

# Heavy Vehicle National Law Amendment Bill 2012

## Explanatory Notes

### Short title

The short title of the Bill is the Heavy Vehicle National Law Amendment Bill 2012.

### Policy objectives and reasons for the Bill

The principal objective of the Heavy Vehicle National Law Amendment Bill 2012 (the Amendment Bill) is to amend the *Heavy Vehicle National Law Act 2012* (the Act) including the Heavy Vehicle National Law (National Law) which is a schedule to the Act. The Act implemented the first stage of a single national system for heavy vehicle regulation through the creation of the National Heavy Vehicle Regulator (the Regulator).

This Amendment Bill will resolve policy or technical matters that remained unresolved at the time of passage of the Act.

This Amendment Bill retains the intent and substance of the majority of the provisions contained in the Act. However, a significant renumbering of sections in the National Law has been undertaken in this Amendment Bill due to the introduction of a number of new proposed sections and the reconfiguration of a number of sections of the Act. Given the nature of the changes and the extent of the consequential renumbering, this Amendment Bill will substitute the National Law in its entirety. Where proposed sections in the Amendment Bill will replace sections in the Act, a reference to the section number has been included in the relevant note.

Provisions dealing with the registration of heavy vehicles in Chapter 2 of the Amendment Bill will not be proclaimed into force until the necessary national information and telecommunication infrastructure is in place. Until that point, the current local laws will continue to apply to manage

registration functions. The application laws enacted by states and territories may modify or supplement terms used elsewhere in the National Law to ensure the appropriate integration of the local registration laws.

### **How the policy objectives are to be achieved**

The consolidation and unification of national heavy vehicle laws is necessary to address a long standing problem of contradictory and inconsistent state laws that stifle productivity and hamper the promotion of safety. Although the ‘harmonisation’ approach adopted over the last two decades has improved the situation the model laws have been adapted to reflect individual state and territory concerns and environments.

The Amendment Bill provides the consolidated form of the national law that has been agreed by all jurisdictions.

Further details about how the Bill achieves the policy objectives are set out in the explanatory notes for the *Heavy Vehicle National Law Bill 2012*.

### **Alternative ways of achieving policy objectives**

The Commonwealth Regulation Impact Statement produced in 2009 considered four approaches for a national system of heavy vehicle regulation:

- to retain the status quo—this was used as the ‘base case’ against which to evaluate the other options;
- to create a non-statutory body to foster consistency in the administration of the current model laws as they apply in each jurisdiction;
- to enact uniform national heavy vehicle law in a ‘host’ jurisdiction—other jurisdictions would then adopt that law as ‘template’ legislation; and
- to create a single national statutory Regulator that would administer uniform legislation and deliver services through the existing registration authorities.

This fourth option delivered the most significant benefits when measured against the key objectives for regulatory reform and was the option supported by the Australian Transport Council (ATC). Passage of this Bill will give further effect to this option.

## **Estimated cost for implementation of the Bill**

An independent cost benefit analysis was commissioned to ascertain the net benefits possible through adoption of the proposed national heavy vehicle law. The outcomes of this analysis are summarised in the explanatory notes for the *Heavy Vehicle National Law Bill 2012*.

## **Consistency with Fundamental Legislative Principles**

As far as possible, changes to the National Law contained in the Amendment Bill have been drafted to maintain the policy positions expressed in the heavy vehicle model laws on which both are based. Departures from these positions have been made primarily as a consequence of decisions made by the national project board, the Standing Council on Transport and Infrastructure (SCOTI), and the Transport and Infrastructure Senior Officers Committee (TISOC).

A significant number of these departures (for example, the decision to not require driver conviction as a trigger for the extension of liability in a number of chain of responsibility offences) arose as a result of feedback obtained from industry and government stakeholders during the extensive consultation process for this Bill.

Matters raised regarding consistency with Fundamental Legislative Principles (FLPs) in the explanatory notes for the Act are still relevant, but are not being restated in the explanatory notes for this Bill. These matters were considered by the Transport, Housing and Local Government Committee (THLGC) in *Report No.4 - Heavy Vehicle National Law Bill 2012*.

However, the Amendment Bill includes amendments that may be considered to give rise to new inconsistencies with FLPs.

The National Law has also been scrutinised by government agencies across all Australian jurisdictions including the parliamentary counsel of each jurisdiction (including the Office of the Queensland Parliamentary Counsel) through their participation in the Australasian Parliamentary Counsels' Committee.

Generally, the Amendment Bill has sufficient regard to the rights and liberties of individuals as required by subsection 4(2) of the *Legislative Standards Act 1992* (LS Act). Nonetheless, it has not entirely eliminated all

potential breaches of the FLPs. The potential breaches of the FLPs together with justifications provided in respect of each provision are discussed below.

## **Individual's Rights and Liberties**

### ***Executive Officer Liability***

The definition of *executive officer* is amended to include a reference to a person who is a director of a corporation. The definition currently only requires proof that an executive officer is concerned or takes part in the management of the corporation and does not refer to the office holder.

The basic function of a director, by the very nature of the role, is to be concerned with the management of a corporation at some level, so the provision was always intended to capture directors. The amendment to the definition was nationally agreed to remove any ambiguity. Additionally, proposed section 636, which attributes derivative liability to an executive officer, is drafted to comply as far as practicable with the Council of Australian Governments (COAG) principles for directors' liability and the Business Regulation and Competition Working Group Guidelines for those principles.

The Amendment Bill will have the effect of amending the National Law to now require an executive officer to actively authorise or permit the offence, or be reckless as to the possible commission of the offence. This departs from the position that applied under the Act, whereby executive officers are deemed liable for all offences committed by the relevant corporation, unless they can establish they exercised due diligence to ensure compliance, or were not in a position to influence the relevant conduct of the corporation.

Additionally, the Bill provides that the offences for which derivative liability may arise will be limited to those offences (listed in schedule 4 of the National Law) for which objective justification can be provided. This justification is provided for every such offence where liability arises throughout the National Law and is included at appendix 2 to these explanatory notes. The adoption of this approach is intended to ensure that executive officers are accountable for the consequences of corporate behaviour where this is demonstrably appropriate.

It is anticipated SCOTI will be asked in November 2012 to agree whether the executive officer liability provisions should be further reviewed in line

with a broader review of extended liability provisions as part of the Legislative Forward Work Program to ensure they work together effectively and represent an optimal and contemporary response to this issue.

***Conclusive evidence***

Proposed section 723 (Evidence as to intelligent access map) allows a certificate to be conclusive evidence that a particular map was or was not an intelligent access map issued by the TCA on a stated date or during a stated period. These provisions potentially breach the FLP that legislation should not reverse the onus of proof in criminal proceedings without adequate justification. Subsection (2), however, allows for the reception of evidence against the presumption that the contents of the map are a correct representation of the national road network at the time of its issue. Therefore, proposed section 723 is justified because the contents of the map are arguably more likely to have a substantial bearing on legal proceedings than the matters in subsection (1) in respect of which the conclusive presumption is provided.

***Penalty indexation***

Proposed section 737 (Increase of penalty amounts) effectively allows the amendment of the penalty amounts in the national law by the national regulations. Pecuniary penalties are expressed in dollar values rather than penalty units and it is therefore necessary to prescribe a mechanism in the regulations to increase penalty amounts as there is no single jurisdictional mechanism that would be appropriate in this regard.

The indexation mechanism is to be set out in regulations and is intended to be derived from generally accepted indexes such as inflation, for example, or the consumer or labour price indexes published by the Australian Bureau of Statistics. The note to subsection (2) recognises that the application of the index may result in no increase at all in a given year. In addition to the ordinary requirement of a unanimous recommendation required for regulations made under the National Law (see the proposed section 730 of the Bill which will replace section 669 of the Act), a regulation establishing the index referred to in subsection (2) requires responsible Ministers to be satisfied that the method generally accords with increases in relevant inflation indexes or similar indexes. These safeguards ensure appropriate checks and balances to avoid injustice through the delegation of this rule making power.

### ***Abrogation of the privilege against self-incrimination***

The proposed section 587 is a new section of general operation that clarifies that a person is not excused from compliance with a requirement imposed by an authorised officer under Chapter 9 of the Act on the ground that compliance might incriminate the person or make the person liable to a penalty. The amendment is necessary to nullify an argument by a person who refused to comply with a requirement issued under the Act that the refusal was justified by protections against self incrimination provided under the general law.

Proposed section 588 delineates the evidential immunity available for individuals complying with particular requirements under the Act. Use and derivative use immunity is provided in subsection (2) for information required by an authorised officer to be provided under proposed sections 570 or 577. The effect of this subsection is to prevent information provided by the individual in response to the named requirements being used against the individual in criminal proceedings. Subsection (3) applies to abrogate the privilege in relation to documents required by an authorised officer to be produced under subsection 569(1)(c) to (f) or section 577.

