



Australian Capital Territory

Road Transport Legislation Amendment Act 2015

A2015-30

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Australian Capital Territory

Road Transport Legislation Amendment Act 2015

A2015-30

An Act to amend legislation about road transport, and for other purposes

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

Part 1 Preliminary

1 Name of Act

This Act is the *Road Transport Legislation Amendment Act 2015*.

2 Commencement

This Act commences on the day after its notification day.

Note The naming and commencement provisions automatically commence on the notification day (see [Legislation Act](#), s 75 (1)).

3 Legislation amended

This Act amends the following legislation:

- *Crimes Act 1900*
- *Road Transport (Alcohol and Drugs) Act 1977*
- *Road Transport (Driver Licensing) Regulation 2000*
- *Road Transport (General) Act 1999*
- *Road Transport (Offences) Regulation 2005*
- *Road Transport (Safety and Traffic Management) Act 1999*
- *Road Transport (Safety and Traffic Management) Regulation 2000*
- *Road Transport (Vehicle Registration) Regulation 2000*.

Part 2 Crimes Act 1900

4 Alternative verdicts for aggravated offences—offences against pregnant women Table 48B, new items 5 and 6

insert

5	section 29 (2) (Culpable driving of motor vehicle)—causing death—aggravated offence	<ul style="list-style-type: none"> • section 29 (2), simple offence • <i>Road Transport (Safety and Traffic Management) Act 1999</i>, section 6 (1) (a) (Negligent driving)—causing death
6	section 29 (4) (Culpable driving of motor vehicle)—causing grievous bodily harm—aggravated offence	<ul style="list-style-type: none"> • section 29 (4), simple offence • <i>Road Transport (Safety and Traffic Management) Act 1999</i>, section 6 (1) (b) (Negligent driving)—causing grievous bodily harm

5 Alternative verdicts for certain other offences against the person Table 49, new items 12 and 13

insert

12	section 29 (2) (Culpable driving of motor vehicle)—causing death	<i>Road Transport (Safety and Traffic Management) Act 1999</i> , section 6 (1) (a) (Negligent driving)—causing death
13	section 29 (4) (Culpable driving of motor vehicle)—causing grievous bodily harm	<i>Road Transport (Safety and Traffic Management) Act 1999</i> , section 6 (1) (b) (Negligent driving)—causing grievous bodily harm

Part 3 Road Transport (Alcohol and Drugs) Act 1977

6 Offences against Act—application of Criminal Code etc Section 4, note 1

insert

- s 25 (Consuming alcohol—driver or driver trainer)

7 New section 25

in part 3, insert

25 Consuming alcohol—driver or driver trainer

- (1) A person commits an offence if the person—
 - (a) drives or rides a vehicle on a road or road related area; and
 - (b) consumes alcohol while driving or riding the vehicle.Maximum penalty: 20 penalty units.
- (2) A person commits an offence if the person—
 - (a) is a driver trainer in a motor vehicle on a road or road related area; and
 - (b) consumes alcohol while in the vehicle.Maximum penalty: 20 penalty units.
- (3) An offence against this section is a strict liability offence.

- (4) In a prosecution for an offence against this section, a substance is presumed to be alcohol if—
- (a) the substance is in a container; and
 - (b) a label or other mark on the container describes the contents as alcohol or containing alcohol.

Examples—par (b)

- ‘2.6% Alc/Vol’ printed on a can
- ‘14% Alc/Vol’ printed on the label of a bottle

Note 1 The defendant has an evidential burden in relation to the matters mentioned in s (4) (see [Criminal Code](#), s 58).

Note 2 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (5) In this section:
- vehicle*** means a bicycle or motor vehicle.

Part 4 Road Transport (Driver Licensing) Regulation 2000

8 Other exemptions from requirement to hold driver licence Section 99 (2), note

substitute

Note A bicycle does not include any vehicle—

- (a) with an electric motor capable of generating a power output over 200W, other than a vehicle that is a power-assisted pedal cycle within the meaning of vehicle standards determined under the [Motor Vehicle Standards Act 1989](#) (Cwlth), s 7 (see [Road Transport \(General\) Act 1999](#), dict, def *bicycle* and [Australian Road Rules](#)); or
- (b) that has an internal combustion engine.

Part 5 Road Transport (General) Act 1999

9 Meaning of *first offender* and *repeat offender*—div 4.2 Section 61AA (5), definition of *relevant offence*, paragraph (c)

omit

burnouts and other prohibited conduct

substitute

improper use of a motor vehicle

10 Automatic disqualification for certain other driving offences Section 63 (1) (b)

omit

burnouts and other prohibited conduct

substitute

improper use of a motor vehicle

11 New section 72A

insert

72A Evidentiary certificate—use etc of road or road related area

- (1) In a proceeding under the road transport legislation, a certificate that appears to be signed by or on behalf of an owner of land, or a representative of the owner, and states any of the following matters, is evidence of the matter:

- (a) that an area of the land is or is not a road;

- (b) that an area of the land is, or is not, open to or used by the public for driving, riding or parking vehicles;
 - (c) that a person was, on a stated date, the owner of the land, or a representative of the owner.
- (2) A court must accept a certificate mentioned in subsection (1) as proof of the matters stated in it if there is no evidence to the contrary.
- (3) In this section:
- owner*, of land, includes the lessee or occupier of the land.

