

**1995**

**AUSTRALIAN CAPITAL TERRITORY LEGISLATIVE ASSEMBLY**

**MOTOR VEHICLES (DIMENSIONS AND MASS)  
(AMENDMENT) BILL 1995/6**

**EXPLANATORY MEMORANDUM**

**Circulated by Authority of the Minister for Urban Services  
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# **MOTOR VEHICLES (DIMENSIONS AND MASS) (AMENDMENT) BILL 1995<sup>b</sup>**

## **EXPLANATORY MEMORANDUM**

### **Outline**

The Motor Vehicles (Dimensions and Mass) (Amendment) Bill ("the Bill") makes a number of amendments to the *Motor Vehicles (Dimensions and Mass) Act 1990* ("the Act"). The Bill is closely related to the Motor Traffic (Consequential Provisions) Bill which makes amendments consequential on the Bill.

These amendments are necessary for the ACT to implement agreed national standards for regulation of mass and dimensions of heavy vehicles. The Bill is one further step in the development of uniform road transport legislation as agreed by the Ministerial Council for Road Transport. The intention is for the ACT and other jurisdictions to eventually repeal local legislation on mass and dimensions and replace it with template legislation passed by the Commonwealth for application in the ACT. This template legislation is part complete and consists of the *Road Transport Reform (Mass and Loading) Regulations* (Cth) and the *Road Transport Reform (Oversize and Overmass Vehicles) Regulations* (Cth) made under the *Road Transport Reform (Vehicles and Traffic) Act 1993* (Cth). These regulations contain agreed standards on dimensions and mass, however, the regulations are not sufficiently complete for application in the ACT at this stage. In the interim, these amendments enable the ACT to adopt elements of these regulations as appropriate and keep in step with any further changes to these standards.

The Bill amends several definitions in the Act so that the terms used in the Act are, as far as practicable, consistent with terms and definitions which have been agreed for national use as a result of the road transport reform process.

The Bill makes provision for the Minister to prescribe dimension limits on vehicles by determination. For example, the Minister will be able to determine that a combination consisting of prime mover and a semi-trailer shall not exceed 19 metres in length. Currently dimension requirements are fixed in provisions in the Act itself. This amendment gives the Minister sufficient flexibility to adopt agreed national standards on dimensions and make necessary alterations should those standards change. The Act currently provides for the Minister to set limits on the mass that vehicles may carry by determination. A determination of the Minister is a disallowable instrument.

The Act provides for the Registrar to exempt individual vehicles from requirements of the Act on application. The Bill inserts a new provision to also allow exemption of classes of vehicles by the Minister. The ability to exempt classes of vehicles rather than only individual vehicles, is central to the national road transport reform process. The provision allows the Minister to exempt classes of vehicles subject to conditions in accordance with national standards. The intention is to provide exemptions for classes of vehicles only

where such a general exemption would not present a significant safety risk for persons or property. An exemption notice is also a disallowable instrument. It is estimated that 60% of vehicles which currently require individual permits in the ACT will be dealt with by exemption notice.

A permit will continue to be required for those few vehicles which because of their unusual size or design present a significant safety risk. These vehicles would only be allowed in the ACT under an individual permit for specific journey(s). Vehicles of this nature would require special analysis and supervision on an individual basis and in many cases will require particular safety measures such as a police escort.

In most jurisdictions, it is common practice for enforcement proceedings to be taken against the owner of a vehicle in breach of standards rather than against the driver. This practice recognises the fact that in many cases it is the owner and not the driver who is primarily responsible for the breach. The Act is deficient in this respect because it does not provide for the service of infringement notices ("on the spot fines") to be served on owners as the notices may only be served on drivers. The Bill amends the Act to allow for service of infringement notices on owners as well as drivers. The Bill also revises the infringement notice scheme in existing section 46 in accordance with guidelines developed by the Attorney-General's Department in response to Report No. 1 of the Standing Committee on Legal Affairs which inquired into the Crimes (Amendment) Bill 1993. The new infringement notice scheme is in new Part VIA.

In addition, the Bill revises a number of penalty provisions in the Act as part of a general review of criminal penalties in ACT legislation. Some penalties are to be increased and also new penalties for corporations are introduced where appropriate.

### **Financial Impact Statement**

The Bill will result in some costs and benefits. The Bill will remove the need to issue some 60% of individual permits currently processed. It is estimated that this will reduce the revenue received from applications for permits by approximately \$58,000 per annum. The National Road Transport Commission estimates that, in addition to saving the cost of these permit fees, the measure will save the transport industry approximately \$74,000 per annum in administrative costs associated with obtaining the permits.

