

Serial 81

Traffic Amendment (Impounding and Forfeiture of Vehicles) Bill 2006

Ms Carney

**A BILL
for
AN ACT**

to amend the *Traffic Act* for the impounding and forfeiture of certain vehicles

NORTHERN TERRITORY OF AUSTRALIA
TRAFFIC AMENDMENT (IMPOUNDING AND FORFEITURE OF
VEHICLES) ACT 2006

Act No. [] of 2006

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NORTHERN TERRITORY OF AUSTRALIA

Act No. [] of 2006

AN ACT

to amend the *Traffic Act* for the impounding and forfeiture of certain vehicles

[Assented to [] 2006]

[Second reading [] 2006]

The Legislative Assembly of the Northern Territory enacts as follows:

1. Short title

This Act may be cited as the *Traffic Amendment (Impounding and Forfeiture of Vehicles) Act 2006*.

2. Act amended

This Act amends the *Traffic Act*.

3. Amendment of section 3 (Interpretation)

Section 3(1)

insert (in alphabetical order)

"registered holder", of a registered security interest, means a person registered as the holder of that interest under the *Registration of Interests in Motor Vehicles and Other Goods Act* or a corresponding law of another jurisdiction;

"registered security interest" means a security interest registered under the *Registration of Interests in Motor Vehicles and Other Goods Act* or a corresponding law of another jurisdiction;

4. Amendment of section 19 (Driving under influence of intoxicating liquor or drug or with high alcohol-blood content)

Section 19, at the end

insert

Note

Sections 19A to 19C provide for additional penalties for an offender who has repeatedly committed offences against this section and at the time of the commission of each of the offences the concentration of alcohol in the blood of the person was 150 mg or more of alcohol per 100 mL of blood.

5. New sections 19A, 19B and 19C

After section 19

insert

19A. Impounding and forfeiture of vehicle for repeat offenders

- (1) This section applies to a person (the "offender") if:
 - (a) the offender is found guilty of an offence against section 19 (the "last offence"); and
 - (b) the offender has been found guilty of at least one other offence against that section (a "previous offence") during the immediately preceding period of 5 years; and
 - (c) at the time of the commission of each of the offences, the concentration of alcohol in the blood of the offender was 150 mg or more of alcohol per 100 mL of blood.
- (2) The court sentencing the offender for the last offence must make an order that:
 - (a) states a period not exceeding 3 months for which the vehicle driven by the offender when the offence was committed will be impounded (the "impounding period"); and
 - (b) states that the owner of the vehicle must deliver the vehicle to a police officer by a stated time and at a stated place; and
 - (c) authorises a police officer, without warrant, to:
 - (i) enter any place at which the officer reasonably suspects the vehicle may be found; and
 - (ii) search for, seize and remove the vehicle; and

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- (d) if the court is satisfied the offender has committed at least 2 previous offences that are covered by subsection (1)(b) and (c) – states that the vehicle will, subject to section 19B, be forfeited to the Territory at the end of the impounding period.
- (3) The court must make the order:
 - (a) in addition to any other penalty that may be imposed on the offender for the last offence; and
 - (b) whether or not any other penalty is imposed on the offender for the last offence.
- (4) However, the court must not make the order if it is satisfied:
 - (a) the vehicle was being unlawfully used, or was a stolen or rental vehicle, when the last offence was committed; or
 - (b) making the order will cause severe financial hardship to the owner or the usual driver of the vehicle; or
 - (c) the offence was committed without the knowledge and consent of the owner of the vehicle.
- (5) The offender is liable to pay the costs of removing and keeping the vehicle under the order.
- (6) For subsection (5):
 - (a) the owner of the premises where the vehicle is kept under the order is taken to be a warehouseman under the *Warehousemen's Liens Act*; and
 - (b) that Act (other than section 7) applies to the owner of the premises.
- (7) If section 19B or 19C does not apply to the offender, at the end of the impounding period:
 - (a) the owner of the vehicle may recover the vehicle from the owner of the premises; and
 - (b) the owner of the premises must return the vehicle to the owner of the vehicle if the costs mentioned in subsection (5) have been met.
- (8) Part 2 of the *Uncollected Goods Act* applies to the sale or disposal of the vehicle by the owner of the premises if the owner of the vehicle does not recover the vehicle at the end of the period.

19B. Application by interested party

- (1) This section applies if:
 - (a) the order made under section 19A(2) provides for the forfeiture of the vehicle as mentioned in section 19A(2)(d); and
 - (b) another person having an interest in the vehicle (for example, the registered holder of a registered security interest in the vehicle) did not appear in the proceeding of the court for the making of the order.
- (2) The person may, before the end of the impounding period, apply to the court for an order under this section.
- (3) The applicant must notify the Commissioner of Police of the making of the application.
- (4) The Commissioner of Police must be a party to the proceeding for the application.
- (5) The court may extend the impounding period in order to consider the application.
- (6) The court must:
 - (a) make an order under this section if the court is satisfied:
 - (i) the applicant has a genuine interest in the vehicle; and
 - (ii) the last offence was committed without the knowledge and consent of the applicant; or
 - (b) otherwise – refuse the application.
- (7) An order under this section must:
 - (a) state the nature, extent and, if necessary, the value of the applicant's interest in the vehicle as at the time of the making of the order; and
 - (b) direct that:
 - (i) the vehicle be transferred to the person; or
 - (ii) if the court decides the vehicle must still be forfeited under the order made under section 19A – a specified part of the proceeds from the disposal of the vehicle be paid to the person.