12 New section 236

insert

236 Preliminary discovery for private car park fees

- (1) The road transport authority cannot be required to comply with a preliminary discovery order if the purpose is—
- (a) to ascertain the identity or whereabouts of a person in order to start a proceeding against the person for the recovery of a private car park fee; or
 - (b) otherwise in connection with starting a proceeding for recovery of a private car park fee.
- (2) In this section:
- preliminary discovery order* means an order made under the [Court Procedures Rules 2006](#), division 2.8.6 or any requirement imposed for a similar purpose under any other law.

private car park fee—

- (a) means an amount alleged to be payable under the terms of a contract, arrangement or understanding for the use of a car park; but
- (b) does not include an amount alleged to be payable under the terms of a written contract signed by the relevant parties.

13 Dictionary, definition of *bicycle*, paragraph (c)*substitute*

- (c) does not include—
 - (i) a wheelchair, wheeled recreational device or wheeled toy; or
 - (ii) a vehicle (other than a vehicle mentioned in paragraph (b)) with an electric motor capable of generating a power output over 200W (whether or not the motor is operating); or
 - (iii) a vehicle that has an internal combustion engine.

14 Dictionary, definition of *bicycle*, new note*insert*

Note 3 This definition is not consistent with the definition of *bicycle* in the [Australian Road Rules](#), dictionary. The [Australian Road Rules](#) are not completely self-contained and need to be read with associated laws of each jurisdiction.

Part 6 Road Transport (Offences) Regulation 2005

15 Short descriptions, penalties and demerit points Schedule 1, part 1.3, table, new items 18A and 18B

insert

18A	25 (1)	drive or ride vehicle on road/related area while consuming alcohol	20	\$300
18B	25 (2)	driver trainer in motor vehicle on road/related area while consuming alcohol	20	\$300

Part 7 Road Transport (Safety and Traffic Management) Act 1999

16 New section 5AA

in part 1, insert

5AA Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

Note 1 Criminal Code

The [Criminal Code](#), ch 2 applies to the following offences against this Act (see Code, pt 2.1):

- s 5B (2) and (4) (Improper use of motor vehicle)
- s 10BA (5) (Powers of police officers to issue surrender notices for motor vehicles).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

Note 2 Penalty units

The [Legislation Act](#), s 133 deals with the meaning of offence penalties that are expressed in penalty units.

17 Section 5B heading

substitute

5B Improper use of motor vehicle

18 Section 5B (1), definition of *burnout*

omit

19 Section 5B (1), new definition of *improper use*

insert

improper use, of a motor vehicle, means operate the vehicle in a way that causes the vehicle to undergo sustained loss of traction by 1 or more of the vehicle's wheels.

Examples—improper use

- burnouts
- handbrake turns
- wheelies
- drifting
- j-turns

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

20 Section 5B (1), definition of *prohibited substance*

omit

burnout

substitute

improper use

21 Section 5B (2)

substitute

- (2) A person commits an offence if—
- (a) the person uses a motor vehicle on a road or road related area;
and

- (b) the use is an improper use.

Maximum penalty:

- (a) if a prohibited substance had been placed on the surface of the road or road related area under, or near, a tyre of the vehicle—30 penalty units; or
- (b) in any other case—20 penalty units.

22 Section 5B (4)

substitute

- (4) A person commits an offence if—
- (a) the person engages in conduct on a road or road related area; and
- (b) the conduct is other prohibited conduct.

Maximum penalty: 20 penalty units.

**23 Meaning of *first offender* and *repeat offender*—div 2.3
Section 10AA (5), definition of *impounding offence*,
paragraph (b)**

omit

Burnouts and other prohibited conduct

substitute

Improper use of motor vehicle

**24 Impounding of vehicles used for menacing driving on court order before conviction etc
Section 10A (7)**

before

section 10C

insert

section 10BA (Powers of police officers to issue surrender notices for motor vehicles) or

25 Section 10A (8)

before

section 10C

insert

section 10BA or

**26 Impounding or forfeiture of vehicles on conviction etc for certain offences
Section 10B (1)**

omit

Burnouts and other prohibited conduct

substitute

Improper use of motor vehicle

27 Section 10B (5)

before

or section 10C

insert

, section 10BA (Powers of police officers to issue surrender notices for motor vehicles)

28 Section 10B (6) (c)

before

section 10C

insert

section 10BA or

29 New section 10BA

insert

10BA Powers of police officers to issue surrender notices for motor vehicles

- (1) This section applies to a motor vehicle if a police officer believes on reasonable grounds that the vehicle is being or has been used by a person in committing an offence against section 5A (Races, attempts on speed records, speed trials etc) or section 5B (Improper use of motor vehicle).
- (2) A police officer may, by notice (a *surrender notice*), require the responsible person for the vehicle to surrender the vehicle for impounding at the place and by the date stated in the notice.

