

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

**MOTOR TRAFFIC (AMENDMENT) BILL 1993**

**EXPLANATORY MEMORANDUM**

**Circulated by the Authority of the Minister for Urban Services  
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## MOTOR TRAFFIC (AMENDMENT) BILL 1993

### Explanatory Memorandum

The *Motor Traffic Act 1936* (the Act) regulates various motor traffic and motor vehicle matters such as vehicle registration, driver licences, road safety rules, parking rules, speed limits and insurance requirements.

The Motor Traffic (Amendment) Bill 1993 (the Bill) amends the Act to achieve several major purposes -

- . remove the penalties for parking infringement notices so as to facilitate their transfer into regulations;
- . overcome the inadvertent repeal of two provisions relating to the auctioning of taxi licences;
- . amend provisions relating to parking infringement notices and traffic infringement notices to provide that where a person who is issued with an infringement notice wishes to dispute liability for the notice the matter will be heard in the criminal jurisdiction and that, in default of payment of the penalty, the person's driving licence or motor vehicle registration will be suspended rather than cancelled; and
- . remove sexist language.

#### Financial Considerations

There are no direct costs associated with the Bill.

## MAIN AMENDMENTS

### *Parking Infringement Notices and Traffic Infringement Notices (Clauses 8 and 30)*

The Bill removes the penalties for parking infringement notices from section 149 of the Act as it is proposed that these will be placed in the Motor Traffic Regulations. The inclusion of the penalties in the regulations facilitates the changing of penalties whilst maintaining Legislative Assembly scrutiny and co-locates these penalties with those relating to traffic infringement notices. The Bill accordingly extends the regulation making power in section 218 of the Act to enable parking infringement penalties to be transferred to the regulations.

The Bill also amends section 218 to enable regulations to be made under the Act in respect of penalties under the *Motor Traffic (Alcohol and Drugs) Act 1977* and under the *Traffic Act 1937*. This is necessary because both of these Acts have an isolated penalty for which a traffic infringement notice can be issued. The relevant provisions are paragraph 26A(f) of the *Motor Traffic (Alcohol and Drugs) Act 1977* and section 6D of the *Traffic Act 1937*. These penalties will also be transferred into the Motor Traffic Regulations to facilitate changes in the future but also to enable all traffic infringement penalties to be located together.

### *Auctioning of Taxi Licences - Inadvertent Repeal (Clauses 5 and 6)*

In 1990 the Act was amended to, among other matters, enable the Registrar of Motor Vehicles to auction taxi licences in addition to granting taxi licences upon payment of a determined fee. The auctioning of taxi licences was intended to result in increased revenue to the Territory as the true market value of taxi licences would be obtained.

However in 1991 sections 27A and 27B which dealt, respectively, with the auction of a "defined right" to be granted a taxi licence and the number of taxi licences which could be granted by the Registrar, were inadvertently repealed by the *Motor Traffic (Amendment) Act 1991 (No. 42 of 1991)*. The repeal was effective from 4 November 1991 when the relevant provisions of the amending Act commenced.

Consequently, since 4 November 1991, there has been no power to conduct an auction of taxi licences or to limit the number of taxi licences which may be granted by the Registrar. The Bill reinstates the repealed provisions with some modifications.

The opportunity has also been taken to clarify a further matter regarding the granting of taxi licences. Because paragraph 27(1)(a) of the Act provides that the Registrar may grant a taxi licence upon payment of the determined fee it appears that a person may circumvent an auction by merely paying the determined fee (which would usually be lower than the value obtainable at auction) and demanding a licence. It is arguable that the Registrar may not be able to refuse without good reason. The Bill clarifies the position by providing for the auction of a defined right for a taxi licence and only if the reserved price of that defined right is not reached can the licence be disposed of by payment of the determined fee. Alternatively the Bill enables a fee to be determined for a licence in which case an auction cannot be conducted in relation to that licence. In this way only one option is available at a time to dispose of a taxi licence.

The inadvertent repeal of sections 27A and 27B has had no adverse consequences. The last auction was held on 25 September 1991 and the last determination under section 27B was gazetted on 24 September 1991. Both actions occurred before 4 November 1991. No extensions of the term of a "defined right" were sought under subsection 27A(4) and no other action has taken place under the two provisions since that time.

#### *Parking Infringement Notices and Traffic Infringement Notices - Enforcement Procedures (Clauses 7, 9-29)*

The Bill changes the procedure by which liability for an offence for which a traffic infringement notice (TIN) has been issued is decided. The existing provisions provide for liability for a TIN to be disputed after the issue of a final notice and for a hearing in the civil jurisdiction. The Bill provides for liability for a TIN to be disputed only up to the issue of a final notice and for a hearing in the criminal jurisdiction.

