



AUSTRALIAN CAPITAL TERRITORY

Motor Traffic (Amendment) Act (No. 2) 1997

No. 52 of 1997

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AUSTRALIAN CAPITAL TERRITORY

Motor Traffic (Amendment) Act (No. 2) 1997

No. 52 of 1997

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

[Notified in ACT Gazette S264: 19 September 1997]

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. 2) 1997*.

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 the day on which the *Motor Traffic (Alcohol and Drugs) (Amendment) Act 1997* (other than sections 1, 2 and 3 of that Act) commences.

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—
- (a) by omitting from the definition of “offence of culpable driving” in subsection (1) “section 52A” and substituting “section 29”;
 - (b) by adding “and does not include a special probationary licence granted under section 11C” at the end of the definition of “probationary licence” in subsection (1);
 - (c) by omitting from subsection (1) the definition of “special licence” and substituting the following definition:
 - “ ‘special licence’ means a special probationary licence in force under section 11C;”;
 - (d) by inserting in subsection (5) “180ZC,” after “176,”; and
 - (e) by omitting from subsection (5) “191” and substituting “191, 191P”.

Grant of full or provisional licence to former probationary licensee

5. Section 8A of the Principal Act is amended—
- (a) by omitting subsection (1) and substituting the following subsections:
 - “(1) Subject to subsection (1A) and sections 10 and 104, the Registrar shall—
 - (a) grant another full licence to a person whose former full license has been cancelled; or
 - (b) grant another provisional licence to a person whose former provisional license has been cancelled;
- if the person has held a probationary licence for a period of, or periods totalling, at least 12 months after the cancellation.
- “(1A) Subject to sections 10 and 104, the Registrar shall—
 - (a) grant another full licence to a formerly disqualified full licensee; or

- (b) grant another provisional licence to a formerly disqualified provisional licensee;
if the person has held a probationary licence for a period of, or periods totalling, at least 12 months after the end of the period, or the latest period, during which the person was disqualified from holding a driving licence.”;
- (b) by omitting subsection (3) and substituting the following subsection:
“(3) A licence granted to a person by virtue of subsection (1) or (1A) shall be subject to any provisional endorsement to which the person’s former licence was subject immediately before its cancellation.”; and
- (c) by omitting subsection (6) and substituting the following subsection:
“(6) For the purposes of this section, a formerly disqualified licensee is a person—
 - (a) whose full licence, or provisional licence, has been cancelled by force of, or under, a law of the Territory because of a conviction of an offence; and
 - (b) who has been disqualified by force of, or under, a law of the Territory from holding a driving licence because of that conviction.”.

Conditions on licences

6. Section 8B of the Principal Act is amended by omitting paragraph (7) (b) and substituting the following paragraph:

- “(b) enabling the Registrar to grant or vary a licence so as to be inconsistent with any condition or limitation ordered by a court or imposed as a result of a court order.”.

Refusal of licences to certain persons

7. Section 9 of the Principal Act is amended by adding at the end the following subsection:

- “(2) This section does not apply to a special licence.”.

Substitution

8. Section 11A of the Principal Act is repealed and the following sections are substituted:

Special probationary driving licence

“11A. (1) Any person may apply to the court for an order under subsection (4).

“(2) An application for an order under subsection (4) shall be filed with the Registrar of the court together with an affidavit of the applicant setting out the grounds on which the order is sought.

“(3) The respondents to an application are—

- (a) the Registrar of Motor Vehicles; and
- (b) the chief police officer.

“(4) The court may in exceptional circumstances, and on application in accordance with subsection (2), order the Registrar of Motor Vehicles to grant a special licence in accordance with section 11C by a person in respect of a period during which the person would not otherwise be entitled to drive a motor vehicle because—

- (a) he or she is disqualified from holding a driving licence by force of, or under, a law of the Territory;
- (b) a provisional licence granted to the person is suspended under subsection 180X (2); or
- (c) a driving licence granted to the person is suspended or cancelled by force of, or under, a law of the Territory.

