Western Australia

Control of Vehicles (Off-road Areas) Act 1978

Compare between:

[09 Apr 2006, 03-b0-02] and [01 Jul 2006, 03-c0-02]

Western Australia

Control of Vehicles (Off-road Areas) Act 1978

An Act to prohibit the use of vehicles in certain places, to make provision as to the use of vehicles otherwise than on a road, to provide for areas where the use of off-road vehicles shall be permitted, for the registration of off-road vehicles, and for related purposes.

1. Short title

This Act may be cited as the *Control of Vehicles (Off-road Areas) Act 1978* [1].

2. Commencement

The several provisions of this Act shall come into operation on such day or days as is, or are respectively, fixed by proclamation [1].

3. Interpretation

(1) In this Act unless the contrary intention appears —

"authorised officer" means a person to whom section 38(1) applies;

"certificate of registration" or **"certificate"** means a certificate issued under section 29;

"Committee" means the Advisory Committee constituted pursuant to section 21;

"Department" means a department of the Public Service of the State;

~~**"departmental adviser"** means a person so appointed pursuant to section 22;~~

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"Director General" means the chief executive officer of the department of the Public Service principally assisting the Minister in the administration of this Act;

"district" means, in relation to a local government, the district of that local government plus any other areas which the Governor has declared, under section 5(3), are to be regarded as being part of the district;

"drive" includes riding a vehicle, and **"driver"** includes a rider having the control of a vehicle;

"infringement notice" means a notice of the kind referred to in section 37(1);

"motor cycle" includes a motor cycle as described in the First Schedule to the *Road Traffic Act 1974* and also includes any multi-wheeled open vehicle the driver of which sits astride the vehicle or part of the vehicle in a manner similar to that customary for the driver of a conventional motor cycle;

"off-road vehicle" means a vehicle which is not licensed, deemed to be licensed, or the subject of a permit granted, under the *Road Traffic Act 1974*;

"owner", in relation to a vehicle, means —

(a) the person who is entitled to the immediate possession of the vehicle; or

(b) if there are several persons entitled to its immediate possession, the person whose entitlement is paramount,

but if one of 2 or more persons fitting that description has been nominated for the purposes of section 3(2), it means only the person nominated;

"permitted area" means an area declared as such by the Minister pursuant to section 12 or to section 13 and specified in a notice published pursuant to section 12;

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"private land" means land of a kind to which the provisions of section 39(2)(a) applies, or land to which paragraph (b) of that subsection relates;

"prohibited area" means an area established as such by the Minister and specified in a notice published pursuant to section 16;

"public authority" means a Department or State instrumentality, a local government within its district, and any other person or body, whether corporate or not, who or which under the authority of any Act is charged with the carrying out of any duty whilst acting in the discharge of that duty;

"responsible person", for a vehicle, means a person responsible for the vehicle under section 5A of the *Road Traffic Act 1974*;

"road" means any highway, road or street, open to, or used by, the public; and

"seat belt" means a belt or similar device that is fitted to a motor vehicle and designed to restrain or limit the movement of a person who is seated in the vehicle and wearing the belt or device if the vehicle suddenly accelerates or decelerates but does not include —

(a) a seat belt solely or principally designed to restrain or limit the movement of a person of less than 8 years of age; or

(b) a seat belt which is damaged, or which is defective and is not capable of being worn or of being properly adjusted or securely fastened;

"seat position" in relation to a motor vehicle other than a motor cycle, means a seat position intended for one person and, in the case of contiguous seating positions intended for more than one person, means each complete space of not less than 410 mm measured along the front of the seat;

"vehicle" means a vehicle that is propelled by an engine or other mechanical source of power.

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(2) Where any off-road vehicle is owned by more than one person and one of those persons is nominated by all such persons by notice in writing given to the Director General, the nominated person shall, subject to section 11(3), for the purposes of this Act be deemed to be the owner of that vehicle.

[Section 3 amended by No. 106 of 1981 s. 31 and 34; No. 102 of 1984 s. 4; No. 12 of 1985 s. 3; No. 14 of 1996 s. 4; No. 30 of 1996 s. 13; No. 76 of 1996 s. 23 and 27; No. 39 of 2000 s. 50; No. 7 of 2002 s. ~~4~~4; No. 28 of 2006 s. 356.]

4. Application of this Act

(1) Subject to the provisions of this section, the provisions of this Act apply throughout the State.

(2) The Governor may from time to time by proclamation declare that the provisions of this Act, or such of those provisions as may be therein specified, shall not apply to or in relation to such part or parts of the State as are therein specified and thereupon such provisions of this Act shall not have effect in the area so specified.

(3) The Governor may by a subsequent proclamation vary or cancel any proclamation made under subsection (2).

4A. Delegation

(1) The Director General may delegate to a person any power or duty of the Director General under another provision of this Act.

(2) The delegation must be in writing signed by the Director General.

(3) If a person is not employed in the Director General's department, a power or duty can only be delegated to the person under this section if the person has been approved by the Minister for the purposes of this section.

(4) An approval under subsection (3) may be given in respect of —

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(a) a specified person or persons of a specified class; or

(b) the holder or holders for the time being of a specified office or class of office.

(5) A person to whom a power or duty is delegated under this section cannot delegate that power or duty.

(6) A person exercising or performing a power or duty that has been delegated to the person under this section, is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.

(7) Nothing in this section limits the ability of the Director General to perform a function through an officer or agent.

[Section 4A inserted by No. 7 of 2002 s. 5.]

4B. Agreements for performance of functions

(1) The Director General may enter into an agreement providing for the Director General's functions under this Act that are described in the agreement to be performed on behalf of the Director General.

(2) The agreement may be with the Commissioner of Police, a local government, or any other person or body, whether or not the person or body has itself functions of a public nature.

(3) A function described in the agreement may be performed —

(a) in accordance with the agreement; and

(b) on and subject to terms and conditions in the agreement.

(4) If the performance of a function is dependent upon the opinion, belief, or state of mind of the Director General it may be performed under the agreement upon the opinion, belief, or state of mind of the body or person with whom the agreement is made or another person provided for in the agreement.

(5) For the purposes of this Act or any other written law, an act or thing done by, to, by reference to, or in relation to, a body or

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person in connection with the performance by that body or person under the agreement of a function of the Director General is as effectual as if it had been done by, to, by reference to, or in relation to, the Director General.

[Section 4B inserted by No. 7 of 2002 s. 5.]

5. Local government's responsibility

(1) Subject to the Minister, and in co-operation with the Director General, it shall be the duty of a local government to administer and enforce the provisions of this Act within its district.

[(2) repealed]

(3) Where in the opinion of the Governor the powers conferred by this Act on a local government should be exercised by that local government in an area outside the district the Governor may by Order published in the *Government Gazette* declare that for the purpose of this Act the area is to be regarded as being within the district and the provisions of this Act shall then apply as if in fact the area were within the district.

(4) For the purposes of this Act a district shall be taken to include the land lying between mean high water mark at spring tides of the main sea and mean low water mark at spring tides of the main sea adjacent to that district.

(5) For the purposes of this Act a local government may employ, under and subject to the *Local Government Act 1995*, fit and proper persons to be authorised officers.

[Section 5 amended by No. 106 of 1981 s. 32 and 34; No. 14 of 1996 s. 4; No. 76 of 1996 s. 27; No. 7 of 2002 s. 6.]

6. Driving and using off-road vehicles

(1) A person shall not drive or use an off-road vehicle in any area to which this section applies otherwise than —

(a) on private land by consent; or

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(b) on land comprised within a permitted area,

unless permitted to do so pursuant to section 8(4) or deemed to have been permitted to do so pursuant to subsection (5) of that section.

Penalty: $500.

(2) A person shall not drive or use any vehicle to which, or in the circumstances to which, a declaration made and published under section 16 applies on land comprised within a prohibited area to which the declaration relates unless permitted to do so pursuant to section 8(4).

Penalty: $1 000.

(3) The provisions of subsection (2) apply notwithstanding that the driving or use of the vehicle on the land in question may have been authorised by the owner or occupier of that land.

(4) A person shall not use or drive an off-road vehicle on any land whether or not private land —

(a) in a manner which creates or causes any undue or excessive noise; or

(b) unless an efficient silencing device, so constructed that all exhaust from the engine is projected through the device in such a manner as effectively to prevent the creation of undue noise, is securely fitted to the engine; or

(c) unless it complies with such other requirements as to the control of noise as may be prescribed.

Penalty: $200.

7. Registration of vehicles

(1) Subject to the provisions of any notice published pursuant to subsection (3) all vehicles driven or used in an area of the State to which this subsection applies, other than —

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(a) vehicles for the time being licensed under the *Road Traffic Act 1974*; or

(b) vehicles used exclusively on private land by consent,

are required to be registered under this Act.

(2) A person shall not —

(a) fail to register a vehicle required to be registered under this Act; or

(b) drive or use, or permit to be driven or used, a vehicle required to be registered under this Act and which is not so registered.

Penalty: $200.

(3) The Minister may, by notice published in the *Government Gazette*, provide that the requirements of subsection (1) shall not apply —

(a) to or in relation to persons or vehicles, or classes of persons or kinds of vehicles, specified in that notice either generally or by description; or

(b) at any specified time, or in relation to any specified area of the State, place or circumstance,

and may by a subsequent notice vary or cancel any such notice.

8. Permits

(1) The driving or use of a vehicle in circumstances that would otherwise be contrary to the provisions of section 6(1) or (2) is permitted —

(a) where the vehicle is used or intended to be used for the conveyance of an incapacitated person and is designed for use solely for that purpose;

(b) for purposes connected with the prevention, control, or extinguishing of fires, or for or in relation to the saving of life or the alleviation of injury or illness;

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(c) by an authorised officer in the course of his duty;

(d) by the holder of a permit relevant to the place and circumstances granted under subsection (4) or deemed to have been granted under subsection (5) in accordance with the terms of that permit; or

(e) where the vehicle is being used for the lawful purposes of a public authority.

(1a) The driving or use of or travelling as a passenger in a vehicle in circumstances that would otherwise be contrary to the provisions of section 9A, 9B or 9C is permitted for purposes connected with the prevention, control or extinguishing of fires or for or in relation to the saving of life or the alleviation of injury or illness.

