



AUSTRALIAN CAPITAL TERRITORY

Motor Traffic (Amendment) Act (No. 3) 1996

No. 83 of 1996

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AUSTRALIAN CAPITAL TERRITORY

Motor Traffic (Amendment) Act (No. 3) 1996

No. 83 of 1996

An Act to amend the *Motor Traffic Act 1936* and for related purposes

[Notified in ACT Gazette S328: 20 December 1996]

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

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Motor Traffic (Amendment) Act (No. 3) 1996*.

Commencement

2. (1) Sections 1, 2 and 3 commence on the day on which this Act is notified in the *Gazette*.

(2) The remaining provisions commence on a day, or respective days, fixed by the Minister by notice in the *Gazette*.

(3) If a provision referred to in subsection (2) has not commenced before the end of the period of 12 months commencing on the day on which this Act is notified in the *Gazette*, that provision, by force of this subsection, commences on the first day after the end of that period.

Principal Act

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

PART II—AMENDMENTS OF PRINCIPAL ACT

Interpretation

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

“ ‘identity card’ means an identity card issued by the Registrar;”.

Inspectors

5. Section 6B of the Principal Act is amended by adding at the end the following subsection:

“(4) Where a person referred to in subsection (3) ceases to be an inspector the person shall not, without reasonable excuse, fail to return to the Registrar any identity card issued by the Registrar.

Penalty: 1 penalty unit.”.

Insertion—heading, Division 1

6. Before section 149 of the Principal Act the following heading is inserted in Part X:

“Division 1—Interpretation”.

Interpretation

7. Section 149 of the Principal Act is amended by omitting from the definition of “parking infringement” in subsection (1) “sections 150,” and substituting “section 150, subsections 150Z (3) or 150ZF (2) or sections”.

Insertion—heading, Division 2

8. After section 149 of the Principal Act the following heading is inserted:

“Division 2—Certified vehicles”.

Insertion—heading, Division 3

9. After section 150 of the Principal Act the following heading is inserted:

“Division 3—Labels”.

Insertion—Division and heading

10. After section 150E of the Principal Act the following Division and heading are inserted:

“Division 4—Parking of heavy vehicles

Interpretation

150F. (1) In this Division—

“ ‘Code of Practice’ means the code of practice approved under section 150M, as in force from time to time;

‘controlled activity’ means the activity that is declared by section 150L to be a controlled activity for the purposes of Schedule 5 of the Land Act;

‘exemption’ means an exemption granted under section 150T;

‘existing operator’ means—

- (a) a person who is entitled under section 150Q to apply for an existing operator’s certificate; or
- (b) a person who is the holder of an existing operator’s certificate;

‘existing operator’s certificate’ means a certificate issued under section 150R;

‘heavy vehicle’ means a vehicle or combination of vehicles—

- (a) whether loaded or unloaded, that is more than 7.5 metres in length and which has a GVM exceeding 4.5 tonnes; and
- (b) that is used for commercial purposes;

‘Land Act’ means the *Land (Planning and Environment) Act 1991*;

‘residential land’ means land leased for residential purposes;

‘stock truck’ means a vehicle or trailer—

- (a) having a GVM exceeding 4.5 tonnes; and
- (b) designed and built for the carriage of livestock.

“(2) A reference in this Division to land adjoining residential land shall be read as including a reference to land that would, but for an intervening public street, adjoin that land.

“(3) A vehicle to which this Division applies that is parked partly on residential land and partly on adjoining land that is not residential land, shall not be taken for the purposes of this Division to be parked on residential land.

Parking of specific vehicles and trailers on residential land

“150G. (1) A person shall not park on residential land—

- (a) a stock truck;
- (b) a semi-trailer with the load space permanently enclosed by rigid construction or having sides enclosed by non-rigid material and a rigid roof; or
- (c) a vehicle, whether loaded or unloaded, that—
 - (i) exceeds 3.6 metres in height; and
 - (ii) is used for commercial purposes.

