



AUSTRALIAN CAPITAL TERRITORY

Motor Traffic (Amendment) Act (No. 3) 1999

No. 86 of 1999

An Act to amend the *Motor Traffic Act 1936*

[Notified in ACT Gazette S65: 23 December 1999]

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

1. Short title

This Act may be cited as the *Motor Traffic (Amendment) Act (No. 3) 1999*.

2. Commencement

This Act commences on the day on which it is notified in the *Gazette*.

3. Principal Act

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

4. Interpretation

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

“*burnout* means—

- (a) in relation to a motor vehicle other than a motor cycle—operate the vehicle in a way that causes the vehicle to undergo sustained loss of traction by 1 or more of the driving wheels; or

- (b) in relation to a motor cycle—operate the motor cycle in a way that causes the motor cycle to undergo sustained loss of traction by the driving wheel.

“prohibited substance, in relation to the burnout of a motor vehicle, means—

- (a) petrol, oil, diesel fuel or any other flammable liquid; or
- (b) any other substance that increases the risk of death, injury or damage to property (including damage to the surface of any road or to any prescribed traffic control device) from the burnout.”.

5. Substitution

Section 119 of the Principal Act is repealed and the following sections are substituted:

“119. Motorists not to race, attempt speed records etc.

The driver of a motor vehicle upon a public street or public place shall not—

- (a) race with another vehicle;
- (b) attempt to break any motor vehicle speed record;
- (c) trial the maximum speed or acceleration of a motor vehicle; or
- (d) compete in a trial designed to test the skill of a driver or the reliability or mechanical condition of a vehicle;

unless he or she is the holder of a permit under subsection 217 (1).

Penalty: 10 penalty units.

“119AA. Burnouts of motor vehicles

“(1) A person shall not burnout a motor vehicle on a public street or public place.

Penalty: 10 penalty units.

“(2) A person shall not burnout a motor vehicle on a public street or public place where any prohibited substance has been placed on the street surface beneath, or near, a tyre of the vehicle.

Penalty: 15 penalty units.

“(3) In a prosecution for an offence against subsection (1) or (2), it is a defence if the person charged establishes that the motor vehicle, although operated in contravention of the subsection, was not deliberately operated in that way.

“(4) This section does not apply where a person has obtained a permit under subsection 217 (1).”.

6. Insertion

After Part VIII of the Principal Act the following Part is inserted:

“PART 8A—ENFORCEMENT OF SECTIONS 119 AND 119AA

“139I. Meaning of *impounded motor vehicle* in pt 8A

In this Part—

impounded motor vehicle means a motor vehicle impounded under this Part.

“139J. Disqualification of licence

“(1) Where the Court convicts a person of an offence against section 119 or 119AA or subsection 217 (4)—

- (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) a period not longer than—
 - (A) for a first offender—3 months; or
 - (B) for a repeat offender—12 months; or
 - (ii) if the Court specifies a longer period of disqualification—the longer period; or
 - (iii) if the person is already disqualified—a further period specified by the Court.

“(2) A disqualification under this section is in addition to any penalty imposed for the offence.

“(3) For this section—

- (a) a person who is convicted, or found guilty, of an offence against section 119 or 119AA (the *current offence*) is a *repeat offender* in relation to the current offence if the person has been convicted, or found guilty, of an offence against section 119 or 119AA within 5 years before being convicted, or found guilty, of the current offence; and
- (b) a person who is convicted, or found guilty, of an offence against section 119 or 119AA is a *first offender* in relation to the offence if the person is not a repeat offender in relation to the offence.

“139K. Seizure by police

“(1) A police officer may seize a motor vehicle if the officer suspects on reasonable grounds that the vehicle has been driven or operated on a public street in contravention of section 119 or 119AA or subsection 217 (4).

“(2) For the purposes of subsection (1)—

- (a) a police officer, or a person at the direction of a police officer, may remove, dismantle or neutralise any locking device or other feature of the motor vehicle concerned and may, if the driver or any other person will not surrender the keys to the vehicle, start the vehicle by other means; and
- (b) the vehicle may be driven, towed, pushed or moved in any other manner by a police officer or, at the direction of a police officer, by a person engaged by the chief police officer to a place determined by the chief police officer.

