

1992

**THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL
TERRITORY**

MOTOR TRAFFIC (AMENDMENT) BILL 1992

EXPLANATORY MEMORANDUM

Circulated by the authority of the Minister for Urban Services

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MOTOR TRAFFIC (AMENDMENT) BILL 1992

Motor Traffic (Amendment) Bill 1992 ("the Bill") amends the Traffic Act 1936 ("the Act") to -

Clarify the traffic priorities applying at slip lanes (The diagrams at Appendix A illustrate examples of slip lanes.);
Provide for the use of evidentiary certificates in court proceedings where the police use an approved radar speed measuring device to measure the speed at which a vehicle is travelling;
Correct an anomaly in the Act in relation to the provision of child restraints for children over 1 but under 8 years of age;
Prohibit the use, sale and purchase of radar detectors and jammers.

Financial implications

There are no financial implications arising from the Bill.

Motor Traffic Act 1936

The Motor Traffic Act 1936 regulates various motor traffic and motor vehicle matters such as vehicle registration, driving licences, road safety rules, parking rules, speed limits and insurance.

Slip lanes

The Act is silent as to the duties of a motorist using a slip lane. Slip lanes have been constructed at many A.C.T. intersections and junctions to aid traffic flow by enabling motorists, when it is safe to do so, to make a left turn without having to avoid traffic build up at that intersection or junction.

A lack of guidance in the Act as to which motorist has right of way when a motorist is exiting a slip lane has resulted in confusion as to the traffic rules applying in this situation. The Bill clarifies the position.

Evidentiary certificates

Since 1971 Part IX of the Act has included provisions enabling the use of evidentiary certificates in court proceedings where an amphetamine is used to measure the speed of a vehicle.

An evidentiary certificate is a signed statement as to particular matters which is accepted, in Court proceedings, as evidence of those matters and the facts upon which they are based. The use of such certificates avoids the need for oral evidence to be given to the Court as to these matters which are usually of a technical or procedural nature.

For example, the evidentiary certificate in respect of amphetamine, for which the Act already provides, deals with the procedures by which these devices are tested and are set up to measure the speed of motor vehicles. Another example of the use of an evidentiary certificate may be found in the *Motor Traffic (Alcohol and Drugs) Act 1977* which provides for the use of evidentiary certificates in respect of the technical procedure by which blood is tested to determine blood alcohol concentration.

An evidentiary certificate is prima facie evidence of the matters stated in the certificate. Such evidence may be rebutted by a defendant who provides contrary evidence as to those matters.

The amendments to the Act will enable an evidentiary certificate going to the manner in which a radar speed measuring device has been used to be presented in Court proceedings.

Child restraints

The Act currently provides that, with some exceptions, child restraints must be provided for children under 1 year of age travelling in a motor vehicle. For children 1 year old and under 8 years old there is no requirement to provide a suitable child restraint - there is only an obligation to use the child restraint if it is fitted in the motor vehicle. The Bill corrects this anomaly. The opportunity has also been taken to redraft the provisions relating to child

restraints and seat belts for children and young persons so that they are easier to understand.

Radar detectors and radar jammers

The Act is silent on the issue of radar detectors and radar jammers, devices which are freely available within the A.C.T. The Bill amends the Act to prohibit their sale, purchase and use.

SLIP LANE AMENDMENTS

Main amendment - slip lanes

Clause 6 - slip lane traffic to give way

New section 123A sets out the traffic priorities applying at slip lanes. These are illustrated in the diagrams at Appendix B.

New section 123A requires a driver (Vehicle A in the diagrams) who turns left at a junction or intersection of two or more public streets and, in doing so, makes use of a slip lane, to give way to another vehicle (Vehicle B in the diagrams) travelling upon or turning into that public street where there is a reasonable possibility that the vehicles might collide or a dangerous situation might otherwise be created.

It is not intended that the amendment should change the traffic priorities and obligations applying to motorists once Vehicle A has exited the slip lane sector of a carriageway and is travelling in a lane parallel with the lane in which Vehicle B is travelling (example 3 in Appendix B). In this circumstance the existing rules applying to dual carriageway traffic are intended to apply.

Other amendment - slip lanes

Clause 5 - left hand turns

Section 120 of the Act restricts the circumstances in which the driver of a motor vehicle may turn left from one public street into another public street. For example, where a public street provides a dedicated lane for left turning traffic a motorist must use that dedicated lane.

