

## TASMANIA

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# **POLICE OFFENCES AMENDMENT (CLAMPING) BILL 2009**

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**POLICE OFFENCES AMENDMENT (CLAMPING)  
BILL 2009**

*(Brought in by the Minister for Police and Emergency  
Services, the Honourable James Glennister Cox)*

**A BILL FOR**

**An Act to amend the *Police Offences Act 1935***

Be it enacted by His Excellency the Governor of Tasmania, by  
and with the advice and consent of the Legislative Council and  
House of Assembly, in Parliament assembled, as follows:

**1. Short title**

This Act may be cited as the *Police Offences  
Amendment (Clamping) Act 2009*.

**2. Commencement**

This Act commences on a day to be proclaimed.

**3. Principal Act**

In this Act, the *Police Offences Act 1935*\* is  
referred to as the Principal Act.

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\*No. 44 of 1935

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**4. Section 6 amended (Consorting)**

Section 6(1) of the Principal Act is amended by omitting “or known prostitutes or with persons who have been convicted of having insufficient lawful means of support”.

**5. Section 37JA amended (Use of spotlights on vehicles on public streets)**

Section 37JA(1)(a) of the Principal Act is amended by omitting “the vehicle” second occurring and substituting “a vehicle”.

**6. Part IVA, Division 2: Heading amended**

Division 2 of Part IVA of the Principal Act is amended by inserting in the heading to that Division “*and clamping*” after “*Confiscation*”.

**7. Section 37K amended (Interpretation of Division)**

Section 37K(1) of the Principal Act is amended as follows:

- (a) by inserting the following definitions before the definition of “confiscated vehicle”:

**“authorised period”**, of clamping or confiscation, means the period for which a vehicle may lawfully be

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clamped or confiscated under this Division;

**“clamp”**, a vehicle, means immobilise the vehicle by means of a clamping device (and **“clamped”** has a corresponding meaning);

**“clamping device”** means –

(a) a wheel clamp, steering wheel clamp or other mechanical device for rendering a vehicle immobile; or

(b) an electronic device for rendering a vehicle immobile;

**“clamped vehicle”** means a vehicle clamped under section 37N;

(b) by omitting the definition of “forfeiture order” and substituting the following definitions:

**“forfeiture order”** means an order, under section 37Y, for the forfeiture of a vehicle to the Crown;

**“key”**, to a clamping device, includes, in the case of an electronic clamping device, an electronic key;

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**“notice”**, of clamping or confiscation,  
means notice under section 37T;

**“offending driver”** – see  
section 37T(1)(a);

**8. Section 37MA inserted**

After section 37M of the Principal Act, the  
following section is inserted in Subdivision 1:

**37MA. Special compulsory penalty for prescribed offences**

- (1) A court that convicts a person of a prescribed offence must order the person to pay a special compulsory penalty.
- (2) The special compulsory penalty does not displace the penalty specifically prescribed elsewhere for the prescribed offence.
- (3) The order to pay a special compulsory penalty is to be in addition to any other sentencing order the court may make in respect of the person for the prescribed offence, and the court must not take the person’s liability to pay the special compulsory penalty into account in determining that other sentencing order.
- (4) This section has effect notwithstanding anything to the contrary in the *Sentencing Act 1997*.



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(5) In this section –

**“special compulsory penalty”** means  
a fine of exactly such amount as  
the regulations prescribe for the  
purposes of this section.

**9. Part IVA, Division 2, Subdivision 2: Heading amended**

Subdivision 2 of Division 2 of Part IVA of the Principal Act is amended by omitting ***“Confiscation of vehicles”*** from the heading to that Subdivision and substituting ***“Clamping and confiscation of vehicles”***.

**10. Section 37N amended (Clamping and confiscation of vehicles)**

Section 37N of the Principal Act is amended as follows:

(a) by omitting subsections (1) and (2) and substituting the following subsections:

(1) A police officer who finds a person committing a prescribed offence involving a vehicle may –

(a) clamp the vehicle; or

(b) confiscate the vehicle and have it moved to a holding yard and held in

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accordance with this  
Division.

- (2) Where a police officer finds a person committing a prescribed offence involving a vehicle and does not clamp or confiscate the vehicle at the time (“**time of offence**”), the vehicle may be clamped or confiscated by a police officer at any time during the 14-day period immediately following the time of offence.
- (b) by inserting in subsection (3) “clamping or” after “purpose of”;
- (c) by omitting paragraph (d) from subsection (3) and substituting the following paragraph:
  - (d) give any other direction or take any other action reasonably necessary for clamping or confiscating the vehicle.
- (d) by inserting the following subsection after subsection (3):
  - (3A) Without limiting subsection (3)(d) in its application to clamping, a police officer may, under that subsection, direct the person in control of the vehicle to ensure that the vehicle is available at a specified time and place so that it

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can be clamped at that time and  
place as provided by  
subsection (2).