“(2) Subsection (1) does not apply to a vehicle of the kind referred to in that subsection if—

- (a) the parking of the vehicle on the land was such as was reasonably necessary to avoid a contravention of this Act or of another law in force in the Territory; or
- (b) the parking of the vehicle was for the purposes of the delivery or collection of persons or goods or in the course of the provision of services;

and the vehicle was not permitted to stand on the land for a period longer than was reasonable in all the circumstances.

Parking of heavy vehicles on land adjoining residential land

“150H. (1) A person shall not park a heavy vehicle on land adjoining residential land for a period exceeding 1 hour.

“(2) Subsection (1) does not apply—

(a) if—

(i) the parking of the heavy vehicle on land adjoining residential land was such as was reasonably necessary to avoid a contravention of this Act or of another law in force in the Territory; or

(ii) the parking of the heavy vehicle was for the purposes of the delivery or collection of persons or goods or in the course of the provision of services;

and the vehicle was not permitted to stand on that land for a period longer than was reasonable in all the circumstances; or

(b) if the land on which the heavy vehicle is parked is residential land or land leased for commercial purposes.

“(3) In this section—

‘heavy vehicle’ means a vehicle or combination of vehicles, whether loaded or unloaded, that is more than 7.5 metres in length and which has a GVM exceeding 4.5 tonnes.

Parking of commercial vehicles on leases comprising multi-unit developments

“150J. (1) A person shall not park a vehicle used for commercial purposes, whether loaded or unloaded, that—

(a) exceeds 6 metres in length;

(b) exceeds 2.6 metres in height; or

(c) has a GVM exceeding 3.75 tonnes;

on residential land containing a multi-unit development.

“(2) Subsection (1) does not apply to a vehicle of the kind referred to in that subsection if—

(a) the parking of the vehicle on the land was such as was reasonably necessary to avoid a contravention of this Act or of another law in force in the Territory; or

- (b) the parking of the vehicle was for the purposes of the delivery or collection of persons or goods or in the course of the provision of services;

and the vehicle was not permitted to stand on the land for a period longer than was reasonable in all the circumstances.

“(3) In subsection (1)—

‘multi-unit development’ has the same meaning as in Appendix VI of the Territory Plan as in force at the commencement of this section.

Daily infringement

“150K. A person commits a parking infringement against section 150G, 150H or 150J in respect of each day during which the person fails to comply with that section, including the day of a conviction for the contravention or any later day.

Controlled activity

“150L. (1) The parking of a heavy vehicle on residential land by a person in contravention of the Code of Practice is declared to be a controlled activity for the purposes of Schedule 5 to the Land Act.

“(2) Schedule 5 to the Land Act shall be read as if a reference to the parking of a heavy vehicle by a person on residential land in contravention of the Code of Practice appeared as an item in Column 2 of that Schedule and “20 penalty units” appeared in Column 3 of that Schedule in relation to that item.

Codes of practice

“150M. (1) The Minister may, by instrument, approve a Code of Practice relating to the parking of heavy vehicles on residential land.

“(2) Without limiting the generality of subsection (1), a Code of Practice may include provisions relating to—

- (a) requirements for the parking of heavy vehicles by existing operators;
- (b) the number of heavy vehicles that may be parked on residential land at any time; and
- (c) the operation of heavy vehicles while on residential land.

Disallowance

“150N. A Code of Practice is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

Publication

“150P. (1) The Registrar shall cause to be published in a newspaper published and circulating in the Territory, on or before the date of effect of an approval under section 150M, notice of the approval of each Code of Practice—

- (a) specifying the date on which the Code of Practice takes effect;
- (b) specifying a place or places at which copies of the Code of Practice may be purchased;
- (c) containing a statement to the effect that a copy of the Code of Practice may be inspected by members of the public at the office of the Registrar during office hours; and
- (d) containing a statement to the effect that the Code of Practice is subject to disallowance by the Legislative Assembly under the *Subordinate Laws Act 1989*.

“(2) The Registrar shall ensure that a copy of the Code of Practice to which an approval under section 150M relates is made available for public inspection at the office of the Registrar during office hours.

“(3) In this section—

‘code of practice’ includes any document (or part of a document) the provisions of which are applied by the Code.

