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**AUSTRALIAN CAPITAL TERRITORY
LEGISLATIVE ASSEMBLY**

MOTOR TRAFFIC (AMENDMENT) BILL 1996

EXPLANATORY MEMORANDUM

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Tony De Domenico MLA
Minister for Urban Services**

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Outline

This Bill makes a number of amendments to the *Motor Traffic Act 1936* ("the Act").

The Bill is related in one respect to the Motor Traffic (Alcohol and Drugs) Bill 1996. The *Motor Traffic (Alcohol and Drugs) Act 1977* prescribes a particular maximum blood alcohol limit for certain Commonwealth vehicles which is lower than the general limit. The particular provision is intended to apply to Commonwealth chauffeur driven vehicles. The latter related Bill substitutes a new definition of "Commonwealth vehicle" which is consistent with the current practice for the actual physical identification of Commonwealth vehicles driven by chauffeurs. This Bill inserts an equivalent definition with the effect that Commonwealth vehicles so defined are not required to have child restraints.

The other substantive provisions of this Bill are to:

- establish "Pelican Crossings" (refer to clause 9);
- enable the Registrar to exercise his or her discretion to exempt certain vehicles from the requirement that vehicles be registered; and
- provide that persons newly resident in the Territory for less than three months may continue to drive their vehicle notwithstanding that it is registered interstate.

This Bill also corrects a number of anomalies in the Act.

Financial implications

The costs of informing the community of the new "pelican crossings" shall be absorbed within existing budgetary arrangements.

Details of the bill are as follows:

Clause 1 - Short title

Clauses 1, 2 and 3 deal with formal matters. Clause 1 provides for the citation of the Bill once enacted as the *Motor Traffic (Amendment) Act 1996*.

Clause 2 - Commencement

Clause 2 provides for the commencement of the Act.

Clause 3 - Principal Act

Clause 3 provides that for the purposes of the Bill, the "Principal Act" is the *Motor Traffic Act 1936*.

Clause 4 - Trader's licences and trader's plates

Clauses 4, 5 and 20 are to replace references to *pairs of* trader's plates with respect to the issue and attachment to vehicles of trader's plates. The amendments are to enable the Registrar to issue a *single* trader's plate rather than a pair as is currently required. This measure is intended to prevent the use of one issued pair of trader's plates on two vehicles at the same time in an illegal attempt to avoid insurance costs and the costs of trader's plates.

Clause 4 amends existing subsection 40(4) to enable the Registrar to issue single trader's plates on application.

Clause 5 - Vehicles on which trader's plates may be used

Clause 5 amends existing subsection 41(1) as a consequence of amendments made by clause 4.

Clause 6 - Return of certificates after cancellation or suspension

Existing subsection 100(1) requires a person to return a registration certificate or licence within 7 days of notification of suspension or cancellation of the registration or licence.

Clause 6 inserts a penalty provision (1 penalty unit) at the foot of existing subsection 100(1).

Clause 7 - Refusal, cancellation or suspension of licences or registration

In summary, existing subsection 104(2) sets out certain grounds on which the Registrar may refuse, cancel or suspend registration; or refuse or suspend driver's licences and licences to provide vehicles for hire. Existing subsection 104(6) provides that an application for review of a decision of the Registrar refusing to renew or cancelling or suspending a licence or registration under section 104 shall result in the registration or licence continuing in force pending the review.

Clause 7 inserts new subsection 104(7) which provides that existing subsection 104(6) shall not apply to a decision made under existing subparagraphs 104(2)(b), 104(2)(c), or 104(2)(e). This means that such a decision of the Registrar shall remain effective notwithstanding an application for review of the decision. The decision of the Registrar is to remain effective unless and until it is overturned by the Administrative Appeals Tribunal. This provision is necessary to help ensure that people are not put at risk by potentially unsafe vehicles or unsafe drivers pending a decision on appeal.

Clause 8 - Insertion

Clause 8 inserts new section 107B which applies to vehicles which are owned by a resident of the Territory but which are registered interstate. The new section provides for exemption from the requirement that these vehicles be registered in the Territory (except in specified circumstances, refer to clause 14). The Registrar may declare by notice in the Gazette that a vehicle or class of vehicles is exempt from the requirement of registration. The declaration may be made on application or on the initiative of the Registrar. The notice is to be a disallowable instrument.