Clause 5 extends the operation of section 120 to prohibit the driver of a motor vehicle on a public street from turning left from a public street where a slip lane is provided unless the driver makes the turn from that slip lane. The purpose of this amendment is to prevent a driver from avoiding a build up of traffic on a slip lane by driving around the slip lane and turning left at the intersection or junction of the public streets on which the slip lane exists. This practice has an adverse effect on road safety.

EVIDENTIARY CERTIFICATE AND RADAR SPEED MEASURING DEVICE AMENDMENTS

Main amendments - evidentiary certificates and radar speed measuring devices

Clause 8 - Evidence of speed

Section 147B, which enables the use of an evidentiary certificate in respect of the measurement of speed by an amphotometer, is amended to also provide for the use of an evidentiary certificate in respect of the measurement of speed by a radar speed measuring device.

Clause 10 - Approved radar speed measuring device

New subsection 147CB (1) requires that before evidence is given in Court proceedings of the calculation of the speed of a vehicle, as measured by an approved radar speed measuring device, the device must have been approved and specified testing procedures for the radar speed measuring device must have been carried out within 6 months of the day of the alleged offence. Approval of radar speed measuring devices by the Minister is authorised by new section 147CA.

New subsection 147CB (2) requires that the evidentiary certificate must be signed by a police officer and sets out the following matters which must be addressed in the certificate -

- . that the person who signed the certificate is a police officer;
- . that the device is an approved radar speed measuring device;

that the device has been tested within the preceding 6 months in accordance with the requirements of subsection 147CB(1);
 that the device was tested at the commencement of its period of operation and found to be accurate;
 that the device was tested at the conclusion of its period of operation and found to be accurate;
 that the device was used during a specified time, on a specified day and measured the speed of a specified vehicle travelling through the detection area of the device and the speed so measured is the speed specified.

The statements made in the certificate will be taken, by the Court, to be prima facie evidence of those matters and of the facts upon which the statements are based.

Whilst these amendments to the Act mean the certificate is accepted as prima facie evidence of the matters stated in it and therefore dispense with the need for oral evidence as to the manner of testing and operation of the device to be provided to the Court, the amendments will not impede the right of an alleged offender to contest the accuracy or manner of use of a radar speed measuring device.

Other amendment - evidentiary certificates and radar speed measuring devices

Clause 11 - tampering etc. with amphotometers and radar speed measuring devices

Section 147D of the Act, which makes it an offence for a person to tamper with an amphotometer or tamper or interfere with the seal of an amphotometer is omitted and replaced with a new section 147D which makes it an offence for a person to tamper or interfere with, or damage the mechanism of either an amphotometer or an approved radar speed measuring device. The clause also makes it an offence for a person to tamper or interfere with the seal of either an amphotometer or an approved radar speed measuring device.

CHILD RESTRAINT AMENDMENT

Clause 13 - Repeal and substitution of section 164D

Section 164D, which sets out the requirements for the restraint of children and young persons in motor vehicles, is repealed and three new sections, sections 164D, 164DA and 164DB are substituted. "Child" is defined in section 164A of the Act to mean person who has not attained the age of 8 years. A "young person" is a person of 8 or more years of age who has not attained the age of 14 years.

The new sections are a simplified, more comprehensive, version of the old section. Basically new section 164D provides as follows:

- . where there is a child in the vehicle then a child restraint suitable for use by that child must be provided. New section 164DB lists the exceptions to this rule. The circumstances in which seat belt or child restraint is suitable for use by a particular child or young person are set out in new section 164DA;
- . where a child restraint is provided then the child must be restrained by that child restraint. This rule is not dependent on a requirement to provide the restraint. For example, a vehicle that is not required to have child restraint anchorage points may nevertheless have had anchorage points and a child restraint installed - the child would be required to be restrained in that child restraint;
- . where there is no child restraint but the vehicle is fitted with seat belts then the child must be restrained by the seat belt;
- . if the vehicle has no child restraints and no seat belts then the child must be placed in the back seat;

where there is a young person in the vehicle with seat belts suitable for use by that young person then the young person should be restrained by the seat belt.

Failure to comply with these provisions is an offence committed by the driver of the vehicle.