Subsection 588(3) concerns specified documents, directly related to the National Law and regulatory scheme that have been required by an authorised officer to be produced by an individual. It provides that documents produced by an individual in compliance with the authorised officer's requirement are not inadmissible in evidence against the individual in a criminal proceeding on the ground that the document might incriminate the individual.

This abrogation of the privilege against self-incrimination is necessary for compliance and enforcement purposes. In the absence of a provision compelling the production of specified documents by an individual, and further providing for the use of those documents as evidence, prosecuting breaches of the National Law would require far greater investigative resources. This applies particularly to offences detected during the course of on-road enforcement activities. Public safety is liable to be compromised if prosecution of heavy vehicle offences is more difficult under the National Law than existing jurisdictional laws.

The Scrutiny of Legislation Committee has previously conceded that voluntary participation in a regulatory scheme may imply a waiver of the benefit of the self-incrimination privilege. The Queensland Law Reform

Commission's 2004 Report Number 59 referred to in the FLP Notebook (*The Abrogation of the Privilege against Self Incrimination*) discusses this further at paragraph 6.54:

*The basis of the argument is that participation in the scheme is a matter of choice and, if undertaken, necessarily involves acceptance of submission to the requirements of the scheme, including compulsion to provide information. In other words, in some situations, participation in a regulated activity may be considered to amount to a waiver of privilege. This may be particularly so in the context of records that are required to be kept as part of a mechanism for ensuring compliance within a regulatory framework.*

Relevantly, the Queensland Law Reform Commission found at paragraph 6.73 that the prior existence of a document at the time it was required to be produced weighs in favour of abrogating privilege.

*... [S]ince the document already exists, the individual is not compelled to communicate the information for the purpose of the investigation or inquiry. Although the individual may be forced to produce the document, there may be less cause in such a situation for the application of the rationales for either of the privileges.*

*... This may be particularly so if the document is one that is required to be kept in compliance with a legislative regulatory scheme.*

The redrafting of section 531 through the proposed section 588 represents a narrowing of the basis on which privilege can be claimed in relation to the documents discussed above. However, given the nature of the documents and the significance of this power in the broader regulatory scheme it is believed the departure from FLPs in this respect is justified and is consistent with similar provisions in other jurisdictions.

### ***Infringement notices***

The National Law contains provisions that will allow details stated in an infringement notice to be evidence of an offence having been committed, regardless of whether the fine has been paid.

The National Law provisions of the Act contain offences for which evidence of the payment of a fine sought by an infringement notice is admissible as evidence that the offence happened at the time and place, and in the circumstances, stated in the infringement notice. This contradicts well-

established policy or law in many jurisdictions that payment of a fine imposed in this manner is not to be considered evidence of guilt.

The Amendment Bill will amend the National Law provisions in the Act so that it will only provide that evidence of the details contained in the infringement notice is admissible in this way. The option to challenge the probity of the infringement notice as evidence is available to the defendant and the court is entitled to provide as much, or as little, weight to the material as it sees fit.

***Lessening of protection against damage to property***

Proposed section 581 will have the effect of reducing the ability for a person to claim compensation for costs, damage or loss sustained during the exercise of powers relating to enforcement under the National Law. The bar on claiming compensation for loss or damage arises where the exercise of the power was not improper or unreasonable, or where it was not caused by an unlawful seizure or forfeiture.

This amendment was agreed to nationally on the basis that the powers in question are to be exercised most often in relation to vehicles, and in inhospitable environments such as the roadside. This represents a departure from the operational context for other legislative schemes where similar powers would typically be exercisable only in relation to premises or personal property. Given the different operating environments it would be unreasonable to require the same restrictions to apply to the exercise of the powers under the National Law. In a practical sense, in the conventional exercise of powers under the Act a component of a vehicle may break due to wear and tear. In such instances, subject to the test of the power being exercised properly and reasonably, it is reasonable the Regulator should not be exposed to the costs of any damages.

***Restriction of Performance Based Standards design approval by responsible Minister***

Proposed section 21 of the National Law amendments in the Amendment Bill allows a responsible Minister to notify the Regulator in writing that a vehicle subject to a Performance Based Standards (PBS) design approval is not permitted to operate in their jurisdiction or is only permitted to operate in that jurisdiction in accordance with particular conditions. The applicant for the design approval does not have a right of review of the responsible Minister's decision. This approach has been agreed by all jurisdictions and

is consistent with the package previously approved by SCOTI for the administration of the scheme.

***Reasonable steps defence in substitution for honest and reasonable mistake of fact defence***

The Act includes several offences that exclude the mistake of fact defence and, in its place, provide for the reasonable steps defence to be raised. This approach is common throughout the Act and is discussed in the Explanatory Notes for the Heavy Vehicle National Law Bill 2012. OQPC advised in relation to the Act for this issue that the potential FLP infringement is made less objectionable (and possibly even justified) in situations where the charged persons are given the benefit of the reasonable steps defence. The exclusion of the defence is extended to proposed subsection 91(1) (Person must not tamper with emission control system fitted to heavy vehicle) and subsection 376(3) (Keeping relevant document while operating under work diary exemption (notice)). The rationale for excluding the mistake of fact defence is consistent with the approach adopted for equivalent offences such as tampering with a speed limiter (proposed section 93) and tampering with an approved electronic recording system (proposed section 335), and proposed section 287 (keeping relevant document while operating under work and rest hours exemption (notice)).

The Act is to be further amended by clarifying that the mistake of fact defence is not available in a number of proposed provisions, and no reasonable steps defence is to be provided instead. The provisions affected are sections 205, 206, 208, and 229 to 239. The defence is unnecessary or inappropriate as in each case:

- it is a requirement for the prosecution to establish that unreasonableness of the defendant's behaviour, making the defence (which would need to otherwise be established by the defendant) redundant; and
- any part of the offence that does not fall within the above is expressed as an absolute offence in the model law on which the clause is based, indicating an intention the defence should not be able to be raised.

***Review of decisions of Commissioner of Police***

Proposed sections 28 and 29 of the local application provisions provide that certain decisions of the commissioner of the Queensland Police Service regarding mass or dimension exemptions are subject to internal review, but

are not subject to further appeal. This potentially breaches the FLP that legislation should make rights and liberties, or obligations, dependent on administrative power only if subject to appropriate review.

The commissioner's decisions concerning mass or dimension exemptions relate to oversize vehicle movements on the road network (for example, police escorts for long and wide loads). Queensland police have extensive experience and expertise in assessing these vehicle movements and ensuring that public safety is maintained. The commissioner's decisions are made on public safety grounds and involve complex operational considerations, including assessment of local traffic conditions, coordination of risk management approaches with rail operators and utility providers and considering whether the movement requires a police escort. While it is appropriate to provide for internal review of these decisions, it is considered that no appeal from these decisions should be provided given the critical public safety considerations at stake.

#### ***Evidentiary certificates and averments***

Proposed sections 30, 31 and 33 of the local application provisions provide for certain evidence to be given by evidentiary certificates or averments. These provisions potentially breach the FLP that legislation should not reverse the onus of proof in criminal proceedings without adequate justification.

The potential breach is considered justified because:

- the evidentiary certificates and averments relate to matters that are generally non-contentious;
- if the matter is contentious in the context of a particular proceeding, the evidence is not conclusive and the defence can lead evidence in rebuttal;
- the evidence is often extracted from records maintained by the Regulator or road authority;
- use of evidentiary certificates streamlines the administration of justice and provides cost savings through not having to call a witness for issues that are not in dispute.

## **The Institution of Parliament**

### ***Regulation-making head of power***

Proposed section 755 inserts a regulation-making head of power into the Act. The inclusion of this power raises the issue of whether the legislation has sufficient regard to the institution of Parliament by sufficiently subjecting the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly as provided for in section 4(4)(b) of the *Legislative Standards Act 1992*.

The implementation of the National Scheme requires the complex transition of eight separate registration and regulatory schemes into one national scheme. A number of transitional issues have already been identified and, in some cases, require a consistent approach across participating jurisdictions, while other transitional issues are relevant to only one or some jurisdictions.

The regulation-making power enables a transitional provision to have retrospective operation to a day not earlier than the day that Queensland participates in the national scheme. This retrospectivity is necessary to ensure the smooth transition from the current State-based registration scheme to the National Scheme. It is noted that the retrospectivity cannot, under subsection (3) operate in a way that is prejudicial to a person's right that existed before the publication or impose liability on persons for things done or omitted to be done prior to the publication.

Comparable national schemes (including schemes implemented in Queensland law) have contained a similar power and the power is considered essential to facilitate effective transition to the new national scheme without causing adverse outcomes for any individual.