The Bill removes the existing provisions which provide that the consequence of default of payment of a parking infringement notice (PIN) or a TIN is the cancellation of a defaulter's driving licence or motor vehicle registration and substitutes provisions for the suspension of the defaulter's driving licence or motor vehicle registration. The Bill also removes the provisions dealing with the liability of a body corporate for a TIN as such a notice is only issued to an individual.

The Bill also deals with the issue of costs of a court hearing. Existing section 162K provides for costs of applications to the court in the civil jurisdiction for a declaration in respect of a disputed notice or as to the reinstatement of a licence or registration. New section 162K clarifies the payment of costs in respect of such applications.

Existing section 180K which provides for the costs of an application to the court for a declaration in respect of a disputed notice or as to the reinstatement of a licence or registration in the civil jurisdiction is repealed. In future such matters will be heard in the criminal jurisdiction and costs are to be at the discretion of the Court.

***Removal of Gender Specific Language (Clauses 31 and 32)***

The Bill and the Schedules remove sexist language from the Act and make various other changes to reflect current drafting policy.

Details of the provisions of the Bill are included in the Attachment.

## Attachment

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**Clauses 1 to 3** deal with formal matters. The Bill commences operation on a day or on days notified in the Gazette or within 6 months, whichever occurs first.

**Clause 4** amends section 4 of the Act which is an interpretation provision. In particular, clause 4(c) enables the Minister to determine, by a disallowable instrument, the administrative charge for the purposes of the PIN and TIN procedures.

**Clause 5** amends section 27 of the Act by including a new subsection 27(1A) which ensures that if the Minister has already determined a reserved price for the auction of a taxi licence then he or she cannot determine a fee in respect of that licence unless the licence was not disposed of at the auction because the reserved price was not reached.

**Clause 6** reinstates sections 27A and 27B which were repealed by the Motor Traffic (Amendment) Act 1991, but with certain modifications:

- Subsection 2 of the repealed section 27A, which enabled the Registrar to determine the terms under which an auction could be conducted, has not been included as it is considered unnecessary. This power is implicit under subsection 27A(1);
- New subsection 27A(2) provides that the Minister must determine the reserved price for the purposes of the auction of defined rights;
- New subsection 27A(3) qualifies the power to hold an auction under subsection 27A(1) by providing that a defined right cannot be auctioned if the Minister has determined a fee in respect of that licence; and
- Reinstated section 27B enables the Minister to determine the number of taxi licences or defined rights which may be granted or auctioned.

**Clause 7** amends section 100 of the Act so that a person has 7 days to hand a suspended or cancelled certificate of registration or driving licence to the Registrar.

**Clause 8** amends section 149 of the Act which is an interpretation provision in relation to Part X which relates to parking requirements. In particular, clause 8(b) provides that a penalty in relation to a parking infringement is the penalty prescribed by the regulations.

**Clause 9** amends section 162 of the Act by removing the requirement that a PIN be in a form approved by the Minister as all relevant requirements are specified in the Act. **Clause 9** also makes a consequential amendment of subsection 162(8).

**Clause 10** amends section 162A of the Act so that a final notice issued under that section is not required to be in a form approved by the Minister. It also specifies the action which the Registrar may inform the infringer that he or she intends to take if the penalty and the administrative charge are not paid.

**Clause 11** inserts words into section 162B of the Act to make it clear that the provisions regarding the discharge of liability for a PIN also apply where a notice is withdrawn.

**Clause 12** amends section 162D of the Act to clarify the circumstances when the Registrar can apply to the Court for a declaration as to the liability of an infringer and also inserts a new paragraph 162D(3)(e) which is consequential upon the amendments effected by clause 16.

**Clause 13** makes several consequential amendments of section 162E of the Act relating to suspension rather than cancellation of an infringer's entitlements. **Clause 13(d)** removes existing subsection 162E(3) which provides that the Registrar must advise a person of the cancellation of the person's licence or registration or suspension of the right to drive in the Territory and inserts instead a provision that the Registrar shall not effect a suspension unless the relevant person is notified, at least 10 days before the suspension takes effect, of the date on which the suspension of a driving licence, registration or right to drive in the Territory is to take effect.

**Clause 14** removes existing section 162F of the Act which provides for the issue of a fresh licence or registration by the Registrar and inserts a new section 162EA to provide that the Registrar shall not issue a licence or registration while a person's right to drive

generally or right to drive the motor vehicle is suspended due to default in payment of a PIN and also inserts a new section 162F which provides that the Registrar shall, on payment of all amounts owing in respect of a PIN, cancel the suspension of the person's driving licence or motor vehicle registration.