Clause 9 - Meanings indicated by traffic lights

Clause 9 amends section 112B of the Act by adding an item which permits motor vehicles to proceed through a pedestrian crossing which has a flashing amber circular light provided there is no pedestrian crossing at that time. This type of crossing is commonly known as a "pelican crossing".

Clause 10 - Maximum speed applicable to public streets

Existing section 143 refers to "City Area". The term "City Area" was also used in the term *City Area Leases Act 1936* to indicate the area to which that Act applied. The *City Area Leases Act* was repealed by the *Land (Planning and Environment) (Consequential Provisions) Act 1991*.

This clause amends section 143 of the Principal Act by deleting reference to "City Area" which has no precise meaning and serves no practical purpose. The effect of section 143 as amended together with existing sections 144 and 147 is that the maximum speed limit of 60 kms per hour will apply except

where speed limit signs on the road indicate otherwise and except in relation to school zones.

Clause 11 - Repeal

Clause 11 repeals existing section 148 which is an evidentiary provision relating to the "City Area". As indicated in relation to clause 10, the term "City Area" is redundant.

Clause 12 - Suspension of licences, registration etc.

Existing subsections 162E(2) provide that a person who has had their licence or registration suspended "is not entitled to a refund of fees for the remaining period for which the licence or registration was granted". These words do not make sense in relation to suspension of licence. The words should have been changed when the option of suspension rather than cancellation of licence/registration for failure to pay an infringement notice penalty was introduced by the *Motor Traffic (Amendment) Act 1993* (No. 47 of 1993).

This clause amends existing subsection 162E(2) to prevent a person from claiming a refund of fees for the period in which that person's licence or registration was suspended.

Clause 13 - Exceptions for the purpose of section 164

Existing subparagraph 164D(a) prohibits the driving of a motor vehicle with a child passenger unless the child is secured by a child restraint. Existing subsection 164DB(1) establishes a number of exceptions to this requirement. Existing subparagraph 164DB(1)(d) provides that the requirement does not apply to vehicles owned by the Commonwealth and which have a number plate that commences with "C*". The purpose of this exception is to exclude Commonwealth vehicles which can be identified as a Commonwealth chauffeur driven vehicle. This subparagraph is now out of date as Commonwealth chauffeur driven vehicles are now identified not by a "C*" on the number plate but by a particular label on the windscreen.

Clause 13 repeals existing subparagraph 164DB(1)(d) and substitutes a new subparagraph which exempts a vehicle which is a "Commonwealth vehicle" as defined in new subsection 164DB(3). The new subsection provides that a Commonwealth vehicle is a vehicle owned by the Commonwealth and which either has attached to its windscreen a label of the type described or is a vehicle which belongs to a class of vehicles identified by the Minister by instrument published in the Gazette. This latter alternative provides for the Minister to take appropriate steps should the method of identifying relevant Commonwealth vehicles change again.

The definition of Commonwealth vehicle in new subsection 164DB(3) is the same as the new definition in clause 4 of the related Motor Traffic (Alcohol and Drugs) (Amendment) Bill.

Clause 14 - Substitution

Existing section 165 prohibits a person from driving a vehicle unless it is registered or the vehicle is a vehicle to which existing subparagraphs 165(b), (c), (d), (e) or (f) apply. In summary, the vehicle must be registered unless the vehicle has trader's plates, is a visiting motor vehicle, is proceeding to the Registrar's Office for registration, or is being driven by the holder of a temporary licence to drive an unregistered vehicle.

Clause 14 repeals existing section 165 and substitutes a new section 165. The new subsection retains the existing exceptions to the requirement of registration but expresses them in a more clear manner. The new subsection also adds the following new exception to the requirement to register vehicles. New subparagraph 165(2)(c) has the effect that a person may drive a vehicle which is not registered in the Territory if the vehicle is registered in another jurisdiction and is owned by a person who is not a resident in the Territory or who has resided in the Territory for less than 3 months.

This clause then requires a person who comes to live and drive their vehicle in the Territory, to change the registration of their vehicle within three months of moving to the Territory. Existing subsection 176(7) concerning driver's licences is a similar provision to new subparagraph 165(2)(c). Under existing section 165, a person who comes to live in the Territory must change their registration immediately.