Details of the Bill are as follows.

#### **Clause 1 - short title**

Clause 1 provides for the citation of the Bill once enacted as the *Motor Vehicles (Dimensions and Mass) (Amendment) Act 1995*.

#### **Clause 2 - commencement**

Clause 2 provides for the commencement of the Act.

#### **Clause 3 - Principal Act**

Clause 3 provides that for the purposes of the Bill, the "Principal Act" is the *Motor Vehicles (Dimensions and Mass) Act 1990*.

#### **Clause 4 - interpretation**

Clause 4 amends existing section 3 of the Act, the interpretation section, so that the terms of the Act are as far as practicable consistent with terms now accepted for national usage as a result of the road transport reform process. The terms are generally consistent with the *Road Transport Reform (Mass and Loading) Regulations* (Cth) and the *Road Transport Reform (Oversize and Overmass Vehicles) Regulations* (Cth) made under the *Road Transport Reform (Vehicles and Traffic) Act 1993*.

Clause 4 inserts new definitions of the following new terms: "B-double", "combination", "dolly", "exemption notice", "GCM", "GVM", "prime mover", "quad axle group", "registration authority", "road train", "single axle group" and "wheelchair". The clause amends the definitions of the following terms: "axle", "axle group", "determined", "semi-trailer", and "vehicle".

The definition of "vehicle" is amended to make it clear that the term "vehicle" does not include trains, trams or wheelchairs.

The new definitions of "GCM" and "GVM" are important definitions. These new definitions replace existing definitions of "manufacturer's gross combination mass" and "manufacturer's gross vehicle mass" respectively. The new definitions take account of the possibility that the manufacturer may not have specified a maximum mass, the specification may have been lost or the vehicle may have been modified so that the specification is no longer appropriate. The new definitions provide that in such situations, the maximum mass for the vehicle or combination of vehicles may be specified by the Registrar of Motor Vehicles in the ACT if the vehicle is registered here or by the registration authority in another jurisdiction if the vehicle is registered interstate. The Motor Traffic (Consequential Provisions) Bill 1995, which is part of this package, amends the *Motor Traffic Act 1936* to allow the Registrar to specify a maximum

mass if the manufacturer's specification does not exist or cannot be found. Refer to clause 7 of the Motor Traffic (Consequential Provisions) Bill.

### **Clause 5 - application of Act to B-doubles and road trains**

Clause 5 amends section 4 to make it clear that the Act applies to road trains and B-doubles. This amendment is made in conjunction with new section 37 in new Part V inserted by clause 18.

New section 37 prohibits the driving of an articulated vehicle with a trailer attached and also of a B-double or a road train. The section is an extension and clarification of the scope of existing section 34 consistent with the premise that particularly large vehicles such as road trains and B-doubles should not be allowed in the ACT except under particular conditions.

The intention is to allow B-doubles and road trains into the ACT but only under an exemption notice or permit which exempts the driver from compliance with new section 37. The B-double or road train would then be required to comply with any conditions set out in the exemption notice or permit as well as any other applicable provisions of the Act.

### **Clause 6 - identity cards**

Clause 6 is one of several which change the expression of the fine for a criminal offence from a dollar amount to penalty units. 1 penalty unit is the equivalent of \$100.

### **Clauses 7, 8 - Minister to prescribe dimensions of vehicles by determination**

Existing sections 9 to 16, 22 and 23 set specific limits on dimensions of various types of vehicles and vehicle parts. For example, subparagraph 9(1)(e) provides that the length of an articulated vehicle other than a bus shall not exceed 17.5 metres (the national standard is now 19 metres).

The combined effect of clauses 7, 8, 9, 12 and 29 is to repeal the fixed dimension requirements in the Act and provide for the Minister to set and change dimension requirements by determination. Clause 7 repeals existing section 9 and substitutes new section 9, clause 8 amends existing section 10, clause 9 repeals sections 11 to 16 and clause 12 repeals sections 22 and 23.

The sections which limit the dimensions of vehicles are new section 9 and amended section 10. New section 9 requires vehicles to not exceed dimensions (other than width) prescribed by determination under section 57. Section 10 as amended, requires that vehicles not exceed the width prescribed by determination under section 57.

Width and non width dimension requirements are set out in separate provisions in order to provide for different criminal penalties. Clause 18, along with other amendments, inserts new sections 34 and 35 which provide for penalties for breach of new sections 9 and 10. New section 34 establishes a penalty for breach of width requirements which is greater than the penalty set by new section 35 for breach of dimension (other than width) requirements. This distinction is necessary because a breach of a width requirement presents a particular risk for other road users.