- (e) by omitting from subsection (5) “20” and substituting “40”;
- (f) by omitting from subsection (6) “or means” and substituting “, means and assistance”;
- (g) by omitting from subsection (6) “, and confiscate the vehicle and have it moved to a holding yard and held in accordance with this Division.” and substituting “and –”;
- (h) by inserting the following paragraphs after subsection (6):
  - (a) clamp the vehicle; or
  - (b) confiscate the vehicle and have it moved to a holding yard and held in accordance with this Division.

**11. Sections 37O, 37P and 37Q substituted**

Sections 37O, 37P and 37Q of the Principal Act are repealed and the following sections are substituted:

**37O. Period of clamping or confiscation for first prescribed offence**

- (1) This section applies if –

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- (a) a police officer finds a person offending in respect of a prescribed offence; and
  - (b) the person has not previously been found offending in respect of a prescribed offence by a police officer.
- (2) The vehicle used in connection with the prescribed offence may be clamped or confiscated for a period of –
  - (a) 7 days if the prescribed offence is an offence against section 14B or 15B; or
  - (b) 28 days in the case of any other prescribed offence.

**37P. Period of clamping or confiscation for second prescribed offence**

- (1) This section applies if –
  - (a) a police officer finds a person offending in respect of a prescribed offence (referred to in this section as “the new prescribed offence”); and
  - (b) the person has previously been found offending in respect of a prescribed offence by a police officer on one occasion.

- (2) The vehicle used in connection with the new prescribed offence may be clamped or confiscated for a period of 3 months.

**37Q. Period of clamping or confiscation for third or subsequent prescribed offence**

- (1) This section applies if –
  - (a) a police officer finds a person offending in respect of a prescribed offence (referred to in this section as “the new prescribed offence”); and
  - (b) the person has previously been found offending in respect of a prescribed offence by a police officer on 2 or more occasions.
- (2) The vehicle used in connection with the new prescribed offence may be clamped or confiscated until the resolution of all existing charges against the person for those prescribed offences.

**12. Section 37R amended (Transportation of vehicle to holding yard)**

The penalty under section 37R(2) of the Principal Act is amended by omitting “20” and substituting “40”.

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**13. Section 37S amended (Unlawful interference with, or removal of, confiscated vehicle)**

Section 37S(4) of the Principal Act is amended as follows:

- (a) by inserting “and using such reasonable force, means and assistance as is necessary” after “warrant”;
- (b) by omitting “found” and substituting “located”.

**14. Section 37SA inserted**

After section 37S of the Principal Act, the following section is inserted in Subdivision 2:

**37SA. Unlawful interference with clamped vehicle, &c.**

- (1) This section applies if a vehicle has been clamped by a police officer under this Division.
- (2) A person must not unlawfully drive or attempt to drive the clamped vehicle.

Penalty: Fine not exceeding 40 penalty units.

- (3) A person must not unlawfully –
  - (a) interfere with the clamping device; or

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- (b) paint or mark the clamping device; or
- (c) damage the clamping device; or
- (d) destroy the clamping device; or
- (e) release or attempt to release the clamping device; or
- (f) remove or attempt to remove the clamping device from the vehicle.

Penalty: Fine not exceeding 40 penalty units.

- (4) If there is a contravention of subsection (3), a police officer may seize the vehicle and have it moved to a holding yard.
- (5) For the purposes of subsection (4), a police officer may, without warrant and using such reasonable force, means and assistance as is necessary, enter any place where the police officer reasonably suspects that the vehicle may be located.

**15. Section 37T amended (Notice of clamping or confiscation to be given)**

Section 37T(1) of the Principal Act is amended as follows:

- (a) by inserting “clamped or” after “vehicle is”;

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- (b) by inserting “clamping or” after “its”;
- (c) by inserting in paragraph (a) ‘(**“the offending driver”**)’ after “offence”.

