

TRANSPORT AMENDMENT (NO. 2) BILL

EXPLANATORY NOTE

THIS Bill amends the Transport Act 1962.

Clause 1 relates to the Short Title and commencement. *Clause 4* (relating to driving tests for disqualified drivers) will come into force on 1 January 1968. The other provisions will come into force on the date of the passing of the Act.

Clause 2: Section 33 of the principal Act makes provision for cumulative periods of disqualification where a disqualified driver commits a further offence for which disqualification may or must be ordered by the Court. The section applies in cases where the subsequent offence is committed while the offender is disqualified, but it could happen that, although the offence is committed while the offender is disqualified, the period of disqualification could expire before he is convicted of that subsequent offence, and the provisions of the section are inappropriate to meet that situation.

This clause amends those provisions, and provides for cumulative periods of disqualification where the offender is convicted of the other offence during the period of disqualification.

Clause 3: Subclause (1) is consequential on the provisions of *clause 4* requiring certain disqualified drivers to pass a new driving test at the end of their period of disqualification.

Subclause (2): Section 35B of the principal Act includes provisions that where the Court makes an order of partial exemption from disqualification under section 35 or section 35A of that Act, particulars of the order may be endorsed on any existing licence of the disqualified person and it will not be necessary for him to obtain a new licence authorising him to drive in accordance with the order.

This clause will enable those particulars to be endorsed on the licence by the local authority by which it was issued, or by the Commissioner of Transport where he has issued the licence. At present it is necessary for the local authority or the Commissioner to send the licence to the Registrar of the Court for the endorsement to be made.

Clause 4 provides that where the holder of a driver's licence is disqualified for more than 12 months the licence shall, on the expiration of the period of disqualification, continue to be of no effect until the holder has passed the prescribed tests for a licence authorising him to drive motor vehicles of the class or classes that he was authorised to drive by virtue of his licence. If his licence authorises him to drive motor vehicles of two or more classes

and he passes the tests for one or more but not all of those classes, his licence will be limited to the class or classes for which he has passed the tests.

These provisions will not apply where an order of partial exemption from disqualification or of removal of disqualification is made within 12 months after the date of the commencement of the period of disqualification, but they will apply if such an order is made 12 months or more after that date.

Subclause (2) is a consequential amendment.

This provision will come into force on 1 January 1968.

Clause 5 confers a right of appeal to the Supreme Court against the refusal by a Magistrate's Court of an application under section 35 of the principal Act (partial exemption from disqualification order), or section 35A (partial exemption from disqualification order on ground of undue hardship), or section 42 (removal of disqualification), or section 51r (partial exemption from suspension under demerit points system).

Clause 6 repeals sections 44 and 46 of the principal Act. Section 44 confers a discretionary power on the Court to order a driver's licence to be endorsed when the holder is convicted of certain offences specified in Part I or Part II of the Third Schedule to the principal Act, and section 46 prescribes certain offences for which endorsement is obligatory notwithstanding that the driver is not disqualified.

As a result of these repeals, particulars of the conviction will be endorsed on a driver's licence only where he is disqualified.

Clause 7: Section 68A (3) of the principal Act provides that where under that section the Court orders the holder of a driver's licence to undergo a driving test, the test is to be carried out by an approved testing officer who is an officer of the Transport Department. The effect of this amendment is that the test may also be carried out by an approved testing officer who is authorised to carry out tests for the local authority in whose district the holder of the licence resides.

Clause 8 inserts new sections 68B to 68D in the principal Act, relating to the powers of constables and traffic officers. Powers corresponding to those conferred by sections 68B and 68D at present appear in regulation 5 of the Traffic Regulations 1956 (reprinted, S.R. 1963/157), but those sections contain some amended provisions specifying those powers in greater detail.

Section 68B enacts provisions at present in that regulation that a constable or traffic officer may direct any person in charge of or in a vehicle or on any road to give his name and address and other particulars as to his identity and give any information in his knowledge that may lead to the identification of the driver or person in charge of any vehicle, may inspect, test, and examine the brakes or any part or any equipment of any vehicle, and may remove any vehicle to a place of safety if in his opinion it causes an obstruction in the road or to any vehicle entrance to any property or its removal is desirable in the interests of road safety or for the convenience or in the interests of the public.

