

LAND TRANSPORT LAW REFORM BILL (NO. 2)

AS REPORTED FROM THE TRANSPORT COMMITTEE

COMMENTARY

Recommendation

The Transport Committee has examined the Land Transport Law Reform Bill (No. 2) and recommends that it be passed with the amendments shown in the Bill.

Introduction

The Bill was introduced on 14 December 1995 and was referred to the Transport Committee for consideration. The closing date for submissions was 7 February 1996. We received 14 submissions from interested groups and individuals. Seven of these submissions were heard orally. Advice was received from the Ministry of Transport, and the Regulations Review Committee commented on regulation-making powers contained in the Bill.

This commentary sets out the major issues we addressed in our consideration of the Bill.

Background and purpose

The Bill contains four main areas of amendment. The first of these is in response to a Government advisory board's recommendation that the administration of motor vehicle registration, road user charges and refunds of excise duty be carried out by an organisation other than the Land Transport Safety Authority (LTSA). The Bill makes clear the ability of the Secretary for Transport to delegate, or authorise other organisations or persons to carry out, tasks relating to this administration.

Secondly, the Bill acknowledges the need for speed limits to be related to specific road conditions and other safety standards, based on standards consistent throughout New Zealand and across roading authority boundaries. The Bill will allow controlling authorities (local authorities and Transit New Zealand) to set and review speed limits according to rules to be developed by the Land Transport Safety Authority. These speed limits will be subject to review and modification by the Director of Land Transport Safety in the event of a speed limit not complying with national criteria.

The Bill, thirdly, amends the Transport Act 1962 by empowering hazardous substance enforcement officers to go onto railway land in order to enforce the hazardous substances provisions of the Act. A further amendment enables a court to direct persons convicted of an offence against the hazardous substances provisions of the Act to attend and complete a hazardous substances course.

The fourth main area of amendment is the removal of cross-references to specific regulations to allow updating of the regulations without the need to amend specific cross-references within definitions and Schedules in the Transport Act 1962 and the Transport Services Licensing Act 1989.

A number of minor technical amendments are made to the Road User Charges Act 1977.

Administration of motor vehicle registration

Clause 3 amends the definition of the term “Registrar” in section 2 of the Transport Act 1962 to include persons to whom the Registrar of Motor Vehicles has delegated any of his or her powers, duties or functions. This will facilitate the administration of motor vehicle registration.

The Legislation Advisory Committee stated that the inclusion in the definition of any person authorised by the Secretary to exercise or perform any of the powers, duties, or functions of the Registrar under the Transport (Vehicle and Driver Registration and Licensing) Act 1986 is unnecessary, because the powers of delegation in section 51A of the Act and section 41 of the State Sector Act 1988 are adequate to empower the Secretary to so authorise.

The Legislation Advisory Committee made similar comment on clauses 4 to 9. However, we consider that the inclusion of a power of authorisation in addition to the power to delegate is necessary. It is preferable to authorise private sector agents to perform certain specified functions than to delegate powers to them. Delegation of powers to agents may give rise to questions of the fettering of delegation. We, therefore, recommend the retention of clauses 3 to 9 without amendment.

We recommend amendments to clause 31, which contains transfer provisions for certain employees of the Land Transport Safety Authority. The amendment would specify the types of matters such employees were principally engaged in prior to becoming employees of the new organisation responsible for the administration of motor vehicle registration. This amendment is to reflect changes arising from the Transit New Zealand Amendment Act 1995.

Stationary vehicle offences

Clause 15 amends the definition of “stationary vehicle offences” in section 41A of the Transport Act 1962, to remove cross-references to specific regulations. The Christchurch City Council submitted that clause 15(1), if enacted, would also repeal specific cross-references to sections providing for offences against the Transport (Vehicle and Driver Registration and Licensing) Act 1986. Clearly, the intention is to remove the cross-references only to the regulations referred to in subparagraphs 41A(1)(b)(i) to (iv). Because subparagraphs 41A(1)(b)(v) and (vi) refer to offences against the Act, our amendment to the clause retains these.

We also recommend that clause 15(2) be amended to extend the definition of “stationary vehicle offence” to include offences against regulations made under the Transport (Vehicle and Driver Licensing and Registration) Act 1986, as well as the Transport Act 1962.

New speed limit setting procedure

Clause 16 makes changes consequential to the new speed limit setting procedure. This clause repeals section 52 of the Transport Act 1962, which currently imposes the 50 kilometre an hour speed limit in built-up areas, and substitutes a new general speed limit offence that reflects the new speed limit setting procedures. The clause also repeals the existing saving provision in section 52A of the Act, and substitutes a new section that preserves the effect of all existing speed limits until they are superseded by limits set under the new procedures.

The Environment and Conservation Organisations of New Zealand (ECO) submitted that there should be a requirement to consider the environmental effects of speed when speed limits are set. However, we believe that environmental costs resulting from speed limit changes of the sort contemplated by this provision are not likely to be significant, particularly in comparison with other factors such as driver behaviour and the type of car and fuel used. We believe that placing a statutory duty of this type in legislation may lead to regulatory emphasis being misplaced.

A number of submissioners expressed concern about national guidelines and local influence on speed limits. The Institution of Professional Engineers New Zealand Incorporated (IPENZ) stated that, without the involvement of central government at the early stages of the procedure, the speed limit setting process could be captured by local authority politicians responding to local pressures, rather than following the prescribed procedures. The New Zealand Automobile Association Incorporated submitted that the new speed limit setting procedure must be consistent nationwide, and that localised pressures must not be permitted to result in limits which are not in accordance with clear national guidelines. The New Zealand Local Government Association Incorporated supported the new speed limit setting procedures, but submitted that the Director of Land Transport Safety should be required to consult with the appropriate local authority before exercising her or his powers to change or amend a speed limit.

Under the proposed procedures, the criteria will be part of a land transport rule with organisations and individuals able to comment at the appropriate consultation stages of the rule development. These speed limits will be subject to review and modification by the Director of Land Transport Safety in the event of a speed limit not complying with national criteria. In addition, any speed limit setting rule will be a regulation for the purposes of the Regulations Disallowance Act 1989, and will therefore automatically come before Parliament and be subject to the scrutiny of the Regulations Review Committee. We recommend the retention of clause 16 without amendment.