**16. Section 37U substituted**

Section 37U of the Principal Act is repealed and the following section is substituted:

**37U. Content of notice for first offence**

A notice of clamping or confiscation where a person has committed, or has been charged with committing, a first prescribed offence is to include the following:

- (a) a statement that the vehicle is clamped or confiscated for the authorised period of clamping and confiscation (which period must be specified) and that it will not be sooner unclamped or released without the order of the Court or the written authority of a police officer of or above the rank of inspector;
- (b) directions as to how the clamped or confiscated vehicle may be unclamped or recovered;
- (c) in the case of a clamping –



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- (i) a statement that, before the vehicle may be unclamped, the person seeking to have it unclamped will be required to produce to a police officer satisfactory evidence of identity; and
  - (ii) notice of the offences (and penalties) under section 37SA(2) and (3);
- (d) in the case of a confiscation –
  - (i) a statement that, before the vehicle may be recovered, the person seeking to recover it will be required to –
    - (A) produce to the person responsible for the holding yard satisfactory evidence of identity and, if applicable, written authority from the owner or registered operator of the vehicle to collect it; and
    - (B) pay the costs of moving the

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vehicle to, keeping  
the vehicle in and  
releasing the  
vehicle from the  
holding yard; and

- (ii) notice of the offences  
(and penalties) under  
section 37S(1) and (2).

**17. Section 37V amended (Content of notice for second  
or subsequent offence)**

Section 37V of the Principal Act is amended as  
follows:

- (a) by inserting “clamping or” after “A  
notice of”;
- (b) by omitting paragraph (a) and  
substituting the following paragraph:
  - (a) the authorised period of clamping  
or confiscation;
- (c) by omitting from paragraph (c) “person  
in control of the vehicle at the time the  
prescribed offence was committed” and  
substituting “offending driver”;
- (d) by inserting in paragraph (c)  
“unclamping or” after “for the”;
- (e) by omitting from paragraph (d) “of”  
second occurring and substituting “as  
to”;

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- (f) by inserting in paragraph (e) “unclamped or” after “is”;
- (g) by inserting in paragraph (e) “unclamping or” after “its”;
- (h) by omitting paragraphs (f) and (g) and substituting the following paragraphs:
  - (f) in the case of a clamping –
    - (i) a statement that, before the vehicle may be unclamped, the person seeking to have it unclamped will be required to produce to a police officer satisfactory evidence of identity; and
    - (ii) notice of the offences (and penalties) under section 37SA(2) and (3);
  - (g) in the case of a confiscation –
    - (i) a statement that, before the vehicle may be recovered, the person seeking to recover it will be required to –
      - (A) produce to the person responsible for the holding yard satisfactory evidence of

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identity and, if applicable, written authority from the owner or registered operator of the vehicle to collect it; and

(B) pay the costs of moving the vehicle to, keeping the vehicle in and releasing the vehicle from the holding yard; and

(ii) notice of the offences (and penalties) under section 37S(1) and (2).

**18. Section 37W amended (Advice to registered operator of date of hearing )**

Section 37W of the Principal Act is amended as follows:

(a) by inserting “clamped or” after “order for a”;

(b) by omitting paragraph (a) and substituting the following paragraph:

(a) the offending driver; and

**19. Section 37Y substituted**

Section 37Y of the Principal Act is repealed and the following section is substituted:

**37Y. Application for forfeiture of vehicles**

- (1) This section applies if –
  - (a) a person (“**offending driver**”) has been found offending in respect of a prescribed offence by a police officer; and
  - (b) the vehicle used in connection with the prescribed offence has been clamped or confiscated pursuant to section 37N and, by virtue of the circumstances, section 37Q applies to the clamping or confiscation; and
  - (c) the offending driver has been convicted of the prescribed offence.
- (2) A police officer may, on the date of the conviction or at any time during the 14-day period immediately following the date of the conviction, apply to the Court for a forfeiture order in respect of the vehicle.
- (3) The Court may, on the application, make the forfeiture order if the court is satisfied that the offending driver has been convicted of a prescribed offence

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on 3 or more occasions, inclusive of the conviction referred to in subsection (1)(c).

- (4) If the Court makes the forfeiture order –
  - (a) the vehicle becomes the property of the Crown; and
  - (b) any right of a person to enforce a charge or other security interest registered under the *Motor Vehicles Securities Act 1984* against a person other than the State by taking possession of the vehicle is extinguished.
- (5) The forfeiture order may be applied for and made even though the value of the vehicle may be more than the monetary jurisdiction of the Court.
- (6) At any time before the application for the forfeiture order is heard and determined, the offending driver or the owner or registered operator of the vehicle (or any of those persons jointly) may apply to the Court for the unclamping or return of the vehicle.
- (7) The Court may, if satisfied on an application under subsection (6) that the clamping or confiscation of the vehicle is causing severe hardship to a person, order that the vehicle be unclamped or returned to its owner or registered

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operator until the application for the forfeiture order is heard and determined.