Subsection (1) (d) of the new section is new. It empowers a constable or traffic officer to direct the driver or person in charge of a vehicle to remove it from any road or any specified part of any road, if in the opinion of the constable or traffic officer it causes an obstruction in the road or to any vehicle entrance to any property or its removal is desirable in the interests

of road safety or for the convenience or in the interests of the public. The existing regulations authorise a constable or traffic officer to remove a vehicle from a road but do not authorise him to direct the driver to remove it or to move it to another part of the road.

Section 68c provides that where any constable or traffic officer is engaged in the regulation of traffic on any road,—

- (a) Persons using vehicles or riding or driving animals on the road shall stop or proceed in a particular direction or keep to a particular line of traffic when directed so to do by the constable or traffic officer:
- (b) Pedestrians must not cross the road in contravention of a direction by the constable or traffic officer.

Section 69d defines the jurisdiction of traffic officers. A traffic officer who is an officer of the Transport Department may exercise his authority on any road. Any other traffic officer may exercise his authority on roads under the control of the local authority or other authority by which he was appointed. He may also exercise his authority on any other road for the purpose of identifying or arresting the driver or person in charge of any motor vehicle or of identifying any motor vehicle or of preventing the continuation of an offence, where an offence has been committed by the driver or person in charge of a motor vehicle in the district of the authority by which the traffic officer was appointed and it is necessary for him to proceed beyond the district for that purpose.

Clause 9 makes provision relating to the use of hovercraft on roads. It provides that no person may use any hovercraft on or over any road except under the authority of the written permission of the Commissioner of Transport and subject to any conditions that he may impose in granting that permission.

Clause 10 provides that before a local authority exercises its power under section 76 of the principal Act to dispose of any abandoned vehicle, or, in cases where it requires the consent of a Magistrate's Court, before it applies for that consent, it must, where practicable, give notice of its intention to do so to the last two registered owners of the vehicle.

Clause 11 authorises the making of regulations prescribing matters relating to the design and construction of motor vehicles manufactured, assembled, or modified in New Zealand, or of any classes of such vehicles, or of such vehicles manufactured, assembled, or modified by specified classes of persons, and also in relation to components or equipment manufactured in New Zealand for use in motor vehicles.

Clause 12 provides that where application for a taxicab-service licence is made by a company, the Licensing Authority shall take into account the personal character and fitness of the directors and general manager and of such other responsible officers of the company as the Licensing Authority thinks fit.

Clause 13 provides that where a local authority or public body (which is defined for this purpose as including the Auckland Regional Authority) proposes to enter into a contract with the licensee of a passenger service for the provision by him of a passenger service either partly or wholly within the district of the local authority or public body, and the parties are unable to agree as to the amount of the financial assistance to be provided by the local authority or public body under the proposed contract, they may refer that question to the Commissioner of Transport for decision.

The decision of the Commissioner is to be binding on the parties, and Part VII of the principal Act will apply as if it were an order of the Commissioner fixing charges. The effect of this will be that there will be a right of appeal to the Transport Charges Appeal Authority against the Commissioner's decision.

Clause 14 repeals subsection (11) of section 188 of the principal Act, which is now spent. That subsection contains special provisions applying where the Minister of Customs exercised a discretion given to him by section 41 of the Customs Acts Amendment Act 1934 in relation to duty on motor spirits intended for use in the Chatham Islands. Section 14 was repealed by the Customs Act 1966, and there is no provision in that Act corresponding to it.

Clause 15 inserts in the principal Act a new *section 192A* making it an offence to personate a traffic officer or to obstruct a traffic officer in the execution of his duty. Similar provisions at present appear in regulation 131 (e) and (f) of the Traffic Regulations 1956 (reprinted, S.R. 1963/157), but the provisions as to obstruction do not apply to other regulations under the principal Act.

Clause 16: Section 193 (1B) of the principal Act (as inserted by section 12 of the Transport Amendment Act (No. 2) 1965) provides that where proceedings are taken against a taxicab organisation for failing to ensure that a contract of hiring of a taxicab accepted by it is carried out, it will be a defence if the organisation proves that the failure to carry out the contract was due to mechanical failure of any radio or telephone or other communications equipment or any equipment ancillary thereto.

This clause re-enacts the subsection in an amended form, and provides that in such proceedings it will be a defence if the organisation proves that it had a reasonable excuse for failing to ensure that the contract was carried out.

Clause 17 inserts a new *section 197A* in the principal Act, prescribing the manner in which a previous conviction may be proved when a person is charged in a Magistrate's Court with an offence against the principal Act or any regulations or bylaws made or continuing in force under that Act.