Application for existing operator’s certificate

“150Q. (1) A person is entitled to apply for an existing operator’s certificate if—

- (a) in the period of 2 years immediately preceding the date of the application, the applicant, on not less than 24 occasions, parked a heavy vehicle on residential land; and
- (b) the period of 12 months after the date of commencement of this section has not expired.

“(2) An application for an existing operator’s certificate shall be—

- (a) in a form approved by the Registrar;
- (b) signed by the applicant;
- (c) accompanied by the determined fee; and
- (d) lodged with the Registrar.

“(3) For the purposes of paragraph (1) (a), a heavy vehicle that is parked on residential land on more than 1 occasion on any 1 day shall be taken to have been so parked on 1 occasion.

Issue of existing operator’s certificate

“150R. (1) The Registrar shall, if satisfied that an applicant is a person who is entitled to apply under subsection 150Q (1), issue to the person an existing operator’s certificate.

“(2) The Registrar shall not issue an existing operator’s certificate if the Registrar believes on reasonable grounds that the applicant—

- (a) has failed to comply with subsection 150Q (2) or section 150Y; or
- (b) made a statement that was false or misleading in a material particular—
 - (i) in his or her application; or
 - (ii) to the Registrar pursuant to a requirement under section 150Y.

Application for exemption

“150S. (1) A person who is the holder of an existing operator’s certificate may apply for an exemption from all or any of the provisions of the Code of Practice.

“(2) An application for an exemption shall—

- (a) be in a form approved by the Registrar;
- (b) be signed by the applicant;
- (c) be accompanied by—
 - (i) the applicant’s existing operator’s certificate; and
 - (ii) the determined fee; and
- (d) be lodged with the Registrar.

Grant of exemption

“150T. (1) The Registrar may—

- (a) grant an exemption; or
- (b) refuse to grant an exemption.

“(2) The Registrar shall, in an exemption, specify the conditions (if any) to which the exemption is subject.

“(3) Before granting an exemption, the Registrar shall, if land adjoining the land to which an application relates—

- (a) is occupied—give notice by post of the making of the application to the occupier and lessee of each adjoining land at the address of the adjoining land; or
- (b) is unoccupied—give notice by post to the lessee of the adjoining land at the address of the lessee last known to the Registrar.

“(4) A notice under subsection (3) shall—

- (a) contain a description of the provisions of the Code of Practice from which exemption is sought;
- (b) invite the occupier and lessee of the land to which the notice relates to make submissions to the Registrar, within 28 days after the date of the notice, why the exemption sought should not be granted; and
- (c) contain a statement to the effect that, if no submissions are received by the Registrar before the expiry of that period of 28 days, the Registrar may grant the exemption.

“(5) In deciding whether to grant an exemption, the Registrar shall—

- (a) take into account any submissions made under subsection (4); and
- (b) have regard to whether the occupier or lessee would, if the exemption were granted, be adversely affected by the granting of the exemption.

“(6) For the purposes of paragraph (5) (b), in deciding whether an occupier or lessee of an adjoining land would be adversely affected, the Registrar shall take into account—

- (a) the period for which, and the provisions of the Code of Practice from which, exemption is sought;
- (b) the likely safety, noise and visual consequences of granting the exemption; and
- (c) any action taken by the applicant to reduce the safety, noise or visual impact on the occupiers of adjoining land including, for that purpose, any landscaping, parking bays, fencing, noise barriers or garaging arrangements on land occupied by the applicant.

“(7) The Registrar shall not grant an exemption if the Registrar believes on reasonable grounds that the applicant—

- (a) has failed to comply with subsection 150S (2) or section 150Y; or

- (b) made a statement which was false or misleading in a material particular—
 - (i) in his or her application; or
 - (ii) to the Registrar pursuant to a requirement under section 150Y.

Term of exemption

“150U. An exemption remains in force, subject to this Division, for such period as is specified in writing by the Registrar commencing on the date on which the exemption was granted.

Endorsement of certificates

“150V. Where the Registrar grants an exemption to the holder of an existing operator’s certificate, the Registrar shall endorse the certificate with that exemption.