(2) The driving or use of or travelling as a passenger in a vehicle in circumstances that would otherwise be contrary to section 6(1), 9A, 9B or 9C is permitted when that vehicle is being used for or in connection with primary production, the development of any mining tenement, *bona fide* prospecting, construction works, or for road making or road maintenance, and not for any other purpose.

(3) In any prosecution for an offence against this Act the onus of proving that a vehicle was being used for any of the purposes referred to in subsection (1) or subsection (2) lies on the person alleging that the vehicle was being so used.

(4) The Minister may, in writing, grant to any person or body a permit authorising the driving or use of or travelling as a passenger in a vehicle in circumstances that would otherwise have been contrary to section 6(1) or (2), 9A, 9B or 9C either generally or subject to such restrictions, limitations or conditions as he may determine and as are specified therein, and may by subsequent notice in writing vary or cancel any such permit.

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(5) The Minister may, by notice published in the *Government Gazette*, declare that the provisions of section 6(1) do not apply to or in relation to the persons or classes of persons or kinds of vehicle specified therein, and thereupon the driving or use of a vehicle by such a person or the driving and use of such a vehicle in circumstances that would otherwise have been contrary to the provisions of that subsection shall be deemed to have been permitted pursuant to this subsection either generally or subject to such restrictions, limitations or conditions as are specified in that notice, and the Minister may by a subsequent notice vary or cancel any such notice.

(6) Regulations made under this Act may make provision, either generally or in relation to specified classes of case, with respect to the application for and grant of permits under this section, and may make differing provisions therefor, including varying scales of charges.

[Section 8 amended by No. 12 of 1985 s. 4.]

9. Dangerous vehicles

A person shall not drive or use on any land to which this Act applies any vehicle so constructed or in such a condition as to be likely to occasion danger to any person or damage to any property.

Penalty: $500.

9A. Seat belts to be fitted

(1) A person shall not drive or use or permit to be driven or used a vehicle to which this section applies in an area to which this section applies unless the vehicle is equipped with —

(a) a seat belt for every seat position in the vehicle conforming to the standards and specifications prescribed by regulations; and

(b) seat belt anchorage points or seat belt anchorages in respect of every seat position in the vehicle conforming

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to the standards and specifications prescribed by regulations.

Penalty: $200 for a first offence and $400 for a second or subsequent offence.

(2) This section applies to motor cars, as described in the First Schedule to the *Road Traffic Act 1974*, and to off-road vehicles but does not apply to motor cycles.

(3) This section applies in every area of the State to which the provisions of this Act apply except —

(a) on a road; or

(b) on private land on which the vehicle is used by consent, being private land that is neither a permitted area nor a prohibited area.

[Section 9A inserted by No. 12 of 1985 s. 5.]

9B. Seat belts to be worn

(1) A person shall not, while occupying a seat position in a motor vehicle to which this section applies and to which a seat belt has been fitted for that seat position, drive or travel as a passenger in an area to which this section applies unless he is wearing that seat belt and the seat belt is properly adjusted and securely fastened.

Penalty: $400 for a first offence and $800 for a second or subsequent offence.

(2) A person shall not, in a motor vehicle to which this section applies and to which seat belts have been fitted and in an area to which this section applies, travel as a passenger in or on any part of the vehicle other than in a seat position for which a seat belt has been fitted unless each seat position for which a seat belt is fitted is occupied.

Penalty: $400 for a first offence and $800 for a second or subsequent offence.

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(3) This section applies to motor cars, as described in the First Schedule to the *Road Traffic Act 1974*, and to off-road vehicles but does not apply to motor cycles.

(4) This section applies in every area of the State to which the provisions of this Act apply except —

(a) on a road; or

(b) on private land on which the vehicle is used by consent, being private land that is neither a permitted area nor a prohibited area.

(5) Subject to subsection (6), it is a defence to a charge of an offence against a person under subsection (1) or (2) that the person —

(a) is driving or travelling in a motor vehicle that is travelling backwards;

(b) is in possession of a certificate signed by a qualified medical practitioner certifying that the person is unable for medical reasons to wear a seat belt, or that because of the person's size, build or other physical characteristics, it would be unreasonable to require him to wear a seat belt, while driving or travelling in a motor vehicle;

(c) is under the age of 3 years; or

(d) is travelling as a passenger in a motor vehicle and is of or over the age of 70 years.

(6) Where a certificate of the kind referred to in subsection (5)(b) is expressed to be of effect for a specified period, the certificate shall cease to have effect for the purposes of that subsection at the expiration of the period so specified.

[Section 9B inserted by No. 12 of 1985 s. 5; amended by No. 84 of 2004 s. 80.]

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9C. Motor cyclists to wear protective helmets

(1) A person shall not drive or, being a person of not less than 6 years of age, travel as a passenger on a motor cycle in an area to which this section applies unless he is wearing securely on his head a protective helmet of a type and standard prescribed by regulations.

Penalty: $400 for a first offence and $800 for a second or subsequent offence.

(2) Subsection (1) does not apply so as to require the wearing of a protective helmet by a person who has been exempted in writing by the Director General from that requirement for a reason relating to the person's medical condition or for any other reason considered sufficient by the Director General.

(3) This section applies in every area of the State to which the provisions of this Act apply except —

(a) on a road; or

(b) on private land on which the vehicle is used by consent, being private land that is neither a permitted area nor a prohibited area.

[Section 9C inserted by No. 12 of 1985 s. 5; amended by No. 76 of 1996 s. 27.]

10. Under age drivers

A person shall not knowingly permit any other person under the age of 8 years to have charge of a vehicle on any land to which this Act applies, otherwise than on private land by consent.

Penalty: $200.

*[**11.** Has not come into operation [2].]*

12. Permitted areas, generally

(1) Following the publication of proposals by the Committee and consideration of any submissions relating thereto in the manner

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required by section 18, the Minister may, with the consent of the Governor, by notice published in the *Government Gazette* declare any land, other than private land, to be a permitted area for the purposes of this Act, and may in like manner but subject to section 18(3) vary or cancel any such declaration, and subject to the provisions of this Act effect shall be given to any such declaration.

(2) A declaration as to a permitted area made under this section shall take effect on the date of the publication in the *Government Gazette* of the notice referred to in subsection (1) or such later date as may be specified in that notice.

13. Initial permitted areas

The Minister may, with the consent of the Governor, within 3 months of the coming into operation of this section exercise the power conferred by section 12(1) to declare an area to be a permitted area notwithstanding that the initial proposal was not published or was not referred to the Committee, any local government, any public authority, or other person or body likely to be affected and that no recommendation in relation thereto was received from the Committee, but subsequent to the initial declaration of the area the provisions of section 12 shall apply to and in relation to any intended variation or cancellation of that permitted area.

[Section 13 amended by No. 14 of 1996 s. 4.]

14. Private land may be declared to be a permitted area

The owner of any private land may in writing authorise the Minister to declare that land to be a permitted area for the purpose of this Act, and the Minister may, subject to any limitation imposed by that authorisation, thereupon exercise the powers conferred by section 12(1) in relation to that land or any part of that land as though that land had not been private land.

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15. Temporary closure of permitted areas

(1) The Minister may, by notice published in the *Government Gazette* and in a newspaper circulating particularly in the locality of the land affected, close the whole or a specified part of a permitted area for the period and purposes therein specified and during the period so specified the land to which the notice relates shall be deemed not to be a permitted area.

(2) A period of closure effected pursuant to subsection (1) shall not extend beyond 6 consecutive months unless renewed by notice so published; but may be varied within such limitation and may be revoked by a notice so published.

16. Prohibited areas, generally

(1) Following the publication of proposals by the Committee and consideration of any submissions relating thereto in the manner required by section 18, the Minister, if he is of the opinion that the public interest so requires, may, with the consent of the Governor, by notice published in the *Government Gazette* establish any land specified therein, whether or not private land and notwithstanding that the owner or occupier of that land does not consent to the proposals, as a prohibited area for the purposes of this Act either in relation to vehicles generally or, pursuant to section 20(2), in relation to specified vehicles or circumstances.

(2) A declaration made and published under subsection (1) may, subject to the provisions of section 18(3), be varied or cancelled by a subsequent declaration so made and published.

(3) A declaration made under this section shall take effect on the date of the publication of the notice in the *Government Gazette* or on such later date as may be specified in that notice.

(4) Where pursuant to subsection (1) any private land is included within a prohibited area for the purposes of this Act a person who is the owner or an occupier normally resident on that land,

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or who is engaged in the working of that land on behalf of any such owner or occupier, who drives or uses a vehicle on that land shall not be taken to contravene the provisions of section 6(2).

(4a) Where pursuant to subsection (1) any private land is included within a prohibited area for the purposes of this Act, a person who is the owner or an occupier normally resident on that land, or who is engaged in the working of that land on behalf of any such owner or occupier, who drives or uses or travels as a passenger in a vehicle on that land in circumstances that but for this subsection would constitute an offence against section 9A, 9B or 9C shall not in such circumstances be taken to contravene section 9A, 9B or 9C as the case may be.

(5) The Minister shall not exercise the power conferred by subsection (1) in relation to any private land without the consent of the owner and of any lawful occupier of that land unless it is the opinion of the Minister that the public interest so requires by reason of —

(a) the need to provide for the protection of livestock or the preservation of any wildlife or flora;

(b) the environmentally sensitive nature of the land or things growing on the land;

(c) the proximity of any land used for residential purposes, or for purposes likely to be incompatible with the use of vehicles in the vicinity; or

(d) the provisions of any local planning scheme.

[Section 16 amended by No. 12 of 1985 s. 6; No. 38 of 2005 s. 15.]

17. The Advisory Committee

(1) For the purposes of this Act there shall be an Advisory Committee constituted in accordance with section 21.

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(2) It shall be the general duty of the Committee to advise the Minister on matters relating to the use of land by vehicles, as to private and other land to which it is proposed that the provisions of this Act should be applied or to which such provisions do apply, and as to such other matters as are referred to the Committee by the Minister.

