

Serial 97
Traffic Amendment (Forfeiture and Impounding Orders) Bill 2010
Mr Giles

A Bill for an Act to amend the *Traffic Act*

NORTHERN TERRITORY OF AUSTRALIA

TRAFFIC AMENDMENT (FORFEITURE AND IMPOUNDING ORDERS) ACT 2010

Act No. [] of 2010

Table of provisions

1	Short title	1
2	Commencement	1
3	Act amended	1
4	Amendment of section 21 (High range blood alcohol content)	1
5	Amendment of section 22 (Medium range blood alcohol content)	2
6	New Part V, Division 10	2
	Division 10 Impounding and forfeiture of vehicles	
	Subdivision 1 Introduction	
	29AAYE Object of Division	
	29AAYF Definitions	
	Subdivision 2 Penalty points system	
	29AAYG Penalty points	
	29AAYH Active penalty points	
	29AAYI Penalty points register	
	29AAYJ Disclosure of information in register	
	Subdivision 3 Impounding order	
	29AAYK Application	
	29AAYL Impounding order	
	Subdivision 4 Forfeiture order	
	29AAYM Application	
	29AAYN Forfeiture order	
	Subdivision 5 Proceedings for orders	
	29AAYO Interested parties for proceedings	
	29AAYP Other related orders	
	29AAYQ Proceedings for order and other penalty	
	29AAYR Application to Local Court after making of forfeiture order	
	29AAYS Registrar's obligations	
	Subdivision 6 Impounded and forfeited vehicles	
	29AAYT Rights of credit provider	
	29AAYU What happens at end of initial period	
	29AAYV Costs of impounding	
	29AAYW Disposal of impounded vehicle	
	29AAYX Disposal of forfeited vehicle	

	Subdivision 7	Related offences	
	29AAYY	Impounding order and forfeiture order	
	Subdivision 8	Administrative matters	
	29AAYZ	Disclosure of information	
7	New section 57	18
	56A	Application of <i>Traffic Amendment (Forfeiture and Impounding Orders) Act 2010</i>	



NORTHERN TERRITORY OF AUSTRALIA

Act No. [] of 2010

An Act to amend the *Traffic Act*

[Assented to [] 2010]
[Second reading [] 2010]

The Legislative Assembly of the Northern Territory enacts as follows:

1 Short title

This Act may be cited as the *Traffic Amendment (Forfeiture and Impounding Orders) Act 2010*.

2 Commencement

This Act commences on the day fixed by the Administrator by *Gazette* notice.

3 Act amended

This Act amends the *Traffic Act*.

4 Amendment of section 21 (High range blood alcohol content)

(1) Section 21(2)(a)(ii), at the end

insert

or

(2) After section 21(2)(a)(ii)

insert

(iii) a low range blood alcohol content;

5 Amendment of section 22 (Medium range blood alcohol content)

(1) Section 22(2)(a)(ii), at the end

insert

or

(2) After section 22(2)(a)(ii)

insert

(iii) a low range blood alcohol content;

6 New Part V, Division 10

After section 29AAYD

Insert

Division 10 Impounding and forfeiture of vehicles

Subdivision 1 Introduction

29AAYE Object of Division

The object of this Division is to provide additional sanctions against repeat offenders in relation to offences against this Part.

29AAYF Definitions

In this Division:

active penalty point means the active penalty points mentioned in section 29AAYH.

Consumer Credit (Northern Territory) Code, see section 4 of the *Consumer Credit (Northern Territory) Act*.

costs, of impounding a motor vehicle as a result of an impounding order, means all the costs related to the following as a result of the order (whether or not the initial period has passed):

- (a) removing and keeping the vehicle;
- (b) if the order specifies that the vehicle be immobilised – immobilising, and removing the immobilisation of, the vehicle.

forfeiture order, see section 29AAYN(1).

high level offence means an offence against section 21, 29AAA, 29AAE or 29AAH.

impound, for a motor vehicle and in relation to an order, means one or both of the following as specified in the order:

