

2009

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

ROADS AND PUBLIC PLACES AMENDMENT BILL 2009

REVISED EXPLANATORY STATEMENT

**Circulated by authority by
Mr Jon Stanhope MLA
Minister for Transport**

ROADS AND PUBLIC PLACES AMENDMENT BILL 2009

Note This Revised Explanatory Statement has been prepared in response to the report into the Bill by the Standing Committee on Justice and Community Safety (performing the duties of a Scrutiny of Bills and Subordinate Legislation Committee) in its Scrutiny Report to the Assembly dated 30 March 2009.

Overview

The Roads and Public Places Amendment Bill 2009 (the Bill) amends the *Roads and Public Places Act 1937* (the principal Act) to provide for simplified means to remove abandoned vehicles from public places by government officers.

Currently the principal Act allows a roads and public places officer, if they suspect a vehicle is abandoned, to move the vehicle to a government retention area in certain circumstances. However if the vehicle is registered they must first give the registered operator a notice advising them of their intention to move the vehicle.

The roads and public places officer must wait two days after the registered operator has been given the notice before they can move the car – see subsection 12E(3) of the principal Act. In order to satisfy the current provisions of the Act they must factor in a period of time to allow for the transmission of the notice by mail. Section 250 of the *Legislation Act 2001* allows the officer to assume that delivery of the notice has been effected when the document would have been delivered “in the ordinary course of post.”

The Bill shortens the required waiting period by allowing a roads and public places officer to affix the required notice onto the vehicle and deeming the affixing of the notice to be the giving of notice to the registered operator. The two day time frame runs from the time the notice is affixed to the vehicle. The Bill makes it an offence to remove or damage a notice affixed to a vehicle, except by the owner or registered operator of the vehicle.

Once the 2 day time frame has expired (and that time frame is calculated having regard to sections 151(3) and 151A of the *Legislation Act 2001*) the vehicle can be moved to a retention area and if not claimed, can be subsequently disposed of under the *Uncollected Goods Act 1996*.

The Bill also recognises that the shortened time frame requires other means to ensure that a person’s vehicle is not needlessly disposed of, in the unlikely event they did not intend to abandon it. For this reason once a vehicle has been moved to a retention area, a second written notice must be sent to the registered operator advising them that the vehicle has been removed to a government retention area. If the registered operator is not the owner of the vehicle they are required to advise a roads and public places officer of the name and address of the owner, if they have that information. Only then do the provisions of the *Uncollected Goods Act 1996* apply.

Notes on Clauses

Clause 1 Name of Act

This clause is a formal provision setting out the name of the proposed Act.

Clause 2 Commencement

This clause explains that the proposed Act will commence on a day fixed by the Minister by written notice.

Clause 3 Legislation Amended

This clause is a formal provision to identify that the legislation to be amended by the proposed Act is the *Roads and Public Places Act 1937*.

Clause 4 Offences against Act—application of Criminal Code etc Section 2AA, note 1

This clause amends the current note to section 2AA of the principal Act to add a reference to new section 12EB(1).

Clause 5 Section 12E(4) to (6)

Section 12E of the principal Act sets out the circumstances under which a vehicle which appears to be abandoned can be removed by a roads and public places officer. In the case of a vehicle that is registered, section 12E(3) of the current provision requires a notice to be served on the registered operator of the vehicle. The registered operator then has two days from the time they have been given the notice to remove the vehicle before a roads and public places officer can take action to remove it – see subsection 12E(4)(a).

This clause amends section 12E to permit the required notice to be served by simply placing the notice conspicuously on the vehicle concerned – see new section 12E(5). New section 12E(6) establishes that such a notice is taken to have been received by the registered operator on the day the notice is placed on the vehicle. New section 12E(4) sets out what the notice must include: this includes asking the registered operator to pass on the details of the owner, if they know them.

If the registered operator has not moved the vehicle within two days or told a roads and public places officer who the owner of the vehicle is, the officer may remove the vehicle to a government retention area, by virtue of existing section 12E(3). However, this time frame should be read in conjunction with sections 151(3) and 151A of the *Legislation Act 2001*. If the two day period expires on a non working day, the time is automatically extended until the next working day.