## **Penalties**

As an interim measure, it was decided to include existing Queensland penalties for heavy vehicle offences within the National Law as contained in the *Heavy Vehicle National Law Act 2012*, with a view to resolution of national penalties for inclusion in this Amendment Bill. SCOTI directed that nationally consistent penalties be developed to promote consistency, equity and fairness in enforcement across the country.

The National Transport Commission (NTC) in conjunction with the National Project Office has consulted with all jurisdictions and has now finalised the national court imposed penalties for inclusion in the amendments to the National Law through this Amendment Bill. Consultation with jurisdictions and industry groups has commenced on the development of infringement and demerit penalties and penalties for the Regulations.

The Amendment Bill includes the nationally-agreed court imposed penalties and SCOTI will agree infringement penalties and demerit points for National Law offences. Infringement notices and demerit points will continue to be managed using existing penalty regimes under jurisdictional law and court matters will continue to be dealt with in state and territory courts and tribunals.

As directed by SCOTI, there will be a review of the national penalties framework in 2014 to investigate and make recommendations on any issues that have been raised but could not be fully considered during the development of these amendments.

The pecuniary value of penalties for court ordered penalties for offences against the National Law as amended through the Amendment Bill are set out in Appendix 1.

## **Consultation**

Consultation with key stakeholders has been ongoing throughout development of the Amendment Bill. Engagement with industry and states and territory stakeholders occurred through their involvement as representatives on the Project Implementation Board, the Policy Analysis Working Group, the Technical Advisory Working Group, the Bus Industry Taskforce and the Jurisdictional Working Groups. These forums were formed to ensure formal stakeholder consultation for the Regulator reform.

Industry and states and territories were provided with regular iterations of policy documentation, drafting instructions and the draft Heavy Vehicle National Law as proposed to be amended through the Amendment Bill, where the opportunity to submit feedback was afforded. The increased stakeholder presence in these groups significantly assisted in the development of the National Law and has been vital in ensuring that the

development of the National Law delivers the reform objectives and does not increase the regulatory burden on industry.

In addition to the formal submissions via electronic correspondence, 25 workshops were held across the country to provide stakeholders with the opportunity to express concerns, review options and make decisions concerning both technical and policy aspects.

All states and territories support the basic premise of the reform, for a single national Regulator and a single national heavy vehicle law. Because of this commitment, states and territories were heavily involved in the production of the National Law as amended through the Amendment Bill through attendance at workshops and via electronic correspondence.

The transport industry has invested significant time to influence the implementation of and the shape of the Regulator and have indicated a very strong commitment to the reform. Key stakeholders from industry, namely the Australian Trucking Association, Australian Livestock Transporters Association, NatRoad, Queensland Transport Association, Australian Logistics Council, Cement Concrete and Aggregates, South Australian Road Transport Association, National Farmers' Federation, Australian Local Government Association and Transport Workers Union of Australia were included in the consultation. These representatives are in addition to those outlined in the explanatory notes for the *Heavy Vehicle National Law Bill 2012*.

Industry representatives appointed to the Project Implementation Board have formally advised that they strongly support the establishment of the single national Regulator and the *Heavy Vehicle National Law Amendment Bill 2012* and recommended a series of operational and legislative initiatives to complement this reform. Those initiatives include a further review of executive officer liability provisions and the potential for establishing affirmative duties as part of the chain of responsibility regime. These initiatives have been included on the forward work program proposal for the Heavy Vehicle National Law to be forwarded to SCOTI for endorsement.

### **Consistency with legislation of other jurisdictions**

It is proposed that the National Law and supporting regulations be adopted in a consistent manner in every jurisdiction under a template law model.

Each jurisdiction will pass legislation so that the National Law, as enacted by Queensland, is applied as law in its own jurisdiction. Western Australia has indicated an intention to mirror the legislation.

## Notes on provisions

### Part 1 Preliminary

*Clause 1* provides the short title of the Act.

*Clause 2* provides for the commencement of the parts of the Bill amending the local application provisions. The administrative and supporting provisions of the National Law are to commence on assent, with the operational provisions of the law to commence on proclamation. Divisions 1, 2 and 3 of Part 4 relate to operational aspects of the National Law and are therefore commencing on proclamation. The remainder of the amendments to the local application provisions are of an administrative and supporting nature and will commence on assent.

### Part 2 Amendment of Heavy Vehicle National Law Act 2012

*Clause 3* provides that this part amends the *Heavy Vehicle National Law Act 2012*.

*Clause 4* inserts a new section 2A in the local application provisions dealing with commencement, which provides for the administrative and supporting provisions of the National Law to commence on assent and the operational provisions of the National Law to commence on proclamation.

It is planned to commence the operational provisions of the National Law in all states and territories on a common agreed date, currently scheduled for the middle of 2013. Provisions dealing with the registration of heavy

vehicles in Chapter 2 will not be proclaimed into force until the necessary national information and telecommunication infrastructure is in place.

The provisions commencing on assent are administrative and supporting provisions of the National Law that relate to establishing the corporate framework and structures of the Regulator.

Certain provisions of the *Heavy Vehicle National Law Act 2012* were commenced by proclamation on 12 October 2012 (SL 175 of 2012). The provisions that commenced established the Regulator, including allowing for the Regulator Board to be appointed. The provisions commencing on assent as part of this clause include all of the provisions of the *Heavy Vehicle National Law Act 2012* that were commenced by proclamation on 12 October 2012. They also include some additional administrative and supporting provisions that will facilitate the Regulator's preparation for the commencement of the operational provisions of the National Law.

**Clause 5** inserts a note acknowledging that the Heavy Vehicle National Law set out in the Schedule has been drafted as national scheme legislation and therefore, is not entirely consistent with Queensland's current drafting style.

**Clause 6** amends section 5 of the local application provisions to clarify that the *Auditor-General Act 2009* (Qld) applies to the extent provided for in the national regulations. Under sections 693 and 730, the national regulations may provide for the auditing of the financial statements of the Regulator. It is proposed that the national regulations may apply the *Auditor-General Act 2009* or parts of that Act, if the responsible Ministers appoint the Queensland Auditor-General to audit the financial statements of the Regulator. This clause also updates a number of cross-references and renumbers subsections of section 5.

**Clause 7** updates a cross-reference in section 13 of the *Heavy Vehicle National Law Act 2012*.

**Clause 8** updates a cross-reference in section 17 of the *Heavy Vehicle National Law Act 2012*.

**Clause 9** renumbers sections 18 and 19 of the *Heavy Vehicle National Law Act 2012*.

**Clause 10** inserts new Divisions 1 to 4 and a Division 5 heading in Part 4.

Proposed **section 18** contains a definition for Part 4.

Proposed **Division 2** requires the Regulator to obtain the consent of the commissioner of the Queensland Police Service for certain mass or dimension exemptions as provided for in sections 118(1)(c) and 124(1)(c) of the Heavy Vehicle National Law (Queensland). These provisions will ensure the continuation of the public safety role that Queensland Police currently play in relation to vehicle movements in accordance with the *Guideline for Excess Dimension – Vehicles Carrying Indivisible Articles, Special Purpose Vehicles, Vehicles that require a Pilot or Escort – in Queensland (Form 4)* made under the *Transport Operations (Road Use Management—Mass, Dimensions and Loading) Regulation 2005*.

Proposed **section 19** contains definitions for Division 2.

Proposed **sections 20 and 21** provide that the consent of the commissioner is required for a mass or dimension exemption (notice) and a mass or dimension exemption (permit) involving the use of a class 1 heavy vehicle of more than a width or length prescribed under a regulation. It is intended to prescribe that the commissioner's consent will be required for class 1 heavy vehicles:

- more than 4.5 metres wide or more than 35 metres long in critical areas or on critical roads;
- more than 5.5 metres wide or more than 35 metres long in non-critical areas.

Critical areas, critical roads and non-critical areas will be shown on maps developed by the Department of Transport and Main Roads and published on the department's website.

These requirements reflect vehicle movements that currently attract Queensland Police Service involvement under the *Guideline for Excess Dimension – Vehicles Carrying Indivisible Articles, Special Purpose Vehicles, Vehicles that require a Pilot or Escort – in Queensland (Form 4)*.

Proposed **section 22** requires the Regulator to obtain consent from the commissioner as mentioned in sections 20 and 21. The commissioner must decide to give or refuse consent within 28 days. The commissioner's decision is based on public safety considerations. The commissioner must also have regard to the approved guidelines for granting mass or dimension exemptions.

Proposed **section 23** provides that the commissioner may consent to the grant of a mass or dimension exemption subject to a condition directed at ensuring public safety. The Regulator must impose any such condition on the exemption.

Proposed **section 24** provides for information that must be included in an information notice given to an applicant under section 128. The section applies if an application for a mass or dimension exemption (permit) is refused, wholly or partly, because the commissioner refused to consent to the exemption.