Hazardous substances

Clause 19, as introduced, limits to those persons who do not have a hazardous substance endorsement in their licence, the Court's powers to direct a person convicted of an offence against the hazardous substances provisions of the Act to attend a hazardous substances course. The Police believe this provision should include all persons convicted of an offence relating to the transportation of hazardous goods. If a person is convicted but holds a current hazardous substance endorsement, the person would then be required to re-sit a hazardous substances course. We agree and recommend that clause 19 be amended accordingly.

Clauses 18, 20 and 21 amend the Transport Act 1962 to enable hazardous substances enforcement officers to go onto railway land to check for compliance with the hazardous substances provisions of the Act. The Legislation Advisory Committee and ECO stated that these provisions should be made consistent with the Hazardous Substances and New Organisms Act 1996 (HSNO Act). We agree,

and recommend amendments consistent with the HSNO Act, taking into account the land transport focus of these clauses.

Chemie-Tech Limited submitted that, while drivers are required to undergo specific training before handling hazardous goods, other consignors, such as freight forwarders and warehouse staff, are not. As training consignors would help overcome current non-compliance, such training should apply to any commercial organisation which packs or consigns goods. We understand that the training in the handling of hazardous substances is properly covered by the provisions of the Health and Safety in Employment Act 1992. However, we also recommend that this issue be considered by the LTSA in the development of the Land Transport (Dangerous Goods) Rule.

Submissions from IPENZ, Chemie-Tech Limited, the New Zealand Road Transport Association, ECO and Tranz Rail Limited supported giving hazardous substance enforcement officers the power to inspect rail service vehicles as provided for in clause 20. However, Tranz Rail suggested that the power of entry be amended to provide for reasonable notice and consultation with railway operators over the training of enforcement officers, and for enforcement officers to be escorted by a responsible officer of the railway operator and to take heed of the provisions of the railway's safety system. We do not agree with the need to provide for reasonable notice. Further, while we accept that it would be good practice for the Police and the LTSA to consult with railway operators over the training of hazardous substance enforcement officers, we do not believe it necessary to set this out as a requirement in legislation. We agree that it would be desirable for enforcement officers to be escorted by a responsible officer of the railway operator, and to take heed of the railway's safety system. However, as the unavailability of a rail operator officer may frustrate the ability of enforcement officers to enter onto rail land we do not believe that this should be a condition of entry and inspection.

We agree with Tranz Rail Limited that there may be cases where it would be unnecessarily disruptive, or even unsafe, for an enforcement officer to order a train or wagon to not be moved. Accordingly, we recommend the amendment of clause 20 to state that an enforcement officer may not direct that a vehicle not be moved where it would be unsafe or unnecessarily disruptive to do so.

Tranz Rail Limited also submitted that as proposed section 70IA contains the relevant powers of enforcement officers to detain trains, the existing section 70I should be amended to exclude application to trains. We agree and recommend in new clause 19A that the power to stop vehicles for breach of hazardous substances provisions set out in section 70I does not apply to rail service vehicles.

It was Chemie-Tech Limited's view, and that of Tranz Rail Limited and the Police, that enforcement officers' powers of entry should be extended to apply to all premises where hazardous substances are loaded or unloaded from any vehicle. This would enable enforcement officers to check a vehicle before it is on the road, eliminating the potential risk to other road users and to public safety. We agree and recommend, in clause 20, new section 70IB to enable the inspection of premises used for loading and unloading. We also recommend an amendment to section 70I(1A) in clause 19A to clarify that Police are able to inspect road vehicles for non-compliance with hazardous substances requirements. This amendment will rectify ambiguity in the Act, and ensure consistency between Police powers to inspect road vehicles and to inspect rail vehicles.

Chemie-Tech Limited raised a number of hazardous substances issues including the failure by the consignor to declare, or to mislead in declaring, hazardous substances, the need for a container packing certificate to place responsibility for correct packing on the person loading a container or vehicle, and the requirement

for operators of vehicles transporting hazardous substances to provide additional safety information. Chemie-Tech Limited believed that enforcement officers should be given the right to put a seal on a vehicle which they wish to inspect upon unloading at its destination, with suitable penalties for breaking the seal and provision for the inspection to be carried out by another enforcement officer. The Police support this view. We recommend that these issues be considered by the LTSA in developing the draft rule for the transport of dangerous goods, or be included in offence regulations under the Land Transport Act 1993, or in amendments to existing regulations under the Transport Act 1962.

Definition of rail “incident”

The Transport Accident Investigation Commission (TAIC) proposed amendments to the Bill to amend the section 2 definition of “incident” in the Transport Services Licensing Act 1989. The TAIC believed that the existing definition of “incident”, which means any occurrence, other than an accident, that is associated with the operation of a rail service vehicle, being an occurrence that placed or could have placed a person at risk of serious injury differs significantly from the wording in the civil aviation and maritime legislation where the definition is “an occurrence that ... affects or could affect the safety of operation”. The TAIC believed a change to this terminology would encourage rail operators to notify incidents and would be consistent with other modes of transport.

We do not believe that any amendment to the definition of “incident” is warranted at present. We consider that the TAIC and the LTSA should be given the opportunity to apply the current definitions of “accident” and “incident”. We recommend that the Ministry of Transport monitor the situation for twelve months. If monitoring shows significant problems during this period, the Minister should be advised immediately by the Ministry.

Continuous licensing

Continuous licensing was enacted in the Transport (Vehicle and Driver Registration and Licensing) Amendment Act 1992 with the relevant provisions to be brought into force by Order in Council. Under continuous licensing, owners of most vehicles will be required to pay licence fees for their vehicles as if those vehicles had at all times been licensed, whether or not they were actually licensed. This provision will apply unless an application for an exemption from continuous licensing has been applied for and granted, or the vehicle falls into a class which will be exempt from the continuous licensing requirement, or it has recently been sold and was unlicensed at the time of its change of ownership.

A further amendment to the Transport (Vehicle and Driver Registration and Licensing Act) 1986 is required to enable the Secretary for Transport to exempt those who do not relicence their vehicles for legitimate reasons, for example:

- the vehicle owner may be in hospital or on holiday; or
- the vehicle may be a second or third vehicle which is not being used for a period of time; or
- the vehicle may be used seasonally, e.g., caravans or campervans.