Clause 15 - Suspension of licences, registration etc.

Clause 15 amends existing subsection 180(F) to correct an anomaly of the same kind corrected by clause 12 above.

Clause 16 - Suspension or cancellation of full licence

Existing section 180U provides for the Registrar to take action where a person accumulates 12 or more relevant demerit points in the Demerit Points Register. The Registrar must suspend the person's licence unless the person surrenders the licence and applies for a probationary licence.

Existing subsection 180U(6) requires the Registrar to delete from the Demerit Points Register the relevant demerit points where the Registrar has cancelled the person's licence under existing subsection 180U(2). Due to an oversight existing subsection 180U(6) does not also require the Registrar to delete the relevant demerit points from the Register after suspending a person's licence under subsection 180U(3). Clause 16 corrects this anomaly.

Clause 17 - Record of registration and licences to be kept

Clause 17 inserts new subsection 194(3) which requires the Registrar to disregard any notice or information concerning a trust. The provision removes any need to record and monitor details of a trust and also removes

the possibility of the Registrar being required to answer a claim of beneficiaries of a trust to the effect that the Registrar has dealt with trust property in a manner inconsistent with the interests of the beneficiaries. This provision has some similarity to section 124 of the *Real Property Act 1925*.

Clause 18 - Powers and duties of police, inspectors and officers

Existing subsection 202(5) enables a police officer to drive a vehicle to a place of safety in cases where the driver of the vehicle has been arrested or taken into custody under the *Motor Traffic (Alcohol and Drugs) Act 1977*. This will typically happen when a person is detained after failing a breath analysis test.

At present most persons who are so detained are not arrested but are given a summons to appear later in Court and are then free to leave the police station. The police currently have no power to stop a person from driving away even if they are clearly not capable of driving without committing a further offence under the *Motor Traffic (Alcohol and Drugs) Act*.

This clause inserts new subsection 202(6) which allows a police officer to hold a motor vehicle if the officer believes on reasonable grounds that the detained person will commit an offence under the *Motor Traffic (Alcohol and Drugs) Act* if the person drove his or her vehicle away.

The detained person may authorise another person to drive the vehicle away. New subparagraph 202(6)(b) provides that a police officer need not release the vehicle to a person so authorised unless the officer is satisfied that the person who made the authorisation understood its meaning.

This clause also inserts new subsection 202(7) which provides that the police officer in charge of the vehicle is not liable for damage or theft of the vehicle except where this is the result of the officer's own deliberate actions or negligence.

Clause 19 - Temporary Licences

Existing subsection 216(1) allows the Registrar to grant a licence to drive an unregistered vehicle on a specified route or to drive a vehicle for a purpose other than a purpose for which the vehicle was registered or licensed. The licence so granted must not exceed seven days.

This clause inserts new subsection 216(1A) to require the person who has been granted a temporary licence under existing subsection 216(1) to display the licence on the vehicle in the manner required by the instructions on the licence. Failure to comply with this new subsection is to be subject to a criminal penalty (2 penalty units for a natural person and 10 penalty units for a body corporate).

Clause 20 - Schedule 2

Clause 20 repeals existing clause 11A under Part I of existing Schedule 2 to the Act and replaces it with new clause 11A which refers to single trader's plates rather than to pairs of plates. Refer to clauses 4 and 5.

Clause 21 - Schedule 7

Existing Schedule 7 to the Act lists those decisions of the Minister or the Registrar made under the Act which are subject to review by the Administrative Appeals Tribunal.

Clause 21 amends Schedule 7 of the Act to include the following decisions of the Registrar:

- a) a decision to cancel a driving licence or a provisional endorsement on a driving licence made under existing subparagraph 104(2)(ea); and
- b) a decision of the Registrar to refuse to grant an exemption from the requirement to register a vehicle or trailer under new subparagraph 107B(2)(d).

Clause 22 - Transitional

Clause 22 is a transitional provision to ensure that the amendments under clauses 5 and 20 in relation to the fixing of single trader's plates to vehicles have no application to pairs of trader's plates issued before the commencement of this provision. Refer also to clause 4.