Proposed **section 25** provides that, if a mass or dimension exemption (permit) is granted subject to a public safety condition required by the commissioner, an information notice must be given to the applicant regarding the condition. This applies even if section 127 does not otherwise require the notice to be given. Section 25 also provides for the information that must be included in the information notice about the public safety condition.

Proposed **section 26** provides for the procedure for amending or cancelling a mass or dimension exemption (notice) at the request of the commissioner if the commissioner is satisfied the use of heavy vehicles under the notice has adversely affected or is likely to adversely affect public safety.

Proposed **section 27** provides for the procedure for amending or cancelling a mass or dimension exemption (permit) at the request of the commissioner if the commissioner is satisfied the use of heavy vehicles under the permit has adversely affected or is likely to adversely affect public safety.

Proposed **section 28** provides that certain decisions of the commissioner are reviewable for the purposes of chapter 11.

Proposed **section 29** makes special provision about how chapter 11 applies to reviewable decisions of the commissioner. Decisions of the commissioner are subject to internal review under Part 11.2, but are not subject to appeal under Part 11.3.

Proposed **Division 3** deals with evidentiary matters.

Proposed **section 30** provides for evidentiary certificates to be issued by the Regulator about certain matters, in addition to the matters already specified in section 711. Evidentiary certificates for these matters are currently able to be provided under section 60 of the *Transport Operations (Road Use*

*Management) Act 1995*. Subsection 30(3) provides that section 715 applies to the matters mentioned in subsection (1) as if the matter was stated in a certificate under section 711. This means that if a defendant wishes to challenge a matter mentioned in a certificate mentioned in section 30(1), the defendant must comply with the notice of challenge procedure set out in section 715.

Proposed **section 31** provides for evidentiary certificates to be issued by the road authority about certain matters, in addition to the matters already specified in section 712. Evidentiary certificates for these matters are currently able to be provided under section 60 of the *Transport Operations (Road Use Management) Act 1995*. Subsection 31(3) provides that section 715 applies to the matters mentioned in subsection (1) as if the matter was stated in a certificate under section 712. This means that if a defendant wishes to challenge a matter mentioned in a certificate mentioned in section 31(1), the defendant must comply with the notice of challenge procedure set out in section 715.

Proposed **section 32** provides that an authorised officer may give evidence of the contents of a document issued or required to be kept under the law that was examined by the officer without the document being produced. This provision is equivalent to section 60(7) of the *Transport Operations (Road Use Management) Act 1995*.

Proposed **section 33** provides for certain statements in a complaint for an offence to be evidence of the matter. These statements are in addition to the matters already specified in section 710 and are commonly referred to as “averments”. Averments for these matters are currently able to be provided under section 124(1)(r) of the *Transport Operations (Road Use Management) Act 1995*. Subsection 33(2) provides that the averment mentioned in subsection (1)(b) is taken to be a matter stated in a certificate to which section 715 applies. This means that if a defendant wishes to challenge a matter mentioned in section 33(1)(b), the defendant must comply with the notice of challenge procedure set out in section 715.

Proposed **Division 4** makes special provision about the application of industrial relations laws to the Regulator.

Proposed **section 34** declares that the Regulator is not a public sector employer for the purposes of the *Fair Work (Commonwealth Powers) and Other Provisions Act 2009* and that it is Parliament’s intention that the Regulator be a national system employer for the purposes of the *Fair Work*

*Act 2009* (Cwlth). It is considered that the Regulator would ordinarily fall within the ambit of a “national system employer” under the *Fair Work Act 2009*, but this provision is intended to convey Parliament’s intention and therefore put the matter beyond doubt. Proposed section 34 is consistent with the Regulator being one single national entity, as provided for in section 656 of the Schedule.

**Clause 11** inserts new Parts 5 and 6 in the *Heavy Vehicle National Law Act 2012*.

Proposed **section 37** provides a regulation-making power under the local application provisions of the Act.

Proposed **section 38** provides that anything done under chapter 12 or 14 of the Heavy Vehicle National Law (Queensland) as it existed on 12 October 2012 continues to have effect after the commencement of chapter 12 or Part 14.1 of the Heavy Vehicle National Law (Queensland) as amended by the *Heavy Vehicle National Law Amendment Bill 2012*. It should be noted that certain provisions, including chapters 12 and 14, of the *Heavy Vehicle National Law Act 2012* were commenced by proclamation on 12 October 2012 (SL 175 of 2012).

**Clause 12** omits the Schedule to the *Heavy Vehicle National Law Act 2012* and replaces it with a new Schedule.

## Schedule Heavy Vehicle National Law

Note, as a result of the amendments to the National Law through this Amendment Bill the following sections of the National Law as contained in the Act will be omitted or relocated:

Reference	Explanation
Section 154 – Liability of employer etc. for driver’s contravention of mass limit traffic offence	Omitted – these offences are dealt with under s153 and the provision is therefore redundant
Section 259 – What is a driver’s base in particular circumstances	Omitted – this definition is incorporated in the new definition of base in clause 5.
Section 265 – How information requirements apply to a day	Moved to national fatigue regulations to provide greater flexibility to change work diary recording requirements as needed
Section 267 – Information to be recorded immediately before or after work and rest change	Some parts of this provision are now contained in clauses 298 and 299. Otherwise, this has moved to national fatigue regulations to provide greater flexibility to change work diary recording requirements as needed  Offence remains in the primary law – clause 296
Section 268 – Information to be recorded immediately after change of base or record location	Moved to national fatigue regulations to provide greater flexibility to change work diary recording requirements as needed

	Offence (and driver defence) remains in the primary law – clause 297
Section 269 – Information to be recorded immediately before finishing work	Moved to national fatigue regulations to provide greater flexibility to change work diary recording requirements as needed  Offence remains in the primary law - s296
Section 295 – Period for which, and way in which, records must be kept	Moved to Div 6A – consequential to the introduction of fatigue record keeping exemptions (which may exempt record keepers from Div 3)
Section 376 – Contravention of particular provisions not an offence	Omitted – redundant
Section 464 – Requirement to give offence warning	Omitted – policy change
Section 538 – Deciding whether offence is a first, second or subsequent offence	Omitted – policy change
Section 577 – unincorporated local government authority	Omitted – addressed in Clause 638

Explanatory notes for the remaining changes are outlined below.

## Chapter 1 Preliminary

### Part 1.1 Introductory matters

Note: References to the Act in the following clauses refer to the provisions of the National Law as contained in schedule 1 of the *Heavy Vehicle National Law Act 2012*.

*Clauses 1 and 2* replace and do not materially amend sections 1 and 2 of the Act.

*Clause 3* identifies the object of the Law, in establishing a national scheme for facilitating and regulating the use of heavy vehicles on road. It amends subsection 3(c) of the National Law through providing that an object of this Law is to facilitate and regulate the use of heavy vehicles on roads in a way that:

- promotes industry productivity and efficiency in the road transport of goods and passengers by heavy vehicles; and
- encourages and promotes productive, efficient, innovative and safe business practices.

*Clause 4* replaces and does not materially amend section 4 of the Act.

### Part 1.2 Interpretation

*Clause 5* amends section 5 which defines numerous technical and other terms used throughout the Act.

The following definitions will be omitted on the basis they are no longer required or will be relocated elsewhere in the National Law.

- *cause of fatigue* (relocated to proposed section 221)
- *offence*
- *engage*
- *single axle*

The following new definitions will be incorporated:

- *agricultural trailer*
- *Application Act*
- *approved vehicle examiner*
- *ATM (aggregate trailer mass)*
- *category, of heavy vehicles*
- *condition*
- *conduct*
- *consent*
- *fatigue record keeping exemption*
- *fatigue record keeping exemption (notice)*
- *fatigue record keeping exemption (permit)*
- *fifth wheel coupling*
- *hauling unit*
- *intelligent access map*
- *heavy trailer*
- *PBS design approval*
- *PBS Review Panel*
- *PBS road network*
- *PBS vehicle*
- *PBS vehicle approval*
- *pig trailer*
- *prescribed dimension requirement*
- *prescribed mass requirement*
- *primary production*
- *prime mover*
- *registered interest*
- *relevant emission*
- *vehicle defect notice*
- *vehicle registration duty legislation*

The following definitions are being amended:

- *ADR agricultural implement*
- *B-double*
- *base*
- *consign and consignor*
- *dimension requirement*

- *executive officer*
- *garage address*
- *infringement notice*
- *inspect*
- *loading manager*
- *mass requirement*
- *registered operator*
- *regular loading or unloading premises*
- *single axle*
- *speed limit*
- *tamper*
- *third party insurance legislation*
- *unload*
- *unloader*

Most of the amendments to the definitions are minor however the following detail the more significant changes.