19C. Forfeiture of vehicle

- (1) This section applies if:
 - (a) the order made under section 19A provides for the forfeiture of the vehicle; and
 - (b) any of the following applies:
 - (i) no application is made under section 19B for the vehicle;
 - (ii) such an application is made but the application is refused;
 - (iii) such an application is made and the court hearing the application decides that the vehicle must still be forfeited under the order made under section 19A.
- (2) The vehicle becomes the property of the Territory at the end of the impounding period or the period as extended under section 19B(5).
- (3) The Commissioner of Police must dispose of the vehicle as the Commissioner considers appropriate.
- (4) If the Commissioner sells the vehicle, the proceeds of the sale must be paid in the following order of priority:
 - (a) first – expenses of the sale;
 - (b) second – the costs of removing and keeping the vehicle under the order;
 - (c) third – any payment under a direction made under section 19B(7)(b)(ii);
 - (d) fourth – the Central Holding Authority.

6. Amendment of section 33 (Driving unregistered vehicle)

Section 33, at the end

insert

Note

Sections 33C to 33E provide for an additional penalty for an offender who has repeatedly committed offences against this section.

7. New sections 33C, 33D and 33E

After section 33B

insert

33C. Failure of owner to seek registration following contravention of section 33 or 33A

(1) This section applies if a person:

- (a) has contravened section 33(1) or 33A(1) (the "contravention"); and
- (b) is not cautioned under section 33B for the contravention.

(2) A police officer must, as soon as practicable after becoming aware of the contravention, give a notice to the owner of the vehicle (the "owner") driven by the person at the time of the contravention.

(3) The notice must state:

- (a) that the owner must seek the registration of the vehicle within 60 days (the "period") after receiving the notice; and
- (b) that the owner may apply to the Commissioner of Police for an extension of the period under subsection (4); and
- (c) that a failure to seek the registration within the period or the period as extended may result in the forfeiture of the vehicle.

(4) The owner may, before the end of the period, apply in writing to the Commissioner of Police for an extension of the period if the owner considers there are special circumstances justifying the extension.

(5) The Commissioner of Police must:

- (a) extend the period for 30 days if the Commissioner considers there are special circumstances justifying the extension; or
- (b) otherwise – refuse the application.

(6) The owner commits an offence (the "offence") if the owner fails to seek the registration of the vehicle within the period or the period as extended.

(7) It is a defence to a charge of the offence if:

- (a) the vehicle was being unlawfully used, or was a stolen or rental vehicle, at the time of the contravention; or

- (b) the contravention occurred without the knowledge and consent of the owner of the vehicle; or
 - (c) the owner has a reasonable excuse.
- (8) If the owner is found guilty of the offence, the court sentencing the owner for the offence must:
- (a) order the vehicle be forfeited to the Territory if the ownership of the vehicle:
 - (i) has not been transferred to another person when the owner is sentenced; and
 - (ii) is not transferred to another person because of section 33D(6)(b)(i); or
 - (b) otherwise – impose a fine not exceeding 100 penalty units.

33D. Order for interested party

- (1) This section applies if:
 - (a) the vehicle has not been transferred to anyone when the owner is sentenced for the offence; and
 - (b) a person other than the owner has an interest in the vehicle (for example, the holder of a registered security interest in the vehicle).
- (2) The person may, before the owner is sentenced for the offence, apply to the court for an order under this section.
- (3) The applicant must notify the Commissioner of Police of the making of the application.
- (4) The Commissioner of Police must be a party to the proceeding for the application.
- (5) The court must, when sentencing the owner for the offence:
 - (a) make an order under this section if the court is satisfied:
 - (i) the applicant has a genuine interest in the vehicle; and
 - (ii) the offence was committed without the knowledge and consent of the applicant; or
 - (b) otherwise – refuse the application.

- (6) An order under this section must:
 - (a) state the nature, extent and, if necessary, the value of the person's interest in the vehicle as at the time of the making of the order; and
 - (b) direct that:
 - (i) the vehicle be transferred to the person; or
 - (ii) if the court decides the vehicle must still be forfeited under section 33C(8)(a) – a specified part of the proceeds from the disposal of the vehicle be paid to the person.

33E. Forfeiture of vehicle

(1) This section applies if an order forfeiting the vehicle is made under section 33C.

(2) The vehicle becomes the property of the Territory when the order is made.

(3) The Commissioner of Police must dispose of the vehicle as the Commissioner considers appropriate.

(4) If the Commissioner sells the vehicle, the proceeds of the sale must be paid in the following order of priority:

- (a) first – expenses of the sale;
- (b) second – the cost of removing and keeping the vehicle under the order;
- (c) third – any payment under a direction made under section 33D(6)(b)(ii);
- (d) fourth – the Central Holding Authority.

8. New section 52AA

Before section 53

insert

52AA. Acquisition on just terms

If, but for this section, property is acquired under this Act other than on just terms:

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- (a) the person from whom the property is acquired is entitled to receive the compensation necessary to ensure the acquisition is on just terms; and
- (b) a court of competent jurisdiction may determine the amount of compensation or make the orders it considers necessary to ensure the acquisition is on just terms.