“(5) In determining whether exceptional circumstances exist which justify making an order under subsection (4), and without limiting the matters to which the court may have regard, the court shall have regard to the following:

- (a) the likelihood that the applicant, or a person affected by the outcome of the application, would suffer or incur any inconvenience or loss (actual or potential) which would be unreasonable, if the special licence were not granted;
- (b) whether it would be unreasonable for the applicant to use an alternative means of transport, including public transport, if the special licence were not granted;

- (c) the likelihood of the applicant's health, or that of any dependant, suffering or being put at risk if the special licence were not granted;
 - (d) the applicant's history concerning any offence or infringement under this Act or any other law in relation to the use of a motor vehicle; and
 - (e) the likelihood of the applicant complying with the conditions of a special licence.
- “(6) In considering an application under subsection (1) by—
- (a) a person who is the holder of a suspended learner licence;
 - (b) a person whose driving licence is suspended under paragraph 104 (2) (b);
 - (c) a person who is not licensed to drive a motor vehicle following the cancellation of his or her driving licence under paragraph 104 (2) (b);
 - (d) a person whose driving licence is suspended under subsection 162E (1);
 - (e) a person whose driving licence is suspended under subsection 180F (1);
 - (f) a person whose full licence is suspended under subsection 180U (3);
 - (g) a person whose provisional endorsement of a licence is suspended under subsection 180ZA (3);
 - (h) a person who is disqualified from holding a driving licence by force of subsection 180ZC (1);
 - (j) a person who is disqualified from holding a special licence by force of section 191J; or
 - (k) a person who is disqualified from holding a driving licence because of an order under section 191D arising from a conviction of an offence against section 191P;

the court shall make an order under subsection (4) only in the most extraordinary circumstances.

“(7) The court order shall specify—

- (a) the class of motor vehicle for which the licence is to be granted, being a class in respect of which the person had previously been licensed to drive; and

(b) the period during which the licence is to be in force.

“(8) A special licence is subject to—

(a) any condition to which the last driving licence held by the applicant before the grant of the special licence was subject; and

(b) any additional condition specified by the court.

“(9) The additional conditions which may be specified by the court include conditions about the following matters:

(a) the time of day or night at which the licence would be in force;

(b) the journeys which may be undertaken;

(c) the purposes for which the motor vehicle may be driven;

(d) the consumption of alcohol, or use of a drug, by the applicant;

(e) any other matter the court thinks fit.

Special probationary driving licence—evidence of application inadmissible

“11B. Evidence of—

(a) the making of an application under section 11A; or

(b) the contents of such an application or any supporting affidavit;

is not admissible in proceedings for an offence if, on conviction, the offender’s driving licence could be cancelled by force of, or under, any law of the Territory.

Special probationary driving licence—grant

“11C. The Registrar shall, on application and payment of the determined fee, grant a special probationary licence in accordance with an order of the court under subsection 11A (4).

Special probationary driving licence—contravention of conditions

“11D. A special licensee shall not, without reasonable excuse, contravene a condition to which the licence is subject.

Penalty: 50 penalty units or imprisonment for 6 months, or both.”.

Residents with interstate licences

9. Section 107A of the Principal Act is amended by adding at the end the following subsection:

“(5) A declaration has no effect in respect of a person who is disqualified from holding a driving licence.”.

Suspension or cancellation of full licence

10. Section 180U of the Principal Act is amended by inserting after subsection (3) the following subsection:

“(3A) The Registrar shall give written notice of a suspension under subsection (3) to the licensee concerned.”.

Probationary licences

11. Section 180V of the Principal Act is amended—

- (a) by adding at the end of paragraph (1) (a) “or”;
- (b) by omitting from paragraph (b) “or”;
- (c) by omitting paragraph (1) (c); and
- (d) by inserting after subsection (1) the following subsection:

“(1A) After a person ceases to be disqualified from holding a driving licence, the Registrar may, on application and payment of the determined fee, grant a probationary licence to the person for not more than 12 months.”.