We recommend amending clause 10, adding a new section 35A(2) to the Act to empower the Secretary for Transport to grant exemptions from continuous licensing permanently for particular vehicle classes, or for a limited period for individual vehicles, and to make other consequential amendments to the power of the Secretary to grant exemptions.

Certification of Road User Charges business records

Section 23A of the Road User Charges Act 1977 enables documents which are certified by an officer or employee of the Ministry of Transport as Road User Charges records to be presented as *prima-facie* evidence in court proceedings. The Police and the LTSA are responsible for enforcement of the Road User Charges Act 1977. It is, therefore, more appropriate for the LTSA or Police staff to exercise this power of certification. We recommend a new clause 38A, to amend section 23A, to enable the Chief Executive of the Ministry of Transport to authorise appropriate people to exercise this power of certification.

KEY TO SYMBOLS USED IN REPRINTED BILL

AS REPORTED FROM A SELECT COMMITTEE

Struck Out (Unanimous)

Subject to this Act,

Text struck out unanimously

New (Unanimous)

Subject to this Act,

Text inserted unanimously

(Subject to this Act,)

Words struck out unanimously

Subject to this Act,

Words inserted unanimously

Hon. Maurice Williamson

LAND TRANSPORT LAW REFORM (NO. 2)

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A BILL INTITULED

An Act to amend various enactments relating to land transport

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title and commencement—(1) This Act may be cited as the Land Transport Law Reform Act (No. 2) 1995. 5

(2) Except as provided in **sections 3A (4), 8A (3), 13 (3), and 26 (2) of this Act**, this Act shall come into force on the day on which it receives the Royal assent.

PART I 10

AMENDMENTS TO TRANSPORT (VEHICLE AND DRIVER REGISTRATION AND LICENSING) ACT 1986

2. Part to be read with Transport (Vehicle and Driver Registration and Licensing) Act 1986—This Part of this Act shall be read together with and deemed part of the Transport (Vehicle and Driver Registration and Licensing) Act 1986* (in this Part of this Act referred to as the principal Act). 15

*1986, No. 6

Amendments: 1987, No. 107; 1988, No. 171; 1989, No. 78; 1992, No. 110; 1995, No. 45

3. Interpretation—(1) Section 2 (1) of the principal Act is hereby amended by repealing the definition of the term "Registrar" (as substituted by section 32 (1) of the State-Owned Enterprises Act 1986), and substituting the following definition: 20

“ ‘Registrar’ means the Secretary, and includes, where appropriate,—

“(a) Any person to whom the Secretary has delegated any of the powers, duties, or functions of the Registrar under this Act:

5 “(b) Any person for the time being authorised by the Secretary to (*exercise or*) perform any (*of the powers, duties, or functions*) specified function of the Registrar under this Act.”.

10 (2) The State-Owned Enterprises Act 1986 is hereby consequentially amended by repealing so much of the Third Schedule as relates to section 2 (1) of the Transport (Vehicle and Driver Registration and Licensing) Act 1986.

New (Unanimous)

3A. Motor vehicles to be registered and licensed—

15 (1) Section 5 of the principal Act is hereby amended by repealing subsections (1A) and (1B), and substituting the following subsection:

 “(1A) Once a motor vehicle is registered in accordance with this Part of this Act then, except as otherwise provided in this Act or in regulations made under **section 35A (1) (a)** of this Act,—

20 “(a) The owner of the vehicle shall keep the vehicle licensed at all times under this Part of this Act; and

 “(b) The fees payable in respect of such licensing shall be payable as if the vehicle is at all times required to be licensed (whether or not it is actually licensed).”

25 (2) Section 5 of the principal Act is hereby further amended by repealing subsection (6).

 (3) Section 3 of the Transport (Vehicle and Driver Registration and Licensing) Amendment Act 1992 is hereby consequentially amended by repealing subsections (1) and (4).

30 (4) This section shall come into force on a date to be appointed by the Governor-General by Order in Council.

4. Issue of registration plates and certificates of registration—(1) Section 8 (1) of the principal Act is hereby amended by inserting, after the words “the Registrar”, the words “, or a person authorised in that behalf under **subsection (6)** of this section,”.

 (2) Section 8 of the principal Act is hereby further amended by adding the following subsection:

40 “(6) The Secretary may authorise any person (whether or not employed in the Ministry of Transport) to issue registration

plates and certificates of registration under this section, and any such authorisation may—

“(a) Include within the authorisation any employees or agents of the person principally authorised:

“(b) Specify the manner in which the authority is to be exercised: 5

“(c) Also be expressed to apply for the purposes of issuing substitute registration plates and duplicates of certificates of registration and duplicate personalised plates under section 15 of this Act.” 10

5. Issue and display of licences—(1) Section 13 (1) of the principal Act is hereby amended by inserting, after the words “the Registrar,”, the words “or a person authorised in that behalf under subsection (6) of this section,”.

(2) Section 13 of the principal Act is hereby further amended by adding the following subsection: 15

“(6) The Secretary may authorise any person (whether or not employed in the Ministry of Transport) to issue licences for motor vehicles under this section, and any such authorisation may— 20

“(a) Include within the authorisation any employees or agents of the person principally authorised:

“(b) Specify the manner in which the authority is to be exercised:

“(c) Also be expressed to apply for the purposes of issuing substitute licences under section 15 of this Act.” 25

6. Replacement certificates of registration, licences, and registration plates—Section 15 (3) of the principal Act (as substituted by section 4 (1) of the Transport (Vehicle and Driver Registration and Licensing) Amendment Act 1988) is hereby amended by inserting, after the words “The Registrar”, the words “, or any person appropriately authorised in that behalf under section 8 (6) (c) or section 13 (6) (c) or section 34 (2) (c) of this Act,”. 30

7. Notification of change of ownership of motor vehicle—(1) Section 20 (1) of the principal Act is hereby amended by inserting, after the words “give to the Registrar”, the words “or to a person authorised by the Secretary in that behalf”. 35

(2) Section 20 of the principal Act is hereby further amended by repealing subsection (2). 40

(3) Section 13 of the Transport (Vehicle and Driver Registration and Licensing) Amendment Act 1992 is hereby consequentially repealed.

5 (4) The Transport (Vehicle and Driver Registration and Licensing) Amendment Act 1992 is hereby further amended by repealing section 14 (2).