“139L. Powers of Court to impound or forfeit vehicles

“(1) Where the Court convicts a person of an offence against section 119 or 119AA or subsection 217 (4), a motor vehicle used in connection with the offence shall, subject to subsection (2)—

- (a) in the case of a first offence by the offender—be impounded for a period of 3 months; or
- (b) in the case of a second or subsequent offence by the offender—be forfeited to the Territory.

“(2) The Court may, by order, specify a shorter period of impounding, dispense with the period of impounding or commute a forfeiture to a period of impounding to avoid undue hardship to any person or other injustice perceived by the Court.

“(3) In deciding whether to make an order under subsection (2), the Court—

- (a) must have regard to the circumstances of the offence, including the risk to the safety of road users; and
- (b) may seek evidence from the prosecution about the circumstances of the offence.

“(4) Subsection (3) does not limit, by implication, the matters to which the Court may have regard or prevent the offender from presenting evidence about the circumstances of the offence.

“(5) Where a motor vehicle used in the commission of an offence is not already impounded, the Court may order that the vehicle be delivered to the chief police officer within a time and in a manner specified by the Court.

“(6) Where at the time an order to impound a motor vehicle is made under subsection (1), the vehicle has been seized under subsection 139K (1), the period for which the vehicle may be impounded under subsection (1) shall be reduced by a period corresponding to the period for which the vehicle has been seized under subsection 139K (1).

“(7) Without affecting any other right of appeal, an impounding or forfeiture under this section is appellable in the same manner as if it were, or were part of, a sentence imposed in respect of the offence.

“139M. Impounding of motor vehicles

“(1) Where a motor vehicle is seized under subsection 139K (1) or an order is made under subsection 139L (1), the chief police officer shall impound the vehicle until, in accordance with this Part, it is returned to its owner or forfeited to the Territory.

“(2) The chief police officer shall take all reasonable steps to secure an impounded motor vehicle against theft or damage.

“139N. Notice of impounding or forfeiture

“(1) Where a motor vehicle is impounded or forfeited the chief police officer shall, within 14 days, give notice in writing of the impounding or forfeiture of the vehicle to—

- (a) the registered owner of the vehicle; and
- (b) the holder of any registered interest in the vehicle.

“(2) The notice—

- (a) may be given personally or by post; and
- (b) must state—
 - (i) the provision of this Act contravened by the person; and
 - (ii) the place where the offence was committed and the date and approximate time of the offence; and
 - (iii) particulars that identify the vehicle.

“(3) Where a motor vehicle is seized under subsection 139K (1) the chief police officer shall retain the vehicle until—

- (a) proceedings in relation to an offence against section 119 or 119AA or subsection 217 (4) with which the vehicle is connected have been instituted and—
 - (i) the vehicle is impounded or forfeited under section 139L;
or
 - (ii) no offence has been found proved in relation to the vehicle;
or
- (b) if such proceedings are not instituted within 28 days after the vehicle is seized—those 28 days have elapsed.

“(4) Where a motor vehicle is impounded under paragraph 139L (1) (a), the chief police officer shall retain the vehicle until the vehicle is released under section 139P or 139Q.

“(5) Where a motor vehicle is forfeited to the Territory under paragraph 139L (1) (b), it may be sold or disposed of in such a manner as the Minister directs at the expiration of 14 days after notification under subsection (1).

“(6) In this section—

registered interest, in relation to a motor vehicle, means an interest in the vehicle that is registered under the Register of Interests in Goods maintained under section 4 of the *Registration of Interests in Goods Act 1986* of the State of New South Wales;

registered owner—

- (a) in relation to a registered motor vehicle—means the person whose name is specified in the certificate of registration as the owner of the vehicle or appears in the record of registration kept under subsection 194 (1) as the owner of the vehicle; or
- (b) in relation to a visiting motor vehicle—means the person whose name is specified in the certificate of registration as the owner of the vehicle under the law of a State or the Northern Territory or whose name is notified to the chief police officer by the registration authority of that State or Territory.