- (8) The Court may, on making an order under subsection (7), impose such conditions on the use of the vehicle as it considers appropriate.
- (9) If under subsection (7) the Court orders the return or unclamping of the vehicle –
  - (a) its owner must not sell or otherwise dispose of it, or substantially alter it, before the application for the forfeiture order has been determined or withdrawn; and
  - (b) its registered operator must not sell or otherwise dispose of it, or substantially alter it, before the application for the forfeiture order has been determined or withdrawn.

Penalty: Fine not exceeding 40 penalty units.

**20. Section 37Z amended (Defence to show no knowledge and consent)**

Section 37Z of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “clamped” after “of a”;

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- (b) by inserting in subsection (1) “relevant” after “that the”;
- (c) by inserting in subsection (2) “unclamped or, as the case may be,” after “be”.

**21. Section 37ZA substituted**

Section 37ZA of the Principal Act is repealed and the following section is substituted:

**37ZA. Powers for enforcing forfeiture order**

If the Court orders the unclamping or return of a vehicle to its owner or registered operator under section 37Y(7) and later makes a forfeiture order in respect of the vehicle, the Court may, in the forfeiture order, authorise a police officer, without warrant and using such reasonable force, means and assistance as is necessary, to enter any place where the police officer reasonably believes the vehicle may be located and, as the case requires –

- (a) clamp the vehicle; or
- (b) seize the vehicle and move it to a holding yard.



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**22. Part IVA, Division 2, Subdivision 4: Heading amended**

Subdivision 4 of Division 2 of Part IVA of the Principal Act is amended by omitting “*Recovery and return of vehicles*” from the heading to that Subdivision and substituting “*Unclamping and recovery, &c., of vehicles*”.

**23. Section 37ZC substituted**

Section 37ZC of the Principal Act is repealed and the following section is substituted:

**37ZC. Unclamping or recovery of vehicle clamped or confiscated for prescribed offence**

(1) This section applies if –

- (a) a notice of clamping or confiscation has been given under section 37U or 37V in respect of a vehicle; and
- (b) the authorised period of clamping or confiscation has expired.

(2) In the case of a clamped vehicle, an authorised claimant may, subject to the requirements of the notice, unclamp the vehicle by –

- (a) collecting a key to the clamping device from a police station during normal business hours; and

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- (b) by means of the key, releasing the clamp and removing it from the vehicle; and
  - (c) returning both the clamping device and the key to a police station during normal business hours within 4 days of collecting the key to the clamping device.
- (3) In the case of a confiscated vehicle, an authorised claimant may, subject to the payment of the costs payable under section 37X(1) and the other requirements of the notice, recover the vehicle by –
  - (a) attending at the relevant holding yard during normal business hours; and
  - (b) removing the vehicle from that holding yard.
- (4) If, in the case of a clamped vehicle, no person seeks to have the vehicle unclamped within 10 days after the end of the authorised period of clamping, a police officer may unclamp the vehicle and retrieve the clamping device.
- (5) For the purpose of subsection (4), the police officer may, without warrant and using such reasonable force, means and assistance as is necessary, enter any place where the police officer reasonably

suspects the clamped vehicle may be located.

- (6) A person who collects a key to a clamping device as provided by subsection (2) is guilty of an offence if he or she –
- (a) fails, without reasonable excuse, to return the key and the clamping device as provided by that subsection; or
  - (b) damages the key or causes or allows another person to damage the key; or
  - (c) except on the express instructions of a police officer of or above the rank of inspector, lends the key to another person.

Penalty: Fine not exceeding 40 penalty units.

- (7) A person must not, except on the express instructions of a police officer of or above the rank of inspector, copy or attempt to copy a key to a police clamping device.

Penalty: Fine not exceeding 40 penalty units.

- (8) In this section –

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**“authorised claimant”**, of a clamped or confiscated vehicle, means –

- (a) the offending driver; or
- (b) the owner or registered operator of the vehicle; or
- (c) a person who has the written authority of the owner or registered operator of the vehicle;

**“police clamping device”** means a clamping device used by the Police Service for the purposes of this Division.

**24. Section 37ZD amended (Unclamping or recovery of vehicle clamped or confiscated for second or subsequent prescribed offence)**

Section 37ZD of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “clamped or” after “is”;
- (b) by inserting in subsection (1) “to have the vehicle unclamped or” after “Court”;
- (c) by inserting in subsection (2) “clamping or” after “satisfied that the”;
- (d) by inserting in subsection (2) “unclamped or” after “be”;

- (e) by omitting subsection (3) and substituting the following subsection:

- (3) The Court may impose such conditions on an order under subsection (2) as it considers appropriate in the circumstances including conditions on the subsequent use of the vehicle.

