

NORTHERN TERRITORY OF AUSTRALIA

TRAFFIC AMENDMENT ACT 2004

Act No. 30 of 2004

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NORTHERN TERRITORY OF AUSTRALIA

Act No. 30 of 2004

AN ACT

to amend the *Traffic Act* and for related purposes

[Assented to 4 June 2004]

[Second reading 26 November 2003]

The Legislative Assembly of the Northern Territory enacts as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Traffic Amendment Act 2004*.

2. Commencement

(1) Section 6 comes into operation on the day on which the Administrator's assent to this Act is declared.

(2) The remaining provisions of this Act come into operation on the date fixed by the Administrator by notice in the *Gazette*.

PART 2 – AMENDMENTS OF *TRAFFIC ACT*

3. Principal Act

The *Traffic Act* is in this Part referred to as the Principal Act.

4. New Part

The Principal Act is amended by inserting after Part V the following:

"PART VA – IMPOUNDING AND FORFEITURE OF MOTOR VEHICLES FOR CERTAIN OFFENCES

"Division 1 – Preliminary

"29AB. Definitions

"In this Part, unless the contrary intention appears –

'forfeiture order' means an order made under section 29AG(1)(c)(ii);

'impounding order' means an order made under section 29AG(1)(a), 29AG(1)(b) or 29AG(1)(c)(i);

'last offence' has the meaning in section 29AE;

'offender' has the meaning in section 29AE;

'police officer' means a member of the Police Force;

'prescribed driving offence' means an offence against a prescribed provision of this Act by the driver of a motor vehicle;

'storage premises', for a motor vehicle, means the premises where the vehicle is kept under an impounding order.

"29AC. Traffic infringement notice counted as first offence

"For this Division, an offender has been found guilty of a prescribed driving offence on the first of 2 or more occasions if –

- (a) a traffic infringement notice has been issued, and not withdrawn, under the Regulations to the offender for the offence; or
- (b) the person has been found guilty of the offence.

"29AD. Effect of impounding and forfeiture orders

"(1) An impounding order for a motor vehicle does not affect the rights of a credit provider to repossess the vehicle under the Consumer Credit (Northern Territory) Code and sell it.

"(2) The making of an impounding order or forfeiture order for a motor vehicle arising out of the commission of a prescribed driving offence is in addition to any other penalty that may be imposed for the offence.

"Division 2 – Impounding and forfeiture orders

"29AE. Application of Division

"This Division applies if the driver of a motor vehicle (the 'offender') is found guilty of a prescribed driving offence (the 'last offence') within 2 years after having previously been found guilty of a prescribed driving offence.

"29AF. Application for impounding or forfeiture order

"(1) Within 28 days after the offender is found guilty of the last offence, a police officer may apply to the Local Court for an impounding order or forfeiture order for the vehicle driven by the offender when the last offence was committed.

"(2) However, subsection (1) does not apply if the vehicle was being unlawfully used, had been stolen or was a rental vehicle.

"29AG. Making of order

"(1) On hearing the application, the Local Court may –

- (a) if the offender has been found guilty on 2 occasions of a prescribed driving offence, order that the vehicle be impounded for 48 hours;
- (b) if the offender has been found guilty on 3 occasions of a prescribed driving offence, order that the vehicle be impounded for a stated period of not more than 3 months; or
- (c) if the offender has been found guilty on 4 or more occasions of a prescribed driving offence, order that the vehicle –
 - (i) be impounded for a stated period of not more than 3 months; or
 - (ii) be forfeited to the Territory.

"(2) However, the Court must not make an impounding order or forfeiture order if it is satisfied impounding or forfeiting the vehicle will cause severe financial or physical hardship to the owner or usual driver of the vehicle.

"(3) In addition, the Court must not make an impounding order or forfeiture order if the owner of the vehicle raises the defence mentioned in subsection (4) and the Court is satisfied the defence has been made out.

"(4) It is a defence for an owner of the vehicle to prove the prescribed driving offence happened without the knowledge and consent of the owner.