The section provides that the informant may serve on the defendant a notice in writing specifying any previous conviction proposed to be brought to the notice of the Court in the event of his conviction of the offence charged. The notice must specify certain particulars set out in the section, and must inform the defendant that if he is not present in person at the hearing and does not notify the Court that he disputes the conviction or any particulars in the notice served on him, the previous conviction may, if the defendant is convicted, be taken into account as if he had been present in person and admitted it.

If the defendant is not present in person at the hearing and does not notify the Court that he disputes the previous conviction or any particulars concerning it, the previous conviction may, if the defendant is convicted, be taken into account by the Court as if the defendant had been present in person and admitted it.

Hon. Mr Gordon

TRANSPORT AMENDMENT (NO. 2)

ANALYSIS

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| Title | 68c. Drivers and pedestrians to comply with traffic directions |
| 1. Short Title and commencement | 68d. Jurisdiction of traffic officers |
| 2. Application of disqualification provisions where offender is already a disqualified person | 9. Use of hovercraft on roads |
| 3. Procedure on partial exemption from disqualification | 10. Removal of abandoned vehicles from roads |
| 4. Driving tests for disqualified drivers | 11. Regulations as to design and construction of motor vehicles |
| 5. Appeal against refusal of application for removal of or exemption from disqualification or suspension | 12. Applications for taxicab service licences |
| 6. Endorsement of drivers' licences | 13. Passenger service carried on by licensee under contract with local authority or public body |
| 7. Driving tests ordered by Court | 14. Repeal |
| 8. New sections (as to powers of constables and traffic officers) inserted | 15. Personation or obstruction of traffic officers |
| 68b. Powers of constables and traffic officers | 16. Failure to carry out contract of hiring of taxicab |
| | 17. Proof of previous convictions |

A BILL INTITULED

An Act to amend the Transport Act 1962

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same,
5 as follows:

1. Short Title and commencement—(1) This Act may be cited as the Transport Amendment Act (No. 2) 1967, and shall be read together with and deemed part of the Transport Act 1962* (hereinafter referred to as the principal Act).

*1962, No. 135

Amendments: 1963, Nos. 62, 119; 1964, No. 126; 1965, Nos. 127, 128; 1966, No. 107; 1967, No. 1

(2) Section 4 of this Act shall come into force on the first day of January, nineteen hundred and sixty-eight.

(3) Except as provided in subsection (2) of this section, this Act shall come into force on the date of its passing.

2. Application of disqualification provisions where offender is already a disqualified person—Section 33 of the principal Act is hereby amended by omitting from subsection (1), and also from subsection (2) and from subsection (3), the words “Where a person disqualified from holding or obtaining a driver’s licence commits while so disqualified”, and substituting in each case the words “Where a person, while disqualified from holding or obtaining a driver’s licence, is convicted of”.

3. Procedure on partial exemption from disqualification—

(1) Section 35B of the principal Act (as inserted by section 9 of the Transport Amendment Act 1966) is hereby amended by adding to subsection (2) the words “unless the holder is a person to whom subsection (2) of section 37 of this Act applies, in which case the Registrar shall forward the licence to the local authority by which the licence was issued or, in the case of a licence issued by the Commissioner, to the Commissioner”.

(2) Section 35B of the principal Act (as so inserted) is hereby further amended by adding the following subsection:

“(3) Where a licence is required to be endorsed pursuant to this section, then, unless the licence has been returned to the holder under subsection (2) of this section, the Registrar of the Court, when notifying the local authority by which the licence was issued, or the Commissioner in the case of a licence issued by the Commissioner, of particulars of the order of the Court, may authorise the local authority or the Commissioner, as the case may be, to endorse those particulars on the licence, and the local authority or the Commissioner, as the case may be, shall endorse those particulars on the licence accordingly, and, notwithstanding anything in subsection (2) of this section, shall return the licence to the holder:

“Provided that where the holder is a person to whom subsection (2) of section 37 of this Act applies, the local authority or the Commissioner, as the case may be, shall not return the licence to him until he has passed the tests prescribed by that section.”