- (f) by inserting in subsection (4) “unclamped or” after “vehicle”;
- (g) by inserting in subsection (4) “clamping or” after “to the”.

**25. Section 37ZE amended (Clamped or confiscated vehicle may be unclamped or returned in certain circumstances)**

Section 37ZE of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “return of a confiscated vehicle on payment of the costs payable under section 37X(1).” and substituting “unclamping of a clamped vehicle or the immediate return of a confiscated vehicle on payment of the costs payable under section 37X(1), as determined by that police officer.”;
- (b) by inserting in subsection (2) “clamped or” after “a”;

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- (c) by inserting in subsection (2) “unclamped or” after “be”.

**26. Section 37ZF amended (Unclamping or return of vehicle in case of severe hardship)**

Section 37ZF of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “clamping,” after “that the”;
- (b) by inserting in subsection (1) “clamping,” after “ordering the”;
- (c) by inserting in subsection (1)(a) “unclamped or” after “be”;
- (d) by inserting in subsection (1)(a) “or to the offending driver” after “owner”;
- (e) by inserting in subsection (2) “unclamped or” after “be”.

**27. Section 37ZG substituted**

Section 37ZG of the Principal Act is repealed and the following section is substituted:

**37ZG. Return of vehicle if offending driver not convicted, &c.**

- (1) This section applies if –

- (a) under this Division, a vehicle is clamped or confiscated by a police officer consequent on finding a person committing a prescribed offence; and
  - (b) the person is not convicted of the prescribed offence or proceedings in respect of the prescribed offence are for any reason not instituted or are discontinued; and
  - (c) the vehicle is not the subject of another clamping or confiscation order, or a forfeiture order, under this Division.
- (2) The vehicle must be unclamped or returned to its owner or registered operator or to the offending driver as soon as reasonably practicable during normal business hours.

**28. Part IVA, Division 2, Subdivision 5: Heading inserted**

Division 2 of Part IVA of the Principal Act is amended by inserting the following heading after section 37ZG:

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***Subdivision 5 – Disposal of vehicles, &c.***

**29. Section 37ZH amended (Disposal of confiscated vehicle)**

Section 37ZH(1) of the Principal Act is amended by omitting “a period” and substituting “the authorised period”.

**30. Section 37ZJ amended (Voluntary transfer of ownership of vehicle to Crown)**

Section 37ZJ(1) of the Principal Act is amended as follows:

- (a) by inserting “clamped or” after “a”;
- (b) by omitting “period of confiscation” and substituting “authorised period of clamping or confiscation”.

**31. Section 37ZK amended (Clamped or confiscated vehicle not to be sold or disposed of)**

Section 37ZK of the Principal Act is amended as follows:

- (a) by inserting “clamped or” after “A”;
- (b) by omitting “period of” and substituting “authorised period of clamping or”.



**32. Part IVA, Division 2, Subdivision 6: Heading inserted**

Division 2 of Part IVA of the Principal Act is amended by inserting the following heading after section 37ZL:

***Subdivision 6 – Miscellaneous***

**33. Section 37ZLA inserted**

After section 37ZL of the Principal Act, the following section is inserted in Subdivision 6:

**37ZLA. Power of Commissioner to authorise unclamping**

- (1) The Commissioner may give a police officer or other person approval to unclamp a vehicle (an “**unclamping approval**”) –
  - (a) at the end of the authorised period of clamping; or
  - (b) at any other time if the Commissioner considers it necessary or expedient to do so under or for the purposes of this Division.
- (2) An unclamping approval may be given subject to such technical, time, reporting and other conditions as the Commissioner thinks fit.

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- (3) A police officer executing an unclamping approval may, unless it expressly provides otherwise, without warrant and using such reasonable force, means and assistance as is necessary, enter any place where the police officer reasonably suspects that the vehicle to be unclamped may be located.
- (4) The Commissioner's power under subsection (1) is not capable of being exercised inconsistently with a judicial determination or an express provision of this Division.

**34. Section 37ZM amended (Protection from liability)**

Section 37ZM of the Principal Act is amended by omitting subsections (1) and (2) and substituting the following subsections:

- (1) A police officer acting in good faith is not liable for any damage to, any depreciation in the value of, any loss of use of or any loss of a vehicle that may result from its clamping or confiscation under this Act.
- (2) A liability that would, but for subsection (1), attach to a police officer attaches instead to the Crown.

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**35. Repeal of Act**

This Act is repealed on the ninetieth day from the day on which it commences.