(3) The Committee shall —

(a) consider, and make recommendations to the Minister upon, submissions, proposals, complaints and objections received from members of the public generally in relation to the use or proposed use of any land by vehicles;

(b) consider and advise the Minister upon submissions made by any local government, owners or occupiers of land, public authorities, and other interests likely to be substantially affected by the operation of this Act in relation to any land to which the provisions of this Act apply or may be applied; and

(c) carry on consultations with such bodies or persons as to the effect from time to time of the use of any land by vehicles.

(4) The Minister may give to the Committee directions of a general character as to the exercise of its functions, and the Committee shall give effect to such a direction, but any such direction may distinguish between different classes of case.

(5) The Committee shall, in so far as those duties are consistent with the provisions of this Act, carry out such duties as may be required of it by the Minister in furtherance of the objectives of this Act, but may, of its own initiative, bring any other matter relevant to this Act to the notice of the Minister.

[Section 17 amended by No. 14 of 1996 s. 4.]

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18. Functions of the Committee as to permitted or prohibited areas, and the use of vehicles

(1) Except in so far as the provisions of section 13 apply, the Minister shall not declare any land to be a permitted area, or declare any land to be established as a prohibited area, until the recommendations of the Committee have been sought by him, and the Minister is required to have regard to, but not necessarily to give effect to, any recommendations the Committee may make in relation to the locality in question.

(2) The Committee may, and if the Minister so requires shall, prepare and submit to the Minister recommendations as to the declaration of permitted areas and prohibited areas, and in relation to the variation, temporary closure, or cancellation of such areas from time to time.

(3) The Minister shall refer to the Committee any question as to the declaration, variation or cancellation of a permitted area or a prohibited area which is not of a nature that falls within existing recommendations of the Committee or which does not relate only to a minor variation.

(4) Where the Minister is of the opinion that an investigation and recommendation of the Committee is necessary or expedient in relation to the use of any kind of vehicle the Minister may require the Committee to make such investigation and recommendation.

(5) The Committee shall not make any recommendation under this Act in relation to the declaration of any land as a permitted area or prohibited area or as to the cancellation of any such declaration without a prior investigation, notice of which the Committee shall cause to be published in a newspaper circulating throughout the State and in any newspaper circulating particularly in, or in the vicinity of, the locality of the land to be investigated.

(6) The notice to be published pursuant to subsection (5) shall —

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(a) describe the land to be investigated sufficiently to enable it to be readily determined;

(b) state the general nature of the proposals;

(c) give an address where further details of the land and of the proposals may be obtained, and a plan of the land and its general location may be inspected;

(d) state that submissions sent to the Committee at the address and in the manner therein specified will be considered if they are received within 30 days of such notice.

(7) For the purposes of preparing a report on an investigation the Committee shall send a copy of the notice published under subsection (5) to, and have regard to the views of, —

(a) any local government —

(i) in the district of which the land, or any part of the land, to which the proposals relate is situated or is regarded as being situated for the purposes of this Act; or

(ii) the inhabitants of whose district are by reason of proximity likely to be affected by the proposals;

(b) the CEO within the meaning of the *Environmental Protection Act 1986* and any public authority that in the opinion of the Committee has an interest in the land to which the proposals relate or in the use of that land or land likely to be affected by the proposals; and

(c) any person or body who or which in the opinion of the Committee has an especial interest in respect of the investigation,

and shall consider any submissions on, or objections to, the proposals received within the period specified in the notice published under subsection (5) or such longer period as may be agreed upon.

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(8) On completing an investigation under this section the Committee shall prepare a report setting out the recommendations of the Committee, specifically drawing to the notice of the Minister all objections received and advising the Minister thereon.

[Section 18 amended by No. 14 of 1996 s. 4; No. 54 of 2003 s. 142.]

19. Identification of areas

(1) Where any land is declared to be a permitted area or is established as a prohibited area for the purposes of this Act the Minister shall as soon as is practicable thereafter —

(a) cause a map of the area and a description of the land to be made available for inspection by interested persons —

(i) at the office of the Lands and Surveys Department [3];

(ii) at the office of any local government, the district of which for the purpose of this Act is wholly or partly within the area; and

(iii) at such other places likely to be convenient to persons affected by the declaration as he may think fit;

and

(b) cause a notice, briefly describing the area concerned and stating where a map of the area may be inspected, to be published in a newspaper circulating in each of the districts wholly or partly affected.

(2) It shall not be necessary that the boundaries of any permitted area or prohibited area be surveyed or demarcated but where practicable the local government of the district in which the boundary is situated shall delineate that boundary by the erection or establishment of suitable notices or marks.

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(3) A person shall not destroy, damage, alter, move, or interfere with any notice or mark erected or established pursuant to subsection (2).

Penalty: $100.

[Section 19 amended by No. 14 of 1996 s. 4.]

20. Effect of the declaration of a permitted area, or the establishment of a prohibited area

(1) Subject to the provisions of section 8(4) and (5), a declaration of an area of land as a permitted area for the purposes of this Act —

(a) may apply in relation to vehicles generally, or may be limited in its application to vehicles of the class or kind specified therein or to vehicles of that class or kind when used in the manner or in the circumstances thereby permitted;

(b) may apply so that the area in question is a permitted area in respect of some classes or kinds of vehicles notwithstanding that it is not a permitted area in relation to other vehicles;

(c) shall not have effect in or in relation to any part of the State, and if in force in relation to any such area shall cease to have effect, where under the provisions of any other Act or law of the State or of the Commonwealth access thereto or the use of vehicles therein is or becomes prohibited.

(2) Subject to the provisions of section 8(4), a declaration made and published under section 16 establishing an area of land as a prohibited area for the purposes of this Act —

(a) may apply in relation to vehicles generally;

(b) may apply in relation to vehicles generally except when used in the manner or circumstances therein specified;

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(c) may be limited in its application to vehicles of the class or kind specified, or to vehicles of that class or kind when used in the manner or in the circumstances thereby prohibited; and

(d) may apply so that the area in question is a prohibited area in respect of some classes or kinds of vehicles or in specified circumstances notwithstanding that it is not a prohibited area in relation to other vehicles or in other circumstances.

(3) An area of land may be declared to be a permitted area in relation to specified vehicles or circumstances notwithstanding that it is established as a prohibited area in relation to other vehicles or other circumstances.

(4) Regulations and local laws made under this Act may make provision for the control of vehicles in a permitted area and for the safety and obligations of persons who use vehicles in the area, and a person shall not drive or use a vehicle in a permitted area unless he complies in all respects with such regulations and local laws and any conditions, restrictions or limitations thereby imposed.

Penalty: $200.

[Section 20 amended by No. 14 of 1996 s. 4.]

21. Constitution of the Committee

(1) The Advisory Committee shall consist of 7 permanent members of whom—

(a) one shall hold office as Chairman of that Committee;

(b) 2 shall be persons selected from a panel of names submitted to the Minister by the body known as the Western Australian Local Government Association;

[(c) deleted]

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(d) 2 shall be persons selected from amongst persons who have in the opinion of the Minister appropriate experience in the operation of off-road vehicles;

(e) one shall be a person selected from amongst persons who have in the opinion of the Minister appropriate experience in the operation of four wheel drive vehicles; and

(f) one shall be a person nominated by the Minister to whom the administration of the *Conservation and Land Management Act 1984* is for the time being committed by the Governor, being a person who in the opinion of that Minister has appropriate experience in environmental matters,

each of whom shall be appointed by the Minister and shall hold office for such period not exceeding 3 years as is specified in the instrument of appointment, unless his appointment is sooner terminated pursuant to this Act.

(2) The person appointed as Chairman of the Committee shall preside at all meetings at which he is present.

(3) In the absence of the Chairman, the permanent members present shall select one of their number to preside at the meeting and the member so selected shall whilst so presiding have and may exercise all the powers of the Chairman.

(4) The Committee shall hold meetings at such times and places as it determines, but the Minister or the Chairman may at any time convene a meeting of the Committee.

(5) The quorum at any meeting of the Committee shall be constituted by not less than 4 permanent members.

(6) The permanent members are eligible to attend every meeting of the Committee and to vote on any matter.

(7) The Minister may for the purposes of any meeting co-opt any person possessing special experience, knowledge or

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qualifications, or having a particular interest, relevant to the matters under consideration, and a person so co-opted is not eligible to vote but in all other respects shall be deemed to be a member of the Committee for the purposes of that meeting.

~~(8) Where the Committee, or the Minister, considers that the advice of any departmental adviser should be sought in relation to any matter the presence of such an adviser shall be requested by the Committee and that departmental adviser has a right to be heard on any matter under consideration by the Committee where the matter is likely materially to affect the interest which he represents, but a departmental adviser is not eligible to vote and any question as to whether or not the interest which he represents is likely to be materially affected may be referred to the member presiding at that meeting whose decision is final.~~

[(8) repealed]

(9) A person who has no right to vote or be heard on any particular matter may, with the consent of the member presiding, nevertheless speak to, and be heard, on the matter.

(10) Each member present and eligible to vote may cast a deliberative vote on any question and the question shall be decided by the majority, but if the votes are equal the question shall be taken to have been decided in the negative.

(11) A person who is a member of the Committee, other than a person to whom Part 3 of the *Public Sector Management Act 1994*, applies, may be paid such remuneration or allowances as the Minister from time to time determines, and any member of the Committee may be reimbursed in respect of expenditure incurred pursuant to this Act in such manner as the Minister may determine.

(12) Subject to the requirement that a quorum be present at any meeting, the performance or exercise of any function, duty or obligation shall not be affected by reason only of there being a vacancy in the office of a member.

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(13) Subject to this Act, and to any direction which may be given by the Minister, the proceedings of the Committee may be regulated in such manner as the members think fit.

(14) A record of the proceedings of every meeting shall be kept by the Committee and shall be amended as necessary and thereafter certified as correct by the member presiding at that or the next succeeding meeting.