Note A police officer may seize a motor vehicle under s 10C without giving the responsible person for the vehicle a surrender notice.

- (3) However, the police officer may only give a person a surrender notice within 10 days after the day of the commission of the offence mentioned in subsection (1).
- (4) The notice must state—
- (a) the details of the alleged offence; and
 - (b) the service number of the police officer giving the notice; and
 - (c) a reasonable date and time by which the motor vehicle must be surrendered; and
 - (d) that it is an offence to fail to comply with a surrender notice; and
 - (e) that a police officer may seize the vehicle under section 10C if the person fails to comply with the notice; and
 - (f) anything else prescribed by regulation.
- (5) The responsible person for a motor vehicle commits an offence if the person—
- (a) is given a surrender notice for the vehicle; and
 - (b) fails to comply with the notice.
- Maximum penalty: 20 penalty units.
- (6) An offence against subsection (5) is a strict liability offence.
- (7) Subsection (5) does not apply if the person has a reasonable excuse for failing to comply with the notice.
- Note* The defendant has an evidential burden in relation to the matters mentioned in s (7) (see [Criminal Code](#), s 58).
- (8) If a person fails to comply with a surrender notice, a police officer may seize the vehicle under section 10C.

30 Powers of police officers to seize and impound vehicles used in committing certain offences
Section 10C (1) (a)

omit

Burnouts and other prohibited conduct

substitute

Improper use of motor vehicle

31 Section 10C (2)

substitute

- (2) However, the police officer may only seize the motor vehicle under subsection (1) (a) within 10 days after the later of—
- (a) the commission of the offence; and
 - (b) if a surrender notice has been given to the responsible person for the vehicle under section 10BA and the person fails to comply with the notice—the date and time by which the motor vehicle was to be surrendered under the notice.

32 Registered operator and interested people to be notified
Section 10D (2)

omit

Burnouts and other prohibited conduct

substitute

Improper use of motor vehicle

33 Section 10E heading

substitute

10E Keeping of certain vehicles seized or surrendered

34 New section 10E (1A)

insert

- (1A) This section also applies if a motor vehicle is surrendered under section 10BA (Powers of police officers to issue surrender notices for motor vehicles) in the circumstances mentioned in section 10BA (1).

35 Section 10E (3)

omit

Vehicles seized under s 10C (1) (a)

substitute

Certain vehicles seized or surrendered

36 Section 10E (5), definition of *relevant offence*, paragraph (b)

omit

Burnouts and other prohibited conduct

substitute

Improper use of motor vehicle

37 Section 10G heading

substitute

10G Certain vehicles seized or surrendered—release by chief police officer**38 Section 10G (1)**

substitute

- (1) A person may apply to the chief police officer for the release to the person of a motor vehicle that has been—
- (a) seized under section 10C (1) (a); or
 - (b) surrendered in the circumstances mentioned in section 10BA (1).

39 Section 10H heading

substitute

10H Certain vehicles seized or surrendered—release by Magistrates Court**40 Section 10H (1)**

substitute

- (1) A person may apply to the Magistrates Court for an order for the release to the person of a motor vehicle that has been—
- (a) seized under section 10C (1) (a); or
 - (b) surrendered in the circumstances mentioned in section 10BA (1).
- (1A) This section applies whether or not an application has been made to the chief police officer under section 10G for the release of the vehicle.

**41 Failure to prosecute
Section 10J**

before

section 10C

insert

section 10BA (1) (Powers of police officers to issue surrender notices for motor vehicles) or

Part 8 **Road Transport (Safety and
Traffic Management)
Regulation 2000**

42 **General**
Division 2.2.1 heading, note 3, new item 11

insert

11 dict, def *bicycle* *Road Transport (General) Act 1999*, dict, def
bicycle

43 **Exemption for driver of police vehicle—training and
assessment**
Section 69A (3), new definition of *police officer*

insert

police officer includes a person who is training to become a police officer.

Part 9 Road Transport (Vehicle Registration) Regulation 2000

44 Section 20 heading

substitute

20 Bicycles with electric motors

45 Section 20, note

substitute

Note A bicycle does not include any vehicle—

- (a) with an electric motor capable of generating a power output over 200W, other than a vehicle that is a power-assisted pedal cycle within the meaning of vehicle standards determined under the [Motor Vehicle Standards Act 1989](#) (Cwlth), s 7 (see [Road Transport \(General\) Act 1999](#), dict, def **bicycle** and [Australian Road Rules](#)); or
- (b) that has an internal combustion engine.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 14 May 2015.

2 Notification

Notified under the [Legislation Act](#) on 21 August 2015.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Road Transport Legislation Amendment Bill 2015, which was passed by the Legislative Assembly on 6 August 2015.

Clerk of the Legislative Assembly

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