Cancellation etc.—special licences

12. Section 180Z of the Principal Act is amended by omitting subsection (4) and substituting the following subsection:

“(4) Where a person’s special licence is cancelled under subsection (2), then, by force of this subsection, any suspended licence granted to the person is cancelled together with the special licence.”.

Effect of cancellation of probationary licence

13. Section 180ZC of the Principal Act is amended—

- (a) by omitting from paragraph (1) (a) “other than a special licence”;
- (b) by omitting from paragraph (2) (a) “other than a special licence”; and
- (c) by omitting paragraph (2) (c) and substituting the following paragraph:

“(c) drive a motor vehicle on a public street.”.

Insertion

14. Before section 192 of the Principal Act the following Division, Division heading and sections are inserted in Part XIII.

“Division 1—Right to drive after conviction

Interpretation

“191A. In this Division—

‘driving licence’ includes a learner licence receipt.

Culpable driving

“191B. (1) Where a court convicts a person of an offence of culpable driving, then, by force of this subsection—

- (a) any driving licence held by the person is cancelled; and
- (b) the person is disqualified from holding a driving licence, other than a special licence, for—
 - (i) 6 months; or
 - (ii) if the court specifies a longer period of disqualification—the longer period.

“(2) Where, under section 92A of the *Magistrates Court Act 1930*, the Court commits a person to the Supreme Court for sentence, subsection (1) applies as if the Supreme Court had convicted the person.

Dangerous driving etc.

“191C. (1) Where a court convicts a person of an offence against subsection 129 (1) or section 147A, then, by force of this subsection—

- (a) any driving licence held by the person is cancelled;
- (b) in the case of a first offender—the person is disqualified from holding a driving licence, other than a special licence, for—
 - (i) 3 months; or
 - (ii) if the court specifies a longer period of disqualification—the longer period; and
- (c) in the case of a repeat offender—the person is disqualified from holding a driving licence, other than a special licence, for—
 - (i) 12 months; or
 - (ii) if the court specifies a longer period of disqualification—the longer period.

“(2) In subsection (1)—

‘first offender’, in relation to an offence against subsection 129 (1) or section 147A, means a person convicted of the offence other than a repeat offender;

‘repeat offender’, in relation to an offence against subsection 129 (1) or section 147A, means a person convicted of the offence who, during the 5 years ending on the date of the conviction, has been convicted of—

- (a) any other offence against that provision; or
- (b) an offence of culpable driving.

Negligent driving and other offences

“191D. Where a court convicts a person of an offence against—

- (a) subsection 129 (1A) (negligent driving);
- (b) section 191P (driving etc. while suspended or disqualified); or
- (c) this Act, by virtue of subsection 192 (1) (general offence);

the court may cancel any driving licence held by the person and disqualify the person from holding a driving licence, other than a special licence, for—

- (d) a period specified by the court; or
- (e) if the person is already disqualified—a further period specified by the court.

Timing of licence cancellation and disqualification

“191E. (1) Where a driving licence is cancelled, and the former licensee is disqualified from holding a driving licence, by force of, or under, section 191B, 191C or 191D, the cancellation and disqualification take effect—

- (a) on the relevant conviction by the court; or
- (b) if the court specifies a later date of effect—on the later date.

“(2) Where a person who is not the holder of a driving licence is disqualified from holding a driving licence by force of, or under section 191B, 191C or 191D, the disqualification takes effect on the relevant conviction by the court.

Disqualification subject to grant of special licence

“191F. Where a person, other than a special licensee, is disqualified from holding a driving licence by force of, or under, section 191B, 191C or 191D, the disqualification has effect subject to the grant of a special licence.

