



ANALYSIS

Title
1. Short Title

2. New Part

1992, No. 5

An Act to amend the Transport Act to control
the parking of vehicles

(22 September 1992)

BE IT ENACTED by the Parliament of the Cook Islands in Session assembled, and by the authority of the same as follows:

1. Short Title - (1) This Act may be cited as the Transport Amendment Act 1992 and shall be read together with and deemed part of the Transport Act 1966 (hereinafter referred to as "the principal Act").
(2) This Act shall come into force on a date to be determined by the Minister by notice published in the Gazette.

2. New Part - The principal act is amended by inserting after Part V the following new part:

"PART VA

PARKING RESTRICTIONS

55A. Interpretation - In this Part unless the context shall otherwise require - "Infringement Offence" means an offence specified in this Part or in regulations made pursuant to this Part and includes a parking offence;
"Parking Offence" means parking in breach of any regulation made under this Part.

55B. Application of this Part - (1) This Part shall apply to every road or portion of road that the Minister may by notice in the Gazette determine.
(2) Every road or portion of road to which this Part shall apply shall be identified in the manner prescribed.

55C. Appointment of traffic wardens - (1) There may from time to time be appointed by the Commissioner of Police such number of traffic wardens necessary for the efficient administration of this Part.
(2) The terms and conditions upon which traffic wardens shall be appointed shall be as prescribed by regulation.

55D. Powers of traffic wardens - (1) A traffic warden in uniform or in possession of any warrant or other evidence of authority as a traffic warden is hereby authorised to enforce the provisions of this Part.

(2) A traffic warden shall have such functions duties and powers as may be prescribed and may:

- (a) direct any person on any road and apparently in charge of or in any vehicle, to furnish the person's name and address and give any other particulars required as to the person's identity and give such information as is within the person's knowledge and as may lead to the identification of the driver or person in charge of any vehicle;
- (b) if the traffic warden believes on reasonable grounds that a vehicle on a road causes an obstruction in the road or to any vehicle entrance to any property, or that the removal of the vehicle is desirable in the interests of road safety or for the convenience or in the interests of the public:
 - (i) enter, or authorise another person to enter, the vehicle for the purpose of moving it or preparing it for movement; and
 - (ii) move, or authorise another person to move, the vehicle to any place where it does not constitute a traffic hazard;
- (c) direct the driver or person in charge of any vehicle on any road to remove the vehicle from the road or any specified part of any road, if the traffic warden believes on reasonable grounds that it causes an obstruction in the road or to any vehicle entrance to any property, or that its removal is desirable in the interests of road safety or for the convenience or in the interest of the public.

(3) Every person commits an offence who fails to comply with any direction given under subsection (2)(a) of this section or who gives in response to all direction under that provision any information that the person knows to be false.

(4) Every person to whom any direction is given under the authority of this section shall comply with that direction and no person shall do any act that is for the time being forbidden by any direction given under the authority of this section.

(5) Any person who is authorised by a traffic warden to:

- (a) enter a vehicle for the purpose of moving it or preparing it for movement; or
- (b) move a vehicle to a place where it does not constitute a traffic hazard - may do so, but shall do everything reasonably necessary to ensure that the vehicle is not damaged in the course thereof.

55E. Infringement offences - (1) Where a traffic warden has reason to believe that the user of a vehicle has committed an infringement offence the traffic warden may:

- (a) require the user of the vehicle to immediately pay an infringement fine of \$10.00; or
- (b) issue an infringement notice in respect of the alleged offence by:
 - (i) attaching the notice, or a copy thereof, to the vehicle to which the notice relates; or
 - (ii) delivering the notice, or a copy thereof, personally to the person who is the user of the vehicle or who is accompanying that person; or
 - (iii) sending the notice, or a copy thereof, to the user or owner of the vehicle by post addressed to the user or owners last known place of residence or business.