Clause 29 amends section 57 to provide for the Minister to prescribe dimensions of vehicles by determination.

### **Existing mass and design requirements are mostly unchanged**

Existing subsection 57(2) provides for the Minister to determine amounts of mass for the purposes of the Act. This subsection is unchanged.

Existing section 24 provides that the mass carried by a vehicle (with or without load and trailer) shall not exceed an amount determined by the Minister or other specified amount whichever is the least. Existing section 25 provides that the mass carried by a wheel and the load of an axle or axle group shall not exceed the determined amount. These sections are unchanged except for amendments to the terms used under clause 4.

Existing sections 17 to 21 make various requirements concerning the design features of vehicles. These existing sections except for a minor amendment to section 17 and amendments to section 20 are unchanged. Refer to clause 10 for amendments to existing section 17 and to clause 11 for amendments to section 20.

### **Clause 9 - repeal**

Clause 9 repeals sections 11 to 16 of the Act concerning dimension requirements. These sections are made obsolete by new sections 9, 10 and 57 concerning dimensions. Refer to comments in relation to clauses 6 and 7.

### **Clause 10 - required axle groups**

Clause 10 removes the words "of vehicles" in existing subparagraph 17(1)(b) as these words are no longer necessary because of the new definition of "combination" which clause 4 inserts.

### **Clause 11 - suspension systems**

Existing section 20 requires axles and axle groups to be connected to an "acceptable suspension system". Clause 11 amends section 20 to simplify and update this requirement. These amendments retain all the core requirements for suspension systems.

Clause 11 amends section 20 so that the same definition of "acceptable suspension system" applies to both single axles and axles in an axle group. The clause then adds a special requirement for axles in an axle group (other than twin-steer axle group). New subsection 20(1A) requires axles in an axle group (other than a twin-steer group) to be connected to a system which allows the axles to share the load between themselves.

The reference to "manual" in subparagraph 20(2)(b) is repealed because it does not take account of quad axle groups and contains details which are unduly complex and unnecessary.

### **Clause 12 - repeal**

Clause 12 repeals existing sections 22 and 23 which are to be replaced by new sections 9 and 57. Refer to comments in relation to clauses 6 and 7.

### **Clause 13 - gross mass**

Clause 13 makes a number of consequential amendments. Subclause 13(a) substitutes "GVM" for "manufacturer's gross vehicle mass" and subclause 13(c) substitutes "GCM" for "manufacturer's gross combination mass". Refer to new terms "GVM" and "GCM" in clause 4. Subclause 13(d) removes the words "of vehicles" made unnecessary because of the new definition of "combination".

Subclause 13(b) amends existing subsection 24(2) to make it clear that this subsection applies to a combination consisting of a motor vehicle, semi-trailer and trailer which combination is a road train.

### **Clause 14 - permits**

Existing sections 27 to 31 and 39 concern permits for vehicles to be driven notwithstanding that they contravene requirements of the Act. Existing section 27 provides for the Registrar to issue a permit on application to allow a vehicle to be driven in contravention of one or more of existing sections 9 to 26 (Parts I and II) and section 34 (to become new section 37). Parts I and II of the Act consist of mass, dimension, design, and tyre pressure requirements and existing section 34 prohibits the driving of an articulated vehicle with a trailer. Existing section 39 (new section 40A) provides that where these requirements are not complied with, there is no offence if the conduct was allowed under a permit.

The existing permit process will continue to operate but will do so alongside a new exemption notice system to be introduced by clause 17. The new exemption notice system is to provide for the Minister to exempt classes of vehicles from requirements (Parts I and II and new section 37) of the Act. The permit process will continue to apply to individual vehicles on application. The two processes are to be complementary. The permit system will be used but

only for particular journeys of exceptional vehicles which should not operate in the ACT except upon individual assessment and under particular conditions. The exemption notice system will be used to allow classes of vehicles into the ACT subject to conditions of the exemption notice developed for national application.

Clause 14 amends existing section 27 to allow the Registrar to issue a permit to drive a vehicle in contravention of a condition of an exemption notice. New subsection 27(1A) provides that the Registrar may issue a permit for a particular person to couple a trailer to an articulated vehicle in contravention of new section 37. This permit attaches to a person and not a vehicle.

#### **Clause 15 - issue of permit subject to conditions**

Clause 15 amends section 30 to further specify the types of conditions which the Registrar may impose on a permit. Clause 17 which introduces the exemption notice scheme, inserts new section 31B which provides that the types of conditions which the Minister may impose on exemption notices are the same as those which a Registrar may impose on a permit which are listed in section 30.