"(5) The Court may, in an impounding order or forfeiture order for the vehicle –

- (a) order the owner to deliver the vehicle to a police officer by a stated time at a stated place; or
- (b) authorise a police officer, without warrant, to enter any place the police officer reasonable suspects is a place where the vehicle may be found and search for, seize and remove it.

"29AH. Costs of impounding

"(1) The offender is liable to pay the costs of removing and keeping the vehicle under an impounding order or forfeiture order.

"(2) For subsection (1), the owner of the storage premises for the vehicle is taken to be a warehouseman under the *Warehousemen's Liens Act* and that Act (other than section 7) applies to the vehicle.

"(3) If, after the end of the period of impounding of the vehicle under an impounding order, the owner of the vehicle does not recover it, Parts III, IV and V of the *Disposal of Uncollected Goods Act* apply to the sale or disposal of the vehicle by the owner of the storage premises.

"29AI. Return of vehicle after impounding

"(1) When the period of impounding of the vehicle ends, the owner of the vehicle is entitled to recover it from the owner of the storage premises for the vehicle.

"(2) The owner of the storage premises must return the vehicle to its owner on request.

"(3) However, subsection (2) does not apply if the costs of removing and keeping the vehicle have not been paid.

"29AJ. Effect of forfeiture order

"On the making of a forfeiture order for the vehicle –

- (a) the vehicle becomes the property of the Territory; and
- (b) a right of a person to enforce any security interest against another person by taking possession of the vehicle is extinguished.

"Division 3 – Provisions about forfeiture

"29AK. Disposal of forfeited vehicle

"The Commissioner of Police may dispose of a motor vehicle forfeited to the Territory under a forfeiture order in the way the Commissioner considers appropriate, including by selling it.

"29AL. Application of proceeds of sale

"If, under section 29AK, the Commissioner of Police sells the vehicle, the proceeds of the sale must be paid as follows:

- (a) first – in payment of the expenses of the sale;
- (b) second – in payment of the cost of removing and keeping the vehicle;
- (c) third – if there is an amount owing to a person under a security interest registered for the vehicle under the *Registration of Interests in Motor Vehicles and Other Goods Act* or a corresponding law of another jurisdiction – in payment of the amount owing to the registered holder of the interest;
- (d) fourth – to the Consolidated Revenue Account.

"29AM. Third party protection from forfeiture order

"(1) A person, other than the offender, who did not appear at the hearing of an application for a forfeiture order and has an interest in a motor vehicle forfeited to the Territory under the order may apply to the Local Court for an order under subsection (5).

"(2) Unless the Court gives leave, the application must be made before the end of the period of 6 months starting on the day the forfeiture order was made.

"(3) The Court may give leave for a later application if it is satisfied the delay in applying was not because of the applicant's neglect.

"(4) Unless the Court gives leave, a person who was given notice of the application for the forfeiture order cannot apply to the Court for an order under subsection (5).

"(5) On an application, the Court may make an order –

- (a) declaring the nature, extent and, if necessary for the order, the value (when the declaration is made) of the applicant's interest in the vehicle; and

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- (b) directing the Territory –
 - (i) if the vehicle is still vested in the Territory – to transfer it to the applicant; or
 - (ii) if the vehicle is no longer vested in the Territory – to pay to the applicant the value of the applicant's interest in the vehicle after taking into account any amount paid under section 29AL(c) to the holder of a security interest.

"(6) The Court must, and may only, make the order if it is satisfied –

- (a) the applicant would, apart from the forfeiture, have a genuine interest in the vehicle; and
- (b) the prescribed driving offence for which the forfeiture order was made happened without the knowledge and consent of the applicant.

"(7) For all applications, including applications for leave to apply –

- (a) the applicant must give notice of the making of the application to the Commissioner of Police; and
- (b) the Commissioner is a party to the application.

"Division 4 – Miscellaneous provisions

"29AN. Offence to remove or interfere with impounded vehicle

- "(1) A person must not –
 - (a) unlawfully remove an impounded motor vehicle from its storage premises; or
 - (b) interfere with an impounded motor vehicle held on its storage premises.