RADAR DETECTOR AND RADAR JAMMER AMENDMENT

Main feature of amendment - radar detectors and radar jammers

Clause 14 - sale, purchase or use of radar detectors and jammers

The Bill amends Part XI of the Principal Act to prohibit the sale, purchase and use of radar detectors and jammers - devices which may be used by motorists to prevent the effective use of radar speed measuring equipment by the police.

New subsection 164G (1) prohibits the use, sale, or purchase of a radar detecting device or radar jamming device.

New subsection 164G (2) makes it an offence for a person to drive a motor vehicle, or cause a motor vehicle to stand on a public street if the vehicle is fitted with or is carrying a radar detecting device or radar jamming device. This provision is necessary to ensure that a motorist is not able to avoid prosecution by claiming that whilst a radar detector or jammer is fitted or carried in his or her vehicle, the device is not, or has not been, in use.

New subsection 164G (3) makes the owner of a motor vehicle which is driven or stands on a public street or in a public place in contravention of subsection (2) guilty of an offence.

A penalty of \$2000 is provided in respect of an offence against **new section 164G**.

Other features of the amendment - radar detectors and radar jammers
Clause 14 - defences, surrender and forfeiture of devices

New subsection 164H (1) provides that where a defendant satisfies the Court that a device was not a radar detecting or jamming device, but was designed for some other purpose, that is a defence to prosecution for an offence under new section 164G.

New subsection 164H (2) provides further defences in respect of offences against new subsections 164G(2) and (3) where a defendant satisfies the court that at the time of an alleged offence one of the following situations applied -

- the vehicle was travelling to a place for the purpose of surrendering the device;
- the vehicle was the subject of an unexpired notice issued by the police requiring the owner to remove the device from the vehicle within a specified time;
- the defendant did not know and in the circumstances could not reasonably have been expected to know that the vehicle was fitted with or carrying the device concerned.

New subsection 164I (1) enables a police officer, who has reasonable grounds to believe that a radar detecting or jamming device is being sold or offered for sale or that a motor vehicle is standing or being driven in contravention of the Act because of a device fitted to or carried in the vehicle, to require a person in possession of the device, whether or not that person is the owner of the device, to surrender it immediately. Where a device is fitted to a motor vehicle and is not immediately removable, paragraph 164I (2) (b) authorises a police officer to serve written notice, in a manner specified in section 108D of the Act, on the owner of the vehicle requiring the owner to surrender the device within a specified time and in a specified manner.

Section 108D of the Act enables a notice to be served, personally, upon the owner of a vehicle but also provides for other methods of service including service upon the driver of the vehicle, affixing the notice to the motor

vehicle and leaving the notice at, or posting the notice to, the last known place of residence or business of the owner.

A penalty of \$2000 is provided in respect of an offence against new section 164I.

New subsection 164J (1) empowers a court which finds an offence under new section 164G proven against any person to order that the device concerned, if not already surrendered, be delivered to the Chief Police Officer, within a time and in a manner specified by the court.

New subsection 164J (2) requires the forfeiture of a surrendered device to the Territory.

New subsection 164J (3) exempts a person who surrenders a device, pursuant to a requirement of new section 164J, from liability arising from the surrender of that device by the person where he or she is not the absolute owner of the device.

FORMAL AND TECHNICAL MATTERS

Clauses 1, 2, 3, 4, 7, 9, 12 and 15

Clauses 1 and 2 are formal clauses dealing with citation and commencement of the provisions of the Bill, respectively. *Clause 2* provides that with the exception of sections 5, 6, 12, 13 and 14 the Act will commence upon its notification in the *Gazette*.

Subclauses 2 (2) and 2(5) have the effect of commencing sections 5 and 6, dealing with slip lanes, upon a day fixed by the Minister by notice in the *Gazette*, or after six months from the day upon which the Act is notified in the *Gazette*, whichever is the latter. The flexibility in these commencement provisions is intended to enable any appropriate public education program concerning the new provisions to be undertaken.

Subclause 2(3) means that sections 12 and 13, which require the provision in a motor vehicle of a child restraint for a child between the age of one and eight years, will commence 90 days after the day on which the Act is notified in the

Gazette. The delayed commencement is intended to enable persons affected by the amendments sufficient time to purchase or fit child restraints to motor vehicles.