#### **Clause 16 - factors related to issue of permit**

Clause 16 amends existing subparagraph 31(b) as a consequence of the repeal of sections 9, 10, 11, 16, 23 and substitution of new section 37 for existing section 34. The substance of subparagraph 31(b) is unchanged.

#### **Clause 17 - exemption notices**

Clause 17 adds new sections 31A, 31B and 31C which provide for an exemption notice system to allow exemption of classes of vehicles from requirements of the Act subject to any specified conditions.

New subsection 31A(1) provides for the Minister to exempt vehicles from any or all of the requirements in Parts I and II of the Act by notice.

New subsection 31A(2) similarly provides for exemption of classes of persons from the prohibition on driving an articulated vehicle with a trailer attached, B-doubles or road trains in contravention of new section 37.

Exemptions of vehicles by notice under new subsections 31A(1) or 31A(2) are "exemption notices" - refer to clause 4. New subsection 31C(1) provides that an exemption notice shall contain information on the class of vehicles to which the notice applies, the provisions of the Act from which exemption is given, the conditions applying and the period for which the notice operates.



New subsection 31C(2) establishes the factors which the Minister must consider before issuing an exemption notice. The Minister must consider the risk to persons and property and the extent to which the use of the vehicle is in the public interest. Note that these two factors are incorporated by reference to existing section 31 which contains the factors which the Registrar must consider when deciding whether to issue a permit.

New subsection 31B provides for the Minister to issue an exemption notice subject to conditions specified in the notice. The types of conditions which may be applied are the same as those which the Registrar may apply in issuing a permit on application. These possible conditions are listed in section 30. The types of conditions can be broken down into the following categories:

- a) new mass limits;
- b) new dimension (other than width) limits;
- c) new width limits;
- d) limits on speed, times of travel and routes which the vehicle may take;  
and
- e) other matters concerning safety or property.

An exemption notice may operate in the following way. The Minister may issue an exemption notice which exempts semi-trailers from compliance with the limits on mass set by the Act. The exemption notice may be issued with conditions requiring semi-trailers to comply with new (less stringent) limits on mass and that such vehicles may only travel on certain routes and at certain times of day. The restrictions on mass, times and routes are all conditions of the exemption notice.

New subsection 31A(3) requires the exemption notice to be notified in the Gazette and also requires the exemption notice to be notified in a newspaper within 21 days of Gazettal. This second requirement is to help inform truck drivers and owners whether an exemption notice and conditions apply to the vehicle that they operate. The provision leaves scope for publication in newspapers outside the ACT should this be considered necessary. New subsection 31A(5) requires the newspaper item to note the date on which the exemption notice was Gazetted, the class of vehicles to which the exemption notice applies, the date the exemption notice commenced operation and where a copy of exemption notice conditions can be obtained.

New subsection 31A(6) provides that an exemption notice is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

## **Clause 18 repeals Part V and substitutes a new Part V - Offences**

Existing Part V of the Act contains provisions which make it an offence to contravene the mass, dimension and design requirements of the Act. New Part V retains these offences with some modifications and groups them into the following categories of offences:

- a) mass (breach of mass requirements) - new section 33;
- b) width - new section 34;
- c) dimensions other than width - new section 35;
- d) design and tyre pressure - new subsections 36(1) and (2) respectively;
- e) breach of conditions of a permit or exemption notice not related to mass or dimensions - new subsection 36(3);
- f) use of trailer with articulated vehicle - new section 37;
- g) production of a permit or copy of permit - new section 38;
- h) owners- offences - new section 39; and
- i) third persons - offences - new section 40.

In this approach most of the mass offences are grouped into one section, most of the width offences into another section and so on. Offences by owners are grouped into new section 39.

### **Interpretation - driving a vehicle**

New section 32 applies to any offence provision in new Part V which refers to driving a vehicle. The new section is to put beyond any doubt that a reference to the action of driving a vehicle is a reference to driving the motor vehicle and of any other vehicles which are towed by the motor vehicle. This provision makes it clear that not only the motor vehicle but also the trailers in tow must comply with the mass, dimension and other requirements of the Act.

### **New sections 33, 34, 35 - mass, dimension and design offences**

New subsections 33 (1) and (2) make it an offence for a driver to exceed mass limits. The penalty is unchanged at 30 units.

New subsection 33(3) makes it an offence for a driver to exceed mass limits which are set as a condition of a permit or exemption notice. The offence of breach of a mass condition of an exemption notice is a new offence. The penalty is 30 units.

New section 34 makes it an offence for a driver to exceed width limits in breach of new section 10.