- (a) keeping the vehicle at a specified place (for example, a place under the control of a tow truck operator);
- (b) immobilising the vehicle by using wheel clamps or other devices.

impounding order, see sections 29AAYL(1) and 29AAYN(7).

initial period, see sections 29AAYL(3) and 29AAYN(7).

low level offence means an offence against section 23.

mid level offence means an offence against section 22, 24, 25 or 26.

offender, in relation to a penalty points offence, means the offender for the offence.

penalty point means a penalty point mentioned in section 29AAYG.

penalty points offence means a low level offence, mid level offence or high level offence.

register means the register of penalty points established by section 29AAYI.

registered operator, of a motor vehicle, means the person who is nominated under section 92A of the *Motor Vehicles Act* to be the operator of the vehicle.

registered owner, of a motor vehicle, means the person who is the owner of the vehicle as defined in section 5(1) of the *Motor Vehicles Act*.

senior police officer means a police officer of the rank of superintendent or above.

storage place, for an impounding order relating to a motor vehicle, means the place at which the vehicle is kept because of the impounding order.

traffic infringement notice means a traffic infringement notice issued under the Regulations.

Subdivision 2 Penalty points system

29AAYG Penalty points

A person who commits a penalty points offence on or after the commencement of this section incurs the number of penalty points for the offence as specified in the following table.

Penalty points offence	Penalty points
low level offence (offence against section 23)	1
mid level offence (offence against section 22, 24, 25 or 26)	2
high level offence (offence against section 21, 29AAA, 29AAE or 29AAH)	3

29AAYH Active penalty points

- (1) Only active penalty points may be taken into account in making an impounding order (as provided in section 29AAYK) or forfeiture order (as provided in section 29AAYM).
- (2) A penalty point incurred by a person because of a penalty points offence becomes active on and after the earlier of the following:
 - (a) the day on which the offender is found guilty by a court of the offence;
 - (b) if the offender has been issued with an infringement notice for the offence, the earlier of following:
 - (i) the day on which the offender pays the fine to which the notice relates;
 - (ii) the last day of the period for electing to have the offence dealt with by a court if the offender has not made the election by the end of that period.
- (3) The penalty point:
 - (a) is taken never to have been incurred or active if the offender is subsequently found not guilty of the offence on an appeal; and
 - (b) otherwise – ceases to be active at the end of 5 years after it became active.

-
- (4) A penalty point:
- (a) may be active even if it has not been recorded in the register;
and
 - (b) continues to be active despite the making of any impounding order or forfeiture order that has taken the point into account.

29AAYI Penalty points register

- (1) The Registrar must establish and maintain a penalty points register.
- (2) The register must contain the following information for each person who commits a penalty points offence:
 - (a) the name and contact details of the person;
 - (b) each penalty points offence committed by the person;
 - (c) when the penalty points incurred by the person became active and when they would expire;
 - (d) any other information prescribed by regulation.
- (3) Regulations may be made about matters arising from this section (for example, correction of the information in the register).

29AAYJ Disclosure of information in register

- (1) The Registrar may, for statistical purposes, retain in the register records of penalty points that are no longer active.
- (2) Information in the register about a particular person may only be disclosed to:
 - (a) that person; or
 - (b) a police officer performing functions or exercising powers under this Act.
- (3) In addition, information in the register may be used for statistical purposes in a way that will not permit the identification of a particular person who has incurred penalty points.
- (4) Subject to subsection (3), the Registrar must prepare an annual report for each year after the commencement of this Division about the operation of the register.

-
- (5) The report must provide statistics about the following matters:
 - (a) the gender and age of the offenders of penalty points offences;
 - (b) the number of those offenders who identified themselves as indigenous;
 - (c) other matters prescribed by regulation.
 - (6) The Registrar must give the report to the Minister within 3 months after the end of the year to which it relates.
 - (7) The Minister must table a copy of the report in the Legislative Assembly within 6 sitting days after receiving the report.

Subdivision 3 Impounding order

29AAYK Application

This Subdivision applies if:

- (a) a court has found a person guilty of a penalty points offence (the **current offence**); and
- (b) the offender has at least 3, but less than 6, active penalty points when the person is found guilty of the current offence (including the penalty points incurred because of the current offence).