Multiple disqualifications—cumulative or concurrent

“191G. Where, by force of, or under, a law of the Territory—

- (a) a person is disqualified from holding a driving licence for a period; and
- (b) while so disqualified, the person is again disqualified from holding a driving licence for a period;

the periods are cumulative unless a court orders otherwise.

Contravening special licence conditions

“191H. (1) Where a special licensee is convicted of an offence against section 11D, unless the court specifies to the contrary, the special licence is cancelled by force of this section.

“(2) The cancellation takes effect—

- (a) on the conviction by the court; or
- (b) if the court specified a later date of effect—on the later date.

Disqualification etc.—further special licence

“191J. (1) Where a person’s special licence is cancelled by force of, or under, section 191B, 191C, 191D or 191H, then, by force of this subsection—

- (a) any suspended licence granted to the person is cancelled together with the special licence; and
- (b) the person is disqualified from holding another special licence during the remainder of the period for which the person was originally disqualified.

“(2) A disqualification by force of subsection (1) is in addition to any other disqualification from holding a driving licence imposed on the person by force of, or under, section 191B, 191C or 191D or any other law of the Territory.

“(3) For the purposes of subsection (1), the period for which a person was originally disqualified is the period during which the person was disqualified from holding a driving licence, disregarding the period for which the special licence was granted.

Extraordinary disqualification by court

“191K. (1) This section applies where—

- (a) a court convicts a person of an offence against a law of the Territory; and
- (b) because of the conviction, or that conviction and any other conviction, the person is disqualified from holding a driving licence for a period of, or periods totalling, at least 12 months (in this section called ‘compulsory disqualification period’).

“(2) Where the court is satisfied that it is necessary in the public interest, it may, by order, disqualify the person from holding a driving licence from the end of the compulsory disqualification period until the order is set aside under subsection (3).

“(3) Where a court is satisfied that a disqualification under subsection (2) is no longer necessary in the public interest, it may, by order and on application in accordance with subsection (4), set aside the order under that paragraph.

“(4) An application for an order under subsection (3) shall be filed with the Registrar of the court with an affidavit of the applicant setting out the grounds on which the order is sought.

“(5) The respondents to an application are—

- (a) the Registrar of Motor Vehicles; and
- (b) the chief police officer.

“(6) For the purposes of subsection (2) or (3), the matters to which the court shall have regard include the following:

- (a) the period during which the applicant is, or has been, disqualified from holding a driving licence;
- (b) the applicant’s history concerning any offence or infringement under this Act or any other law in relation to the use of a motor vehicle;
- (c) any relevant rehabilitation or remedial action undertaken, or to be undertaken, by the applicant;

- (d) the risk to the safety of other road users if the applicant were to be granted a driving licence.

Additional powers of court

“191L. The powers of a court under this Division are in addition to any other powers of the court.

Notice to Registrar

“191M. The Registrar of a court shall give to the Registrar of Motor Vehicles particulars of—

- (a) each conviction by the court of a person of an offence to which this Division applies;
- (b) each period of disqualification specified by the court under this Division; and
- (c) each disqualification ordered by the court under section 191K.

Quashing of conviction

“191N. A disqualification from holding a driving licence imposed by force of, or under, a law of the Territory because of a conviction of an offence ceases to have effect if the conviction is quashed or set aside.

“Division 2—Ancillary

Driving etc. while suspended or disqualified

“191P. (1) This section applies to a person—

- (a) who is disqualified from holding a driving licence by force of, or under, a law of the Territory; or
 - (b) whose driving licence is suspended under a law of the Territory;
- and who is not the holder of a special licence.

“(2) Such a person shall not—

- (a) drive a motor vehicle on a public street; or
- (b) obtain a driving licence, other than a special licence for which the person is entitled to apply.

Penalty: 100 penalty units or imprisonment for 12 months, or both.

Return of suspended or cancelled driving licence

“191Q. A person whose driving licence is cancelled or suspended by force of, or under, this Act or any other law of the Territory shall not, without reasonable excuse, fail to return the licence to the Registrar.