The National Law as contained in the Act includes two slightly different definitions of *base* with origins in the model fatigue law and the model compliance and enforcement law. The definition of *base* is revised through the Amendment Bill in order to better reflect the two purposes of the definition, namely:

- determining whether a driver is doing local (100km) work and not required to complete a work diary: and
- determining the location a driver normally works from for enforcement purposes (inspection etc.).

The definition of *loading manager* is moved from Chapter 6 and amended, in conjunction with amendments to the definition of *regular loading or unloading premises* to make it clear that the obligations in Chapter 6 only apply to loading managers where an average of 5 or more fatigue-regulated heavy vehicles are loaded or unloaded each day at the premises.

The definition is restructured to clarify under the first limb of the definition that other than for the purposes of Chapter 4 the term captures premises at which goods in general are loaded or unloaded. This is because chapters 5 and 6 apply to systemic duties that are not dependent on a particular load of goods. For chapter 4, however, the definition is linked to the particular

goods that are loaded onto the vehicle because that creates the mass, dimension or loading breach.

The terms *unload* and *unloader* have been moved from Chapter 6 and have been subject to minor modification to make loading and unloading complementary. The terms have also been modified to make it clear they encompass all loads (including goods, and freight containers).

**Clause 6** defines the key term *heavy vehicle*. The term previously referred only to a vehicle that has a gross vehicle mass of more than 4.5 tonnes. The definition now refers further to *aggregate trailer mass* (as defined in clause 5) of more than 4.5 tonnes.

**Clauses 7 and 8** replace and do not materially amend sections 7 and 8 of the Act.

**Clause 9** replaces section 9 and amends it. Clause 9 defines the terms *convicts* and *convicted of an offence* in accordance with their ordinary meaning. Subsection 9(3), which required payment of an infringement notice to be considered as a conviction in various sections is omitted. This extended definition was previously used in a number of extended liability provisions (such as the current clause 183).

**Clauses 10 to 14** replace and do not materially amend sections 10 to 14 of the Act.

**Clause 15** is a new clause that clarifies the basis on which vehicles may be categorised.

## **Part 1.3                      Application and operation of Law**

**Clauses 16 to 18** replace and do not materially amend sections 15 to 17 of the Act.

## **Part 1.4                      Performance based standards**

*Clause 19* is a new clause that explains the purpose of this Part and other associated provisions of this Amendment Bill to enable Performance Based Standards (PBS) vehicles that meet a particular performance level to operate (unless otherwise specified by the responsible Minister) on roads that are authorised to be used by PBS vehicles that meet or exceed that performance level.

*Clause 20* is a new clause that requires the Regulator to notify the road authority for this jurisdiction of a PBS design approval together with a description of the significant features of the design to which the approval relates. The purpose of this clause is to ensure the responsible Minister is apprised of the application in contemplation of the exercise of the power granted to the Minister under clause 21.

*Clause 21* is a new clause that empowers the Minister to issue a notice to the Regulator requiring the Regulator to impose conditions prohibiting any heavy vehicle built to a design that is the subject of a PBS design approval from operating in this jurisdiction, or making such operation subject to the condition set out in the notice.

*Clause 22* is a new clause that empowers the Regulator to consider an application for a PBS design approval, and reject or approve the application subject to any condition the Regulator sees fit. The breadth of the power to impose these conditions is necessary given the safe operation of the vehicle may contemplate such matters as driver licensing, a matter not otherwise dealt with under the Act at this point. In making this decision the Regulator is required to have regard to any approved guidelines, performance based standards and assessment rules prescribed in the national regulations, and the advice of the PBS Review Panel.

*Clause 23* is a new clause that empowers the Regulator to consider an application for a PBS vehicle approval. The approval functions as evidence that a vehicle is constructed in accordance with an approved PBS design and must contain the condition relevant to that approval, whether imposed by the Regulator under clause 22, or clause 21. In making this decision the Regulator is required to have regard to any approved guidelines, performance based standards and assessment rules prescribed in the national regulations, and the advice of the PBS Review Panel.

**Clause 24** is a new clause that creates a head of power to make regulations stipulating which vehicle standards a PBS vehicle may be exempted from. It is intended at this point that the exemptions be limited to the following matters:

- Axle configuration;
- Relation between axles in a group;
- Selection of couplings and drawbar eyes on road trains; and
- Tow coupling overhang on road trains.

**Clause 25** is a new clause that makes it clear a mass or dimension limit authorised in a PBS approval is to have precedence over the general mass or dimension limits.

**Clause 26** is a new clause that creates a head of power to make regulations dealing with procedures for applications for PBS design and vehicle approvals, procedures for cancelling or modifying a PBS design or vehicle approval, assessment criteria and procedures and the appointment of persons to assess designs and certify vehicles purportedly built to them.

## **Chapter 2      Registration**

A note is inserted clarifying that Chapter 2 is not to commence at the same time as other provisions of the National Law but at a later time, and that transitional provisions for this jurisdiction relating to and consequential on the delayed commencement are intended to be dealt with by national regulations or by legislation of this jurisdiction.

### **Part 2.1          Preliminary**

**Clause 27** replaces and does not materially amend section 18 of the Act.

## **Part 2.2            Registration scheme**

### **Division 1            Preliminary**

*Clause 28* replaces and amends section 19 of the Act by including a regulation making power to exempt specified categories of vehicles from the registration requirements and, where necessary, impose conditions on such exemptions. It further provides for the making of regulations allowing the Regulator to adversely deal with various registrations transactions for noncompliance with requirements of vehicle registration duty legislation or third party insurance legislation of the state or territory in which a vehicle's garage address is located. Clause 28 now also enables the period of registration to be for longer than a year where necessary through amendment to subsection 19(1)(e).

*Clause 29* replaces and does not materially amend section 20 of the Act.

### **Division 2            Requirement for heavy vehicle to be registered**

*Clause 30* replaces and does not materially amend section 21 of the Act.

### **Division 3            Authorised use of unregistered heavy vehicle**

*Clauses 31* replaces and does not materially amend section 22 of the Act.

*Clause 32* replaces and amends section 23 of the Act by clarifying the circumstance in which an unregistered heavy vehicle may be used on a road for the purposes of obtaining registration under subsection (1). It does so by providing that requiring the journey be undertaken to the nearest registration place, and extending the circumstances in which it may lawfully travel to include a journey by way of the nearest inspection place.

**Clause 33** replaces and amends section 24 of the Act by including a requirement in subsection (1) that the driver must carry evidence of the ‘Temporary Admission Carnet’ in order to satisfy the ‘temporary’ status of the unregistered vehicle. A carnet is an internationally recognised document for the temporary importation of goods, issued under section 162AA of the *Customs Act 1901* (Cwth).

**Clause 34** replaces and amends section 25 of the Act by removing a requirement previously found in subsection (1) that the short-term use of an unregistered vehicle need only be undertaken in compliance with the conditions imposed on its movement where this is ‘reasonably practicable’. Strict compliance with the conditions of an authority is the ordinarily applicable basis on which they are granted throughout the Act.

**Clause 35** replaces and amends section 26 of the Act by including a definition of *primary production* in subsection (2) to make it clear the exemption is not intended to operate for the benefit of regular movement typically undertaken, for example, in mining sector operations.

**Clause 36** replaces and amends section 27(a) of the Act as a consequence of the inclusion of the new definition of *agricultural trailer* in section 5. This will allow all agricultural trailers to be treated as class 1 vehicles, irrespective of whether the trailer exceeds mass or dimension requirements.

**Clause 37** inserts a new subsection that authorises the use of an unregistered heavy vehicle on a road when it is under tow by a tow truck.

**Clause 38** replaces and does not materially amend section 28 of the Act. .

**Clause 39** inserts a new subsection that creates an offence where a person uses, or permits to be used, an unregistered heavy vehicle on a road in any of the circumstances mentioned in proposed subsections 32 to 38 if the driver does not have in the driver’s possession proof that the requirements of third party insurance legislation applying to the vehicle are complied with.

## **Division 4            Exemption from requirement to be registered**

### **Subdivision 1    Exemption by Regulator**

*Clauses 40 to 45* replace and do not materially amend sections 29 to 34 of the Act.

*Clause 46* inserts a new section that allows the Regulator to cancel a registration exemption immediately if there is a need to minimise serious harm to public safety or significant damage to road infrastructure. The exercise of the power is subject to publication requirements to minimise the possibility of inadvertent noncompliance.

### **Subdivision 2    Exemption by national regulations**

*Clause 47* inserts a new section that creates a head of power for the making of regulations in relation to the exempting (whether conditional or otherwise) of a specific category of heavy vehicle from the requirement to be registered.

## **Part 2.3            Vehicle register**

*Clause 48* replaces and does not materially amend section 35 of the Act.