8. Particulars required to be supplied by persons acquiring ownership—Section 22 (1) of the principal Act (as substituted by section 14 of the Transport (Vehicle and Driver
10 Registration and Licensing) Amendment Act 1992) is hereby amended by omitting the words “, on the form referred to in section 20 of this Act”, and substituting the words “or to a person authorised by the Secretary in that behalf, on a form provided by the Registrar”.

15 *New (Unanimous)*

8A. Cancellation of registration where licence for motor vehicle not renewed—(1) Section 28 of the principal Act is hereby amended by repealing subsection (3), and substituting the following subsection:

20 “(3) Notwithstanding anything in subsection (1) of this section, the Registrar shall not cancel the registration of a motor vehicle at any time during which the vehicle, by virtue of any provision of this Act or any regulations made under
25 section 35A (1) (a) of this Act, is for a specified period exempt from the requirement in section 5 (1A) (a) of this Act to be licensed at all times.”

(2) Section 18 of the Transport (Vehicle and Driver Registration and Licensing) Amendment Act 1992 is hereby consequentially repealed.

30 (3) This section shall come into force on a date to be appointed by the Governor-General by Order in Council.

9. Issue of trade plates and trade licences—(1) Section 34 of the principal Act is hereby amended by inserting, after the words “the Registrar”, the words “, or a person authorised in
35 that behalf under subsection (2) of this section”.

(2) Section 34 of the principal Act is hereby further amended by adding the following subsection:

“(2) The Secretary may authorise any person (whether or not employed in the Ministry of Transport) to issue trade plates or

trade licences under this section, and any such authorisation may—

- “(a) Include within the authorisation any employees or agents of the person principally authorised:
- “(b) Specify the manner in which the authority is to be exercised: 5
- “(c) Also be expressed to apply for the purposes of issuing substitute plates or substitute (*licenses*) licences under section 15 of this Act.”

10. Regulations—The principal Act is hereby amended by repealing section 35A, and substituting the following section: 10

“35A. (1) The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:

- “(a) Exempting or authorising the Secretary to exempt any motor vehicle or person or any specified category or class of motor vehicles or persons from— 15
 - “(i) Any specified requirements of this Part of this Act or of any regulations made under this Part of this Act: 20
 - “(ii) Any prescribed fees:
- “(b) Prescribing fees for the purposes of this Part of this Act or the method by which such fees are to be assessed:
- “(c) Providing for the refund or waiver of any such fee, in whole or in part, in any specified class of cases: 25
- “(d) Authorising the Registrar to refund or waive payment of any such fee, in whole or in part, in any specified case:
- “(e) Prescribing the obligations of the seller and the buyer, and the functions of the Registrar, where there is a change in the registered ownership of a registered motor vehicle: 30
- “(f) Providing for the appointment, functions, and duties of agents for the purposes of effecting a change in the registered ownership of a registered motor vehicle: 35
- “(g) Prescribing or authorising the Secretary to prescribe the form of certificates of registration for the purposes of this Part of this Act:
- “(h) Authorising the Registrar to enter particulars of a change of registered ownership on the register, notwithstanding the failure of any party to comply with the requirements of section 20 (1) or section 40

22 (1) of this Act, and prescribing the circumstances in which such particulars may be entered:

- 5 “(i) Providing for discounts to be granted in respect of the prescribed fee payable where a change in the registered ownership of a registered motor vehicle occurs.

New (Unanimous)

- 10 “(2) Without limiting the generality of **subsection (1) (a)** of this section, regulations under that provision may—
- 15 “(a) Define a class of motor vehicles by reference to—
- “(i) Actual or intended vehicle usage:
 - “(ii) Ownership by a specified class of owner or by persons or classes of persons approved for the purpose by the Secretary:
 - 15 “(iii) Loss of possession or control, whether because of theft or any other specified reason:
- 20 “(b) Provide that a registered owner whose application for an exemption from the requirement in **section 5 (1A) (a)** of this Act is lodged with the Secretary more than 60 days after the date of expiry of the latest licence issued in respect of the vehicle to which the application relates is liable to pay, in respect of the period commencing on the day after that date of expiry and ending with the close of the day immediately preceding the date of lodgment of the application, an amount which shall be a proportionate amount of the appropriate annual vehicle licence fee:
- 25 “(c) Authorise the Secretary to grant an exemption from any requirements or fees referred to in **subsection (1) (a)** of this section if he or she is satisfied, whether because the registered owner is intending to go overseas or will be hospitalised or for any other reason whatever, that the vehicle to which the application relates will not be used on a road while the exemption has effect:
- 30 “(d) Provide that exemptions referred to in **subsection (1) (a)** of this section that are granted by the Secretary shall, subject to any limitations imposed by the regulations, have effect for such period as the Secretary thinks fit in each case:
- 35
- 40

New (Unanimous)

“(e) Provide that exemptions from the requirement in section 5(1A)(a) of this Act, whether conferred by or under the regulations, have no effect while a vehicle is being used on a road: 5

“(f) Provide for the renewal and revocation of exemptions referred to in subsection (1)(a) of this section that are granted by the Secretary.”

11. Exemption, waiver, or discount for fees or charges relating to supply of information—The principal Act is hereby amended by inserting, after section 36, the following section: 10

“36A. Notwithstanding anything in section 19 of this Act, or in any regulations made under section 35A or section 48 of this Act, the Secretary may waive, or allow an exemption from or discount on, any fee or charge payable under this Part of this Act by any person or class of persons in respect of the supply of information from a register, where the Secretary considers that to do so would be commercially or otherwise advantageous to the Crown.” 15 20

12. Delegation of Secretary’s functions or powers to persons outside Ministry—Section 51A of the principal Act (as inserted by section 35 (1) of the Land Transport Act 1993) is hereby amended by adding the following subsection: 25

“(8) In this section, ‘person’ includes a body corporate, but does not include an unincorporated body of persons.”

PART II

AMENDMENTS TO TRANSPORT ACT 1962

13. Part to be read with Transport Act 1962—(1) This Part of this Act shall be read together with and deemed part of the Transport Act 1962* (in this Part of this Act referred to as the principal Act). 30

(2) Subject to subsection (3) of this section, this Part of this Act shall come into force on the day on which this Act receives the Royal assent. 35

*R.S. Vol. 16, p. 659

Amendments: 1985, No. 126; 1985, No. 194; 1987, No. 96; 1988, No. 139; 1988, No. 170; 1989, No. 77; 1989, No. 158; 1990, No. 135; 1992, No. 48; 1992, No. 67; 1992, No. 108; 1995, No. 44

(3) The provisions of sections 14 (3), 15, 16, 17 (1), 22, 23, and 25 of this Act shall come into force on a date to be appointed by the Governor-General by Order in Council, and different dates may be appointed for different provisions.

