



AUSTRALIAN CAPITAL TERRITORY

## **Motor Traffic (Amendment) Act (No. 2) 1992**

**No. 46 of 1992**

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### **An Act to amend the *Motor Traffic Act 1936***

*[Notified in ACT Gazette S148: 1 September 1992]*

The Legislative Assembly for the Australian Capital Territory enacts as follows:

#### **Short title**

**1.** This Act may be cited as the *Motor Traffic (Amendment) Act (No. 2) 1992*.

#### **Commencement**

**2. (1)** Subject to subsections (2), (3), (4) and (5), this Act commences on the day on which it is notified in the *Gazette*.

**(2)** Sections 5 and 6 commence on a day fixed by the Minister by notice in the *Gazette*.

**(3)** Sections 12 and 14 commence at the expiration of 90 days after the day on which this Act is notified in the *Gazette*.

**(4)** Section 15 commences at the expiration of 30 days after the day on which this Act is notified in the *Gazette*.

(5) If the provisions referred to in subsection (2) have not commenced before the end of the period of 6 months commencing on the day on which this Act is notified in the *Gazette*, those provisions, by force of this subsection, commence on the first day after the end of that period.

### **Principal Act**

3. In this Act, “Principal Act” means the *Motor Traffic Act 1936*.<sup>1</sup>

### **Interpretation**

4. Section 4 of the Principal Act is amended by inserting in subsection (1) the following definitions:

“ ‘Australian Standard 2898.1-2’ means Australian Standard ‘2898.1-2—1986’, as in existence from time to time;

‘slip lane’ means a branch of a public street provided at an intersection or junction exclusively for the use of vehicles turning left at that intersection or junction onto the intersecting or adjoining public street being a branch which is separated from those streets by a traffic island;”.

### **Left hand turns**

5. Section 120 of the Principal Act is amended—

- (a) by omitting from paragraph (1) (a) “or”;
- (b) by inserting after paragraph (1) (a) the following paragraph:

“(aa) where a slip lane is provided—in that slip lane; or”;
- (c) by inserting in subsection (1) “, without reasonable excuse,” after “shall not”.

### **Insertion**

6. After section 123 of the Principal Act the following section is inserted:

#### **Slip lane traffic to give way**

“123A. Where—

- (a) the driver of a motor vehicle turns the vehicle to the left at the junction or intersection of 2 or more public streets;
- (b) the driver in so doing makes use of a slip lane;
- (c) there is another vehicle travelling upon or turning onto the public street onto which the motor vehicle referred to in paragraph (a) is turning; and

- (d) there is a reasonable possibility that the vehicles might collide or that a dangerous situation might otherwise be created;

the driver of the motor vehicle referred to in paragraph (a) shall allow the other vehicle to pass in front of him or her.”.

### **Interpretation**

7. Section 140 of the Principal Act is amended by inserting the following definitions:

- “ ‘approved radar speed measuring device’ means a device approved under section 147CA;
- ‘radar detecting device’ means a device designed or apparently designed to be fitted to or carried in a motor vehicle for the purpose of detecting electromagnetic radiations from an approved radar speed measuring device;
- ‘radar jamming device’ means a device designed or apparently designed to be fitted to or carried in a motor vehicle for the purpose of interfering with the receiving by an approved radar speed measuring device of reflected electromagnetic radiations;”.

### **Evidence of speed**

8. Section 147B of the Principal Act is amended by omitting “the next succeeding section” and substituting “section 147C, or as measured by a radar speed measuring device in accordance with section 147CB”.

### **Speed measuring device**

9. Section 147C of the Principal Act is amended—

- (a) by omitting from subsection (2) “member of the Police Force” and substituting “police officer”;
- (b) by omitting from subparagraph (2) (b) (i) “(b) of the last preceding subsection” and substituting “(1) (b)”;
- (c) by inserting in subsection (3) “or she” after “he” (wherever occurring);
- (d) by omitting from paragraph (3) (a) “of this section”;
- (e) by omitting from subparagraph (3) (a) (ii) “(b) of that subsection” and substituting “(1) (b)”;
- (f) by omitting from paragraph (3) (b) “member of the Police Force” and substituting “police officer”; and

- (g) by omitting from subparagraph (3) (b) (i) “the last preceding paragraph” and substituting “subparagraph (a) (ii)”.