New subsection 34(1) increases the penalty for exceeding width from \$1000 to \$2000 (20 penalty units). This increase is necessary because breach of width requirements presents a greater danger to other road users than breach of other dimension requirements.

New subsection 34(2) makes it an offence to exceed width limits set as a condition of a permit or exemption notice. The penalty is 20 units.

New subsection 35(1) makes it an offence for a driver to exceed dimension (other than width) limits in breach of new section 9. The penalty is 10 units.

New subsection 35(2) makes it an offence, with a penalty of 10 units, to exceed dimension (other than width) limits set as a condition of a permit or exemption notice.

New section 36 makes it an offence for a driver to contravene design or tyre pressure requirements and conditions of a permit or exemption notice not related to mass or dimensions.

New subsection 36(1) makes it an offence for a driver to breach a design requirement in existing section 17, 18, 19, 20 or 21. The penalty is unchanged at 10 units.

New subsection 36(2) makes it an offence for a driver to exceed the tyre pressure limits in existing section 26. The penalty is unchanged at 10 units.

New subsection 36(3) makes it an offence for a driver to contravene a condition of a permit or exemption notice not related to mass or dimensions. Breach of a condition of an exemption notice is a new offence. The penalty is 10 units.

#### New sections 37 - Driving articulated vehicle with a trailer attached

New section 37 provides that it is illegal, with a penalty of 10 units, to drive B-doubles or road trains in the ACT. The intention is to allow these vehicles to travel in the ACT only under an exemption notice or permit and with particular conditions consistent with national standards. Refer to clause 5.

#### New section 38 - production of permit on request

New section 38 requires the driver of a vehicle, on request by an inspector, to produce either the original permit or a copy of the original. A penalty of 5 units applies for failure to do so. The inspector may, in practice, check the validity of a copy by contacting the central office and checking the permit number.

### New section 39 - offence by owners

New section 39 provides that a contravention of a mass, dimension or design requirement of Part II of the Act by the driver shall constitute an offence by the owner except in the two following circumstances. There is no offence if the driver is also the owner. There is also no offence if the conduct of the driver does not constitute an offence because of the operation of defence provisions in new sections 40A and 40B. The owner may be an individual or a body corporate.

New subsection 39(1) provides that a contravention of a mass requirement by the driver shall constitute an offence by the owner (penalty 30 units, body corporate 150 units). New subsection 39(2) similarly provides for owner offences in relation to width (penalty 20 units, body corporate 100 units). New subsection 39(3) similarly provides for owner offences in relation to dimensions (other than width) (penalty 10 units, body corporate 50 units). New subsection 39(4) establishes owner offences in relation to design and tyre pressure requirements (penalty 10 units, body corporate 50 units). New subsection 39(5) establishes owner offences in relation to contravention of a condition of a permit or exemption notice not related to mass or dimensions (penalty 10 units, body corporate 50 units).

New subsection 39(6) establishes a new offence which does not currently exist in the Act. If a driver commits an offence against section 37 and the driver is not also the owner, then the owner is guilty of an offence under new subsection 39(6) (penalty 10 units, body corporate 50 units). This new offence recognises that the owner of the vehicle may be responsible for the illegal action if the owner requires the driver to attach a trailer in contravention of section 37.

### New section 40 - offences by persons other than owners or drivers

New section 40 makes it an offence for a person other than an owner or driver who causes or permits a vehicle to be driven in contravention of mass, dimension, design or tyre pressure requirements other than requirements of a permit or exemption notice. The penalty is 5 units.

### New sections 40A and 40B - Defences

New sections 40A and 40B are defence provisions. New section 40A provides that there is no offence if there exists an exemption notice or permit which permits the conduct which would otherwise be an offence. New section 40B provides general defences relating to reasonable mistake, reasonable reliance on information provided by another person and an act or default of another person where, in each case, the defendant took reasonable precautions and exercised due diligence.

### Exemption Notices - offence of breach of condition of exemption notice

Clause 18 introduces a new type of offence, that is, the offence of breach of a condition of an exemption notice. These offences are established by new subsections 33(3), 34(2), 35(2), 36(4), and new section 39. These sections also provide that a breach of a permit is an offence.