5 **14. Interpretation**—(1) Section (2) (1) of the principal Act is hereby amended by inserting, after the definition of the term “Commissioner”, the following definition:

10 “‘Controlling authority’, in relation to any road, means the authority, body, or person having control of the road, whether under Part IV of the Transit New Zealand Act 1989 or Part XXI of the Local Government Act 1974 or under any other enactment or rule of law; and includes any person acting under and within the terms of any delegation or authorisation given by a controlling authority.”

15 (2) Section 2 (1) of the principal Act is hereby further amended by inserting, after the definition of the term “farmer”, the following definition:

20 “‘Fire brigade’ includes a volunteer fire brigade, a defence fire brigade, and an industrial fire brigade (as those terms are defined in section 2 of the Fire Service Act 1975), and also includes an airport fire brigade.”

25 (3) Section 2 (1) of the principal Act is hereby further amended by repealing the definition of the term “speeding offence”, and substituting the following definition:

 “‘Speeding offence’ means an offence which consists solely of exceeding any limit of speed fixed by or under—

30 “(a) This Act or any regulations made under this Act; or

 “(b) Any bylaw made under section 72 of this Act; or

 “(c) Any ordinary rule or emergency rule made under Part II of the Land Transport Act 1993.”

35 **15. Owner liability for stationary vehicle offences**—

(1) Section 41A (1) of the principal Act (as inserted by section 8 of the Transport Amendment Act (No. 3) 1992) is hereby amended by repealing subparagraphs (i) to (iv) of paragraph (b) of the definition of the term “stationary vehicle offence”.

40 (2) Section 41A (1) of the principal Act (as so inserted) is hereby amended by adding to the definition of the term “stationary vehicle offence” the following paragraph:

“(c) Any offence against any regulations made under this Act or the Transport (Vehicle and Driver Registration and Licensing) Act 1986 that is declared by such regulations to be a stationary vehicle offence for the purposes of this definition:” 5

16. New sections substituted—(1) The principal Act is hereby amended by repealing sections 52 and 52A (as inserted by section 9 (1) of the Transport Amendment Act 1989), and substituting the following sections:

“**52. Speed limits**—Subject to section 53 of this Act, no person shall drive any motor vehicle at a speed exceeding that fixed for the relevant circumstances and locality— 10

“(a) By a controlling authority in accordance with any ordinary rule or emergency rule made under Part II of the Land Transport Act 1993; or 15

“(b) By the Director under any such rule; or

“(c) By a Minister of the Crown by bylaw made under section 72 (1) (j) of this Act; or

“(d) By or under any provision of this Act (including section 52A) or any other Act or any rule or regulation relating to temporary speed limits. 20

“**52A. Saving of existing speed limits**—(1) All speed limits fixed by any Act, regulation, bylaw, or notice in the *Gazette* before the date on which section 16 of the Land Transport Law Reform Act (No. 2) 1995 comes into force shall continue to have effect in relation to any road or locality to which they applied before that date until superseded in respect of that road or locality by a speed limit fixed on or after that date by— 25

“(a) A controlling authority in accordance with any ordinary rule or emergency rule made under Part II of the Land Transport Act 1993; or 30

“(b) The Director under any such rule; or

“(c) A Minister of the Crown by bylaw made under section 72 (1) (j) of this Act.”

(2) Section 9 (1) of the Transport Amendment Act 1989 is hereby consequentially repealed. 35

17. Exemption from speed limits of Police, traffic officers, and ambulance and fire brigade drivers—

(1) Section 53 of the principal Act is hereby amended by inserting, before the word “bylaw”, the words “rule or”. 40

(2) Section 53 of the principal Act is hereby further amended by inserting in paragraph (c), after the word “fire”, the words “or other emergencies”.

18. Definition of “hazardous substance”, etc.—

5 (1) Section 70E (1) of the principal Act is hereby amended by omitting the expression “sections 70F to 70H”, and substituting the expression “sections 70F to 70K”.

(2) Section 70E (1) of the principal Act is hereby further amended by inserting, in their appropriate alphabetical order,
10 the following definitions:

“ ‘Hazardous substance enforcement officer’, or
‘enforcement officer’, means a person appointed by
warrant under section 70K of this Act:

New (Unanimous)

15 “ ‘Operator’ has the same meaning as in section 2 of this Act, but also includes—

“(a) Any rail service operator (as defined in section 2 of the Transport Services Licensing Act 1989):

20 “(b) Any driver of a rail service vehicle:

“ ‘Premises’ includes any vehicle, carriage, box, or receptacle, but does not include a dwelling or any
Maori reservation constituted by or under the Maori Affairs Act 1953 or Part XVII of Te Ture Whenua
25 Maori Act 1993:

“ ‘Rail service operator’ has the same meaning as in section 2 (1) of the Transport Services Licensing Act 1989.”

19. Drivers to have licence with hazardous substance endorsement—Section 70H of the principal Act (as inserted by section 16 (1) of the Transport Amendment Act 1989) is hereby amended by inserting, after subsection (2), the following subsections:

Struck Out (Unanimous)

35 “(2A) Where a person is convicted of the offence specified in subsection (1) of this section,

New (Unanimous)

“(2A) Where a person—

“(a) Is convicted of the offence specified in subsection (1) of this section; or

“(b) Is convicted, in that person’s capacity as driver of the relevant vehicle, of an offence against section 70F (2) of this Act,—

the Court may, whether or not it imposes any other penalty or makes any other order in respect of the offence, order that person to attend and complete a hazardous substances course approved by the Director under section 48 (2)(e) of the Transport (Vehicle and Driver Registration and Licensing) Act 1986 within such time and on such conditions as may be specified in the order.

“(2B) A person who attends a hazardous substances course pursuant to an order under **subsection (2A)** of this section is liable to pay the same fees as the person would pay if he or she attended and completed the course otherwise than pursuant to the order.”

New (Unanimous)

19A. Power to stop road vehicles for breach of hazardous substances provision—(1) Section 70I (1) of the principal Act (as inserted by section 33 of the Transport Amendment Act (No. 3) 1992) is hereby amended by inserting, after the words “traffic officer is satisfied that”, the words “there is no breach or that”.