(15) The office of a member becomes vacant if —

(a) his term of office expires;

(b) he is a person in respect of whom an administration order is in force under Part 6 of the *Guardianship and Administration Act 1990* or he otherwise becomes permanently incapable of performing his duties as a member;

(c) he resigns his office by written notice addressed to the Minister;

(d) he is or becomes an undischarged bankrupt or a person whose property is subject to an order or arrangement under the laws relating to bankruptcy; or

(e) he is removed from office by the Minister on the grounds —

(i) of neglect of duty, incompetence or misbehaviour; or

(ii) that he has ceased to represent the interest in relation to which he was appointed.

(16) All acts done at any meeting shall, notwithstanding it is afterwards discovered that there was some defect in the appointment of a person purporting to be a member, be as valid as if that defect had not existed.

[Section 21 amended by No. 56 of 1986 s. 4; No. 24 of 1990 s. 123; No. 32 of 1994 s. 3(1); No. 49 of 2004 s. ~~13~~13; No. 28 of 2006 s. 357.]

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[22. ~~Departmental advisers~~

~~(1) For the purpose of assisting the Committee in its deliberations generally, and in particular by attending its meetings when requested on reasonable notice, the Minister may request the Minister concerned with the administration of any Department of the Public Service of the State, statutory body, or government instrumentality to appoint an officer from that Department, body, or instrumentality to act as a departmental adviser to the Committee on matters likely to be affected by the provisions of this Act which are the concern of that Department, body, or instrumentality, and an appropriate officer shall thereupon be so appointed and so act.~~

~~(2) The persons following shall be deemed to have been appointed pursuant to subsection (1) to act as departmental advisers to the Committee in relation to their respective interests —~~

~~(a) an officer of the Department of Conservation and the Environment [4] nominated by the chief executive officer of that Department;~~

~~(b) an officer of the Soil Conservation Service of the Department of Agriculture nominated by the Commissioner of Soil Conservation;~~

~~(c) an officer of the Western Australian Planning Commission nominated by the chairperson of the Western Australian Planning Commission;~~

~~(d) an officer of the Forests Department [5] nominated by the Conservator of Forests [6];~~

~~(e) an officer of the Local Government Department [7] nominated by the chief executive officer of that Department;~~

~~(f) an officer of the Public Health Department [8] experienced in noise control measures nominated by the Commissioner of Public Health [9]; and~~

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~~(g) an officer of the Public Service of the State nominated by the chief executive officer of the Department for Youth, Sport and Recreation.~~

~~(3) A reference to the holder of an office referred to in subsection (2) shall be construed as including a reference to a person holding or acting in that office or any other office substituted for that office by virtue of any Act or change of name.~~

~~*[Section 22 amended*~~*Repealed by No. ~~84~~28 of ~~1994~~2006 s. ~~46~~358.]*

23. Nominations may be requested

Where a body has, by virtue of section 21, the right to submit to the Minister a panel of the names of persons to be considered for selection and appointment to the membership of the Committee the Minister may, as the occasion requires, by notice in writing to a responsible officer of that body request that body to submit those names within such period of not less than 30 days as is therein specified and if upon the expiration of that period no person, or no suitable person, is so nominated the Minister may appoint to membership of the Committee such person as, having regard to the interests in respect of which the person was to be so nominated, the Minister thinks fit.

24. Deputies

(1) The Minister may, in respect of each member of the Committee other than the Chairman, appoint a person to be deputy to that member and a person so appointed is, in the event of the absence from any meeting of that member, entitled to attend that meeting of the Committee and, when so attending, is deemed to be a member and has all the powers and duties of a member.

(2) If at any time the office of a member becomes vacant, the person who is at that time the deputy of that member is, until the office of that member is filled by the appointment of another

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person as member, deemed to be a member and has all the powers and duties of a member.

(3) The provisions of section 21(1)(b), (c), (d), (e) and (f), and of section 23, that apply to and in relation to the appointment of a member apply, with any necessary modification, to and in relation to the appointment of the deputy of that member.

[Section 24 amended by No. 56 of 1986 s. 5.]

25. Committee members, and the *Public Sector Management Act 1994*

(1) Acceptance of or acting in the office of a member of the Committee by any person does not of itself render the provisions of Part 3 of the *Public Sector Management Act 1994*, or any other Act applying to persons as officers of the Public Service of the State, applicable to that person, or affect or prejudice the application to him of those provisions if they applied to him at the time of the acceptance of or acting in that office.

(2) Where the services of any person are for the time being utilised by the Committee under the provisions of this Act, it does not prejudice that person's existing or accruing rights under the *Public Sector Management Act 1994*, or under any other Act, and service rendered on behalf of the Committee pursuant to this Act shall be regarded as not constituting a break in the service in which he would otherwise have been employed.

[Section 25 amended by No. 32 of 1994 s. 3(1).]

26. Assistance to the Committee

All Departments and all instrumentalities of the Government of the State and all other authorities, whether corporate or not corporate, established or administered pursuant to any Act (including any local government) are hereby authorised to give to the Committee such assistance in the carrying out of its functions as is reasonably practical.

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[Section 26 amended by No. 14 of 1996 s. 4.]

27. Sub-committees

The Committee may, from time to time, appoint a sub-committee or sub-committees, consisting in each case of 2 or more persons who need not be members of the Committee, to advise the Committee on such matters relating to its functions as are referred by the Committee to the sub-committee.

28. Registration scheme

(1) The scheme of registration of vehicles under this Act is to be administered by the Director General, who is to maintain a separate financial record in relation to that scheme.

(2) The Director General shall maintain a register of the particulars of —

(a) the registrations of vehicles and renewals thereof effected under this Act; and

(b) transfers of registration effected under this Act.

[(3) repealed]

(4) Nothing in this Act shall require the Director General to register, renew or transfer the registration of, a vehicle which is so constructed or is in such a condition that in the opinion of the Director General it would occasion danger to any person or damage to property.

(5) The registration of a vehicle under this Act, or the renewal or transfer of any such registration, may be withheld until the vehicle has been examined by a person authorised by the Director General.

(6) Where it appears to the Director General that any vehicle registered under this Act is so constructed or in such condition that it is likely to occasion danger to any person or damage to property, the registration of that vehicle may be suspended by a

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notice in the prescribed form served personally or by post on the person in whose name the vehicle is registered.

(7) During the period of any suspension of the registration of a vehicle under this Act the vehicle shall for all purposes of this Act be deemed to be an unregistered vehicle.

(8) The suspension of the registration of a vehicle under this Act may be withdrawn by a notice in the prescribed form served personally or by post on the person in whose name the vehicle is registered.

[Section 28 amended by No. 106 of 1981 s. 34; No. 76 of 1996 s. 27; No. 39 of 2000 s. 51; No. 7 of 2002 s. 8.]

28A. Applications for issue, renewal and transfer of registration

(1) An owner of a vehicle may apply for the registration, renewal of registration or transfer of registration of a vehicle under this Act by —

(a) submitting an application in a form approved by the Director General;

(b) providing a statutory declaration made pursuant to section 106 of the *Evidence Act 1906*, in a form approved by the Director General as to the compliance of the vehicle with the prescribed safety and noise requirements; and

(c) paying any fee that would be required by section 29.

(2) Upon an application under subsection (1), the Director General shall —

(a) register, renew the registration of, or transfer the registration of, a vehicle; and

(b) issue to the owner a certificate of that registration, and on payment of the prescribed fee a number plate displaying the symbols or numbers or the symbols and numbers allotted to the vehicle by the Director General,

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if, in the case of an application by an individual the applicant has attained the age of 18 years.

(3) A vehicle cannot be registered in the name of more than one person at a particular time.

(4) Any one of 2 or more owners may apply for the issue or transfer of a registration and the application is to be signed by each of them.

(5) An application under subsection (4) is to be regarded as notice of the nomination of the applicant for the purposes of section 3(2).

(6) The Director General shall refund any amount paid by a person in connection with an application under this section that is refused.

[Section 28A inserted by No. 39 of 2000 s. 52.]

29. Registration procedure

[(1), (2) repealed]

(3) The registration of a vehicle granted under section 28A shall be valid for such period of not less than 6 months and not more than 18 months as is determined by the Director General and specified in the certificate of registration.

(4) Regulations made under this Act may make differing provision in respect of the registration fees to be payable in relation to specified classes or kinds of vehicles or by reference to the ownership of the vehicle or to the location of the vehicle or the purposes for which the vehicle is designed or adapted or is to be used, and may provide that no such fee shall be payable in specified circumstances.

(5) Subject to the provisions of section 28, where an application for the renewal of the registration of a vehicle is made under section 28A —

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(a) within the period of 30 days immediately preceding the day on which the registration expires; or

(b) within the period of 15 days immediately succeeding the day on which the registration expired,

the Director General shall renew the registration for a period of 12 months and the renewal shall be deemed to be a continuation of the registration and to have effect on and from the day next succeeding the day on which the registration expires or expired.

(6) Where an application for the renewal of the registration of a vehicle is made after the expiration of the period of 15 days immediately succeeding the day on which the registration expired, the Director General may renew the registration for a period which terminates 12 months after the date of expiration of the registration which has already expired but that renewal shall take effect on and from the day on which it is effected and the fee payable shall be the fee applicable to a full 12 month period.

[(7)-(10) repealed]

(11) A person shall not, whether on his own behalf or on behalf of any other person, knowingly make any false or misleading statement in relation to the registration of a vehicle under this Act, or to any application in respect thereof.

Penalty: $200.

[Section 29 amended by No. 106 of 1981 s. 34; No. 76 of 1996 s. 27; No. 39 of 2000 s. 53; No. 7 of 2002 s. 9.]

29A. Transfer of vehicle registrations

(1) Where a person to whom a certificate of registration of a vehicle has been granted ceases to be the owner of the vehicle, the person shall —

(a) within 7 days of ceasing to be the owner give notice in writing to the Director General of the name and address of the new owner of the vehicle; and

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(b) if the registration had, pursuant to the provisions of this Act, been granted or renewed without payment of a fee or on payment of a reduced registration fee which was less than the fee that would otherwise have been payable in relation to that vehicle had the particular circumstances not applied, and unless the provisions of section 30(1) have been complied with, within 7 days after ceasing to be the owner, return the certificate of registration and the number plate issued in respect of that vehicle to the Director General.