It is important to note that a permit or exemption notice continues to operate notwithstanding a breach of the exemption notice or permit. A breach therefore has the following effect. A person who breaches a condition of an exemption notice/permit commits an offence (subject to defence provisions set out in new sections 40A, 40B). The offence is a breach of the exemption notice/permit condition. Notwithstanding the breach, the exemption notice/permit continues to operate. Therefore, there is no additional offence for breach of a requirement of the Act as the relevant conduct is permitted by the exemption notice/permit (refer to new section 40B). For example, the Minister may make a determination that the maximum mass for vehicles is 20 tonnes. The Minister may subsequently issue an exemption notice to the effect that a particular class of vehicles may have a mass of 25 tonnes with the condition that they travel only on specified roads. If the vehicle travels on the wrong roads then the driver commits an offence of breach of the exemption notice. However, the driver is not in breach of the determination requiring a maximum mass of 20 tonnes because the exemption notice allowing 25 tonnes continues to operate.

### **Clause 19 - inspection of vehicles**

Clause 19 amends section 41 to allow an inspector to require the production of, inspect and take extracts from documents or business records relevant to the standards applying to the vehicle and to the business purpose of the journey. These additional powers are necessary to allow the inspector to properly ascertain the standards applying to the vehicle and determine whether the vehicle complies with those standards.

### **Clause 20 - offences related to section 43 notice**

Clause 20 amends existing section 44 by increasing the maximum penalty from \$3000 to \$5000 (50 penalty units).

### **Clause 21 - repeal of existing section 46**

Clause 21 repeals existing section 46 which is to be replaced by new "Part VIA Infringement Notices" under clause 24.

## **Clause 22 - failure to comply with directions**

Existing section 47 makes it an offence for a person to refuse a direction of an inspector given under existing "Part VI—Inspection of Vehicles". Clause 22 amends the penalty provision by an increase in the maximum penalty from \$3000 to \$5000 (50 penalty units) and by insertion of a maximum penalty for a body corporate of \$25000 (250 penalty units).

## **Clause 23 - obstruction of inspector**

Existing section 48 makes it an offence for a person to obstruct an inspector in the exercise of his or her powers under the Act. Clause 23 amends the penalty provision by increasing the maximum penalty for a natural person from \$3000 to \$5000 (50 penalty units) or 6 months imprisonment or both. Clause 23 also inserts a maximum penalty for a body corporate of \$250000 (250 penalty units).

## **Clause 24 - New part VIA - Infringement Notices**

Clause 24 inserts new "Part VIA—INFRINGEMENT NOTICES".

The new Part VIA makes a number of significant changes to the existing infringement notice scheme but preserves the basic concept of the scheme. The most important new features are as follows:

- a) owners as well as drivers may be served an infringement notice;
- b) the amounts of the penalties in new Part VIA attaching to an infringement notice "on-the-spot-fine" are presented in table form in new Schedule 2;
- c) the Registrar must serve a "final infringement notice" if there is no response to the initial infringement notice;
- d) persons who receive an infringement notice may apply to the Registrar for withdrawal of the notice on prescribed grounds;
- e) once an infringement notice issues, there may be no prosecution of the alleged offence until the relevant periods for payment of the on-the-spot-fine expire without payment been made; and
- f) there is specific provision for pensioners to apply for an extension of time for payment of the on-the-spot-fine.

### **New section 48A - interpretation section- prescribed offences - on-the-spot-fines**

New section 48A is the interpretation section for new Part VIA. The term "notice of offence" is replaced by "infringement notice" and there is now a "final infringement notice".

The infringement notice scheme applies only to a "prescribed offence". The prescribed offences, listed in column 2 of new Schedule 2, are contravention of sections 33, 34, 35, 36, 37 and 39. The prescribed offences include contravention of new section 39 which sets out offences by owners of vehicles. The infringement notice scheme therefore applies to owners as well as drivers. An action by a driver may therefore result in an infringement notice issuing to both the driver of the vehicle and (provided the driver is not also the owner) the owner. For example, if a driver allegedly commits an offence of exceeding the mass limits for the vehicle, then an infringement notice may be served on the driver for alleged contravention of new section 33 and also on the owner (provided the owner is not also the driver) for alleged contravention of new subsection 39(1). It is important to note that the one action of the driver results in not one but two separate alleged offences by the driver and the owner. Whether the inspector serves a notice on the driver, the owner or both is a matter for judgment in the circumstances of the particular case.

New Part VIA does not provide for service of infringement notices on third persons who allegedly commit an offence under new section 40.

The on-the-spot-fine is the penalty to be paid on receiving an infringement notice in order to avoid prosecution for the alleged offence. Column 2 of Schedule 2 lists all of the offences which are subject to infringement notices and Column 4 sets out the on-the-spot-fine which must be paid to discharge liability for the alleged offence. The amount of the fine varies according to the nature of the alleged offence. The prescribed offences and the fines are set out in 4 groups, which are listed as items 1, 2, 3 and 4 in column 1. Item 1 includes all of the prescribed offences relating to mass, item 2 includes those relating to width, item 3 includes those concerning dimensions (other than width) and item 4 includes those relating to design, tyre pressure and conditions of exemption notices or permits not related to mass or dimensions.