(2) Section 70I of the principal Act (as so inserted) is hereby amended by inserting, after subsection (1), the following subsection:

“(1A) For the purposes of subsection (1) of this section, a constable or traffic officer may—

“(a) Take samples of any substance; and

“(b) Open containers or packages (including secured or sealed containers or packages) to inspect the contents; and

“(c) Take measurements and sketches; and

New (Unanimous)

- “(d) Inspect any documents or other records relating to the obligations imposed under sections 70F to 70H of this Act; and
- 5 “(e) Require the production of any documents relevant to the purpose of the inspection.”
- (3) Section 70I of the principal Act (as so inserted) is hereby further amended by adding the following subsection:
- 10 “(3) Nothing in this section applies to any rail service vehicle or the driver of a rail service vehicle.”

20. New sections inserted—The principal Act is hereby amended by inserting, after section 70I (as inserted by section 33 of the Transport Amendment Act (No. 3) 1992), the following sections:

- 15 “70IA. **Power to inspect rail service vehicles**—(1) Any hazardous substance enforcement officer may at any reasonable time go on, into, under, and over any premises (*except a dwelling*) for the purpose of inspection to determine whether or not the requirements of sections 70F (and 70G) to
- 20 70H of this Act are being complied with in relation to any rail service vehicle or any railway line.
- “(2) For the purposes of subsection (1) of this section, an enforcement officer (or any person assisting the enforcement officer) may—
- 25 “(a) Take samples of any substance; and
- “(b) Open containers or packages (including secured or sealed containers or packages) to inspect the contents; and

Struck Out (Unanimous)

- 30 “(c) Inspect any documents or other records relating to the obligations imposed under this Act.

New (Unanimous)

- “(c) Take measurements and sketches; and

New (Unanimous)

“(d) Inspect any documents or other records relating to the obligations imposed under sections 70F to 70H of this Act; and

“(e) Require the production of any documents relevant to the purpose of the inspection. 5

“(3) Where a hazardous substance enforcement officer has good cause to suspect that, in respect of any rail service vehicle or the driver of any rail service vehicle, there has been a breach of section 70F of this Act, the enforcement officer may, by direction given to the driver or person in charge of the vehicle, direct that— 10

“(a) The vehicle not be moved; or

“(b) The vehicle be moved to a place of safety approved by the enforcement officer in consultation with the rail service operator and kept stopped at that place— until the enforcement officer is satisfied that the breach has been rectified. 15

“(4) Nothing in subsection (3) of this section authorises an enforcement officer to *(stop a train in motion.)*— 20

New (Unanimous)

“(a) Stop a train in motion; or

“(b) Direct that a vehicle not be moved if it would be unsafe or unnecessarily disruptive for the vehicle to remain in that place. 25

“(5) Every person commits an offence and is liable on conviction to a fine not exceeding \$5,000 who—

“(a) Without reasonable excuse, obstructs an enforcement officer in the exercise of the officer’s powers under subsection (2) of this section; or 30

“(b) Fails to comply with or does any act in breach of a direction given by an enforcement officer under section (3) of this section; or

“(c) Whether or not he or she is a person to whom the direction is given, knowingly moves any rail service vehicle in breach of any direction given under subsection (3) of this section. 35

“(6) Every enforcement officer exercising any of the powers conferred under this section shall, at the time of exercising that power, and thereafter on request, produce—

5 “(a) Evidence of that person’s appointment as an enforcement officer; and

“(b) Evidence of that person’s identity.

“(7) An enforcement officer may, if specifically authorised to do so by the Director or the Commissioner, take any person onto the premises to assist the officer with the inspection.

10 “(8) Nothing in this section shall limit or affect the privilege against self incrimination.

New (Unanimous)

“70IB. **Power to inspect premises used for loading—**

15 (1) Any hazardous substance enforcement officer may, at any reasonable time, go into, under, and over—

“(a) Any premises on or at or in which the operator of a transport service vehicle loads or unloads the vehicle; or

20 “(b) Any premises on or at or in which goods are loaded onto or unloaded from a transport service vehicle, or are packed with a view to being loaded onto a transport service vehicle, by a person other than the operator of the vehicle, if the enforcement officer has reason to believe that any of those goods may be a hazardous substance—

for the purpose of inspection to ensure that all persons involved in the transport of hazardous substances comply with the requirements of sections 70F to 70H of this Act and otherwise to ensure the safe transportation of hazardous substances.

30 “(2) For the purposes of subsection (1) of this section, an enforcement officer (or any person assisting an enforcement officer) may—

“(a) Take samples of any substance; and

35 “(b) Open containers or packages (including secured or sealed containers or packages) to inspect the contents; and

“(c) Take measurements and sketches; and

40 “(d) Inspect any documents or other records relating to the obligations imposed under sections 70F to 70H of this Act; and

New (Unanimous)

- “(e) Require the production of any documents or information relevant to the purpose of the inspection; and
- “(f) Take copies of the documents or information or extracts from those documents or information.
- “(3) The enforcement officer may give such reasonable directions as are necessary in relation to the loading or unloading of any vehicle or the packing or unpacking of any thing to ensure compliance with sections 70F to 70H of this Act or otherwise to ensure safety in relation to the transportation of hazardous substances.
- “(4) Every person commits an offence and is liable on conviction to a fine not exceeding \$5,000 who—
- “(a) Without reasonable excuse, obstructs an enforcement officer in the exercise of the officer’s powers under **subsection (2)** of this section; or
- “(b) Fails to comply with or does any act in breach of a direction given by an enforcement officer under **subsection (3)** of this section.
- “(5) Every enforcement officer exercising any of the powers conferred under this section shall, at the time of exercising that power, and thereafter on request, produce—
- “(a) Evidence of that person’s appointment as an enforcement officer; and
- “(b) Evidence of that person’s identity.
- “(6) An enforcement officer may, if specifically authorised to do so by the Director or the Commissioner, take any person onto the premises to assist the officer with the inspection.
- “(7) Nothing in this section shall limit or affect the privilege against self incrimination.”