29AAYL Impounding order

- (1) Before the offender is sentenced for the current offence, the Commissioner of Police may apply to the court for an order (an **impounding order**) to impound the motor vehicle used in committing the offence.
- (2) However, the Commissioner of Police may not do so if, at the time of the current offence, the motor vehicle was a rental vehicle, or was stolen or otherwise used without the permission of its owner.
- (3) The court may order the impounding of the motor vehicle for a period of 48 hours (the **initial period**) if the court is satisfied each person with an interest in the vehicle had the opportunity to be heard in the proceedings for the application.

-
- (4) The court must not make the impounding order if the court is satisfied:
- (a) the offender was not the owner of the motor vehicle at the time of the current offence; and
 - (b) the current offence happened without the knowledge and consent of the owner of the vehicle.
- (5) The impounding order:
- (a) must specify the storage place for the vehicle under the order; and
 - (b) may specify other matters relating to the order as the court decides; and
 - (c) is to take effect as the court decides.
- (6) Without limiting subsection (5), the court may specify the impounding order is not to take effect until one or more of the following have occurred:
- (a) the end of the period for instituting an appeal in relation to the offence;
 - (b) a determination of an appeal in relation to the offence;
 - (c) the end of a suspension of the offender's licence to drive under a law of the Territory;
 - (d) the end of an AIL period that applies to the offender;
 - (e) the end of a sentence of imprisonment to be served by the offender.
- (7) This section does not permit the making of an impounding order if the only penalty points taken into account in making the order were also the only penalty points taken into account in making another impounding order.

Example for subsection (7)

An offender has no active penalty points before being found guilty of a mid-level offence and a low level offence on the same day. The offender now has 3 active penalty points. This section permits the making of one impounding order for one of the offences but does not permit the making of 2 separate impounding orders for each of these offences.

Subdivision 4 Forfeiture order

29AAYM Application

This Subdivision applies if:

- (a) a court has found a person guilty of a penalty points offence (the **current offence**); and
- (b) the offender has at least 6 active penalty points when the person is found guilty of the current offence (including the penalty points incurred because of the current offence).

29AAYN Forfeiture order

- (1) Before the offender is sentenced for the current offence, the Commissioner of Police may apply to the court for an order (a **forfeiture order**) to forfeit the motor vehicle used in committing the offence.
- (2) However, the Commissioner of Police may not do so if, at the time of the current offence, the motor vehicle was a rental vehicle, or was stolen or otherwise used without the permission of its owner.
- (3) The court may make the forfeiture order only if the court is satisfied:
 - (a) each person with an interest in the motor vehicle had the opportunity to be heard in the proceedings for the application; and
 - (b) forfeiting the vehicle will not cause severe financial or physical hardship to a person mentioned in paragraph (a) who was heard in the proceedings.
- (4) The court must not make the forfeiture order if the court is satisfied:
 - (a) the offender was not the owner of the motor vehicle at the time of the current offence; and
 - (b) the current offence happened without the knowledge and consent of the owner of the vehicle.
- (5) The forfeiture order is to take effect as specified in the order at the earlier of the following:
 - (a) the expiration of the period for the offender to institute an appeal in relation to the offence if no such appeal is instituted within that period;
 - (b) the determination of the appeal if the appeal is unsuccessful.

-
- (6) When the forfeiture order takes effect:
- (a) the vehicle becomes the property of the Territory; and
 - (b) any rights in the vehicle existing before the forfeiture are extinguished.
- (7) Instead of making a forfeiture order, the court may make an order (an **impounding order**) to impound the vehicle for a specified period of at least 14 days and not more than 6 months (the **initial period**) if the court:
- (a) would, apart from subsection (3)(b), make the forfeiture order; and
 - (b) is satisfied that impounding the vehicle for the initial period will remove or reduce the hardship as mentioned in that subsection.
- (8) The court may make the impounding order on its own initiative or on the application of the Commissioner of Police.
- (9) The impounding order:
- (a) must specify the storage place for the vehicle under the order; and
 - (b) may specify other matters relating to the order as the court decides; and
 - (c) is to take effect as the court decides.
- (10) Without limiting subsection (9), the court may specify the impounding order is not to take effect until one or more of the following have occurred:
- (a) the end of the period for instituting an appeal in relation to the offence;
 - (b) a determination of an appeal in relation to the offence;
 - (c) the end of a suspension of the offender's licence to drive under a law of the Territory;
 - (d) the end of an AIL period that applies to the offender;
 - (e) the end of a sentence of imprisonment to be served by the offender.