Form of existing operator’s certificate

- “150W. An existing operator’s certificate shall—
- (a) be in a form approved by the Registrar; and
 - (b) specify—
 - (i) the name and address of the person to whom it is granted;
 - (ii) each provision of the Code of Practice from which exemption is granted;
 - (iii) whether or not the exemption is subject to conditions;
 - (iv) the vehicle or vehicles to which the exemption relates; and
 - (v) the residential land on which the vehicle or vehicles may be parked in accordance with the exemption.

Variation of conditions of exemptions

“150X. (1) The Registrar may, on application in writing by the holder of an existing operator’s certificate, vary the conditions to which an exemption is subject in the manner specified in the application.

“(2) Section 150T applies in relation to an application under this section as if a reference to an exemption were a reference to the variation of a condition to which an exemption is subject.

Further information

“150Y. The Registrar may, by written notice to an applicant under—

- (a) section 150Q or 150S; or
- (b) section 150X in relation to the variation of a condition to which an exemption is subject;

require the applicant to give to the Registrar, either orally or in writing, such further information relating to the application as is specified in the notice.

Issue of copy of existing operator’s certificate

“150Z. (1) Where the Registrar is satisfied that an existing operator’s certificate in force under this Act has been lost, stolen or destroyed, the Registrar shall, on payment of the determined fee, issue to the holder a copy of the certificate and that copy has, for the purposes of this Act, the same force and effect as the certificate.

“(2) The holder of an existing operator’s certificate which has been lost, stolen or destroyed shall not, without reasonable excuse, fail to notify the Registrar within 14 days of becoming aware of its being lost, stolen or destroyed.

“(3) A person shall not, without reasonable excuse, contravene subsection (2).

Penalty:

- (a) if the offender is a natural person—5 penalty units;
- (b) if the offender is a body corporate—25 penalty units.

Cancellation of existing operator’s certificate or revocation of exemptions

“150ZA. (1) Where the Registrar believes on reasonable grounds that—

- (a) an existing operator’s certificate in force under subsection 150R (1) or 150Z (1);
- (b) an exemption in force under section 150T; or
- (c) the variation under section 150X of a condition to which an exemption is subject;

was issued or granted, as the case requires, in reliance on information given to the Registrar by the applicant which was false or misleading in a material particular, the Registrar may cancel the certificate.

“(2) The registrar shall, on request by the holder of an existing operator’s certificate, cancel the certificate or revoke an exemption, in accordance with that request.

Notice to show cause before cancellation of existing operator’s certificate

“150ZB. (1) The Registrar shall not cancel an existing operator’s certificate under subsection 150ZA (1) unless the Registrar has given the person to whom the existing operator’s certificate was issued written notice—

- (a) stating the facts and circumstances on which the Registrar relies; and
- (b) informing the person that he or she may, within 28 days from the date of the notice, by writing given to the Registrar, make submissions to the Registrar concerning any matters stated in the notice.

“(2) In making a decision under section 150ZA, the Registrar shall consider any submissions made in accordance with paragraph (1) (b).

“(3) Subject to this Division, where an application is made under section 217D for the review of a decision by the Registrar under subsection 150ZA (1), the existing operator’s certificate is deemed to have continued and to continue in force pending the determination or withdrawal of the appeal.

“(4) Where no application is made under section 217D for the review of a decision by the Registrar under section 150ZA, the cancellation of the existing operator’s certificate takes effect at the expiration of 14 days after the day on which the Registrar gives the person to whom the certificate was issued notice in writing of the cancellation under subsection 217C (1).

Inspections etc.

“150ZC. An inspector may enter land—

- (a) with the consent of the occupier of the land; or
- (b) pursuant to a warrant issued under section 150ZG or 150ZH;

and, subject to section 150ZE, exercise any power referred to in section 150ZF if the inspector has reasonable grounds for believing that the provisions of this Division are not being complied with.

Consent to entry

“150ZD. (1) Before seeking the consent of the occupier of land for the purposes of section 150ZC, an inspector shall inform the occupier that he or she may refuse to give that consent.

“(2) If an inspector obtains the occupier’s consent for those purposes, the inspector shall ask the occupier to sign a written acknowledgment—

- (a) that the occupier has been informed that he or she may refuse to give consent, for the purposes of section 150ZC, for the inspector to enter the land and to exercise any power under section 150ZF;
- (b) that the occupier has given the inspector that consent; and
- (c) of the day on which, and the time at which, the consent was given.

