

ROAD TRAFFIC (AMENDMENT NO. 3) BILL 2010

EXPLANATORY MEMORANDUM

This Bill is the result of various recommendations made by the Road Safety Committee, the Norfolk Island Police and the office of the Registrar of motor vehicles following a period of public consultation.

The principal amendments are for the inclusion of detailed provisions covering the issue of provisional licences, the wearing of cycle helmets, travel on the back of open trucks and the wearing of seatbelts.

The Bill also effects a name change for the legislation so that it will be known subsequently as the “*Traffic Act*” rather than the “*Road Traffic Act*”.

Sections 1 to 3 provide for the short title, for the Bill to become law upon gazettal of assent and for reference back to the principal Act.

Section 4 effects change of the name of the principal Act.

Section 5 effects the various amendments to the principal Act that are made in the various items of the Schedule.

Item 1 inserts into section 3, a number of new definitions for expressions that are used in the Act. The changes make the distinction between a bus and a minibus, clarify the meaning of the motor vehicle register, defines a “passenger” and “provisional licence” and makes it clear that a reference to the Commonwealth includes a Commonwealth authority. New definitions are inserted describing “novice driver”, “prescribed concentration of alcohol”: or “PCA” and the “register of licensed drivers”.

Item 2 reduces from 1 year to 3 months the time within which a person resident in Norfolk Island must obtain a drivers licence rather than rely on a recognised licence issued in another place.

Item 3 clarifies the section 8 requirements of third party insurance by making reference to motor vehicles including minibuses as one class and buses as the other.

Item 4 amends the provision of subsection 9(4) allowing registration of a private hire vehicle so that it may be allowed if the vehicle can carry no more than 11 passengers (is a minibus) rather than 8 as in the provision amended.

Item 5 clarifies the terminology of the amended subsection 10(3) but does not intend to change its meaning.

Item 6 extends the class of vehicles that cannot be registered under section 11, to include vehicles of a type that are not registrable such as motor assisted pedal cycles, motorised wheelchairs, lawn mowers and golf buggies as well as any other vehicles declared by regulation to be not registrable.

Item 7 has the effect of inserting the same penalty provision in section 12 for the transferee of registration of a motor vehicle who fails to apply for transfer of registration as is applied to the transferor who fails to give notice. It also requires that the transferee of registration have third party insurance in respect of the vehicle and produce evidence to that effect.

Item 8 repeals a now redundant transitional provision (subsection 14C(3)) concerning inspectors of motor vehicles.

Item 9 repeals and replaces the existing provisions of section 15 concerning the requirement to hold a licence before driving a motor vehicle on a road. There are 6 kinds of licence that may be held. A person who drives a vehicle on a road without an appropriate licence commits an offence.

Special provisions relate to the conditions attached to provisional licences such as the hours of driving (unless the Registrar has otherwise endorsed the licence), the prohibition of acting as the licensed driver for the driver of a motor vehicle who holds a learners licence, driving with more than one passenger. The amendment also includes provision for the reissue of a new learners licence where the holder has been disqualified from obtaining a learners licence.

Item 10 repeals the existing section 16, dealing with learners licences and replaces it with 2 new sections. The new section 16 deals with learners licence and is, in the first 4 subsections, substantially the same as that repealed, except that a learners licence is to last for 1 year rather than 3 months. The additional 3 subsections require the fixing of “L” plates” and the prohibitions against driving a vehicle that is modified from the manufacturers specifications and provides for penalties for failure to comply.

The new section 16A makes specific provision for provisional licences which are issued for 2 years and require a driver to show “P” plates while driving. A provisional driver must not drive a modified vehicle and if disqualified from obtaining a provisional licence can only be re-issued such a licence that continues for a full 2 years.

Item 11 amends section 17 so that a licence issued to a person of 70 years (previously 65 years) is valid for 2 years (3 years for other persons).

Item 12 inserts a new section 17A requiring the opening and maintenance of a register of drivers licences.

Item 13 inserts a number of special provisions applicable to provisional licences that include the power to endorse the class of vehicle that, and the hours and localities when and where vehicles, may be driven. The holder of a provisional licence that is endorsed is deemed not to hold a licence unless driving in conformity with the conditions endorsed. The holder of a provisional licence for a motor cycle is not permitted to carry a pillion passenger during the first 12 months of issue.

Item 14 amends the penalty provisions of section 32 (Driving under the influence of drink or drugs) to include provision in certain circumstances for mandatory cancellation of licence and disqualification from obtaining a new licence for 12 months from conviction. Special provision is made for the distinction between novice drivers, drivers of commercial vehicles and other drivers as regards the level of PCA found present.

Item 15 inserts into section 38, provisions requiring the wearing of helmets by riders of a cycle (defined in section 3 of the principal Act) and imposes penalties for failure to comply.