21. Director and Commissioner of Police may appoint hazardous substance enforcement officers—The principal Act is hereby amended by inserting, after section 70j (as inserted by section 33 of the Transport Amendment Act (No. 3) 1992), the following section:

“70k. (1) The Director may, by warrant, appoint any person as an enforcement officer to enforce the requirements of sections 70F (and 70G) to 70H of this Act in respect of (any rail service vehicle or any railway line.)—

New (Unanimous)

- “(a) Any rail service vehicle or any railway line:
“(b) Any premises referred to in **section 70B (1)** of this Act where goods are loaded or unloaded or packed.

- 5 “(2) The Commissioner of Police may, by warrant appoint any person as an enforcement officer to enforce the requirements of sections 70F (and 70G) to 70H of this Act in respect of (any rail service vehicle or any railway line.)—

New (Unanimous)

- 10 “(a) Any rail service vehicle or any railway line:
“(b) Any premises referred to in **section 70B (1)** of this Act where goods are loaded or unloaded or packed.

- 15 “(3) There shall be appointed under this section only such persons as, in the opinion of the Director or the Commissioner (as the case may be), are qualified by knowledge or experience to undertake enforcement of the functions specified in the warrant of appointment.

- 20 “(4) Each enforcement officer shall be supplied by the Director or the Commissioner with a warrant which specifies the functions that the officer is required to undertake.

“(5) The Director or the Commissioner (as the case may be) may at any time revoke a warrant appointing a person as an enforcement officer.”

- 25 **22. Bylaws as to use of roads**—Section 72 (1) (j) of the principal Act is hereby amended by omitting the word “Fixing”, and substituting the words “In the case of Ministers of the Crown only, fixing”.

- 30 **23. Regulations**—Section 77 (1) (p) of the principal Act (as substituted by section 18 of the Transport Amendment Act 1966) is hereby amended by repealing subparagraphs (i) and (ii) (as inserted section 26 (4) of the Transport Amendment Act 1987).

- 35 **24. Schedules referring to offences may be amended by Order in Council**—The principal Act is hereby amended by inserting, after section 199B, the following section:

“199c. (1) The Governor-General may from time to time, by Order in Council, amend the Second Schedule and Schedule 2A to this Act—

“(a) By omitting any reference to a regulation or bylaw that has been revoked, and, if appropriate, substituting a reference to the corresponding new regulation or bylaw: 5

“(b) By amending any reference to a regulation or bylaw for the purpose of updating that reference:

Struck Out (Unanimous)

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“(c) By adding any reference to a new regulation or bylaw:

“(d) By omitting any Part of either of those Schedules that relates only to regulations or bylaws, and substituting a new Part or Parts:

“(e) By omitting the whole of either of those Schedules, or both, and substituting a new Schedule or Schedules, but only to the extent that any substantive differences between the new and former Schedules relate only to regulations or bylaws.” 15

New (Unanimous)

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“(c) Subject to **subsection (2)** of this section, by adding any new item that relates to a regulation or bylaw.

“(2) The amount of the infringement fee in respect of an offence that is added to the Second Schedule to this Act under **subsection (1)** of this section may not exceed 50 percent of the maximum fine to which a person is liable if convicted of the offence. 25

“(3) Any order made under **subsection (1)** of this section may—

“(a) Omit any Part of the relevant Schedule that relates only to regulations or bylaws (or both) and substitute a new Part or Parts; or 30

“(b) Omit the whole of the relevant Schedule and substitute a new Schedule—

provided that any substantive differences between the new and former Parts or Schedules relate only to regulations or bylaws (or both) and are authorised by **subsections (1) and (2)** of this section.” 35

Amendment to Public Works Act 1981

25. Amendment to Public Works Act 1981—Section 243 (1) of the Public Works Act 1981 is hereby amended by repealing paragraphs (a) and (c).

5

PART III

AMENDMENTS TO LAND TRANSPORT ACT 1993

26. Part to be read with Land Transport Act 1993—

(1) This Part of this Act shall be read together with and deemed part of the Land Transport Act 1993* (in this Part of this Act referred to as the principal Act).

10

(2) Except as provided in section 31 (2) of this Act, this Part of this Act shall come into force on the day on which it receives the Royal assent.

*1993, No. 88

Amendment: 1995: No. 43

27. Interpretation—(1) Section 2 (1) of the principal Act is hereby amended by inserting, after the definition of the term “Authority”, the following definition:

15

“‘Controlling authority’ has the same meaning as in section 2 (1) of the Transport Act 1962.”

(2) Section 2 (1) of the principal Act is hereby further amended by inserting in the definition of the term “Land Transport Register”, after the words “Transport (Vehicle and Driver Registration and Licensing) Act 1986”, the words “(other than Part I of that Act)”.

20

28. Power of Minister to make ordinary rules—Section 4 of the principal Act is hereby amended by inserting, at the beginning of subsection (6), the words “Without derogating from the provisions of any other enactment,”.

25

29. Rules relating to safety and licensing—Section 5 of the principal Act is hereby amended by inserting, after paragraph (c), the following paragraph:

30

“(ca) Rules authorising controlling authorities to set maximum speeds or minimum speeds of vehicles or of specified classes of vehicles in respect of roads or parts of roads, which rules may—

35

“(i) Prescribe criteria, requirements, and procedures to be complied with by controlling authorities when setting speed limits:

“(ii) Authorise the Director to change, or modify the application of, any speed limit that does not

comply with the prescribed criteria, requirements, or procedures.”.

30. Rules relating to general matters—(1) Section 6 (a) of the principal Act is hereby amended by inserting, after subparagraph (viii), the following subparagraph: 5

“(viii) Controlling authorities:”.