(2) Every person who shall be required to pay a fine pursuant to subsection (1) may:

- (a) elect to pay the infringement fine immediately, in which event the traffic warden shall acknowledge in writing the receipt of such sum and the person shall not be liable to prosecution under section 55G; or

- (b) elect not to pay the fine either immediately or within 24 hours of the infringement offence, in which event that person shall be liable to prosecution under section 55G.
- (3) Where an infringement notice, or a copy thereof, is attached to the vehicle to which the notice relates pursuant to subsection (1), the notice or copy shall be deemed to have been served on every person liable in respect of the alleged offence and to have been served when the notice or copy was attached to the vehicle.
- (4) Where an infringement notice, or a copy thereof, is sent to a person by post addressed to the person at the person's last known place of residence or business pursuant to subsection (1), the notice or copy shall be deemed to have been served on the person when it was so posted.
- (5) Every infringement notice shall be in a form prescribed by regulations, and shall contain -
 - (a) such particulars of the alleged infringement offence as are sufficient to fairly inform a person of the time, place and nature of the alleged offence together with such other details as may be prescribed; and
 - (b) the amount of the infringement fine in respect of the infringement; and
 - (c) a statement of the consequences if the person served with the notice does not pay the infringement fine within 24 hours;
 - (d) the date upon which a prosecution in the High Court shall be commenced being a date not more than three days from the date of the alleged offence.

55F. Owner liability for parking offences - (1) Every proceeding for a parking offence may be taken against any one or more of the following persons:

- (a) the person who allegedly committed the offence;
- (b) any person who, at the time of the alleged offence, was registered as the owner, or one of the owners, of the vehicle involved in the offence;
- (c) any person who, at the time of the alleged offence, was lawfully entitled to possession of the vehicle involved in the offence whether (jointly with any other person or not) -

whether or not (in the case of a person referred to in paragraph (b) or paragraph (c) of this subsection) the person is an individual or was the driver, person in charge, or user of the vehicle at the time of the alleged offence was committed.

(2) In any proceedings under section 55G taken against a person referred to in paragraph (b) or paragraph (c) of subsection (1), it shall be conclusively presumed that:

- (a) the person was the driver, person in charge and user of the vehicle at the time of the alleged offence; and accordingly,
- (b) the acts or omissions of the driver, person in charge, or user of the vehicle at that time, were the acts or omissions of the first mentioned person.

(3) It shall be a defence to proceedings under section 55G against a person referred to in paragraph (b) or paragraph (c) of subsection (2), if the person proves that at the time the alleged offence was committed another person was unlawfully in charge of the vehicle.

(4) This section shall have effect notwithstanding anything to the contrary in any Act or rule of law.

55G. Prosecution of infringement offence - (1) Every person served with an infringement notice and who does not pay the infringement fine within 24 hours of being served shall be liable to prosecution in respect of the offence to which the notice shall relate and shall upon conviction be liable to a fine not exceeding \$50.00.

(2) Notwithstanding anything to the contrary in any other Act, every prosecution of an infringement offence may be commenced against a person served with an infringement notice by filing the notice in the High Court and without further service of any other documentation upon the offender.

(3) Every prosecution commenced pursuant to this section may be proceeded with in the absence of the offender unless the offender has given written notice to the Registrar of the High Court of his intention to either:

- (a) defend the proceedings; or
- (b) dispute the amount of the fine referred to in subsection (1).

55H. Regulations - For the purposes of this Part the Queen's Representative may by Order in Executive Council make regulations for all or any of the following purposes:

- (a) offences involving parking a vehicle on a road in excess of such period of time as may be prescribed;
- (b) offences involving parking a vehicle at a location on a road reserved for specific vehicles as may be prescribed;
- (c) offences involving parking a vehicle whether attended or unattended without due care or without reasonable consideration for other persons using the road;
- (d) offences involving parking a vehicle so as to cause or be likely to cause damage to ornamental grass plants shrubs or flower beds laid out or planted on or adjacent to the road;
- (e) offences involving parking contrary to the terms of any notice traffic sign; or marking or sign maintained on or adjacent to the road indicating the stopping standing or parking of the vehicle is prohibited limited or restricted;
- (f) offences involving parking so as to obstruct other traffic or any view of the road way by other drivers;
- (g) procedures in relation to prosecutions under section 55G.

This Act is administered in the Department of Police