“(3) Where it is material, in any proceedings, for a court to be satisfied that an occupier has consented for the purposes of section 150ZC and an acknowledgment, in accordance with subsection (2), signed by the occupier, is not produced in evidence, it shall be presumed that the occupier did not consent, but that presumption is rebuttable.

Display of identity cards

“150ZE. An inspector who enters land under section 150ZC is not entitled to remain on the land if, on request by the occupier, the inspector does not show his or her identity card to the occupier.

Powers of inspection

“150ZF. (1) Subject to this Division, an inspector who enters land under section 150ZC may—

- (a) inspect, examine and take measurements of any vehicle on that land that the inspector has reasonable grounds for believing is a heavy vehicle;
- (b) take such photographs or video recordings, or make such sketches or other recordings, as the inspector believes on reasonable grounds to be necessary;
- (c) require any person in or on the land—
 - (i) to give the inspector such information; or
 - (ii) to produce to the inspector any document containing such information;relating to the use of the land;
- (d) require any person in or on the land to answer questions; and

- (e) require any person on the land to give the inspector such assistance as is reasonable to enable the inspector to exercise his or her powers under this section.

“(2) A person shall not, without reasonable excuse, fail to comply with a requirement made of the person under paragraph (1) (c), (d) or (e).

Penalty:

- (a) if the offender is a natural person—50 penalty units;
- (b) if the offender is a body corporate—250 penalty units.

Search warrants

“150ZG. (1) Where an inspector has reasonable grounds for believing that there is, or there will be within the next 72 hours, in or on any land, any evidential material, the inspector may—

- (a) lay before a Magistrate an information on oath setting out those grounds; and
- (b) apply for the issue of a warrant to search the land for that evidential material.

“(2) Where an application is made under subsection (1) for a warrant to search land, a Magistrate may, subject to subsection (3), issue a warrant authorising an inspector named in the warrant, with such assistance and by such force as is necessary and reasonable—

- (a) to enter the land;
- (b) to ascertain whether or not a parking infringement has been committed on the land; and
- (c) to search the land for evidential material of the kind specified in the warrant.

“(3) A Magistrate shall not issue a warrant under subsection (2) unless—

- (a) the informant or another person has given the Magistrate, either orally or by affidavit, any further information that the Magistrate requires concerning the grounds on which the issue of the warrant is being sought; and
- (b) the Magistrate is satisfied that there are reasonable grounds for issuing the warrant.

“(4) A warrant shall include statements of the following matters:

- (a) the parking infringement to which it relates;

- (b) a description of the land to which the warrant relates;
- (c) the kinds of evidential material that are to be searched for under the warrant;
- (d) the name of the inspector who is responsible for executing the warrant;
- (e) the period not exceeding 28 days for which the warrant remains in force;
- (f) subject to subsection (5), the times during which the search is authorised.

“(5) If the application for the warrant is made under section 150ZH, this section applies as if—

- (a) subsection (1) referred to 48 hours instead of 72 hours; and
- (b) paragraph (4) (e) referred to 48 hours instead of 28 days.

Warrants by telephone or other electronic means

“150ZH. (1) An inspector may make an application to a Magistrate for a warrant by telephone, telex, facsimile or other electronic means if the delay that would occur if an application were made in person would frustrate the effective execution of the warrant.

“(2) The Magistrate may require communication by voice to the extent that is practicable in the circumstances.

“(3) An application under this section shall include all information required to be provided in an ordinary application for a warrant, but the application may, if necessary, be made before the information is sworn.

“(4) If an application is made to a Magistrate under this section and the Magistrate—

- (a) after considering the application; and
- (b) having received and considered such further information (if any) as the Magistrate required;

is satisfied that the delay that would occur if an application were made in person would frustrate the effective execution of the warrant, the Magistrate may complete and sign the same form of warrant that would be issued under section 150ZG.

“(5) If the Magistrate decides to issue the warrant, the Magistrate is to inform the applicant, by telephone, telex, facsimile or other electronic means, of the terms of the warrant and the day on which and the time at which it was signed.