(2) A person who becomes the owner of a vehicle in respect of which a certificate of registration has been granted shall, within 14 days after becoming the owner, give notice in writing to the Director General of that fact.

(3) As soon as practicable after receiving notice under subsection (1)(a) or (2), or otherwise, of a change in the ownership of a vehicle in respect of which a certificate of registration has been granted, if the Director General is satisfied that the registration may be transferred under section 28A(2) and no application has been made under section 28A(1), the Director General may issue to the new owner a notice requiring that —

(a) an application for the transfer of the registration to the new owner be made under section 28A; or

(b) the number plates issued in respect of the vehicle be delivered up to the Director General.

(4) In subsection (3) —

"new owner", in relation to a vehicle, means a person who, according to the notice received by the Director General, has become a new owner of the vehicle and, if there is more than one such person, each or any of them.

(5) A person to whom a notice is issued under subsection (3)(b) commits an offence if an application for the transfer of the registration for the vehicle is not made within 28 days after the

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notice is issued, or any longer period that the Director General allows, unless it can be shown that —

(a) the person did not agree to becoming the owner of the vehicle and has notified the Director General in writing accordingly;

(b) another person has been nominated for the purposes of section 3(2);

(c) there is more than one owner of the vehicle and there is good reason why a person was not nominated under section 3(2); or

(d) there was some other good reason why the application for the transfer of the registration was not made.

(6) The other subsections of this section do not apply if a person to whom a certificate of registration in respect of a vehicle has been issued dies, and in that case the Director General shall on an application under section 28A, if any, by the executor or administrator of the estate of that person endorse on the certificate the transfer of the registration to that executor or administrator.

[Section 29A inserted by No. 39 of 2000 s. 54.]

30. Change in fee payable

(1) Where a certificate of registration has been issued by the Director General without the payment of a fee, or upon the payment of a reduced fee, by reason of specified conditions or of the circumstances applicable to the ownership, location or use of the vehicle, and those conditions are not observed or those circumstances are changed, or the vehicle is put to some other use, then, unless or until the fee that would otherwise have been payable, or the difference between that fee and the reduced fee, has been paid in respect of that vehicle a person who uses that vehicle contravenes the provisions of section 7.

(2) Where a certificate of registration is issued pursuant to the provisions of this Act and the fees paid in respect of that

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registration are subsequently found to be either in excess of or less than the fees which are properly payable in respect of the registration, the Director General —

(a) shall forthwith upon demand refund the amount of the excess to the person to whom the certificate of registration was issued;

(b) may recover the deficiency in a court of competent jurisdiction from the person to whom the certificate of registration was issued, if that person fails to pay the deficiency to the Director General within 7 days after the amount of the deficiency has been demanded in writing from him.

[Section 30 amended by No. 106 of 1981 s. 34; No. 76 of 1996 s. 27.]

31. Registration obtained by means of dishonoured cheque void

(1) Where the fees for the issue or renewal of a certificate of registration are paid by a cheque which is not honoured by the financial institution on which it is drawn, the registration is void as from the time of issue or renewal as the case may be.

(2) The person to whom a certificate of registration is issued in the circumstances referred to in subsection (1) shall, on demand made by or on behalf of the Director General forthwith deliver the certificate of registration and the number plate relating to that registration to the Director General.

(3) A person to whom a certificate of registration is so issued shall not, after demand so made, —

(a) fail so to deliver the certificate of registration or the number plate; or

(b) use or continue to use, or allow any other person the use of, the certificate of registration or the number plate relating to that registration.

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Penalty: For a first offence a fine not exceeding $40; for any subsequent offence, a fine not exceeding $100.

[Section 31 amended by No. 106 of 1981 s. 34; No. 76 of 1996 s. 27; No. 24 of 2000 s. 48.]

32. Refund of registration fees

(1) The Director General may refund a fair proportion of the registration fee paid in respect of any vehicle in any circumstances which in the opinion of the Director General render it just and convenient that a refund should be made.

(2) Where a refund of any registration fee, or a proportion thereof, is made under any provision of this Act, the Director General shall charge a prescribed fee for such refund and deduct that fee from the amount to be refunded.

[Section 32 amended by No. 106 of 1981 s. 34; No. 76 of 1996 s. 27.]

32A. Change of nominated owner

(1) If a person is the owner of a vehicle as the result of a nomination for the purposes of section 3(2), the person may apply to the Director General, in a form approved by the Director General, to cancel the nomination.

(2) The application is to include a statement, signed by each person who would be an owner if there had been no nomination, to the effect that they agree to another of them being the owner of the vehicle for the purposes of this Act.

(3) If the Director General approves the application and the applicant pays the prescribed fee, if any —

(a) the current nomination ceases to have effect;

(b) the statement under subsection (2) is to be treated as being a nomination for the purposes of section 3(2); and

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(c) the Director General is to vary the registration in accordance with the application by changing the name of the person in whose name the vehicle is registered.

[Section 32A inserted by No. 39 of 2000 s. 55.]

33. Review

There is a right to apply to the State Administrative Tribunal for a review of a decision —

(a) to refuse a registration, or the renewal or a transfer of a registration, under this Act; or

(b) to suspend a registration.

[Section 33 inserted by No. 55 of 2004 s. 147.]

34. Number plate to be displayed

(1) A person shall not drive or use a vehicle registered under this Act, otherwise than on private land by consent, unless the number plate issued in respect of the vehicle is affixed to the vehicle so that it is plainly visible and complies with any prescribed requirement relating thereto.

(2) A person shall not drive or use a vehicle licensed under the *Road Traffic Act 1974*, on any land (except in the circumstances prescribed under that Act, on private land by consent, or otherwise with the prior approval of either the Director General under this Act or the Director General under that Act) unless the number plates issued under that Act in respect of the vehicle are affixed to the vehicle in the manner required by that Act and the regulations in force thereunder.

Penalty: $200.

[Section 34 amended by No. 106 of 1981 s. 34; No. 76 of 1996 s. 27; No. 7 of 2002 s. 10.]

35. Other offences concerning number plates

A person shall not —

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(a) wilfully alter or deface any number plate issued under this Act;

(b) cause or permit a number plate issued under this Act to be affixed to a vehicle other than the vehicle for which that number plate was issued;

(c) being the person in whose name a vehicle was registered under this Act, but for which the registration has expired and not been renewed for a period exceeding 15 days, fail to deliver up the number plate issued under this Act in respect of the vehicle; or

(d) use on any vehicle a number plate not issued in respect of that vehicle, or any counterfeit or false number plate or any thing apparently intended to resemble or pass for a number plate.

Penalty: $200.

[Section 35 amended by No. 39 of 2000 s. 56.]

36. Road Traffic Act provisions

In the application of the provisions of the *Road Traffic Act 1974*, to vehicles to which this Act applies or to persons using vehicles in circumstances to which this Act applies —

(a) the obligations set out in section 54(6) and section 56(1) of that Act shall be deemed to extend to and in relation to the use of a vehicle otherwise than on a road; and

(b) any reference in section 53, section 54, section 57, section 58, section 86A or section 89 of that Act to a member of the Police Force shall be construed as a reference to an authorised officer within the meaning of this Act.

[Section 36 amended by No. 106 of 1981 s. 33.]

[36A. *Repealed by No. 76 of 1996 s. 25.]*

37. Infringement notices

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(1) Where an authorised officer has reason to believe that a person has committed any offence against this Act or any regulation or local law made pursuant to this Act in respect of which a modified penalty is prescribed he may serve on that person an infringement notice in the prescribed form, informing the person that, if he does not wish to be prosecuted for the alleged offence in a court, he may pay to the office of the local government specified in the notice, within 21 days after the date of the service of the notice, the amount of the modified penalty.

(2) An infringement notice may, in any case, be served on the alleged offender personally or be addressed to and served on a responsible person for the vehicle within 30 days after the date on which the offence is alleged to have been committed.

(3) Where, under the provisions of subsection (2), an infringement notice is addressed to and served on a responsible person for a vehicle within the time specified in that subsection or addressed to the responsible person and served by attaching it to the vehicle or leaving it in or on the vehicle, then, unless within 21 days after the date of the service of the infringement notice —

(a) the modified penalty is paid; or

(b) the responsible person —

(i) informs the chief executive officer of the local government or such other person as may be specified in that notice as to the identity and address of the person who was the driver or person in charge of the vehicle at the time the offence is alleged to have been committed; or

(ii) satisfies the chief executive officer of the local government that the vehicle had been stolen or unlawfully taken, or was being unlawfully used, at the time the offence is alleged to have been committed,

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the responsible person is, in the absence of proof to the contrary, deemed to have been the driver or person in charge of the vehicle at the time of the alleged offence.

(4) A person who receives an infringement notice may decline to be dealt with under the provisions of this section and, where he fails to pay the prescribed modified penalty within the period of 21 days after the date of service of the notice or within such further time as may, in any particular case, be allowed, he is deemed to have declined to be dealt with under those provisions.

(5) An infringement notice may, whether or not the modified penalty has been paid, be withdrawn at any time within 28 days after the service of the notice, by the sending of a notice, in the prescribed form, signed by a person authorised by the local government, to the alleged offender advising the alleged offender that the infringement notice has been withdrawn, and, in that event, the amount of any modified penalty that has been paid shall be refunded.

(5a) In subsection (5) —

"alleged offender", in relation to an infringement notice addressed to and served on a responsible person under subsection (3), means the responsible person.

(6) Where a modified penalty has been paid pursuant to an infringement notice and the notice has not been withdrawn as provided by subsection (5), proceedings shall not be brought against any person with respect to the offence alleged in the notice.

(7) The payment of a modified penalty pursuant to an infringement notice constitutes a conviction of an offence, but shall not be regarded as an admission of liability for the purpose of, nor in any way affect or prejudice, any civil claim, action or proceeding arising out of the occurrence by reason of which the infringement notice was given.

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(8) A person, other than an owner of, a responsible person for, a driver of, or a person in charge of a vehicle in respect of which an offence is alleged to have been committed, shall not remove any infringement notice relating to the offence affixed to the vehicle or left in or on the vehicle by an authorised person.