## **Part 2.4            Other provisions relating to registration**

*Clause 49* replaces and does not materially amend section 36 of the Act.

*Clause 50* replaces section 37 of the Act and amends it by extending the prohibition on the making of false statement in subsection (1) to a broader

range of registration transactions, including renewal of registration and the issuing of a registration exemption.

*Clause 51* replaces section 38 of the Act and amends it by extending the range of circumstances set out in subsection (1) in which the Regulator may recover and replace a registration item to include items which are inadvertent duplicates, of poor quality or illegible.

*Clause 52* replaces section 39 of the Act and amends it by clarifying that the categories of person who maybe required under subsection (2) to verify particular records to include the holder of an unregistered heavy vehicle permit for the vehicle, and clarifying that it is only a registered operator (not merely an operator) of the vehicle to whom such a notice under this proposed subsection may be issued under the same subsection.

## **Part 2.5                      Written-off and wrecked heavy vehicles**

*Clauses 53 and 54* replace and do not materially amend sections 40 and 41 of the Act.

*Clause 55* replaces section 42 of the Act and amends it by extending the range of matters in subsection (4) for which regulations may be made under this head of power to include offences of driving written-off and wrecked vehicles, and requirements for notifying the Regulator about written-off and wrecked vehicles.

## **Part 2.6                      Other provisions**

*Clauses 56 and 57* replace and do not materially amend sections 43 and 44 of the Act.

## **Chapter 3      Vehicle operations— standards and safety**

### **Part 3.1          Preliminary**

*Clause 58* replaces and does not materially amend section 45 of the Act.

### **Part 3.2          Compliance with heavy vehicle standards**

#### **Division 1        Requirements**

*Clause 59* replaces and amends section 46 through the inclusion of a new subsection (3) to provide a head of power for the making of regulations to prescribe exemptions for different requirements for component vehicles that are not heavy vehicles. The Act may not have previously been able to allow for light vehicles to be exempted from all or part of one or more heavy vehicle standards when the light vehicle is part of a heavy vehicle combination.

*Clause 60* replaces section 47 and substantially amends it.

A note is to be added to subsection (2) to clarify that the exception allowing the movement of the vehicle to a place repair does not supersede the requirements of any defect notice issued for the vehicle.

Subsection (2)(b) is amended to clarify that the exception in subsection (1) allowing the vehicle to be driven notwithstanding its contravention of an applicable heavy vehicle standard operates only where the testing or analysis is being undertaken by an approved examiner.

This subsection is further amended to clarify that the vehicle must not be carrying passengers during the testing or analysis, and has only the quantity of goods that is necessary or appropriate for the conduct of the testing or analysis, and those goods do not pose a safety risk.

Subsection (6) is incorporated to provide that a PBS vehicle is exempt from vehicle standards stated in its PBS vehicle approval and where it complies with the other applicable vehicle standards, the vehicle is regarded for the purposes of the National Law as complying with the vehicle standards applying to the vehicle.

## **Division 2                    Exemptions by Commonwealth Gazette notice**

*Clause 61* replaces and does not materially amend section 48 of the Act.

*Clause 62* replaces section 49 of the Act and amends it by clarifying the circumstances in which the Regulator may grant a vehicle standards exemption (notice) for a category of heavy vehicles. Proposed subsection (1)(a)(iv) authorises the grant of the exemption for categories of heavy vehicles that were not required to comply with a similar standard immediately before the commencement of this clause in a participating jurisdiction, and were registered, or operating under an unregistered heavy vehicle permit or exemption from registration (however described).

*Clauses 63 and 64* replace and do not materially amend section 50 and 51 of the Act.

*Clause 65* replaces and does not materially amend section 52 of the Act.

*Clause 66* replaces and does not materially amend section 53 of the Act.

*Clause 67* inserts a new section that empowers the Regulator to suspend a vehicle standards exemption notice immediately to prevent or minimise serious harm to public safety or significant damage to road infrastructure. The power is exercisable through the meeting of the ordinary publication requirements (in or on each of the Commonwealth Gazette, a relevant newspaper, and on the Regulator's website). The maximum length of the suspension is calculated with reference to the matters set out in proposed subsection 67(2).

## **Division 3 Exemptions by permit**

*Clauses 68 and 69* replace and do not materially amend sections 54 and 55 of the Act.

*Clause 70* replaces section 56 and amends it by clarifying the circumstances in which the Regulator may grant a vehicle standards exemption (permit). The proposed subsection (1)(a)(iii) authorises the grant of the exemption for a heavy vehicle that was not required to comply with a similar standard immediately before the commencement of this clause in a participating jurisdiction, and was registered, or operating under an unregistered heavy vehicle permit or exemption from registration (however described).

*Clauses 71 to 74* replace and do not materially amend sections 57 to 60 of the Act.

*Clause 75* replaces section 61 and amends it by making provision for the amendment or cancellation of a vehicle standards exemption permit to be accompanied by the prescribed fee (if any) for the application.

*Clause 76* replaces and does not materially amend section 62 of the Act.

*Clause 77* inserts a new section that empowers the Regulator to immediately suspend a vehicle standards exemption permit where there is an immediate need to prevent or minimise serious harm to public safety or significant damage to road infrastructure. The proposed subsection (2) sets out the procedures the Regulator must follow in exercising this power.

*Clauses 78 and 79* replace and do not materially amend sections 63 and 64 of the Act.

*Clause 80* replaces section 65 and amends it by making it clear through the proposed subsection (4) that the offence of failing to apply for a replacement permit cannot be committed where the person has already applied for cancellation of the permit.

## **Division 4            Operating under vehicle standards exemption**

*Clauses 81 and 82* replace and do not materially amend sections 66 and 67 of the Act.

*Clause 83* replaces and amends section 68(6) so that evidence of the payment of an infringement notice will no longer be evidence of an offence occurring. The previous position was inconsistent with the generally accepted principle that expiation of an infringement notice by payment is not to be taken as evidence of an offence. Instead, the details of the facts stated in the notice are to be admissible as evidence of the relevant matters. A court is entitled to place such weight as it thinks fit on this evidence and the defendant can test the evidence it purports to represent.

## **Part 3.3            Modifying heavy vehicles**

*Clause 84* inserts a new section including a definition of *modification* to limit the expression to alterations or changes resulting in non-compliance with an applicable vehicle standard, or a departure from an applicable vehicle standards exemption already in place (other than a departure bringing the vehicle into full compliance with all applicable vehicle standards).

*Clause 85* replaces section 69 and amends it by replacing references to *authorised entity* with *approved examiner* throughout. This substitution is a consequence of the statutory recognition of the role of approved examiners in the Amendment Bill changes to the National Law and the creation of a system for their ongoing regulation.

*Clause 86* replaces section 70 and amends it by replacing the notice-based system of authorisation for approved examiners of modified vehicles with a head of power to make regulations with respect to examiners under proposed section 731. The clause also amends the section to replace a reference to an *authorised entity*, with references to an *approved vehicle examiner*.

**Clause 87** replaces section 71 and amends it by providing an additional ground through the insertion of subsection (1)(b) on which the Regulator may approve a modification. That ground arises where the Regulator is satisfied the modified vehicle will comply with applicable noise and emission standards prescribed by national regulations, or the Regulator is satisfied that the modified vehicle complies with the requirements of any exemption from a noise or emission standard.

The proposed subsection (4) establishes the requirements for a plate or label that operates as evidence of the Regulator's approval of a modification.

**Clause 88** inserts a new section that establishes a general head of power for the making of regulations with respect to the modification of heavy vehicles.

## **Part 3.4            Other offences**

**Clause 89** replaces section 72 and amends it by omitting the examples previously provided under subsection (2) to demonstrate instances when a vehicle would be considered to be unsafe, and omits subsection (3) that authorised use of the vehicle for testing and analysis or to be drive to a place of repair. The examples are to be omitted because they suggested contraventions of vehicle standards (which are dealt with under the proposed section 47). Subsection (3) previously authorised the operation of a vehicle that was, by definition unsafe, too broadly. The proposed new subsection (3) now authorises the movement of these vehicles through the use of vehicle defect notices where the vehicle complies with any conditions imposed through the notice.

**Clause 90** replaces section 73 and amends it by limiting the clause's application to cases where an emissions control systems is required by an applicable vehicle standard. The proposed section makes it clear the Act does not require all heavy vehicles to be fitted with a gaseous emission control system if they were built before the relevant emissions control ADR (Australian Design Rule) came into force.

Subsection (2) is amended to clarify that an emission control system must be operated in accordance with the manufacturer's design.