4. Driving tests for disqualified drivers—(1) Section 37 of the principal Act is hereby amended by adding, as subsections (2) to (5), the following subsections:

5 “(2) Where, after the commencement of this subsection, the holder of a driver’s licence is disqualified from holding or obtaining a driver’s licence for a period of more than twelve months or for two or more cumulative periods totalling more than twelve months, and his disqualification will expire before the expiration of the term of the licence, the licence shall, on the expiration of his disqualification, continue to be of no effect until the holder thereof undergoes and passes such tests as are prescribed for a driver’s licence authorising him to drive motor vehicles of the class or classes that he was authorised to drive by virtue of his driver’s licence or any 15 of those classes.

“(3) Where any person to whom subsection (2) of this section applies—

20 “(a) Is the holder of a driver’s licence by virtue of which he is authorised to drive two or more classes of motor vehicles; and

“(b) Undergoes and passes such tests as are prescribed in relation to only one or more but not all of the classes of motor vehicles that he is authorised to drive by virtue of his licence,—

25 the local authority on behalf of which the tests were conducted shall endorse the licence accordingly, and thereupon, notwithstanding anything in subsection (2) of this section, that person shall be authorised to drive by virtue of that licence only motor vehicles of a class or classes in respect of which he has passed those tests.

30 “(4) The provisions of subsection (2) of this section shall not apply to the holder of a driver’s licence in respect of whom an order of a Court is made under the provisions of section 35, section 35A, or section 42 of this Act before the expiration of twelve months after the date of the commencement of the period of disqualification.

35 “(5) The provisions of subsection (2) of this section shall apply to the holder of a driver’s licence in respect of whom any order specified in subsection (4) of this section is made twelve months or more after the date of the commencement of the period of disqualification as if that period had expired on the date of the making of the order.”

40 (2) Section 41 of the principal Act is hereby amended by adding the following proviso:

“Provided that where the person entitled to the licence is a person to whom subsection (2) of section 37 of this Act applies, the licence shall not be returned to him until he has passed the tests prescribed by that section.”

5. Appeal against refusal of application for removal of or exemption from disqualification or suspension—The principal Act is hereby further amended by inserting, after section 42, the following section: 5

“42A. Where any application for an order under section 35, or section 35A, or section 42, or section 51I of this Act is refused by a Magistrate’s Court, the applicant may appeal against the refusal of the order to the Supreme Court, and in any such case the provisions of Part IV of the Summary Proceedings Act 1957 shall, with the necessary modifications, apply.” 10

6. Endorsement of drivers’ licences—The principal Act is hereby further amended— 15

(a) By repealing sections 44 and 46:

(b) By repealing so much of Parts I and II of the Third Schedule as relates to the endorsement of drivers’ licences: 20

(c) By repealing clause 2 of Part V of the Third Schedule.

7. Driving tests ordered by Court—Section 68A of the principal Act (as inserted by section 14 of the Transport Amendment Act 1966) is hereby amended by adding to subsection (3) the words “or is authorised to carry out tests for the local authority in whose district the person undergoing the test resides”. 25

8. New sections (as to powers of constables and traffic officers) inserted—(1) The principal Act is hereby further amended by inserting, after section 68A (as so inserted), the following sections: 30

“68B. Powers of constables and traffic officers—(1) Every constable or traffic officer, if for the time being in uniform or in possession of any warrant or other evidence of his authority as a constable or traffic officer, is hereby authorised to enforce the provisions of this Act and any regulations or bylaws for the time being in force under this Act, and in particular may at any time— 35

5 “(a) Direct any person being in charge of or in any vehicle, whether on a road or not, or any person on any road to furnish his name and address and give any other particulars required as to his identity and give such information as is within his knowledge and as may lead to the identification of the driver or person in charge of any vehicle:

10 “(b) Inspect, test, and examine the brakes or any other part of any vehicle on any road or any equipment thereof:

15 “(c) At the expense of the owner, move or cause to be moved to any place of safety any vehicle on any road, if in the opinion of the constable or traffic officer it causes an obstruction in the road or to any vehicle entrance to any property or its removal is desirable in the interests of road safety or for the convenience or in the interests of the public:

20 “(d) Direct the driver or person in charge of any vehicle on any road to remove the vehicle from the road or any specified part of any road, if in the opinion of the constable or traffic officer it causes an obstruction in the road or to any vehicle entrance to any property or its removal is desirable in the interests of road safety or for the convenience or in the interests of the public.