-
- (11) This section does not permit the making of a forfeiture order or impounding order if the only penalty points taken into account in making the order were also the only penalty points taken into account in making another forfeiture order or impounding order.

Subdivision 5 Proceedings for orders

29AAYO Interested parties for proceedings

- (1) This section applies if, in relation to an offender, the Commissioner of Police intends to apply for any of the following (**proposed order**):
- (a) a forfeiture order;
 - (b) an impounding order.
- (2) The Commissioner of Police must, before the offender is sentenced for the offence to which the proposed order relates, give written notice of that intention to the following:
- (a) the Registrar;
 - (b) if the vehicle is registered – the registered owner and registered operator of the motor vehicle;
 - (c) if the Commissioner knows the identity of the owner of the vehicle (whether or not the vehicle is registered) – that owner;
 - (d) if the Commissioner knows the identity of a person who is the spouse or de facto partner of a person mentioned in paragraph (b) or (c) – that person;
 - (e) for an application for a forfeiture order – anyone whose interest in the vehicle is recorded in the Register of Interests in Motor Vehicles and Other Goods maintained under section 6 of the *Registration of Interests in Motor Vehicles and Other Goods Act*.
- (3) A person notified under subsection (2), or anyone else claiming to have an interest in the motor vehicle, has a right to be heard in the proceedings for the application.

29AAYP Other related orders

- (1) The court making an impounding order or forfeiture order may:
- (a) order the owner of the motor vehicle to which the order relates to deliver the vehicle to a police officer by a specified time at a specified place; or

-
- (b) authorise a police officer, without warrant, to:
 - (i) enter a place the officer reasonably suspects the vehicle may be found; and
 - (ii) search for, seize and remove the vehicle.
 - (2) A police officer may use any reasonable force and assistance in exercising a power under the order.

29AAYQ Proceedings for order and other penalty

To avoid doubt:

- (a) the proceedings for the application of an impounding order or forfeiture order in relation to an offence are part of the proceedings for sentencing the offender in relation to the offence; and
- (b) the making of an impounding order or forfeiture order is in addition to, and does not limit the court's power to impose, any other penalty for the offence.

29AAYR Application to Local Court after making of forfeiture order

- (1) This section applies to a person if:
 - (a) the person had an interest in a motor vehicle before it was forfeited under a forfeiture order; and
 - (b) the person:
 - (i) was not notified of the application for that order under section 29AAYN and did not appear as a party in the proceedings for that application; or
 - (ii) is allowed by the Local Court to make an application for an order under this section; and
 - (c) the vehicle:
 - (i) is still vested in the Territory; or
 - (ii) has been sold under section 29AAYX and part of the proceeds has been paid to the Central Holding Authority (the **CHA amount**).
- (2) The person may, within 60 days after the forfeiture of the motor vehicle, apply to the Local Court for an order:
 - (a) declaring the nature, extent and value of the interest; and