Penalty: $50.

(9) An infringement notice served under subsection (2) shall inter alia contain a short statement of the effect of subsection (3).

(10) Regulations or local laws made under this Act may make provision in respect of the issue and use of infringement notices and may prescribe modified penalties not exceeding $50 for any contravention specified therein and may prescribe differing penalties for the same offence according to the circumstances by which the offence is attended.

[Section 37 amended by No. 14 of 1996 s. 4; No. 39 of 2000 s. 57; No. 84 of 2004 s. 80.]

38. Authorised officers

(1) For the purposes of this Act an authorised officer is —

(a) any member of the Police Force;

(b) any person appointed as such pursuant to subsection (2) within the area of jurisdiction entrusted to him by the appointment;

(c) any person appointed as such pursuant to subsection (3) within the area of jurisdiction entrusted to him by the appointment.

(2) The Minister may appoint any person who is or acts in the office of —

(a) an inspector, under the *Environmental Protection Act ~~1971~~ [10] 1986*;

(b) a conservation and land management officer, forest officer, ~~under the *Forests Act 1918* [11];~~

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~~(c) a~~ wildlife officer~~, under the *Wildlife Conservation Act 1950*;~~

~~(d) a~~ or ranger, under the ~~*National Parks Authority Act 1976* [11]~~ *Conservation and Land Management Act 1984*;

[(c), (d) deleted]

(e) an honorary warden, under the *Aboriginal Heritage Act 1972*;

(f) an inspector or honorary warden, under the *Waterways Conservation Act 1976*;

(g) a fisheries officer referred to in the *Fish Resources Management Act 1994*; or

(ga) a warden, under the *Road Traffic Act 1974*;

(h) a prescribed officer of a public authority,

to be an authorised officer for the purposes of this Act either in respect of the whole of the State or any part thereof defined in the appointment.

(3) A local government may by resolution appoint —

(a) any employee of the local government; and

(b) where the Minister by notice published in the *Government Gazette* authorises the local government to do so, any member of the council of that local government,

to be an authorised officer for the purposes of this Act either in respect of the whole of its district or any part thereof defined in the appointment.

(4) A person who is appointed as an authorised officer pursuant to subsection (2) or subsection (3) —

(a) has within the area of jurisdiction entrusted to him by the appointment the duties and powers of an authorised

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officer under this Act, and may exercise such powers within that area;

(b) may exercise the powers conferred upon him by this Act in relation to any person or vehicle which he has reason to believe is concerned in a contravention of this Act notwithstanding that such person or vehicle is not then within the area of jurisdiction entrusted to him if that person or vehicle was pursued from that area or is known to have been in that area at the time of the contravention;

(c) may, for the purposes of this Act in the course of his duty, enter on any land or, using only such force as is necessary, may enter a vehicle for the purpose of removing it; and

(d) shall be issued with a certificate of his appointment as an authorised officer in the prescribed form, evidencing the area of jurisdiction entrusted to him under this Act, which he shall, on reasonable demand, produce for inspection by any person.

(5) The Minister may appoint any person to be an honorary inspector under this Act, and a person so appointed shall have within the area of jurisdiction entrusted to him by the appointment the powers conferred on an honorary inspector by this Act, including the power to issue infringement notices, and the duty to report to the local government contraventions of this Act, and any such person shall be issued with a certificate of his appointment in the prescribed form and shall, on reasonable demand, produce that certificate for inspection.

(6) A person shall not wilfully obstruct any authorised officer or an honorary inspector acting in the execution of this Act.

Penalty: $200.

(7) Where an authorised officer or an honorary inspector has reasonable grounds to believe that a person has contravened or that a vehicle contravenes, or was used or driven in

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contravention of, the provisions of this Act, the officer or inspector may stop that person or vehicle and may request that person to furnish his name and address to that officer or inspector or to produce any license, registration, permit or exemption relating to the vehicle in his possession, and to give full information as to the ownership, use, construction and equipment of that vehicle and where such a person fails or refuses to do so, or furnishes a name or address or other information that the officer or inspector reasonably believes to be false, he shall be treated as having wilfully obstructed that officer or inspector for the purposes of subsection (6).

(8) An authorised officer may require any person to permit him to examine and test drive a vehicle in the possession of that person and may require that person to unlock or open any such vehicle and to deliver any key relating thereto, and where he has reason to believe that any vehicle is so constructed or in such condition that it is likely to occasion danger to any person or damage to property or otherwise does not comply with the prescribed requirements for vehicles registered under this Act he may attach to the vehicle a notice, in a prescribed form, prohibiting the use of that vehicle, except for the purpose of presenting it for inspection and such other purposes as may be specified in that notice, either forthwith or on or after a date specified in the notice, until —

(a) the defects specified in the notice have been remedied or the requirements specified in the notice have been met; and

(b) the vehicle has been presented for further inspection at a place designated by the Director General and the notice has been removed by or on behalf of the Director General after an inspection of the vehicle has been made.

(9) Where an authorised officer pursuant to subsection (8) orders a driver to discontinue using a vehicle for which the driver is not a

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responsible person the driver shall bring the notice to the attention of a responsible person.

(10) A person who uses a vehicle in respect of which a notice under subsection (8) is in force otherwise than for a purpose specified in that notice or for the purpose of presenting the vehicle to the Director General for inspection by or on behalf of the Director General, or who wilfully removes, damages or obliterates any such notice attached to a vehicle, commits an offence.

Penalty: $200.

(11) An authorised officer may without warrant stop, seize and detain any vehicle which he has reason to believe contravenes, or was used or driven in contravention of the provisions of this Act if —

(a) the vehicle appears to him to be neither licensed under the *Road Traffic Act 1974*, nor registered under this Act; and

(b) the identity of a responsible person for, or a driver of, the vehicle can not be established to the satisfaction of that officer,

and may cause the vehicle to be conveyed to a place of safe custody until such time as it may be dealt with according to law.

(12) Any member of the Police Force may without warrant stop, seize and detain —

(a) any off-road vehicle; or

(b) any vehicle licensed under the *Road Traffic Act 1974*, when in use otherwise than on a road or private land by consent,

if the vehicle is in his opinion so constructed or in such condition that it is likely to occasion danger to any person or damage to any property, and may cause the vehicle to be

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conveyed to a place of safe custody until such time as it may be dealt with according to law.

(13) No authorised officer or other person acting in the performance of his duties shall be liable for anything done or seizure made under this Act for which there shall have been reasonable cause, nor in respect of any loss or damage, however arising, during any period in which a vehicle is detained under this Act.

(14) Regulations made under this Act may make provision in respect of the removal and detention of vehicles pursuant to this Act, and for the custody, disposal or sale of such vehicles, and in respect of recouping the costs of the removal, custody, and disposal or sale whether by deduction from the proceeds of sale or by recovery from a responsible person in a court of competent jurisdiction, and for the payment or appropriation of the proceeds of any such sale or other moneys relating thereto.

(15) If a vehicle is seized under subsection (11), it may be detained until the officer is satisfied —

(a) that it is licensed under the *Road Traffic Act 1974* or registered under this Act; or

(b) as to the identity of the owner or driver,

or until an order is made under section 42, whichever happens first.

(16) A person claiming to be a responsible person for a vehicle seized under subsection (11) or (12) may apply to the Magistrates Court for an order that the vehicle be delivered to him.

(17) A vehicle detained —

(a) under subsection (11) or (12) by a member of the Police Force; or

(b) under subsection (11) by an authorised officer appointed under subsection (2),

is to be taken to be detained in the name of the Director General.

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(18) A vehicle detained under subsection (11) by an authorised officer appointed by a local government under subsection (3) is to be taken to be detained by the local government.

[Section 38 amended by No. 106 of 1981 s. 34; No. 24 of 1995 s. 53; No. 53 of 1994 s. 264; No. 14 of 1996 s. 4; No. 76 of 1996 s. 26 and 27; No. 39 of 2000 s. 58 and 59; No. 59 of 2004 s. 141 ; No. 28 of 2006 s. 359.]

39. Proof of certain matters

(1) In any proceedings for an offence against this Act —

(a) an averment in the prosecution notice that —

(i) any place at which a vehicle is alleged to have been driven or used is, or is not, as the averment may specify, within a permitted area or within a prohibited area;

(ii) a vehicle was not licensed under the *Road Traffic Act 1974*; or

(iii) a vehicle was not registered under this Act,

shall be deemed to be proved in the absence of proof to the contrary;

(b) the onus of proving that —

(i) any place at which a vehicle was driven or used is situate on private land, or is within a permitted area; or

(ii) any vehicle was being used in circumstances where the provisions of this Act do not apply, or pursuant to and in accordance with any restrictions, limitations or conditions applicable to a permit or exemption granted under this Act,

is on the person alleging that to be the case; and

(c) the averment on the process that an employee of a local government is authorised to take the proceedings shall

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be sufficient proof of that fact and of his appointment as such an employee unless the contrary is shown.

(2) Where by way of defence to any prosecution for an offence under this Act it is alleged that any vehicle was driven or used or was intended to be driven or used on private land by consent that defence shall not be taken to have been established unless —

(a) it is shown that the land in question was —

(i) land (not being land comprised in a reserve under Part 4 of the *Land Administration Act 1997*, whether or not vested in or leased to any person or body under that Act) which is alienated from the Crown for any estate or interest;

(ii) land the subject of any conditional purchase agreement or of any lease from the Crown;

(iii) land comprised in a reserve under any Act and leased for any purpose; or

(iv) other land, in respect of which a right of occupation or use is held by any person or body not being a right conferred principally for mining purposes,

and that the vehicle was driven or used in that place at the material time with the specific prior consent of a lawful occupier or the owner of that land; or

(b) the Court is otherwise satisfied that the vehicle was lawfully in a place the property or use of which is vested in a person or body who or which consented to the vehicle being there, not being land of the kind referred to in paragraph (a).

[Section 39 amended by No. 14 of 1996 s. 4; No. 31 of 1997 s. 17; No. 84 of 2004 s. 80.]

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40. Summary proceedings

All proceedings for offences under this Act may be instituted by any person aggrieved, or by any employee of a local government or other authorised officer.