Item 16 inserts a definition of “prescribed cycle helmet” into section 38.

Item 17 inserts a new section 40A dealing with the carriage of persons on the back of open tray trucks or utility vehicles (subsection (1)) – Children under the age of 5 years may not be carried there at all and persons over that age must be seated and the sides of the tray extend at least 150mm above the floor. The section makes it clear (subsection 2) that the prohibition on carriage of young children does not relieve a person from liability (criminal or civil) arising from the carriage of persons of any age (whether above or below the age described in subsection (1)). This means that a person might be found to have acted negligently in a given circumstance or to have driven dangerously even if not in breach of subsection (1). It is not intended that this provision should affect the law as it would be were subsection (1) not enacted.

Item 18 inserts 8 new sections after section 44C, dealing with the fitting and wearing of seat belts and child restraints.

Section 44D requires the wearing of seat belts by drivers of moving motor vehicles (or vehicles stationary but not parked) unless reversing or exempt.

Section 44E requires passengers 16 years or older to wear seatbelts in a moving vehicle (or a vehicle stationary but not parked) provided there is a seat available with a seat belt and the passenger is not exempt. A person must not sit in a front row seat unless it has a seat belt or there is no seating position in another row.

Section 44F requires the driver of a motor vehicle to ensure that a passenger under 16 years is appropriately restrained in compliance with the section and that if a passenger is under 1 year the passenger is properly fitted into a suitable approved child restraint.

Section 44G provides conditions of exemption which in general are that the person is exempt under a law other than the traffic law and the person is complying with that exemption. Specific exemption is given to a person engaged in the business of door-to-door delivery requiring the person to get in or out of the vehicle at frequent intervals and the vehicle is not travelling at a speed greater than 25 kph, or the passenger is over 5 years and is sitting on the open tray of a truck or utility, the sides of the tray of the vehicle are closed and extend at least 150 millimeters above the floor of the tray; further exemption applies to passengers in a police or fire services vehicle or ambulance and the person is not in the front row of seats and there is no other seat available. .

Section 44H makes it an offence to tamper with a seatbelt so as to render it inoperative or less effective.

Section 44J provides time limits for compliance, thus following the section coming into effect—

- A period of 12 months is given before all vehicles must be installed with seatbelts unless exempted or they cannot be driven on a road or registered .
- After 6 months, a vehicle that has not been previously registered on Norfolk Island cannot be registered unless it is fitted with seatbelts.
- After 3 months if a vehicle is already fitted with seatbelts they must not be inoperable or defective.

Section 44K makes it clear that having airbags fitted does not excuse a vehicle from being fitted with seat belts or a person from wearing them.

Item 19 defines the Demerits Points Register.

Item 20 inserts a new section 52C to make it clear that offences under the Act are not to be mentioned as “prior convictions” in criminal proceedings if the conviction for the offence does not include the possibility of imprisonment as a penalty or a possible fine of more than 20 penalty units.

Item 21 amends section 8 to insert a new provision making it clear that it is not an offence to drive an unregistered vehicle in a public place as defined in section 3 if it is within the class of vehicles that are not registrable nor is it an offence to drive on a road provided the driving is merely for the purpose of passing from one place that is not a road to another and that the passage is done as quickly and in the shortest distance as reasonably possible. Thus, for example, it is not intended to be an offence for a motorised wheel chair or a ride-on mower to cross a road from one side to the other.

Item 22 amends section 17 so that a drivers licence may not be issued to a person unless that person has at the time of making application held a provisional licence for the 2 years immediately preceding the application.

Item 23 amends section 18 to extend the requirement that the Registrar be satisfied as to the mental and physical capability of a driver to be the holder of any kind of licence.

Item 24 amends section 19 to extend the power of the Registrar to cancel suspend or refuse to issue or renew a licence to any kind of licence in the circumstances described in that section.

Item 25 amends section 20 to extend the power to revoke a licence in the circumstances described in the section to any kind of licence.

Item 26 amends the section 21 requirement that notice must be given to the licence holder or applicant affected if the Registrar refuses to grant or renew or to cancel suspend or revoke a licence, extends to all kinds of licence.

Item 27 amends section 22 make it clear that the right of appeal set out in the section applies to all kinds of licence.

Item 28 amends subsection 23(3) to make it clear that the requirement imposed on a learner is subject to any endorsement of the Registrar on the learners licence under subsection (1).

Item 29 introduces a new section 40A setting out a behavioural requirement on drivers as a basic safety issue, namely that a driver not drive with a person, dog or other animal, or bird on the driver’s lap or between the driver and the steering wheel or between the driver and the window on the driver’s right hand side

Item 30 introduces a new section 47Q providing for the suspension of a provisional licence where the holder has accumulated 6 or more demerit points and the consequences that flow from that suspension.