-
- (b) directing the Territory:
 - (i) if the vehicle is still vested in the Territory – to transfer it to the applicant; or
 - (ii) otherwise – to pay to the applicant an amount worked out under subsection (3).
 - (3) The amount must be:
 - (a) equal to the value of the interest if that value is less than so much of the CHA amount as is reduced by any amount already paid under this section to another person who also had an interest in the vehicle (the **reduced CHA amount**); or
 - (b) otherwise – equal to the reduced CHA amount.
 - (4) The Local Court may allow the application to be made more than 60 days after the forfeiture of the vehicle if it is satisfied the delay in making the application was not caused by the applicant's neglect.
 - (5) The applicant must notify the Commissioner of Police of the application at least 3 days before the Local Court hears the application.
 - (6) The Commissioner of Police:
 - (a) is a party to the proceedings for the application; and
 - (b) if the vehicle is vested in the Territory – must not dispose of the vehicle after being notified of the application and before the end of the proceedings.
 - (7) The Local Court must grant the application by making an order it considers appropriate if it is satisfied:
 - (a) the applicant would, apart from the forfeiture order, have a genuine interest in the vehicle; and
 - (b) the offence to which the forfeiture order relates happened without the knowledge and consent of the applicant.

29AAYS Registrar's obligations

- (1) The Registrar must, on request of a police officer, give the officer all information held by the Registrar about a motor vehicle to which any of the following relates:
 - (a) an impounding order or forfeiture order;

-
- (b) an application that has been made for an impounding order or forfeiture order.
 - (2) In addition, the Registrar must not cancel or change the registration of the motor vehicle during the period starting on the day the Registrar is given a notice under section 29AAYO(2) in relation to the application and ending on the day the application is decided by a court.
 - (3) However, this section does not prevent the Registrar from:
 - (a) renewing the registration of the motor vehicle without changing the registration of the ownership of the vehicle; or
 - (b) changing the registration of the motor vehicle because it is repossessed or sold by a credit provider as mentioned in section 29AAYT.

Subdivision 6 Impounded and forfeited vehicles

29AAYT Rights of credit provider

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

29AAYU What happens at end of initial period

- (1) The owner of a motor vehicle to which an impounding order relates is entitled to collect the vehicle at the end of the initial period on payment of the costs of impounding the vehicle.
- (2) The Commissioner of Police must notify the following about any change of the arrangement for impounding the vehicle after the initial period:
 - (a) the person who was the driver of the vehicle at the time of the offence to which the impounding order relates;
 - (b) if the vehicle is registered and that driver is not the registered owner or registered operator of the vehicle – the registered owner and registered operator;
 - (c) if the Commissioner knows the identity of the owner of the vehicle (whether or not the vehicle is registered) – that owner.

29AAYV Costs of impounding

- (1) The driver of a motor vehicle at the time of the offence to which an impounding order relates is liable to pay the costs of impounding the vehicle as a result of the order.
- (2) If the Territory incurs an amount of costs of impounding the vehicle, the amount is a debt due to the Territory by the driver.
- (3) Despite subsection (2), the Regulations may provide for the release of the vehicle to a person on payment of an amount by the person.
- (4) This section does not prevent the owner of the vehicle to recover from the driver an amount of the costs of impounding the vehicle paid by the owner under section 29AAYU(1).

29AAYW Disposal of impounded vehicle

- (1) This section applies if the owner of a motor vehicle to which an impounding order relates does not collect the vehicle within 28 days after the order expires.
- (2) The Commissioner of Police may dispose of the vehicle in any way the Commissioner considers appropriate (for example, sale or destruction) if:
 - (a) all proceedings for the alleged offence or offence to which the order relates have ended, the period for appeal has expired and, for an impounding order, the order is not overturned; and
 - (b) at least 28 days before the proposed disposal of the vehicle – the Commissioner has notified each of the following of the proposed disposal:
 - (i) the person who was the driver of the vehicle at the time of the alleged offence or offence;
 - (ii) if the vehicle is registered and that driver is not the registered owner or registered operator of the vehicle – the registered owner and registered operator;
 - (iii) if the Commissioner knows the identity of the owner of the vehicle (whether or not the vehicle is registered) – that owner;
 - (iv) anyone else whom the Commissioner knows to have an interest in the vehicle; and