[Section 40 amended by No. 14 of 1996 s. 4; No. 59 of 2004 s. 141.]

41. General penalty

(1) Any person convicted of an offence against this Act is liable, where no penalty is expressly provided for the offence, to a penalty not exceeding $100.

[(2) repealed]

[Section 41 amended by No. 78 of 1995 s. 17.]

42. Detention of vehicles

(1) Where the Court finds that any vehicle is so constructed or in such condition that it is likely to occasion danger to any person or damage to property or that any vehicle has been used in the commission of an offence against this Act the Court may order that the vehicle shall be detained by or on behalf of the Director General or a local government —

(a) for a period not exceeding 12 months; or

(b) until the Director General is satisfied that arrangements have been made that will ensure that the construction or condition of the vehicle will be so changed as to eliminate the source of danger,

but where it appears to the Court that some person is lawfully entitled to possession and is not guilty of an offence in relation thereto the Court may order the vehicle to be delivered to that person.

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(2) Where any vehicle is detained by or on behalf of the Director General or a local government pursuant to this Act and —

(a) a responsible person cannot be found after reasonable inquiry; or

(b) a responsible person dies, and after reasonable inquiry no other person appears to the Director General or that local government to be lawfully entitled to possession of the vehicle; or

(c) the vehicle is not recovered from the custody of the Director General or that local government within a prescribed period,

then, after the expiry of the period of detention relating thereto, the Director General or that local government may dispose of or sell that vehicle and apply the proceeds of that disposal or sale in accordance with regulations made under this Act.

[Section 42 amended by No. 106 of 1981 s. 34; No. 14 of 1996 s. 4; No. 76 of 1996 s. 27; No. 39 of 2000 s. 59; No. 59 of 2004 s. 141.]

43. Expenses of this Act, and appropriation of penalties, etc.

(1) The expenses of the Minister in connection with the administration of this Act shall be paid out of moneys from time to time appropriated by Parliament for that purpose.

(2) The expenses of the Director General in connection with the administration of this Act shall be paid in so far as is practicable out of moneys derived from the administration of the scheme of registration effected by this Act, and in so far as such moneys shall not be sufficient for that purpose out of moneys from time to time appropriated by Parliament for that purpose.

(3) Subject to subsection (2), moneys derived by the Director General pursuant to the provisions of this Act shall be credited to an account to be established as a trust account under

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the *Financial Administration and Audit Act 1985* section 15B and called the "Off-Road Vehicles Account" which shall be dealt with in such manner as the Minister, with approval of the Treasurer, may direct.

[Section 43 amended by No. 106 of 1981 s. 34; No. 78 of 1995 s. 17; No. 49 of 1996 s. 64; No. 76 of 1996 s. 27; No. 7 of 2002 s. 11(1).]

44. Regulations to operate as local laws

(1) The Governor may make regulations that are to operate as if they were local laws for each district to which they apply.

(2) Regulations made under this section may deal with any matter in respect of which local laws may be made under this Act.

(3) Regulations under this section, other than those that only repeal or amend other regulations, are to contain a statement to the effect that they apply as if they were local laws.

(4) A local government is to administer any regulation made under this section to the extent that it relates to any place where the local government may perform functions, as if the regulation was a local law.

(5) If there is any inconsistency between a regulation made under this section and a local law, the regulation prevails to the extent of the inconsistency.

[Section 44 inserted by No. 14 of 1996 s. 4.]

45. Local laws

A local government may make local laws —

(a) for its district and any other area that is to be regarded, for the purposes of this Act, as being within that district;

(b) in accordance with subdivision 2 of Division 2 of Part 3 of the *Local Government Act 1995*; and

(c) for the purposes permitted by this Act.

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[Section 45 inserted by No. 14 of 1996 s. 4.]

45A. Model local laws

(1) The Governor may cause to be prepared and published in the *Gazette* model local laws the provisions of which a local law made under this Act may adopt by reference, with or without modification.

(2) Model local laws have no effect except to the extent that they are adopted.

(3) The Governor may, by notice published in the *Gazette*, amend a model local law published under this section.

(4) An amendment to a model local law does not affect any local law that adopted the model local law before the amendment but the amendment may be adopted by a further local law.

[Section 45A inserted by No. 14 of 1996 s. 4.]

45B. Governor may amend or repeal local laws

(1) The Governor may make a local law to amend the text of, or repeal, a local law.

(2) Subsection (1) does not include the power to amend a local law to include in it a provision that bears no reasonable relationship to the local law as in force before the amendment.

(3) The Minister is to give a local government notice in writing of any local law that the Governor makes to amend the text of, or repeal, any of the local government's local laws.

(4) A local law made under this section is to be taken, for all purposes, to be a local law made by the local government which made the local law that is amended or repealed.

(5) Section 3.17 of the *Local Government Act 1995* does not apply in relation to local laws made under this Act.

[Section 45B inserted by No. 14 of 1996 s. 4.]

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46. Local laws and regulations generally

(1) Any regulation made under section 44 or local law made under this Act may be so made —

(a) as to apply generally or in a particular class of case, or particular classes of cases, at all times or at a specified time or specified times, throughout the district or in a specified part or specified parts of the district and in areas which although not within the district are by the operation of the provisions of this Act nevertheless to be regarded as being within the district;

(b) as to require a matter affected by it to be in accordance with a specified requirement, or as approved by, or to the satisfaction of, a specified person or body, or class of person or body, and so as to delegate to or confer upon a specified body a discretionary authority; and

(c) as to provide that in specified cases, or a specified class of case, or specified classes of cases, whether on specified conditions or unconditionally, persons or things may be exempted from its provisions either wholly or to such extent as is specified.

(2) Any regulation made under section 44 or local law may make provision for the imposition of penalties not exceeding $100 in respect of any contravention.

(3) Where in relation to a regulation made under section 44 or local law made under this Act the expression "specified" is used, the expression, unless the context requires otherwise, means specified in that regulation or local law.

[Section 46 amended by No. 14 of 1996 s. 4.]

47. Revocation or amendment of local laws and town planning schemes

(1) Where any local law has been or is made by a local government under this Act or the *Local Government Act 1995*, or any local planning scheme has been or is made under the *Planning and*

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Development Act 2005 and that local law or scheme, or any provision of such a local law or scheme, is in the opinion of the Governor repugnant to or inconsistent with the provisions of this Act the Governor may by notice published in the *Government Gazette* revoke or amend that local law or scheme, or the relevant provision thereof, in so far as it is so repugnant or inconsistent and effect shall be given to any such revocation or amendment but without affecting the validity, or curing the invalidity, of any thing done, or of the omission of any thing, in the meantime.

(2) The Minister shall cause a copy of any notice published under this section to be laid before each House of Parliament within 6 sitting days of that House next following the publication, and if either House of Parliament passes a resolution of which notice has been given within the first 14 sitting days of that House after the copy of a notice under this section has been laid before that House that the notice be disallowed, the notice thereupon ceases to have effect, but the disallowance of the notice does not affect or invalidate anything done in good faith before the passing of the resolution.

[Section 47 amended by No. 14 of 1996 s. 4.; No. 38 of 2005 s. 15]

48. Regulations

(1) The Governor may make regulations for or with respect to any matter or thing which is required or permitted for the proper administration of this Act or for achieving the objects and purposes of this Act.

(2) The regulations may prescribe penalties not exceeding a fine of $100 in respect of a breach of any of the regulations.

(3) The regulations may require that any information or form required to be given or furnished thereunder shall be verified by statutory declaration.

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(4) Where and to the extent that there is inconsistency between any regulation made under this Act and any local law made under this Act, the provisions of the regulation prevail.

[Section 48 amended by No. 14 of 1996 s. 4.]

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Notes

[1] This is a compilation of the *Control of Vehicles (Off-road Areas) Act 1978* and includes the amendments made by the other written laws referred to in the following table [1a]. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
Control of Vehicles (Off-road Areas) Act 1978	117 of 1978	12 Dec 1978	Act other than s. 11: 5 Oct 1979 (see s. 2 and *Gazette* 5 Oct 1979 p. 3079)
Acts Amendment (Traffic Board) Act 1981 Pt. VII	106 of 1981	4 Dec 1981	2 Feb 1982 (see s. 2 and *Gazette* 2 Feb 1982 p. 393)
Acts Amendment and Repeal (Credit) Act 1984 Pt. III	102 of 1984	19 Dec 1984	31 Mar 1985 (see s. 2 and *Gazette* 8 Mar 1985 p. 867)
Control of Vehicles (Off-road Areas) Amendment Act 1985	12 of 1985	12 Apr 1985	1 Dec 1985 (see s. 2 and *Gazette* 1 Nov 1985 p. 4189)
Control of Vehicles (Off-road Areas) Amendment Act 1986	56 of 1986	26 Nov 1986	15 May 1987 (see s. 2 and *Gazette* 15 May 1987 p. 2119)
Guardianship and Administration Act 1990 s. 123	24 of 1990	7 Sep 1990	20 Oct 1992 (see s. 2 and *Gazette* 2 Oct 1992 p. 4811)
Acts Amendment (Public Sector Management) Act 1994 s. 3(1)	32 of 1994	29 Jun 1994	1 Oct 1994 (see s. 2 and *Gazette* 30 Sep 1994 p. 4948)
Fish Resources Management Act 1994 s. 264	53 of 1994	2 Nov 1994	1 Oct 1995 (see s. 2 and *Gazette* 29 Sep 1995 p. 4649)
Planning Legislation Amendment Act (No. 2) 1994 s. 46(6)	84 of 1994	13 Jan 1995	1 Mar 1995 (see s. 2 and *Gazette* 21 Feb 1995 p. 567)
Aboriginal Heritage Amendment Act 1995 s. 53	24 of 1995	30 Jun 1995	1 Jul 1995 (see s. 2 and *Gazette* 30 Jun 1995 p. 2781)
Sentencing (Consequential Provisions) Act 1995 Pt. 14	78 of 1995	16 Jan 1996	4 Nov 1996 (see s. 2 and *Gazette* 25 Oct 1996 p. 5632)