Clause 6 New sections 12EA and 12EB

This clause inserts new sections 12EA and 12EB into the principal Act.

New section 12EA establishes the procedure that is to be followed once an abandoned, registered vehicle is moved to a retention area. This is intended to provide some additional assurance that the owner knows that their vehicle has been moved and by whom. The new section requires the registered operator to be given a notice telling them what has happened to the vehicle and that it is available for collection from the retention area. If the registered operator is not the owner they are again asked to pass on the details of the owner, if they know them.

New section 12EB creates an offence of removing or defacing or otherwise interfering with a notice placed on a vehicle under section 12E(3). The maximum penalty for a person found committing such an offence is 20 penalty units.

Registered operators and owners of vehicles are permitted to remove the notice. Government officials acting in their official capacity are permitted to remove the notice, by operation of section 121(3) of the *Legislation Act 2001*.

Unlike the current section 12E, the replacement section 12E no longer contains definitions for “owner” or “registered operator”. Clauses 10 and 11 of this Bill move these definitions to the dictionary at the end of the principal Act.

Clause 7 Section 12F

This clause replaces the current section 12F in its entirety.

At present, under the current section 12F of the principal Act, it is a strict liability offence for a registered operator of an abandoned vehicle, to fail to provide information about the owner of the vehicle to a roads and public places officer, if they know who the owner is. The registered operator has 7 days after receipt of the notice currently issued for the purposes of section 12E(3), to provide that information.

The new section differs from the former section by replacing the reference to the notice under section 12E(3) with the notices under section 12EA. The effect of this amendment is that no offence is committed by a registered operator if they fail to provide the information as requested by the first notice under section 12E (i.e. the notice affixed to the car), but an offence is committed if the registered operator fails to provide that information after receiving the second notice in the mail under section 12EA.

Although the offence in the current section 12F of the principal Act is a strict liability offence, the replacement offence is no longer one of strict liability. An element of the offence – in new subsection 12F(c)(ii) – includes the requirement to establish whether the registered operator believed another person was the owner of the vehicle. This introduces a mental aspect to the offence, to which the application of strict liability (that is, the exclusion of fault elements) would be inappropriate.

The replacement section 12F no longer contains cross-references to the definitions of “owner” or “registered operator” formerly contained in section 12E, as clauses 10 and 11 of this Bill move these definitions to the dictionary at the end of the principal Act.

Clause 8 Disposal of items under sections 12E and 12G Section 12H

This clause amends section 12H of the principal Act by replacing references to “the Minister” with the “Chief Executive” as the possessor of abandoned goods, including vehicles, for the purposes of the *Uncollected Goods Act 1996*. By virtue of section 163 of the *Legislation Act 2001* the reference to Chief Executive is to the Chief Executive of the department with administrative oversight of this provision. Given the administrative nature of this provision, it is considered that the function better sits with the Chief Executive, rather than the Minister. New clause 12EA also refers to the Chief Executive, rather than the Minister (see clause 6 of this Bill).

Clause 9 Disposal of items under sections 12E and 12G New section 12H(2)

This clause adds section 12H(2) which will ensure that before an abandoned registered vehicle (i.e. a vehicle to which 12E(3) applies) can be disposed of under Part 3 of the *Uncollected Goods Act 1996*, the notice required by new section 12EA must first have been sent to the registered operator, or owner, as the case may be. The time limits set for disposal under the *Uncollected Goods Act 1996* only apply 7 days after the relevant notice has been given.

Clause 10 Dictionary, definition of owner

The current definition of “owner” in the dictionary to the principal Act provides a definition of owner for land. This clause amends the definition to include a definition for vehicles. By virtue of this definition, “ownership” includes not only people who own a vehicle, but also other people who nevertheless have a right to move the vehicle.

Clause 11 Dictionary, new definition of *registered operator*

This clause inserts a definition of “registered operator” into the dictionary to the principal Act. The definition adopts the definition of “registered operator” as found in the dictionary to the *Road Transport (Vehicle Registration) Act 1999*.