Clause 15 effects various consequential and technical amendments to section 162H of the Act.

Clause 16 repeals section 162K of the Act and inserts a new section 162K the effect of which is that where a declaration is made under section 162D the respondent shall pay the costs of the Registrar otherwise the Registrar shall pay and where a declaration is made under section 162H the Registrar shall pay the applicant's costs otherwise the applicant shall pay.

Clause 17 makes minor and consequential changes to section 180A of the Act. Clause 17 (c), in particular, amends subparagraph 180A(3)(d)(v) by omitting the words which provide for notice of the consequences of a hearing of disputed liability for a TIN where the Court (in a civil hearing) made a declaration that the person was liable and inserts words which provide that a person issued with a TIN is to be notified that the consequences of a disputed liability, to be heard in the criminal jurisdiction, may be a conviction, a Court order to pay the penalty and costs and such further orders as the Court determines.

Also clause 17(d) omits subsection 180A(4) which provides that the Commissioner of Police may only withdraw a TIN within 28 days of its issue and inserts a new subsection (4) which allows the chief police officer to withdraw a TIN at any time, and new subsection (4A) which provides that where the chief police officer withdraws a TIN and intends to lay an information instead he or she may only do so where the chief police officer has, within 28 days of the issue of the TIN, served a notice on the alleged infringer that the TIN is to be withdrawn and an information laid.

Clause 18 removes the requirement under subsection 180B(2) of the Act that a final notice be in a form approved by the Minister. It also specifies, in clause 18(c), the action which the Registrar may inform the infringer that he or she intends to take if the penalty and the administrative charge are not paid. These actions mirror those which the Registrar may take in respect of a failure to pay a parking penalty and an administrative charge under section 162A as amended by clause 10.



**Clause 19** amends section 180C of the Act consequentially.

**Clause 20** removes existing subsection 180D(1) which provides for notice as to disputed liability for a TIN to be given and inserts a new subsection 180D(1) which provides that a notice as to disputed liability for a TIN must be given within 28 days of the issue of the TIN. The effect of this amendment is that a person may only dispute liability for an offence for which a TIN is issued within 28 days of the issue of the TIN, that is, before the issue of a final notice.

**Clause 21** amends section 180E of the Act to effect several technical and consequential amendments. More importantly, clauses 21(a) and (e) provide that, where a person has lodged a notice of disputed liability for a TIN the chief police officer may, within 60 days of receipt of the notice, lay an information in the Magistrates Court as to the alleged traffic offence and that, where an information is not laid within the 60 days, the chief police officer shall notify the person that no further action is to be taken in respect of the alleged offence and that the chief police officer is to take no such further action.

**Clause 22** effects various technical and consequential amendments to section 180F of the Act.

**Clause 23** removes existing section 180G of the Act which provides for the issue of a fresh licence or registration by the Registrar and inserts a new section 180FA to provide that the Registrar shall not issue a licence or registration while a person's right to drive generally or right to drive the motor vehicle are suspended due to default in payment of a TIN and inserts a new section 180G which provides that the Registrar shall, on payment of all amounts owing in respect of a TIN, cancel the suspension of the person's driving licence or motor vehicle registration.

**Clause 24** effects various technical and consequential amendments to section 180H of the Act.

**Clause 25** repeals sections 180J relating to the liability of a body corporate for a TIN. It also repeals section 180K the effect of which is that the costs of a court hearing will be at the discretion of the court.

**Clauses 26 and 27** effect various technical and consequential amendments to section 180L and 180M, respectively, of the Act.

**Clause 28** inserts a new section 180N to enable the chief police officer to delegate powers given to him or her in relation to the TIN procedures.

**Clause 29** makes a consequential amendment to subsection 193A(10) of the Act.

**Clause 30** amends section 218 of the Act to enable parking penalties under the Act and penalties for offences under the Motor Traffic (Alcohol and Drugs) Act 1977 and the Traffic Act 1937 to be prescribed in the Motor Traffic Regulations.

**Clause 31** amends Schedule 7 of the Act to correct a sexist reference and to effect certain consequential changes.

**Clause 32** provides for the amendment of the Act as detailed in Schedules 1 and 2. The Schedules correct sexist terms and make other technical and drafting changes.

**Clause 33** is a transitional provision which ensures that a PIN or TIN issued prior to the commencement of the Bill is not affected by the changes made by the Bill.