-
- (c) at least 28 days before the proposed disposal – the Commissioner has, by *Gazette* notice, publicised the proposed disposal; and
 - (d) at least 28 days before the proposed disposal – the Commissioner has notified the Registrar about the proposed disposal; and
 - (e) the Commissioner has obtained a certificate for the vehicle under section 12 of the *Registration of Interests in Motor Vehicles and Other Goods Act*.
- (3) The Commissioner of Police is required to notify a person mentioned in subsection (2)(b) only to the extent to which it is reasonably practicable to do so.
 - (4) The owner of the vehicle is entitled to collect the vehicle at anytime before the proposed disposal on payment of the costs of impounding the vehicle mentioned in section 29AAYV.
 - (5) If the motor vehicle is disposed of by sale, the purchaser holds title to the vehicle free of any interest existing in it before the disposal.
 - (6) If the Commissioner of Police sells the vehicle under this section, 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 costs incurred by the Territory for any impounding order for the vehicle;
 - (c) third – in payment of the costs incurred by the Territory for giving notice to a person about the proposed disposal;
 - (d) fourth – in payment of the amount owing to the holder of 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;
 - (e) fifth – to the owner of the vehicle.
 - (7) If, after making reasonable attempts to locate the owner, the Commissioner has not done so, the amount payable to the owner under subsection (6) must be paid to the Central Holding Authority.

29AAYX Disposal of forfeited vehicle

- (1) The Commissioner of Police may dispose of a motor vehicle forfeited under a forfeiture order in any way the Commissioner considers appropriate (for example, sale or destruction).

-
- (2) If the Commissioner of Police sells the vehicle under this section, 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 costs incurred by the Territory for removing and keeping the vehicle for the forfeiture order;
 - (c) third – in payment of the costs incurred by the Territory for any impounding order for the vehicle;
 - (d) fourth – in payment of the amount owing to the holder of 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;
 - (e) fifth – to the Central Holding Authority.

Subdivision 7 Related offences

29AAYY Impounding order and forfeiture order

- (1) A person must not enter into a transaction relating to a motor vehicle, or unlawfully remove anything fitted or attached to the vehicle, if:
- (a) a driver of the vehicle is charged with, or issued with a summons for, a penalty points offence; and
 - (b) the person knows about the matter mentioned in paragraph (a); and
 - (c) the person has been notified under section 29AAYO(2) of the intention of the Commissioner of Police to apply for a forfeiture order for the offence.

Maximum penalty: 400 penalty units or imprisonment for 2 years.

- (2) If a motor vehicle is impounded under an impounding order, a person must not:
- (a) unlawfully remove the vehicle or anything fitted or attached to the vehicle from the storage place where the vehicle is kept; or
 - (b) interfere with the vehicle while it is kept at the storage place; or

-
- (c) remove or tamper with any device used to immobilise the vehicle while it is kept at the storage place.

Maximum penalty: 100 penalty units.

- (3) Subsection (2) does not apply to any of the following:

- (a) a credit provider repossessing or selling the vehicle as mentioned in section 29AAYT;
- (b) a person maintaining the vehicle (for example, periodically starting the engine of the vehicle);
- (c) a person removing personal possessions (other than a thing that is fitted or attached to the vehicle) from the vehicle.

- (4) In this section:

transaction, relating to a vehicle, includes but is not limited to:

- (a) a sale of all or part of the vehicle; and
- (b) the creation of a mortgage or charge in relation to the vehicle.

Subdivision 8 Administrative matters

29AAYZ Disclosure of information

- (1) This section applies to a motor vehicle if:
 - (a) an application for an impounding order or forfeiture order for the vehicle has been made and is pending; or
 - (b) an impounding order or forfeiture order is in force for the vehicle.
- (2) A police officer may give any information held by the officer about the vehicle to another person (for example, a tow truck operator) for the purposes of this Division.
- (3) A person who obtains the information because of subsection (2) (whether directly or indirectly) must not disclose the information to anyone except as authorised under, or for the purposes of, this Division.

Maximum penalty: 200 penalty units or imprisonment for 12 months.

7 New section 57

After section 56

insert

56A Application of *Traffic Amendment (Forfeiture and Impounding Orders) Act 2010*

The amendments made to sections 21 and 22 by the *Traffic Amendment (Forfeiture and Impounding Orders) Act 2010* have effect only in relation to an offence of driving with low range blood alcohol content committed on or after the commencement of that Act.