A new proposed subsection (3) is inserted to make it an offence to use, or permit to be used, on a road a heavy vehicle fitted with an emission control system if the operation of the system results in a failure to comply with an applicable heavy vehicle standard. This is necessary to address a concern that an aftermarket component such as an exhaust pipe may be operating in the way it is intended but still leaves the vehicle in an unsatisfactory state.

A new proposed subsection (5) is inserted to allow national regulations to be made that prescribe testing standards for emissions from heavy vehicles.

**Clause 91** inserts a new section that makes it an offence to tamper with an emissions control system or permitting a heavy vehicle to be used in circumstances where it is known or ought to be known that the emissions control system has been tampered with. The new section excludes the mistake of fact defence and in its place provides for the reasonable steps defence to be raised.

**Clause 92** replaces and does not materially amend section 74 of the Act.

**Clause 93** replaces section 75 and amends it in multiple places. The new subsection (2) is inserted prohibiting a person from fitting or directing another person to fit a speed limiter to a heavy vehicle in circumstances where the person knows or ought reasonably to know that the speed limiter has been tampered with.

Proposed subsection (3) is inserted to prohibit an operator of a heavy vehicle from permitting the vehicle to be driven on a road if the operator knows, or ought reasonably to know, that a speed limiter fitted to the vehicle, as required under an Australian road law or by order of an Australian court, has been tampered with. An exception to this requirement is created the new subsection (5), which provides that subsection (3) does not apply where the vehicle is on a journey to a place for the repair of the speed limiter.

The new subsection (4) clarifies that the offence does not apply to an authorised officer when exercising functions under the Act.

Proposed subsection (5) clarifies that a speed limiter means a device that complies with any applicable heavy vehicle standard.

The definition of *tamper* in subsection (5) is amended in the new subsection (9) to encompass common types of interference with these devices and remove uncertainty as to the operation of the law in this area.

## **Chapter 4      Vehicle operations — mass, dimension and loading**

### **Part 4.1          Preliminary**

*Clause 94* replaces section 76 and amends it by clarifying in subsection (3)(a) that it is also intended to apply to vehicles that are oversize by construction and to allow for the issuing of authorities and exemptions to that class of heavy vehicles known as special purpose vehicles (such as mobile cranes and agricultural implements).

### **Part 4.2          Mass requirements**

#### **Division 1          Requirements**

*Clause 95* replaces section 77 and amends it by providing a new definition for *tare mass* in subsection (5) consistent with the term's definition in the Australian Design Rules by allowing the fluid reservoirs of the vehicle to be filled and 10 litres of fuel to be carried in the fuel reservoir.

*Clause 95* also amends section 75 throughout by substituting the term *prescribed mass requirement* for the term *mass requirement*. This amendment is consequential to the amendment to the expansion of the range of matters that may constitute a mass requirement as the term is amended in clause 5.

*Clause 96* replaces section 78 and amends it by including an incremental penalty for critical mass breaches (where a vehicle is overloaded above 120% of the applicable mass limit) subject to a cap being imposed on the limit of the incremental penalty. The penalty for a severe risk breach is now \$10,000 plus \$500 for every additional 1% above 120% to a maximum incremental penalty of \$20,000, (the total penalty will not exceed \$30,000 for an individual).

The section is further amended through the inclusion of proposed subsection (4) to allow the mass limit for a PBS vehicle to be established in the PBS

vehicle approval. Under this subsection the limit stipulated in the approval is taken to be the applicable limit, and the vehicle is regarded for the purposes of this Law as complying with the prescribed mass requirements.

## **Division 2            Categories of breaches of mass requirements**

*Clause 97* replaces section 79 and amends the definitions of *severe risk breach lower limit* and *substantial risk breach lower limit* to ensure the terms are not unintentionally limited to breaches of mass requirements applying to a heavy vehicle overall, but also to breaches of any mass requirement applying to a heavy vehicle. For example, if a mass requirement relating to the axle spacing of a heavy vehicle is breached by 20% then that breach should be a severe risk breach, even if the overall mass of the heavy vehicle does not exceed by 20% the overall mass limit for the heavy vehicle.

*Clauses 98 to 100* replace and do not materially amend sections 80 to 82 of the Act.

## **Part 4.3            Dimension requirements**

### **Division 1            Requirements**

*Clause 101* replaces and does not materially amend section 83 of the Act.

*Clause 102* replaces and amends section 84 by inserting a new subsection (4) to allow the dimension limit for a PBS vehicle to be established in the PBS vehicle approval. Under this subsection the limit stipulated in the approval is taken to be the applicable limit, and the vehicle is regarded for the purposes of this Law as complying with the prescribed dimension requirements.

## **Division 2            Categories of breaches of dimension requirements**

*Clause 103* inserts a new section that restricts the application of Division 2 to a heavy vehicle only while it is carrying goods or passengers. This restriction is required to ensure that risk categorisations created for dimensional breaches apply only to laden vehicles. Breaches of internal dimension limits are not intended to be penalised on this basis but rather will be subject to the obligations set out in the regulations made under Chapter 3 dealing with vehicle standards.

*Clauses 104 to 107* replace and do not materially amend sections 85 to 88 of the Act.

## **Division 3            Other provisions relating to load projections**

*Clauses 108 and 109* replace and do not materially amend sections 89 and 90 of the Act.

## **Part 4.4            Loading requirements**

### **Division 1            Requirements**

*Clauses 110 and 111* replace and do not materially amend sections 91 and 92 of the Act.

### **Division 2            Categories of breaches of loading requirements**

*Clauses 112 to 114* replace and do not materially amend sections 93 to 95 of the Act.

## **Division 3            Evidentiary provision**

*Clause 115* replaces and does not materially amend section 96 of the Act.

## **Part 4.5            Exemptions for particular overmass or oversize vehicles**

### **Division 1            Preliminary**

*Clause 116* replaces section 97 and amends it at subsection (1) by stipulating that agricultural vehicles (whether or not they exceed mass and dimension requirements) are to be treated as Class 1, and not Class 3, heavy vehicles. This allows for these trailers to be subject to Class 1 rather than Class 3 notices or permits and for the standard conditions that are to apply to Class 1 vehicles as a result of the regulations made under this Chapter to be used for these notices or permits.

In the proposed subsection (4) the definition of *large indivisible item* now correctly refers to a *heavy vehicle* (rather than a *heavy combination*), given that section 6 defines a *heavy vehicle* to include a *combination*.

### **Division 2            Exemptions by Commonwealth Gazette notice**

*Clause 117* replaces and does not materially amend section 98 of the Act.

*Clause 118* replaces section 99 and amends it by including a requirement in the new subsection (1)(c) that the Regulator can only grant a mass or dimension exemption (notice) if the Regulator is satisfied that all other consents required for the exemption under the law of the relevant jurisdiction have been obtained by the applicant or have been otherwise given.

*Clauses 119* replaces section 100 and inserts subsection (4) clarifying that the Regulator may only extend, or add to the condition stating the areas or

routes, if the relevant road manager has consented to a grant that includes the relevant areas or routes.

*Clause 120* replaces and does not materially amend section 101 of the Act.

### **Division 3 Exemptions by permit**

*Clause 121* replaces and does not materially amend section 102 of the Act.

*Clause 122* replaces section 103 of the Act and introduces a minor amendment to subsection (2) to clarify that this provision captures combinations that allow for a *push-pull* sequence of vehicles.

*Clause 123* replaces and does not materially amend section 104 of the Act.

*Clause 124* replaces section 105 and amends it by including a requirement under subsection (1)(c) that the Regulator may only grant a mass or dimension exemption (permit) if satisfied that all consents required for the exemption under the law of the relevant jurisdiction have been obtained by the applicant or have been otherwise given.

*Clauses 125 and 126* replace and do not materially amend sections 106 and 107 of the Act.

*Clause 127* replaces section 108 and amends subsection (2)(b) to facilitate the issuing of so-called ‘farm gate’ permits. These permits authorise the movement of heavy vehicles on roads without necessarily knowing the details of the exact vehicle that will perform the relevant transport task. It does so recognising the registration details may not be known at the time of issuing.

*Clause 128* replaces and does not materially amend section 109 of the Act.

### **Division 4 Operating under mass or dimension exemption**

*Clause 129* replaces and does not materially amend section 110 of the Act.

*Clause 130* replaces section 111 and amends subsection (4) so that details stated in an infringement notice issued for the relevant offence under this

section (for contravening a condition of a mass or dimension exemption relating to pilot or escort vehicle) is evidence that the offence happened at the time and place, and in the circumstances, stated in the infringement notice.

This is consistent with the approach taken for other extended liability offences under the Act as amended and responds to the concern that this and other similar provisions throughout the Act contradicted accepted legal policy that payment of an infringement notice is not understood to represent an admission of guilt.