“139P. Release of vehicles—chief police officer

“(1) A person may apply to the chief police officer for the release of an impounded motor vehicle.

“(2) The chief police officer shall release an impounded motor vehicle to the applicant as soon as practicable if satisfied that the applicant is entitled to possession of the vehicle and—

- (a) a prosecution for an offence against this Part has not been instituted within 28 days of the seizure;
- (b) in proceedings for an offence against this Part the Court does not find the offence proved; or
- (c) where the vehicle has been impounded for the prescribed time.

“(3) Where a motor vehicle is impounded under paragraph 139L (1) (a), it will not be released until the determined fee is paid in respect of the impounding and any seizure of the vehicle.

“(4) Where an impounded motor vehicle is released under this section, the applicant must acknowledge in writing receipt of the vehicle from the custody of the chief police officer.

“139Q. Release of vehicles—Court

“(1) A person may apply to the Court for the release of an impounded motor vehicle whether or not an application has been made under subsection 139P (1).

“(2) The Court may affirm, quash or vary a decision made by the chief police officer under section 139P.

“(3) The Court may release an impounded motor vehicle to the applicant if satisfied that—

- (a) the applicant is entitled to possession of the vehicle;
- (b) the release of the vehicle would not be against the public interest; and
- (c) either—
 - (i) the offence was not committed with the consent of the applicant and that the applicant did not know, and could not reasonably have been expected to know, that the vehicle would be used for the commission of an offence; or
 - (ii) retaining the vehicle would cause undue hardship or other injustice to a person.

“(4) In deciding whether to release the impounded vehicle to the applicant, the Court—

- (a) must have regard to the circumstances of the relevant offence, including the risk to the safety of road users; and
- (b) may seek evidence from the chief police officer about the circumstances of the offence.

“(5) Subsection (4) does not limit, by implication, the matters to which the Court may have regard or prevent the applicant from presenting evidence about the circumstances of the offence.

“(6) Where an impounded motor vehicle is released under this section, the applicant must acknowledge in writing receipt of the vehicle from the custody of the chief police officer.

“(7) The Court may determine whether or not the whole or any part of the determined fee is payable by the applicant to the chief police officer.

“139R Indemnity from personal liability for honest and good faith carrying out of duties

“(1) An individual is not civilly liable for an act or omission done honestly and in good faith in the exercise of a function or power under this Part.

“(2) A liability that would, apart from subsection (1), attach to an individual attaches instead to the Territory.”.

7. Permits—sections 119 and 119AA

Section 217 of the Principal Act is amended—

- (a) by omitting from subsection (1) “conduct motor vehicle reliability trials or speed tests upon any public street” and substituting “engage in conduct mentioned in section 119 or 119AA”; and
- (b) by omitting from subsection (1) “at least 2 clear days” and substituting “at least 28 days”; and
- (c) by omitting from subsection (1) all the words after “Minister,” and substituting “, issue a permit authorising the person to engage in the conduct”; and
- (d) by inserting after subsection (1) the following subsections:
 - “(1A) Before issuing a permit under subsection (1), the registrar must—
 - (a) consult the chief police officer; and

- (b) take reasonable steps to seek, and take into account, the views of anyone who would be, in the registrar's opinion, likely to be affected if the permit were issued or refused.

“(1B) Failure to comply with paragraph (1A) (b) in relation to a permit does not affect the validity of the permit.

“(1C) A permit under subsection (1) exempts the permit holder from the provisions of this Act in relation to the affixing of silencers to the exhaust pipes of motor vehicles, rules of the road and speed limits while engaging in the conduct authorised by the permit.”; and

- (e) by omitting from subsection (2) all the words after “which the” and substituting “conduct may be engaged in and any conditions to which the permit is subject.”.

8. Schedule 7

Schedule 7 to the Principal Act is amended by omitting item 62 of Part 2 and substituting the following item:

62	Section 217	Refusing to issue a permit or issuing a conditional permit
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NOTES

Principal Act

1. Reprinted as at 2 March 1998. See also Acts No. 26, 1998; Nos 16 and 50, 1999.

Penalty units

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

[Presentation speech made in Assembly on 18 November 1998]