

AUSTRALIAN CAPITAL TERRITORY

MAGISTRATES COURT (AMENDMENT) ORDINANCE (NO3) 1989

N6.60

EXPLANATORY STATEMENT

The purpose of the Ordinance is to amend the Magistrates Court Ordinance 1930 (the Principal Ordinance) consequent upon the enactment by the ACT Legislative Assembly of the Motor Traffic (Amendment) Act (No.3) 1989 (the amending Act) which provides for a new scheme for the civil enforcement of parking infringements in the ACT. Under the Act failure to pay an amount due for a parking infringement will result in the cancellation of the owner's driving licence or vehicle registration or, in the case of interstate drivers and vehicles, suspension of the right to drive and to drive the vehicle concerned in the Territory.

Removing ACT parking infringements from the criminal justice system will result in a significant reduction in workload for the Magistrates Court and the Australian Federal Police (AFP).

The Ordinance provides for the application of the licence/registration cancellation and suspension of right to drive provisions of the new scheme where default is made in the payment of a fine imposed by the Court for a parking offence under the current criminal offence provisions.

The Principal Ordinance at present requires the Court to impose a gaol sentence in default of payment of a fine for a parking offence.

The amending Act will only apply to parking infringements that occur after its commencement. There is a substantial backlog in enforcement action in the Magistrates Court and the AFP for non-payment of parking fines imposed by the Court under the current system. The Ordinance will enable this backlog to be cleared more quickly and conserve Court and AFP resources.

In brief, the Ordinance enables the Court:

- (a) on convicting and fining the defendant for a parking offence - to order that in default of payment of the fine the conviction or order be forwarded to the Registrar of Motor Vehicles for cancellation of the person's licence/registration or (for interstate drivers) suspension of the right to drive or to drive the motor vehicle in the Territory as the case requires; and
- (b) where it has convicted and fined the defendant and the person has not paid the fine within the period allowed - to order that unless the person pays the fine within 14 days the order is to be forwarded to the Registrar for similar action to be taken. This will be in lieu of the Court issuing a warrant of commitment for the person's imprisonment. In cases where an order is made:
 - i) The Court will be required to notify the defendant of the order; and
 - ii) The defendant can apply to the Court for further time to pay the amount outstanding or to pay by instalments.

Details of the sections in the Ordinance are set out in the attachment.

Details of Magistrates Court (Amendment) Ordinance (No.3) 1989

Section 1 provides for the citation of the Ordinance.

Section 2 provides for the commencement of the Ordinance on a date fixed by notice in the Gazette. To allow time for computer programs and other administrative tasks to be completed the amending Act has not yet been commenced. The amending Act and the amending Ordinance will need to come into force on the same day.

Section 3 defines "Principal Ordinance" to mean the Magistrates Court Ordinance 1930.

Section 4 amends section 5 (interpretation) of the Principal Ordinance by inserting a definition of the "Motor Traffic Act".

Section 5 amends section 23 of the Principal Ordinance (ex parte order may be set aside on terms). Where the Court has set aside a conviction or order for a parking offence it is to be required to set aside any orders made under new sections 147A, 150A, 150B to be inserted by sections 8 and 10 in the Principal Ordinance and, as appropriate, if action has been taken in accordance with the order under those new sections the Court is also to be required to direct the Registrar of Motor Vehicles to re-issue a cancelled licence, re-register a cancelled motor vehicle registration or cancel the suspension of the right to drive and/or the right to drive the motor vehicle in the ACT, as the case requires.

Section 6 inserts a new section 146 (interpretation) into Division 2 of Part IX of the Principal Ordinance. The new section defines "parking offence" to mean the contravention, before the date of commencement of the Motor Traffic

(Amendment) Act (No.3) 1989 of Part X of the Motor Traffic Act (rules relating to parking), except for certain specified sections. These sections contain offences relating to damages to parking equipment and vouchers that are to remain criminal offences.