25 “(2) Any such constable or traffic officer, if in his opinion any vehicle does not comply with the provisions of any regulations for the time being in force under this Act, may, by notice in writing given to the driver or owner of the vehicle, direct that the vehicle be not used on any road, and that notice shall continue in force until the vehicle has been made to comply with the provisions of any such regulations as aforesaid:

35 “Provided that any such notice may be subject to a condition to the effect that the vehicle may continue to be used to reach any specified place for repair or may continue to be used for a given time or under limitations as to speed or route or otherwise.

40 “(3) Every person to whom any direction is given pursuant to this section shall comply with that direction, and no person shall do any act which is for the time being forbidden pursuant to this section:

“Provided that no person shall be deemed to have committed a breach of this subsection in so far as it relates to a prohibition under subsection (2) of this section, unless the Court is satisfied that the constable or traffic officer had reasonable grounds for believing that in all the circumstances of the case the prohibition was necessary in the interests of the safety of the driver or person in charge of the vehicle or of any other person or of the public. 5

“68c. Drivers and pedestrians to comply with traffic directions—Where any constable in uniform, or any traffic officer wearing a distinctive cap, hat, or helmet with a badge of authority affixed thereto, is for the time being engaged in the regulation of traffic on a road— 10

“(a) Every person using any vehicle or riding or driving any animal on the road shall stop the vehicle or animal, as the case may be, or cause it to proceed in or keep to a particular line of traffic or direction, when directed so to do by the constable or traffic officer: 15

“(b) No pedestrian shall proceed across the road in contravention of a direction to stop given by the constable or traffic officer, either to pedestrians or to pedestrians and other traffic.” 20

“68d. Jurisdiction of traffic officers—Any power or authority conferred on a traffic officer by this Act or by any regulations or bylaws for the time being in force under this Act shall be exercisable as follows: 25

“(a) A traffic officer who is an officer of the Department shall be entitled to exercise any such power or authority on any road: 30

“(b) A traffic officer who is not an officer of the Department shall be entitled to exercise any such power or authority—

“(i) On any road which is under the control of the local authority or other authority by which he has been appointed as a traffic officer: 35

“(ii) On any other road, for the purpose of identifying or arresting the driver or person in charge of the motor vehicle or of identifying the motor vehicle or of preventing the continuation of the offence, where he has good cause to suspect that an offence against this Act or any regulations or bylaws in force under this Act has been committed by the driver or person in charge of any 40

motor vehicle within the district of that local authority or, as the case may be, in the area under the control of that other authority, and it is necessary for him to proceed beyond that district or area for that purpose.”

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(2) Regulation 5 of the Traffic Regulations 1956 is hereby revoked.

9. Use of hovercraft on roads—(1) The principal Act is hereby further amended by inserting, after section 71, the following heading and section:

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“Hovercraft

“71A. (1) No person shall use any hovercraft on or over any road otherwise than pursuant to the authority of and in conformity with the written permission of the Commissioner granted under this section.

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“(2) The Commissioner may from time to time give written permission, whether unconditionally or upon or subject to such conditions as he thinks fit, for the use of any hovercraft on or over any road.

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“(3) Any such permission may be granted for the use of any hovercraft on or over roads generally or any specified road or roads and for such period as the Commissioner thinks fit, and may at any time be varied or revoked in writing by the Commissioner.”

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(2) Section 2 of the principal Act is hereby amended by inserting in subsection (1), after the definition of the term “heavy traffic”, the following definition:

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“‘Hovercraft’ means a contrivance propelled by mechanical power which is designed to be supported by and to move on a cushion of air created by downward thrust from its motor:”.

10. Removal of abandoned vehicles from roads—Section 76 of the principal Act is hereby amended by inserting, after subsection (3A) (as inserted by section 16 of the Transport Amendment Act 1966), the following subsections:

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“(3B) A local authority which has removed a motor vehicle from a road pursuant to subsection (1) of this section shall, where it is practicable so to do, give notice to the last registered owner and the immediately preceding registered owner of the motor vehicle of its intention to sell the vehicle.