Penalty: 1 penalty unit.

No refund of driving licence fee

“191R. (1) A person whose driving licence is cancelled or suspended by force of, or under, this Act or any other law of the Territory is not entitled to a refund of the fee, or any part of the fee, paid in relation to the grant or renewal of the licence.

“(2) Subsection (1) does not apply to—

- (a) a cancellation under section 10 or 104 on the ground that the person is not fit to hold a driving licence because of a physical or mental condition; or
- (b) a suspension under section 162E, 180F or 180U.”.

Repeal

15. Sections 192A, 193 and 193A of the Principal Act are repealed.

Schedule 7

16. Schedule 7 to the Principal Act is amended by inserting after item 52 in Part II the following item:

52A	Subsection 180V (1A)	Refusing to grant a probationary licence
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PART III—TRANSITIONAL

Interpretation

17. In this Part, unless the contrary intention appears—

“commencement day” means the day on which this Act (other than sections 1, 2 and 3) commences;

“amended Principal Act” means the Principal Act as amended by this Act.

Application

18. Subject to this Part, section 180ZC and Division 1 of Part XIII of the amended Principal Act apply only in relation to an offence committed on or after the commencement day.

Former special licences

19. Where—

- (a) a special licence was in force under section 13A of the Principal Act; and
- (b) but for the repeal of that section, the licence would have remained in force subject to that Act for a period that would have ended on or after the commencement day;

then, by force of this section, the licence remains in force on and after the commencement day as if it were a special licence under the amended Principal Act.

Driving licences currently suspended

20. Where—

- (a) a driving licence was suspended for a period under, or by force of section 192A, 193 or 193A of the Principal Act; and
- (b) but for the repeal of that section, the period would have ended on or after the commencement day;

the licence remains suspended by force of this subsection, subject to the amended Principal Act, until the end of that period.

Driving licences—current disqualifications

21. (1) Where—

- (a) a person was disqualified from holding a driving licence for a period under, or by force of section 192A, 193 or 193A of the Principal Act;
- (b) the disqualification was not because of the suspension of a driving licence; and
- (c) but for the repeal of that section, the period of disqualification would have ended on or after the commencement day;

the person remains disqualified from holding a driving licence by force of this subsection, subject to the amended Principal Act, until the end of that period.

(2) Where—

- (a) under, or by force of section 192A, 193 or 193A of the Principal Act, a person was disqualified from holding a driving licence until a court orders otherwise or declares the person to be fit and proper to hold a driving licence; and

(b) no such order had been made before the repeal of that section; the person remains disqualified from holding a driving licence by force of this subsection, subject to the amended Principal Act, unless the court orders otherwise (whether or not it makes an order under section 11A of that Act for the grant of a special licence to the person).

(3) An application for an order under subsection (2) shall be filed with the Registrar of the court with an affidavit of the applicant setting out the grounds on which the order is sought.

- (4) The respondents to an application are—
- (a) the Registrar of Motor Vehicles; and
 - (b) the chief police officer.

PART IV—AMENDMENT OF CRIMES ACT

Crimes Act

22. Section 432 of the *Crimes Act 1900* is amended by omitting from paragraph (1) (d) “or suspend that licence” and substituting “and disqualify the person from holding a driving licence”.

NOTES

Principal Act

1. Reprinted as at 28 February 1995. See also Acts Nos. 8, 17 and 46, 1995; Nos. 7, 26, 47, 76 and 83, 1996; No. 8, 1997.

Penalty units

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

Section headings

On the day on which the *Motor Traffic Act 1936* is amended by this Act, in addition to any alteration of section headings indicated in the text of this Act, the heading to the following section of the Principal Act is altered as set out below:

Section	Alteration
213	Omit from the heading “ Special licences ” and substitute “ Licences ”.

[Presentation speech made in Assembly on 15 May 1997]