### **Insertion**

**10.** After section 147C of the Principal Act the following sections are inserted:

#### **Approval of radar speed measuring devices**

“147CA. (1) The Minister may—

- (a) of his or her own motion; or
- (b) on receiving an application in writing from a manufacturer or importer of the particular radar speed measuring device;

by notice published in the *Gazette*, approve a device designed for use in measuring the speed of motor vehicles.

“(2) In considering whether to approve a device under subsection (1), the Minister shall have regard to Australian Standard 2898.1-2.

#### **Evidence concerning approved radar speed measuring device**

“147CB. (1) Evidence of the speed at which a motor vehicle was travelling upon a public street by reference to a speed measured by a radar speed measuring device shall not be given unless—

- (a) on the day of the alleged offence the device was an approved device under subsection 147CA (1);
- (b) the device was tested within 6 months before the day of the alleged offence;
- (c) when tested the device was accurate and operating properly; and
- (d) the testing was done by a person (approved by the Minister for the purpose by instrument in writing published in the *Gazette*), whom the Minister is satisfied is competent to carry out electrical testing in accordance with Australian Standard 2898.1-2.

“(2) In any proceedings in a court in which evidence is given of the speed of a motor vehicle as measured by a radar speed measuring device, a certificate purporting to be signed by a police officer stating that—

- (a) the person is a police officer;
- (b) the device is an approved radar speed measuring device;

- (c) on a specified day, not more than 6 months before the date of the alleged offence, the device was tested and found to be accurate and operating properly by a person referred to in paragraph (1) (d);
- (d) at the commencement of a specified period of operation of the device, it was tested by the officer against a motor vehicle's accurate speedometer and was found to be accurate within a tolerance of 2 kilometres per hour;
- (e) at the conclusion of the specified period of operation referred to in paragraph (d) (not being more than 9 hours later than the commencement) the device was tested by the officer against the same speedometer and was found to be accurate within a tolerance of 2 kilometres per hour; and
- (f) the officer used the device—
  - (i) during a specified period (within the period referred to in paragraphs (d) and (e)); and
  - (ii) on a specified day;to measure the speed of a specified vehicle travelling on a specified street through the detection area of the device and that the speed so measured was the speed specified;

is evidence of the matters stated in the certificate and of the facts on which they are based.”.

### **Tampering etc. with amphotometers and radar speed measuring devices**

**11.** Section 147D of the Principal Act is repealed and the following section substituted:

“147D. A person shall not, knowingly and without lawful authority—

- (a) tamper or interfere with, or damage the mechanism of an amphotometer or an approved radar speed measuring device; or
- (b) tamper or interfere with a seal affixed to an amphotometer or an approved radar speed measuring device.

Penalty: \$1,000.”.

### **Heading to Part XA**

**12.** The heading to Part XA is amended by adding at the end “**AND CHILD RESTRAINTS**”.

**Interpretation**

13. Section 164A of the Principal Act is amended by omitting from subsection (1) the definition of “Australian Standard 1754—1975” and substituting the following definition:

“ ‘Australian Standard 1754—1975’ means Australian Standard ‘1754—1975’, as in existence from time to time;”

**Substitution**

14. Section 164D of the Principal Act is repealed and the following sections are substituted:

**Children and young persons**

“164D. A person shall not drive a motor vehicle on a public street if—

- (a) a child in the vehicle is not restrained by a child restraint;
- (b) a young person, or a child who is not restrained by a child restraint, in the vehicle is not restrained by a seat belt; or
- (c) a child in a vehicle occupies a position abreast of the driving position—
  - (i) being a position that is equipped with a child restraint—while there is an unoccupied position to the rear that is, or that could be, equipped with a child restraint;
  - (ii) being a position that is not equipped with a child restraint but is equipped with a seat belt—while there is an unoccupied position to the rear equipped with a child restraint or seat belt; or
  - (iii) being a position that is equipped with neither a child restraint nor a seat belt—while there is an unoccupied position to the rear.

**Suitability of child restraints and seat belts**

“164DA. (1) In section 164D, a reference to a child restraint or a seat belt in relation to a child or young person shall be read as a reference to a child restraint or seat belt that is suitable for use by him or her, that is securely fastened around him or her and is properly adjusted.

“(2) For the purposes of this section, a child restraint is not suitable for use by a particular child unless—

- (a) the child restraint is marked—
  - (i) with the letters and number “AS 1754”; or

- (ii) with the certification trade mark registered under the *Trade Marks Act 1955* of the Commonwealth in respect of child restraints and Australian Standard 1754—1975; and
- (b) the child restraint is, within the meaning of Australian Standard 1754—1975, suitable for use by a child of the age, size and mass of that child.