Section 7 amends section 147 of the Principal Ordinance by inserting a new subsection 147(3AA). The new subsection ensures that a natural person who has been convicted of a parking offence is not imprisoned and that a fine against a body corporate will not automatically operate as a judgment for the payment of money.

Section 8 inserts in the Principal Ordinance a new section 147A (parking offences). The section will apply only to convictions or orders in respect of parking offences made after the commencement of the Ordinance. Under the section where a person is fined for a parking offence the Court is to order that, in default of payment within the period specified, a copy of the conviction or order be forwarded to the Registrar of Motor Vehicles for cancellation of the person's driving licence or the registration of the motor vehicle in respect of which the parking offence occurred, or for suspension of the person's right to drive and/or to drive that motor vehicle in the ACT, as the case requires. A copy of new section 162E (cancellation of licences, registration etc) of the Motor Traffic Act inserted by the amending Act is to be given or served on the defendant.

Section 9 amends section 150 of the Principal Ordinance by inserting new subsection 150(1A). Subsection 150(1) provides for committal to prison where a parking fine is not paid. Under subsection 150(1A), subsection 150(1) will not apply to a person who was convicted of a parking offence before the commencement of the amending Ordinance if a warrant of commitment has not been issued.

Section 10 inserts after section 150 of the Principal Ordinance new sections 150A, 150B and 150C.

Section 150A (parking offences - further orders in respect of natural persons) provides that where but for subsection 150(1A), a person is liable to be committed to prison for non-payment of a parking fine the Court is required to make a further order that unless the fine is paid within 14 days, a copy of the further order is to be forwarded to the Registrar of Motor Vehicles for cancellation of the person's driving licence or registration of the motor vehicle in respect of which the offence occurred or, in relation to interstate drivers, for suspension of the person's right to drive and/or drive the motor vehicle in the ACT. A copy of the further order and of section 162E of the Motor Traffic Act is to be served on the defendant.

Section 150B (parking offences - further orders in respect of bodies corporate) provides that where but for this section, a warrant of execution would issue against a body corporate in respect of non-payment of a parking fine the Court is required to make a further order that unless the fine is paid within 14 days a copy of the further order is to be forwarded to the Registrar of Motor Vehicles for cancellation of the registration of the motor vehicle or, in respect of interstate vehicles, suspension of the right to drive the motor vehicle in the ACT. A copy of the further order and section 162E of the Motor Traffic Act is to be served on the defendant. A warrant of execution cannot be issued where a further order is made.

Section 150C (further orders - service) requires service by pre-paid post of a copy of a further order made under sections 150A or 150B to the last known address of the defendant.

Section 11 inserts after section 153 of the Principal Ordinance new sections 153A (parking offence - instalment payments), 153B (consequence of non-compliance with certain orders) and 153C (part payments).

Under section 153A where the court has made a further order for payment of the outstanding amount under section 150A or 150B the defendant can apply for further time to pay the whole or part of the amount due or to pay it by instalments. Where the application is granted the Clerk is not to forward a copy of the further order to the Registrar of Motor Vehicles for cancellation/suspension action unless the defendant defaults on the payment of an instalment or the amount has not been paid within the further time allowed for payment.

Section 153B requires the Clerk, where there has been a default in compliance with an order of the Court made under new sections 147A, 150A, 150B, to send a copy of the order or further order to the Registrar of Motor Vehicles.

Under section 153C where part payment of an amount is made under an order made under section 147A or under subsections 150A(1) or 150A(2) the Clerk is to endorse on the relevant order the amount remaining unpaid.

Section 12 inserts after section 155 of the Principal Ordinance new section 155A. Under the new section where costs pursuant to a parking conviction or order have been paid to the Registrar of Motor Vehicles (for example, to enable a new licence to be issued or a vehicle re-registered which can only occur if the fine and costs have been paid in full) the Registrar is to pay an equal amount to the Clerk.