The table establishes a gradation of penalties for the mass or dimension prescribed offences. The size of the on-the-spot-fine which a person must pay for alleged contravention of these offences depends on the extent to which the person exceeds the relevant mass or dimension limit. For example, in relation to mass, the fine for exceeding the mass limit by less than 5% is \$100, the fine for exceeding the limit by more than 20% is \$500.

In order to determine which is the relevant mass or dimension limit by which to assess the amount of the on-the-spot-fine it is necessary to keep in mind the following point. A permit or exemption notice continues to operate notwithstanding its breach. In many cases a permit or exemption notice will exempt a driver from compliance with a mass limit and will set a new mass limit as a condition of the permit or exemption notice. For example, the mass limit of section 24 may be 5 tonnes, the new mass limit set by condition of a permit may be 6 tonnes. In this case, if the vehicle carries 6.5 tonnes contrary to the permit, the prescribed offence is breach of the permit and the relevant standard is the 6 tonne condition of the permit. The 5 tonne limit under section 24 is not



relevant because the permit exempted the vehicle from this requirement and continues to so exempt the vehicle notwithstanding the breach.

#### New section 48B - infringement notices

New subsection 48B(1) provides that an inspector may serve an infringement notice if the inspector believes on reasonable grounds that the person has committed a prescribed offence.

New subsection 48B(2) requires the infringement notice to contain certain information including the nature of the alleged offence, the amount of the on-the-spot-fine and the time to pay it. New subsection 48B(2) contains a new requirement that the notice contain a statement that failure to pay may result in prosecution of the offence in court and details on how to seek a withdrawal of the infringement notice or an extension of time to pay.

#### New section 48C - final infringement notices

Existing provisions provide for only one infringement notice to be served and if the on-the-spot-fine is not paid within the required time, then the alleged offence may be prosecuted in Court. New section 48C introduces a second notice, that is, a "final infringement notice". The function of the final infringement notice is to act as a further reminder of the possibility of prosecution if the fine is not paid and to provide a further period in which to pay the fine.

In summary, new subsection 48C(1) provides that if a person who receives an infringement notice does not pay the on-the-spot-fine within the required period then the Registrar may serve a final infringement notice. The required period for payment is 28 days or such extended period as the Registrar may allow under new subparagraph 48F(4)(b) or new section 48G.

New subsection 48C(2) provides that the final infringement notice is to contain the same information on the nature of the offence and consequences of failure to pay the on-the-spot-fine as the initial infringement notice. In addition, the final infringement notice must state that the person must pay the fine and also a determined fee (similar to a late fee), within 14 days of receiving the final infringement notice in order to avoid prosecution.

#### New section 48D - discharge of liability for prescribed offences

New subsections 48D(1) and 48D(2) provide that the withdrawal of an infringement notice by the Registrar and also the payment of the on-the-spot-fine shall prevent any further proceedings in respect of the alleged offence.

New subsection 48D(3) provides that purported payment by a cheque which is not honoured shall not constitute payment for the purposes of the infringement scheme.



### New sections 48E and 48F - withdrawal of infringement notices

New sections 48E and 48F provide for withdrawal of the notice on certain grounds.

New section 48E provides that a person who receives an infringement notice or final infringement notice may apply in writing to the Registrar for withdrawal of the notice. The application must be made within the "relevant period", that is, the required time for payment. New subsection 48E(2) provides that a person may not apply more than once for withdrawal of a notice in respect of an alleged offence.

New subsection 48F(1) provides that the Registrar may withdraw the infringement notice or final infringement notice if he or she is satisfied that:

- a) the applicant did not commit the offence;
- b) the applicant had a reasonable excuse for committing the offence; or
- c) it would be unreasonable to prosecute in the circumstances.

New subsection 48F(2) requires the Registrar to give written notice of a decision to withdraw an infringement notice or final infringement notice. New subsection 48F(3) requires this notice to state that no further proceedings will take place, the affected person shall have no liability for the alleged offence and no conviction shall be recorded.

New subsection 48F(4) requires the Registrar to give written notice of a decision to refuse an application for withdrawal of an infringement notice or final infringement notice. If the Registrar refuses to withdraw an infringement notice, the Registrar must extend the time for payment of the on-the-spot-fines by 28 days commencing on the date of the notice of refusal of the application. If the Registrar receives an application for withdrawal of a final infringement notice and refuses to do so, the Registrar must extend the time for payment by 14 days.