“(3) For the purposes of this section, a seat belt fitted in a motor vehicle in accordance with the requirements of the applicable design rules shall be taken to be suitable for use by a child or young person.

#### **Exceptions for purposes of section 164D**

“164DB. (1) Paragraph 164D (a) does not apply in relation to a vehicle that is not equipped with a child restraint and that—

- (a) is a public motor vehicle or a private hire car;
- (b) is not required to comply with the child restraint anchorage requirements of the publication known as Australian Design Rule 34A, 2nd edition or Australian Design Rule 5/00, 3rd edition;
- (c) is registered in a State or another Territory in which there is not in force a law that corresponds generally with the provisions of this Part; or
- (d) is owned by the Commonwealth and the sequence of characters displayed on the number plate commences with ‘C\*’.

“(2) Nothing in section 164D shall be taken to require that a child who has not attained the age of 1 year be restrained by means of a seat belt.”.

#### **Defences**

**15.** Section 164E of the Principal Act is amended—

- (a) by omitting from paragraph (6) (c) "subsection 164D (2)" and substituting "paragraph 164D (a) or (b)"; and
- (b) by omitting from subsection (7) "subsection 164D (1) or (2)" and substituting "paragraph 164D (a) or (b)".

#### **Insertion**

**16.** After section 164F of the Principal Act the following sections are inserted in Part XI:

#### **Sale, purchase or use of radar detectors and jammers**

“164G. (1) A person shall not use, sell or offer for sale, or purchase, a radar detecting device or a radar jamming device.

“(2) A person shall not drive a motor vehicle, or cause a motor vehicle to stand, on a public street or in a public place if the vehicle is fitted with or is carrying a radar detecting device or a radar jamming device.

“(3) The owner of a motor vehicle which is driven or stands on a public street or in a public place in contravention of subsection (2) is guilty of an offence.

Penalty: \$2,000.

### **Defences to prosecution**

“164H. (1) It is a defence to a prosecution for an offence under section 164G if the defendant satisfies the court that the device concerned was not designed as a radar detecting device or a radar jamming device but was designed for another purpose.

“(2) It is a defence to a prosecution for an offence under subsection 164G (2) or (3) if the defendant satisfies the court that, at the time of the alleged offence—

- (a) the vehicle was in the course of a journey to a place appointed by a police officer or a court in order to surrender the device; or
- (b) the vehicle was the subject of a notice, issued by a police officer, requiring the owner of the vehicle to remove the device from the vehicle within a specified time and that time had not expired; or
- (c) the defendant did not know, and in the circumstances could not reasonably be expected to have known, that the vehicle was fitted with or was carrying the device concerned.

### **Surrender of device**

“164I. (1) A police officer who believes on reasonable grounds that—

- (a) a radar detecting device or radar jamming device is being sold or offered for sale in contravention of section 164G (1); or
- (b) a motor vehicle is standing or being driven in contravention of section 164G (2) because a device is fitted to or carried in the vehicle;

may require a person in possession of the device—

- (c) to surrender it immediately to the police officer; or



- (d) where the device is fitted to a motor vehicle and is not immediately removable—may by notice in writing served in a manner specified in section 108D, require the person to surrender the device within a specified time and in a specified manner to the Chief Police Officer for the Australian Capital Territory.

“(2) A person shall comply with a requirement under subsection (1) whether or not he or she is the owner of the device concerned.

Penalty: \$2,000.

### **Forfeiture of device**

“164J. (1) A court which finds an offence under section 164G to have been proven against any person may order that the device concerned, if not already surrendered, be delivered to the Chief Police Officer for the Australian Capital Territory within a time and in a manner specified by the court.

“(2) A device surrendered as required under subsection (1) is forfeited to the Territory and shall be destroyed or otherwise disposed of as directed by the Chief Police Officer for the Australian Capital Territory.

“(3) No liability attaches to any person on account of the surrender by the person, in pursuance of a requirement under this section, of a radar detecting device or radar jamming device of which that person is not the absolute owner.”.

### **Amendment of Schedule 7**

**17.** Schedule 7 to the Principal Act is amended by adding after Item 7 in Part I the following item:

Item	Provision	Decision
7A	Subsection 147CA (1)	Refusing to approve a device designed for use in measuring the speed of motor vehicles

### **NOTE**

1. Reprinted as at 18 May 1992. See also Act No. 44, 1992.

*[Presentation speech made in Assembly on 25 June 1992]*

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