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Short title	Number and year	Assent	Commencement
Local Government (Consequential Amendments) Act 1996 s. 4	14 of 1996	28 Jun 1996	1 Jul 1996 (see s. 2)
Consumer Credit (Western Australia) Act 1996 s. 13	30 of 1996	10 Sep 1996	1 Nov 1996 (see s. 2)
Financial Legislation Amendment Act 1996 s. 64	49 of 1996	25 Oct 1996	25 Oct 1996 (see s. 2(1))
Road Traffic Amendment Act 1996 Pt. 3 Div. 2	76 of 1996	14 Nov 1996	1 Feb 1997 (see s. 2 and *Gazette* 31 Jan 1997 p. 613)
Acts Amendment (Land Administration) Act 1997 Pt. 15	31 of 1997	3 Oct 1997	30 Mar 1998 (see s. 2 and *Gazette* 27 Mar 1998 p. 1765)
Reprint of the *Control of Vehicles (Off-road Areas) Act 1978* as at 5 Mar 1999 (includes amendments listed above except those in the *Control of Vehicles (Off-road Areas) Act 1978* s. 11) (correction to reprint in *Gazette* 18 May 1999 p. 1965)			
Statutes (Repeals and Minor Amendments) Act 2000 s. 48	24 of 2000	4 Jul 2000	4 Jul 2000 (see s. 2)
Road Traffic Amendment Act 2000 Pt. 3 Div. 1	39 of 2000	10 Oct 2000	1 Jan 2006 (see s. 2 and *Gazette* 23 Dec 2005 p. 6244-5)
Machinery of Government (Planning and Infrastructure) Amendment Act 2002 Pt. 2 [12]	7 of 2002	19 Jun 2002	1 Jul 2002 (see s. 2 and *Gazette* 28 Jun 2002 p. 3037)
Reprint of the *Control of Vehicles (Off-road Areas) Act 1978* as at 2 Aug 2002 (includes amendments listed above except those in the *Control of Vehicles (Off-road Areas) Act 1978* s. 11 and the *Road Traffic Amendment Act 2000*)			
Environmental Protection Amendment Act 2003 s. 142	54 of 2003	20 Oct 2003	19 Nov 2003 (see s. 2 and *Gazette* 18 Nov 2003 p. 4723)
Local Government Amendment Act 2004 s. 13	49 of 2004	12 Nov 2004	1 Apr 2005 (see s. 2 and *Gazette* 31 Mar 2005 p. 1029)
Courts Legislation Amendment and Repeal Act 2004 s. 141	59 of 2004	23 Nov 2004	1 May 2005 (see s. 2 and *Gazette* 31 Dec 2004 p. 7128)

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Short title	Number and year	Assent	Commencement
State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004 Pt. 2 Div. 26 [13]	55 of 2004	24 Nov 2004	1 Jan 2005 (see s. 2 and *Gazette* 31 Dec 2004 p. 7130)
Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004 s. 80	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and *Gazette* 31 Dec 2004 p. 7129 (correction in *Gazette* 7 Jan 2005 p. 53))
Reprint 3: The *Control of Vehicles (Off-road Areas) Act 1978* as at 17 Feb 2006 (includes amendments listed above except those in the *Control of Vehicles (Off-road Areas) Act 1978* s. 11)			
Planning and Development (Consequential and Transitional Provisions) Act 2005 s. 15	38 of 2005	12 Dec 2005	9 Apr 2006 (see s. 2 and *Gazette* 21 Mar 2006 p. 1078)
Machinery of Government (Miscellaneous Amendments) Act 2006 Pt. 12 Div 2	28 of 2006	26 Jun 2006	1 Jul 2006 (see s. 2 and *Gazette* 27 Jun 2006 p. 2347)

[1a] On the date as at which this reprint was prepared, provisions referred to in the following table had not come into operation and were therefore not included in compiling the reprint. For the text of the provisions see the endnotes referred to in the table.

Provisions that have not come into operation

Short title	Number and year	Assent	Commencement
Control of Vehicles (Off-road Areas) Act 1978 s. 11 [2]	117 of 1978 (as amended by No. 7 of 2002 s. 7)	12 Dec 1978	To be proclaimed (see s. 2)
Road Traffic Amendment (Vehicle Licensing) Act 2001 Pt. 3 Div. 2 [14]	28 of 2001	21 Dec 2001	To be proclaimed (see s. 2)
Courts Legislation Amendment and Repeal Act 2004 s. 142 [15]	59 of 2004	23 Nov 2004	To be proclaimed (see s. 2)

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[2] On the date as at which this reprint was prepared, the *Control of Vehicles (Off-road Areas) Act 1978* s. 11 (as amended by the *Machinery of Government (Planning and Infrastructure) Amendment Act 2002* s. 7) had not come into operation. It reads as follows:

"

11. Responsibility of owners

(1) Subject to the provisions of subsection (2) of this section, the owner of any vehicle which is —

(a) required to be registered under this Act; or

(b) a vehicle licensed under the *Road Traffic Act 1974*, when being used otherwise than on a road,

shall in all proceedings in respect of damage, injury or death arising from the use of any such vehicle by some other person under the age of 18 years and lawfully in possession of the vehicle, be liable in respect of the probable consequences of the driving and use of that vehicle, otherwise than on private land by consent, as though he had formed a common intention and acted jointly with that other person.

(2) It shall, be a defence to any proceedings arising out of the provisions of subsection (1) of this section for the owner to show that he did not know, and could not reasonably be expected to have known, and had used all due diligence to prevent, the use to which the vehicle was put.

(3) For the purposes of this section, notwithstanding that pursuant to —

(a) subsection (4) of section 5 of the *Road Traffic Act 1974*; or

(b) subsection (2) of section 3 of this Act,

a person has been nominated and is deemed, for the purposes of that Act or for the purposes of this Act other than this section, to be the owner of the vehicle to which the nomination relates that nomination shall not take or have effect to limit the liability of any other person who would but for such nomination be or be deemed to be an owner of the vehicle.

[Section 11 amended by No. 7 of 2002 s. 7.]

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[3] Under the *Public Sector Management Act 1994* the names of departments can be changed. At the time of this reprint the former Lands and Surveys Department is called the Department of Land Administration.

[4] Abolished by the *Environmental Protection Act 1986* Sch. 3 cl. 5.

[5] Under the *Conservation and Land Management Act 1984* s. 151(a) a reference in any written law to the Forests Department is read as a reference to the Department of Conservation and Land Management unless the context is such that it would be incorrect or inappropriate.

[6] Under the *Conservation and Land Management Act 1984* s. 151(a) a reference in any written law to the Conservator of Forests is read as a reference to the Executive Director of the Department of Conservation and Land Management unless the context is such that it would be incorrect or inappropriate.

[7] Under the *Alteration of Statutory Designations Order (No. 3) 2001* the former Local Government Department is now called the Department of Local Government and Regional Development.

[8] Under the *Alteration of Statutory Designations Order (No. 3) 2001* the former Public Health Department is now called the Department of Health.

[9] Under the *Health Legislation Amendment Act 1984* the former Commissioner of Public Health is now called the Commissioner of Health.

~~[10] Repealed by the *Acts Amendment and Repeal (Environmental Protection) Act 1986*.~~

~~[11] Repealed by the *Conservation and Land Management Act 1984*.~~

[10] Footnote no longer required.

[11] Footnote no longer required.

[12] The *Machinery of Government (Planning and Infrastructure) Amendment Act 2002* s. 11(2) and (3) read as follows:

"

(2) The balance of the Off-Road Vehicles Account as it was before this section came into operation is to be the opening balance of the account of that name established under the *Control of Vehicles (Off-road Areas) Act 1978* section 43(3) as amended by subsection (1).

(3) The amount of that opening balance is to be reflected by a closing entry in the Off-Road Vehicles Account that was, before this section came into operation, required to be maintained as a part of the Trust Fund constituted under the *Financial Administration and Audit Act 1985* section 9.

".

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[13] The *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* Pt. 5, the *State Administrative Tribunal Act 2004* s. 167 and 169, and the *State Administrative Tribunal Regulations 2004* r. 28 and 42 deal with certain transitional issues some of which may be relevant for this Act.

[14] On the date as at which this reprint was prepared, the *Road Traffic Amendment (Vehicle Licensing) Act 2001* Pt. 3 Div. 2 had not come into operation. It reads as follows:

"

Division 2 — *Control of Vehicles (Off-road areas) Act 1978* amended

29. The Act amended

The amendments in this Division are to the *Control of Vehicles (Off-road areas) Act 1978*.

30. Section 3 amended

Section 3(1) is amended by deleting the definition of "motor cycle" and inserting instead the following definitions —

"

"motor car" means a vehicle that is not a motor cycle and that is designed —

(a) mainly to carry people; and

(b) to seat not more than 8 adults (including the driver);

"motor cycle" means a vehicle that —

(a) is designed to travel on 2 wheels; or

(b) although not designed to travel on 2 wheels, is designed so that the driver sits astride it, or part of it, in a manner similar to that customary for a vehicle designed to travel on 2 wheels;

".

31. Section 9A amended

Section 9A(2) is amended by deleting ", as described in the First Schedule to the *Road Traffic Act 1974*,".

32. Section 9B amended

Section 9B(3) is amended by deleting ", as described in the First Schedule to the *Road Traffic Act 1974*,".

".

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[15] On the date as at which this reprint was prepared, the *Courts Legislation Amendment and Repeal Act 2004* s. 142, which gives effect to Sch. 2, had not come into operation. It reads as follows:

"

142. Other amendments to various Acts

Each Act listed in Schedule 2 is amended as set out in that Schedule immediately below the short title of the Act.

".

Schedule 2 cl. 12 reads as follows:

"

Schedule 2 — Other amendments to Acts

12. ***Control of Vehicles (Off-road areas) Act 1978***

s. 33(1) [17]	Delete "a court of petty sessions," and insert instead — " the Magistrates Court, ".

".

[16] Footnote no longer applicable.

[17] The amendment to s. 33(1) by the *Courts Legislation Amendment and Repeal Act 2004* would conflict with amendments in the *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* s. 147.

Extract from www.slp.wa.gov.au, see that website for further information