Subclause 2(4) provides that section 14, creating the offence of using, selling or purchasing a radar detector or jammer, will not commence until 30 days after the notification of the Act in the *Gazette*. The delayed commencement of this provision will allow time for a media campaign by the Australian Federal Police to inform motorists concerning the new legislation and will give motorists an opportunity to remove radar detectors or jammers from their vehicles before the new provisions come into force.

Clauses 3, 4, and 7 deal with the interpretation of terms used in, and inserted in the Act by, the Bill. *Clause 4* provides for the insertion in section 4 of the Act of -

- a definition for the Australian Standard relating to radar speed measuring devices to which the Minister must have regard under new subsection 147CA(2); and
- a definition of the term "slip lane".

Clause 7 inserts into section 140 of the Act definitions for the terms "radar speed measuring device", "radar detecting device" and "radar jamming device".

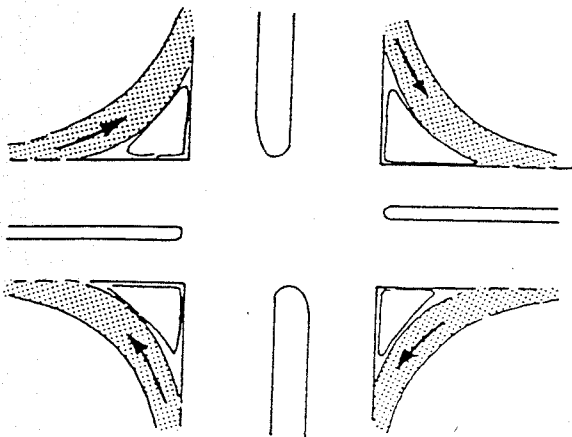
Clause 9 amends section 147C of the Act, dealing with speed measuring devices, to bring the section into accord with current drafting practice.

Clause 15 amends Schedule 7 of the Act to include a decision of the Minister, pursuant to new subsection 147CA (1), refusing to approve a device designed for use in measuring the speed of vehicles as a decision in respect of which the applicant for approval of such a device may seek a review by the A.C.T. Administrative Appeals Tribunal.

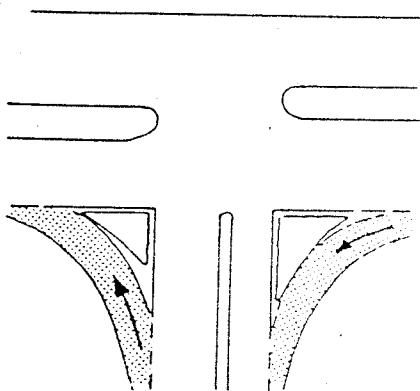
ILLUSTRATIONS OF SLIP LANES

(Shaded areas in diagrams are slip lanes and traffic flow direction is indicated by the arrows.)

Slip lanes at an intersection



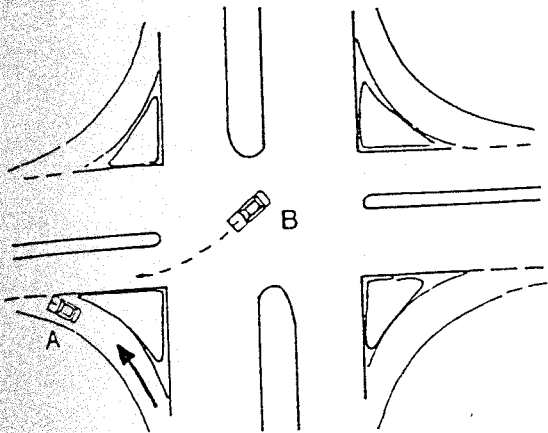
Slip lanes at a junction



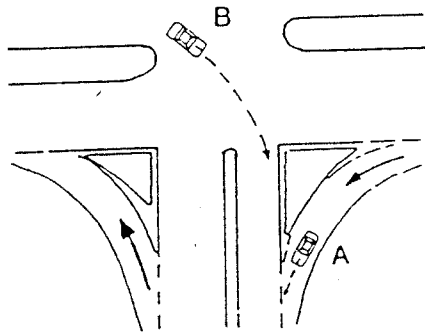
ILLUSTRATIONS OF TRAFFIC PRIORITIES APPLYING AT SLIP LANES

(In examples 1 and 2 vehicle A, travelling in the slip lane, gives way to vehicle B.)

Example 1



Example 2



Example 3 (Once vehicle A has exited the slip lane and is travelling in parallel with vehicle B, existing traffic priorities apply.)