“(6) The applicant shall then complete a form of warrant in terms substantially corresponding to those given by the Magistrate, stating on the form the name of the issuing officer and the day on which and the time at which the warrant was signed.

“(7) The applicant shall, not later than the day after the day of expiry of the warrant or the day after the day on which the warrant was executed, whichever is the earlier, give or transmit to the Magistrate the form of warrant completed by the applicant and, if the information referred to in subsection (3) was not sworn, that information duly sworn.

“(8) The Magistrate is to attach to the documents provided under subsection (7) the form of warrant completed by the Magistrate.

“(9) If—

- (a) it is material, in any proceedings, for a court to be satisfied that the exercise of a power under a warrant issued under this section was duly authorised; and
- (b) the form of warrant signed by the Magistrate is not produced in evidence;

the Court is to assume, unless the contrary is proved, that the exercise of the power was not duly authorised.

“(10) A Magistrate may delegate all or any of his or her powers under this section to the Registrar of the Magistrates Court or a Deputy Registrar of that Court.

Division 5—Offences”.

Insertion—heading, Division 6

11. After section 158 of the Principal Act the following heading is inserted:

Division 6—Parking infringements”.

Bar to criminal proceedings

12. Section 163 of the Principal Act is amended by inserting “150G, 150H, 150J,” after “section”.

Insertion—heading, Division 7

13. After section 163 of the Principal Act the following heading is inserted:

“Division 7—Voucher machines and parking meters”.

Insertion—heading, Division 8

14. After section 163MB of the Principal Act the following heading is inserted:

“Division 8—Miscellaneous”.

Suspension of operation of certain sections

15. Section 163N of the Principal Act is amended by inserting in subsection (1) “150G, 150H, 150J,” after “section”.

Circumstances in which certain provisions not contravened

16. Section 164 of the Principal Act is amended by inserting in subsections (1), (4) and (5) “150G, 150H, 150J,” after “section”.

Schedule 7

17. Schedule 7 of the Principal Act is amended by inserting after item 50 in Part II the following items:

50A	Subsection 150R (1)	Refusing to issue a certificate
50B	Subsection 150T (1)	Granting or refusing to grant an exemption
50C	Subsection 150T (1)	Granting a conditional exemption
50D	Subsection 150U (1)	The period specified for which an exemption remains in force
50E	Subsection 150X (1)	Refusing to vary an exemption
50F	Subsection 150Z (1)	Refusing to issue a copy of a certificate
50G	Subsection 150ZA(1)	Cancelling a certificate

**PART III—CONSEQUENTIAL AMENDMENTS OF LAND
(PLANNING AND ENVIRONMENT) ACT 1991**

Application for order

18. Section 256 of the *Land (Planning and Environment) Act 1991* is amended—

(a) by omitting subsection (3) and substituting the following subsection:

“(3) On receiving an application under subsection (1), the Minister shall give notice in writing of the application—

(a) to each person against whom an order is sought; and

- (b) in the case of an application relating to the parking of heavy vehicles on residential land pursuant to Division 4 of Part X of the *Motor Traffic Act 1936*—to the Minister administering that Act.”;
- (b) by omitting subsection (4A) and substituting the following subsection:
 - “(4A) Before deciding whether to make an order the Minister shall consider any submissions made—
 - (a) by a person against whom the order is sought; and
 - (b) in the case of an application for an order relating to the parking of heavy vehicles on residential land pursuant to Division 4 of Part X of the *Motor Traffic Act 1936*—by the Minister administering that Act.”; and
- (c) by inserting after subsection (4B) the following subsection:
 - “(4C) Where the Minister makes an order under subsection (4B) that relates to the parking of a heavy vehicle on residential land pursuant to Division 4 of Part X of the *Motor Traffic Act 1936*, the Minister shall, as soon as practicable after the order is made, cause a copy of the order to be given to the Minister administering that Act.”.

NOTES

Principal Act

1. Reprinted as at 28 February 1995. See also Acts Nos. 8, 17 and 46, 1995; Nos. 7, 26, 47 and 76, 1996.

Penalty units

See section 33AA of the *Interpretation Act 1967*.

[Presentation speech made in Assembly on 21 November 1996]