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“(3c) Before applying to a Magistrate’s Court under subsection (3A) of this section for an order authorising it to take possession of and remove a motor vehicle, a local authority shall, where it is practicable to do so, give notice to the last registered owner and the immediately preceding registered owner of the motor vehicle of its intention to apply to the Court.” 5

11. Regulations as to design and construction of motor vehicles—Section 77 of the principal Act is hereby amended by inserting in subsection (1), after paragraph (e), the following paragraph: 10

“(ee) Prescribing matters in relation to the design and construction of motor vehicles manufactured, assembled, or modified in New Zealand and intended to be used on roads, or of any specified classes of such motor vehicles, or of such motor vehicles manufactured, assembled, or modified by any specified classes of persons, or in relation to any components or equipment manufactured in New Zealand for use in motor vehicles:”. 15 20

12. Applications for taxicab service licences—Section 121 of the principal Act is hereby amended by adding the following subsection:

“(3) Where the application is made by a company, the Licensing Authority shall take into account the personal character and fitness of the directors and general manager of the company and of such other responsible officers of the company as the Licensing Authority thinks fit.” 25

13. Passenger service carried on by licensee under contract with local authority or public body—The principal Act is hereby further amended by inserting, after section 185, the following section: 30

“185A. (1) Where any local authority or public body proposes to enter into a contract with any licensee of a passenger service to provide the licensee with financial assistance in respect of any service carried on or to be carried on either partly or wholly in the district of the local authority or public body, as the case may be, and the parties to the proposed contract are unable to agree as to the extent of the assistance to be provided, the Commissioner shall, on the application of the parties to the proposed contract, determine the extent of financial assistance to be provided by the 35 40

local authority or public body under the proposed contract, and, subject to the provisions of subsection (2) of this section, the determination of the Commissioner shall have effect for the purposes of the proposed contract as if it had been agreed to by all the parties thereto.

5 “(2) The provisions of this Part of this Act, as far as they are applicable and with the necessary modifications, shall apply with respect to every determination of the Commissioner under this section as if it were an order of the Commissioner under this Part prescribing charges for the carriage of passengers.

10 “(3) In this section the term ‘public body’ includes the Auckland Regional Authority.”

15 **14. Repeal**—Section 188 of the principal Act is hereby amended by repealing subsection (11).

15. Personation or obstruction of traffic officers—(1) The principal Act is hereby further amended by inserting, after section 192, the following section:

“192A. Every person commits an offence who—

20 “(a) Not being a traffic officer, by words, conduct, or demeanour pretends that he is a traffic officer or puts on or assumes the dress, name, designation, or description of a traffic officer; or

25 “(b) Wilfully obstructs, or incites or encourages any person to obstruct, any traffic officer in the execution of his duty.”

(2) Paragraphs (e) and (f) of regulation 131 of the Traffic Regulations 1956 are hereby revoked.

16. Failure to carry out contract of hiring a taxicab—
30 Section 193 of the principal Act is hereby amended by repealing subsection (1B) (as inserted by section 12 of the Transport Amendment Act (No. 2) 1965), and substituting the following subsection:

35 “(1B) Where proceedings are taken against a taxicab organisation for an offence against any regulations under this Act of failing to ensure that a contract of hiring of a taxicab accepted by it to be carried out by one of its members or by a licensee of a taxicab service who has entered into a continuing agreement with the organisation to participate in its
40 communication facilities and any roster of duties provided by the organisation is carried out, it shall be a defence if the defendant proves that it had a reasonable excuse for that failure.”

17. Proof of previous convictions—The principal Act is hereby further amended by inserting, after section 197, the following section:

“197A. (1) Where any person is charged in a Magistrate’s Court with any offence under this Act or any regulation or any bylaw made or continuing in force under this Act, the informant may serve on the defendant a notice in writing specifying any alleged previous conviction proposed to be brought to the notice of the Court in the event of his conviction of the offence charged. 5 10

“(2) Any such notice shall specify—

“(a) The date of the alleged conviction; and

“(b) The Court in which the conviction was entered; and

“(c) The nature of the offence; and

“(d) The sentence of the Court in respect of the conviction (including any order of the Court made on the conviction); and 15

“(e) A statement to the effect that the Court may, where the defendant is not present in person before the Court and has not notified the Court in writing that he disputes any such conviction or any material details in connection with the conviction, in the event of the conviction of the defendant take into account any conviction specified in the notice as if the defendant had been present in person and admitted it. 20 25

“(3) In the event of the conviction of the defendant and upon proof that the notice was served on him not less than seven clear days previously, the Court may, if the defendant is not present in person before the Court and has not notified the Court in writing that he disputes the conviction or any material details in connection with the conviction, take into account any conviction specified in the notice and the particulars concerning it as specified in the notice, as if the defendant had been present in person and admitted the conviction and those particulars. 30 35

“(4) Service on the defendant of any notice under this section shall be effected in the manner specified in section 24 of the Summary Proceedings Act 1957, and the provisions of that section shall apply to such service.” 40