(2) Section 6 (b) of the principal Act is hereby amended by adding the following subparagraph:

“(vii) The specification of the requirements of systems and procedures to be used in the exercise of any power given to any person under any rule:” 10

31. Transfer provisions for certain employees of Land Transport Safety Authority—(1) The principal Act is hereby amended by inserting, after section 37, the following section:

“37A. (1) This section applies to any person (referred to in this section as a transferee) who— 15

Struck Out (Unanimous)

“(a) As an employee of the Authority, is or was engaged principally in duties relating to the administration of the Land Transport Fund established under section 8 of the Transit New Zealand Act 1989; and 20

“(b) Becomes or is offered the opportunity to become an employee or director of any company, partnership, or person (in this section referred to as the employer) to which the responsibility for the administration of the Land Transport Fund has been or is transferred. 25

New (Unanimous)

“(a) As an employee of the Authority, is or was engaged principally in duties relating to any one or more of the following matters: 30

“(i) The administration of motor vehicle registration and licensing under Part I of the Transport (Vehicle and Driver Registration and Licensing) Act 1986: 35

New (Unanimous)

- 5 “(ii) The administration or enforcement of road user charges under the Road User Charges Act 1977:
- “(iii) The administration of fuel excise duty refunds under Part V of the Transit New Zealand Act 1989:
- 10 “(iv) The collection of revenue under the Road User Charges Act 1977, Part I of the Transport (Vehicle and Driver Registration and Licensing) Act 1986, or Part V of the Transit New Zealand Act 1989; and
- “(b) Becomes or is offered the opportunity to become an employee or director of—
- 15 “(i) Any Department or other part of the State services (as defined in section 2 of the State Sector Act 1988); or
- “(ii) Any company, partnership, or person—
- 20 to which the responsibility for any of the matters specified in **paragraph (a)** of this subsection has been or is transferred (such Department, other part of the State services, company, partnership, or person being referred to in this section as the employer).
- “(2) No transferee shall be entitled to any payment, benefit,
- 25 or compensation, whether for redundancy or otherwise, by reason only of the transferee ceasing to be employed by the Authority if—
- “(a) The transferee has been or is offered terms and conditions of employment that are similar in overall
- 30 effect to those of the transferee with the Authority; and
- “(b) The employer has agreed to treat the transferee’s service with the Authority as if it were service with the employer and as if it were continuous; and
- 35 “(c) The duties of the transferee are similar in overall effect to those of the transferee with the Authority or the transferee is willing to accept alternative duties.
- “(3) Any transferee who, immediately before transfer, was a contributor to the Government Superannuation Fund under
- 40 the Government Superannuation Fund Act 1956 shall, for the purposes of that Act, be deemed to be employed in the

Government service so long as that person continues to be employed with, or be a director of, the employer.

“(4) Subject to the Government Superannuation Fund Act 1956, nothing in **subsection (3)** of this section shall entitle a transferee to become a contributor to the Government Superannuation Fund after that transferee has ceased to be a contributor. 5

“(5) For the purpose of applying the Government Superannuation Fund Act 1956 in accordance with **subsection (3)** of this section, the term ‘controlling authority’, in relation to a transferee, means the employer.” 10

(2) This section shall come into force on a date to be appointed by the Governor-General by Order in Council.

PART IV

AMENDMENTS TO TRANSPORT SERVICES LICENSING ACT 1989 15

32. Part to be read with Transport Services Licensing Act 1989—This Part of this Act shall be read together with and deemed part of the Transport Services Licensing Act 1989* (in this Part of this Act referred to as the principal Act).

*1989, No. 74

Amendments: 1990, No. 123; 1992, No. 28; 1992, No. 69; 1992, No. 109; 1995, No. 47

33. Schedules referring to offences may be amended by Order in Council—The principal Act is hereby amended by inserting, after section 66, the following section: 20

“66A. The Governor-General may from time to time, by Order in Council, amend the Second Schedule to this Act—

“(a) By omitting any reference to a regulation that has been revoked, and, if appropriate, substituting a reference to the corresponding new regulation: 25

“(b) By amending any reference to a regulation for the purpose of updating that reference.”

Struck Out (Unanimous) 30

“(c) By adding any reference to a new regulation:

“(d) By omitting any Part of that Schedule that relates only to regulations, and substituting a new Part or Parts:

“(e) By omitting the whole of the Schedule and substituting a new Schedule, but only to the extent that any substantive differences between the new and former Schedules relate only to regulations.” 35

PART V

AMENDMENTS TO TRANSIT NEW ZEALAND ACT 1989

5 **34. Part to be read with Transit New Zealand Act 1989**—This Part of this Act shall be read together with and deemed part of the Transit New Zealand Act 1989* (in this Part of this Act referred to as the principal Act).

*1989, No. 75

Amendments: 1990, No. 122; 1991, No. 57; 1992, No. 70; 1995, No. 42

35. Procedure for obtaining refund—Section 102 (5) of the principal Act is hereby amended by omitting the word “Authority”, and substituting the word “Registrar”.

10

PART VI(I)

AMENDMENTS TO ROAD USER CHARGES ACT 1977

15 **36. Part to be read with Road User Charges Act 1977**—This Part of this Act shall be read together with and deemed part of the Road User Charges Act 1977† (in this Part of this Act referred to as the principal Act).

†R.S. Vol. 21, p. 759

Amendments: 1988, No. 46; 1989, No. 79; 1992, No. 114; 1995, No. 46

20 **37. Interpretation**—(1) Section 2 (1) of the principal Act is hereby amended by repealing the definition of the term “Registrar” (as substituted by section 2 (3) of the Road User Charges Amendment Act 1988), and substituting the following definition:

“‘Registrar’ means the chief executive, and includes, where appropriate,—

25 “(a) Any person to whom the chief executive has delegated any of the powers, duties, or functions of the Registrar under this Act:

“‘(b) Any person for the time being authorised by the chief executive to exercise or perform any of the powers, duties, or functions of the Registrar under this Act:”.

30 (2) Section 2 (1) of the principal Act is hereby further amended by omitting from the definition of the term “weight” (as substituted by section 2 (2) of the Road User Charges Amendment Act 1986) the words “Minister of Transport” where they twice occur, and substituting in each case the words
35 “Land Transport Safety Authority of New Zealand”.

(3) Section 2 (3) of the Road User Charges Amendment Act 1988 is hereby consequentially repealed.

38. Offences—Section 23 of the principal Act is hereby amended by adding the following subsection:

“(8) Where a person breaches the requirements of a licence in more than one particular, each such breach shall, to the extent that it constitutes an offence against this Act, constitute a separate offence.”

New (Unanimous)

5

38A. Evidence in proceedings—Section 23A (1) of the principal Act (as inserted by section 13 of the Road User Charges Amendment Act 1992) is hereby amended by inserting, after the words “employee of the Ministry of Transport”, the words “, or by a person authorised by the chief executive for the purpose,”.

10

39. Delegation of chief executive’s functions or powers to persons outside Ministry—Section 23D of the principal Act (as inserted by section 35 (1) of the Land Transport Act 1993) is hereby amended by adding the following subsection:

“(8) In this section, the term ‘person’ includes a body corporate, but does not include an unincorporated body of persons.”

15