New subsection 48F(5) provides that if the Registrar does not give the appropriate notice of the decision to accept or refuse an application for withdrawal of an infringement notice or, final infringement notice, within 60 days of receiving the application, then the infringement notice or final infringement notice shall be deemed to be withdrawn.

New subsection 48F(6) requires the Registrar to refund any money paid for discharge of the on-the-spot-fine if the notice is withdrawn.

### New section 48G - extension of time to pay the on-the-spot-fine for pensioners

New section 48G provides that pensioners may apply for extension of time to pay a on-the-spot-fine. The Registrar may extend the time for payment by up to 90 days and in doing so may require payment by instalments. The new section defines "pensioner" as a person who holds a Pensioner Concession Card or future equivalent.

### New section 48H - prosecution of prescribed offences

New subsection 48H(1) prohibits the Registrar from instituting a prosecution for the alleged offence before expiry of the time in which payment of the on-the-spot-fine may be made.

New subsection 48H(2) provides that new sections 48B and 48C should not be read as restricting the ability to institute a prosecution or as restricting the amount of a on-the-spot-fine which a Court may impose.

### New section 48J - non-antecedent value of infringement notice records

New section 48J prohibits a court from taking account of any alleged offence the subject of an infringement notice or of any related investigation when sentencing a person.

### New section 48K - service of notices

New section 48K sets out the methods for service of an infringement notice or final infringement notice. These methods include service in person, attachment of the notice to the vehicle the subject of the alleged offence, by post or delivery to last known place of residence of the person or in the case of a body corporate, by delivery or post to the offices of the corporation. New subsection 48K(2) provides that more than one infringement notice may be served with respect to the one alleged offence, however, a person may discharge any liability for the alleged offence and put an end to any further proceedings in respect of all of the notices, by payment of just the one on-the-spot-fine.

### New section 48L - Evidence

New subsection 48L(1) provides that a document which purports to have been signed by the Registrar or an inspector shall be taken to have been so signed.

New subsection 48L(2) provides for the Registrar to present a certificate as evidence of non-payment of an on-the-spot-fine and other matters in a prosecution for the alleged offence.

### **Clause 25 - approval of portable weighing devices**

Clause 25 makes a minor amendment which is necessary as a consequence of the insertion of new Schedule 2 (table of on-the-spot-fines for infringement notices) by clause 30.

### **Clause 26 - interfering with approved portable weighing device**

Existing section 53 makes it an offence for a person to interfere or tamper with a weighing device. Clause 26 amends section 53 by increasing the maximum penalty for a natural person from \$1000 to \$20,000 (200 penalty units). Clause 26 also inserts a penalty for a body corporate of \$100,000 (1000 penalty units).

### **Clause 27 - decisions which are subject to review by the Administrative Appeals Tribunal**

Existing sections 54 and 55 of the Act establish which decisions of the Registrar are subject to review by the Administrative Appeals Tribunal. Clause 27 amends section 54 so that all of the decisions of the Registrar made in the process of granting or refusing an application for a permit are subject to review. These decisions include a decision of the Registrar to:

- a) refuse a permit;
- b) exempt a vehicle from certain provisions of the Act and not others;  
and
- c) specify the time for which the permit shall be in force.

### **Clause 28 - repeal of existing subsection 56(2)**

Clause 28 repeals existing subsection 56(2) which is an evidentiary provision. The existing subsection is no longer necessary because the same function is to be performed by new section 48L in new "Part VIA—Infringement Notices" to be inserted by clause 24.

### **Clause 29 - determinations**

Clause 29 amends existing section 57 to provide for the Minister to prescribe dimensions of vehicles. This clause should be read together with clauses 7 and 8. Clause 7 inserts new section 9 which requires vehicles to not exceed dimensions (other than width) prescribed by the Minister under new section 57. Clause 8 amends section 10 to require vehicles to not exceed the width prescribed by the Minister under new section 57.

New subsection 57(2A) provides for the Minister to prescribe dimensions (width and non width) by notice in the Gazette. New subsection 57(2B) provides an indication of the types of dimensions which may be prescribed.

**Clauses 30 and 31 - insertion of new Schedule 2**

Clause 31 inserts new Schedule 2 which is the table of prescribed offences and on-the-spot-fines for the purposes of the infringement notice scheme. Clause 30 makes a minor amendment as a consequence of the addition of the new Schedule 2.

**Clause 32 - transitional**

Clause 32 is a transitional provision to preserve permits and infringement notices issued under the existing Act before the commencement of this clause.