that for the purposes of subsection 167 (7A) of the Principal Act (an evidentiary provision relating to the affixing of a parking infringement notice to a motor vehicle) and for subsections 162L(1) and (2), a document purported to be signed by the Registrar or Deputy Registrar is taken to be so signed unless the contrary is proved.

#### Section 162M: Applications - how made

New section 162M provides that an application made under section 162D or 162H is to be made pursuant to subsection 20(2) of the Magistrates Court (Civil Jurisdiction) Ordinance 1982.

#### Section 163: Bar to criminal proceedings

New section 163 provides a bar to criminal proceedings in respect of contraventions of the parking infringement matters stated.

Clause 22: One vehicle to be parked on designated parking place

Clause 22 amends section 163D of the Principal Act by omitting the penalty.

**Clause 23: Purchase and display of Vouchers.**

Clause 23 amends section 163E of the Principal Act by omitting the penalties in subsections (1) and (2) and amending subsection (7) to express the conduct stated as a prohibition.

**Clause 24: Expired parking meter**

Clause 24 amends section 163F of the Principal Act by omitting the penalty from subsection (1) and by amending subsection (2) to express the conduct stated as a prohibition.

**Clause 25: Covering of parking meters**

Clause 25 amends section 163M of the Principal Act by omitting the penalty.

**Clause 26: Circumstances in which certain provisions not contravened**

Clause 26 amends section 164 of the Principal Act which had provided defences. This clause amends the section to reflect that the parking infringements are no longer offences.

**Clause 27 General offence**

Clause 27 amends section 192 of the Principal Act which provides for the general offence of contravening or failing to comply with a provision of the Act. This clause provides that the general offence provision does not apply to the parking infringements stated.

**Clause 28: Suspension or cancellation of driving licence.**

Clause 28 amends section 193A of the Principal Act which deals with suspended or cancelled licences generally. This clause inserts new subsection (10) which provides that section 193A does not apply to a licence cancelled under section 162E.

**Clause 29: Laying of information**

Clause 29 amends section 196 of the Principal Act which deals with the laying of informations for offences under the Act. This clause provides that section 196 is subject to section 163 which has been amended to provide a bar to criminal proceedings for the parking infringements stated.

**Clause 30: Transitional**

This clause provides that parking infringements which occur before the commencement of this Act will be dealt with under the current criminal enforcement procedures. That is, where such a person defaults on a parking fine, they will be liable to be prosecuted. However, this is subject to the Magistrates Court

Ordinance 1930. Corresponding amendments to that Ordinance will allow the court to make the same orders as provided in subsections 162E(1)(e) and (f) in respect of infringements occurring before the commencement of this Act where

- a matter has been listed for prosecution but not yet heard;  
or
- a matter has been heard by the Court where an order has been made for payment of the fine, but the payment has not been made within the prescribed period. This will be the case until the point where a warrant of commitment has been issued.