Penalty: 20 penalty units.

"(2) In this section –

'impounded motor vehicle' means a motor vehicle impounded under an impounding order, and includes anything fitted or attached to the vehicle, including for example, an accessory, body kit or stereo system.

"29AO. Review of Part

"There is to be a review of the first 5 years of operation of this Part."

5. Regulatory offences

Section 51 of the Principal Act is amended by omitting "30 and 31" and substituting "29AN(1), 30, 30A and 31".

6. Regulations

Section 53 of the Principal Act is amended by inserting after subsection (3) the following:

"(4) The Regulations may prescribe different penalties for different classes of offender for an offence against the Regulations.

"(5) The Regulations may –

(a) make different provision in relation to –

(i) different persons or matters; or

(ii) different classes of persons or matters; or

(b) apply differently by reference to stated exceptions or factors."

PART 3 – AMENDMENTS OF TRAFFIC REGULATIONS

7. Principal Regulations

The Traffic Regulations are in this Part referred to as the Principal Regulations.

8. Speed trials and races

Regulation 37 of the Principal Regulations is amended –

(a) by omitting subregulation (1) and substituting the following:

"(1) A person must not organise or promote an event on a road or public place unless –

(a) the event is an authorised event or exempt event; or

(b) bicycles are the only vehicles to take part in the event.

Penalty: 10 penalty units.

"(1A) A person must not take part in an event on a road or public place unless the event is an authorised event or exempt event.

Penalty: 5 penalty units.

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"(1B) A person must not attend as a spectator at an event on a road or public place unless the event is an authorised event or exempt event.

Penalty: 1 penalty unit."; and

(b) by omitting subregulation (9) and substituting the following:

"(9) In this regulation –

'authorised event' means an event –

- (a) to which section 43A of the Act applies; or
- (b) for which a permit has been granted under this regulation;

'event' means –

- (a) a speed trial or race between vehicles; or
- (b) a bicycle trial;

'exempt event' means any of the following events:

- (a) the World Solar Challenge;
- (b) the Finke Desert Race;
- (c) the Australian Safari;
- (d) the London to Sydney marathon;

'road' includes a road-related area;

'speed trial' means –

- (a) any attempt to establish or break a vehicle speed record of any description;
- (b) any trial of any description of the speed of a vehicle; or
- (c) any competitive trial of any description designed to test the skill of any driver or the reliability or mechanical condition of any vehicle."

9. New regulations

The Principal Regulations are amended by inserting after regulation 37 the following:

"37A. Burn outs

"(1) A person must not drive a motor vehicle on a road or public place in a way that causes the tyres or a substance poured onto the surface of the road or place, or both the tyres and surface, to smoke when the drive wheels lose traction with the surface.

Penalty: 5 penalty units.

"(2) Subregulation (1) does not apply if the person is driving the vehicle in accordance with the order or permit for an authorised event within the meaning of regulation 37.

"37B. Damaging surface of road or public place

"(1) A person must not drive a motor vehicle in a way that damages the surface of a road or public place.

Penalty: 5 penalty units.

"(2) Without limiting subregulation (1), a person commits an offence against the subregulation if the person drives a vehicle in a way that causes ruts to form in the surface of a road or public place."

10. New regulation

The Principal Regulations are amended by inserting after regulation 91 the following:

"91A. Prescribed provisions for certain driving offences

"For the definition of 'prescribed driving offence' in section 29AB of the Act, an offence against each of the following is a prescribed provision:

- (a) regulation 37(1A);
- (b) regulation 37A(1);
- (c) regulation 37B(1)."

11. Schedule 1

Schedule 1 to the Principal Regulations is amended by adding at the end of item 23 the following:

"Take part in event on road or public place contrary to regulation 37(1A)	220
Drive vehicle causing smoke contrary to regulation 37A(1)	220
Drive vehicle causing damage to road or public place contrary to regulation 37B(1)	220".

12. Amendment by regulation

The Principal Regulations as amended by this Part may be amended or repealed by a regulation as if the amendment had been made by a regulation.