**Clause 131** replaces section 112 and amends subsection (1) to restrict the circumstances in which the driver of a pilot vehicle may be found liable for accompanying a heavy vehicle contravening a condition of a mass or dimension exemption. Those conditions are restricted to matters reasonably within the knowledge of the pilot (such as route and time restrictions) and exclude matters it maybe unreasonable for them to be imputed knowledge of (such as the breach of a particular mass requirement applying to the vehicle).

**Clause 132** replaces section 113 and amends subsection (6) so that details stated in an infringement notice issued for the relevant offence under this clause (for failing to keep a copy of a relevant document while driving under mass or dimension exemption (notice)) is evidence that the offence happened at the time and place, and in the circumstances, stated in the infringement notice.

This is consistent with the approach taken for other extended liability offences under the Act as amended and responds to the concern that this and other similar provisions throughout the Act contradicted accepted legal policy that payment of an infringement notice is not understood to represent an admission of guilt..

**Clause 133** replaces section 114 and amends subsection (6) so that details stated in an infringement notice issued for the relevant offence under this clause (for failing to keep a copy of a relevant document while driving under mass or dimension exemption (permit)) is evidence that the offence happened at the time and place, and in the circumstances, stated in the infringement notice.

This is consistent with the approach taken for other extended liability offences under the Act as amended and responds to the concern that this and other similar provisions throughout the Act contradicted accepted legal policy that payment of an infringement notice is not understood to represent an admission of guilt.

## **Division 5            Other provisions**

*Clause 134* replaces and does not materially amend section 115 of the Act.

## **Part 4.6            Restricting access to roads by large vehicles that are not overmass or oversize vehicles**

### **Division 1            Preliminary**

*Clause 135* replaces and does not materially amend section 116 of the Act.

*Clause 136* replaces section 117 by deeming a PBS vehicle to be a class 2 vehicle for the purpose of Chapter 4. This allows the access management system created under this Chapter (modified as necessary) to be applied to these vehicles so that they may be regulated using notices and permits.

### **Division 2            Restriction**

*Clause 137* replaces and does not materially amend section 118 of the Act.

### **Division 3            Authorisation by Commonwealth Gazette notice**

*Clause 138* replaces section 119 and amends it through the insertion of subsection (1)(c) to extend the conditions on which the Regulator may authorise the use of class 2 heavy vehicles through a class 2 heavy vehicle

authorisation (notice) to include, in the case of a PBS vehicle, compliance with the conditions contained in a PBS vehicle approval.

**Clause 139** replaces section 120 and amends that section by inserting a new subsection (1)(c) to include a requirement that the Regulator can only grant a class 2 heavy vehicle authorisation (notice) where the Regulator is satisfied all other consents required for the authorisation under the law of the relevant jurisdiction have been obtained or given.

**Clauses 140 and 141** replace and do not materially amend sections 121 and 122 of the Act.

**Clause 142** replaces section 123 and amends that section by clarifying that relevant road authority is the road authority for the participating jurisdiction in which a road likely to be travelled under the authorisation is situated. The clause further provides that the Regulator must obtain the road manager consents or such other consents as required under Part 4.7 and apply with any procedures relevant to the gaining of those consents set out in that Part.

## **Division 4                      Authorisation by permit**

**Clauses 143 and 144** replace and do not materially amend sections 124 and 125 of the Act.

**Clause 145** replaces section 126 and amends it by inserting a new subsection (1)(c) to include a requirement that the Regulator can only grant a class 2 heavy vehicle authorisation (permit) where the Regulator is satisfied all other consents required for the authorisation under the law of the relevant jurisdiction have been obtained or given.

**Clauses 146 and 147** replace and do not materially amend sections 127 and 128 of the Act.

**Clause 148** replaces section 129 and amends subsection (2)(b) by clarifying that where a permit under this provision applies to particular categories of heavy vehicles (rather than to individual vehicles) those categories must be described in the permit.

**Clause 149** replaces and does not materially amend section 130 of the Act.

## **Division 5                    Operating under class 2 heavy vehicle authorisation**

*Clause 150* replaces and does not materially amend section 131 of the Act.

*Clause 151* replaces section 132 and amends subsection (6) so that details stated in an infringement notice issued for the relevant offence under this clause (for an offence of failing to keep a copy of a relevant document while driving under a class 2 heavy vehicle authorisation (notice)) are evidence that the offence happened at the time and place, and in the circumstances, stated in the infringement notice.

*Clause 152* replaces section 133 and amends subsection (6) so that details stated in an infringement notice issued for the relevant offence under this clause (for an offence of failing to keep a copy of a relevant document while driving under a class 2 heavy vehicle authorisation (permit)) are evidence that the offence happened at the time and place, and in the circumstances, stated in the infringement notice.

*Clause 153* is a new provision that requires a driver of a class 2 heavy vehicle that is a PBS vehicle to which a class 2 heavy vehicle authorisation applies to keep a copy of the PBS vehicle approval in their possession.

The clause extends liability for an offence by the driver under subsection (1) to an employer, or prime contractor or an operator of the vehicle.

A person charged under this proposed section does not have the benefit of the mistake of fact defence for the offence but does have the benefit of the reasonable steps defence.

## **Part 4.7                    Particular provisions about mass or dimension authorities**

### **Division 1                    Preliminary**

*Clause 154* replaces section 134 and amends it by changing the definition of *road condition* in subsection (1) to encompass conditions directed at

preventing or minimising significant risks to public safety arising from heavy vehicle use that is incompatible with road infrastructure or traffic.

The definition of *road condition* is also amended to remove the reference to *public amenity* and instead expressly restricts the meaning of *road condition* under subsection (a)(ii) of this definition to conditions preventing or minimising an adverse effect on the community arising from noise, emissions or traffic congestion or from other matters stated in approved guidelines. This addresses the uncertainty and potentially perverse outcomes arising from the inclusion of the broad concept of *public amenity* in the access consent decision-making process.

Clause 154 is further amended to include the term *travel condition*. This term is required to expressly allow a mass or dimension authority to include conditions governing route and time of travel as requested by a relevant road manager. The term is intended to encompass conditions about which way a vehicle turns, as safe access to roads is in some cases subject to the heavy vehicle travelling in a specific direction or turning in a particular direction at an intersection.

## **Division 2            Obtaining consent of relevant road managers**

*Clause 155* replaces and does not materially amend section 135 of the Act.

*Clause 156* replaces section 136 and makes multiple amendments to it. Subsection (1)(a)(ii) is included to stipulate a time in which consent must be granted where a road manager objects to the issuing of a consent under the expedited procedure set out in proposed section 167.

The grounds on which a road manager may agree to an extension of time in which the decision for consent must be finalised are extended through the new subsection 156(2)(c) to include consultation with a local government authority in the circumstances provided.

Subsection (3), which establishes the basis on which a road manager may refuse consent, is amended to reflect the additional matters road conditions may be imposed to address as a result of the amendments to subsection 154 (a)(ii) and (iii).

Proposed subsection 156(5) is inserted and requires the Regulator to provide the applicant a written statement identifying the road manager concerned (as there may be more than one road manager relevant to the application) and indicating the ground on which the road manager asked for a longer period, where the Regulator agrees to the request for an extension of time in which consent must be given as a result of the application of subsection 156 (1)(b).

**Clause 157** inserts a new provision that applies where an applicant for a mass or dimension exemption (permit) or class 2 heavy vehicle authorisation (permit) and consultation with another entity is required under a jurisdictional law. Proposed subsection (2) requires the Regulator to notify the applicant of this requirement and advise the relevant road manager of the fact of this notification simultaneously.

**Clause 158** is a new clause that applies where an applicant for a mass or dimension exemption (permit) or class 2 heavy vehicle authorisation (permit) and consultation with another entity is required under a jurisdictional law. It is intended to ensure that the actions required to be undertaken by the road manager to respond to the request for consent are completed as far as possible and not delayed on the basis of the requirement to undertake additional consultation with another entity. Proposed subsection (3) provides that the consent provided by the road manager in this instance is conditional upon the completion of consultation with the other entity.

New subsection (4) outlines the obligations of the road manager where consultation is required but the road manager's consent would be inoperative as a result of the actions of the other entity.

Proposed subsection (5) prevents the Regulator from granting a mass or dimension authority where the other entity has declined to provide its approval.

**Clause 159** replaces and does not materially amend section 137 of the Act.

**Clause 160** replaces section 138 and amends subsection (1) by authorising the Regulator to impose conditions on a class 2 heavy vehicle authorisation (notice) if it is a type of condition prescribed by regulations and required by the relevant road manager or road authority.

New subsection (4) inserts a regulation-making power to allow for making of regulations about the types of conditions that may be imposed on a class 2 heavy vehicle authorisation (notice) at the request of the road authority or

road manager. These conditions are limited to road conditions and the regulations must specify the circumstances in which it is appropriate to impose that type of condition.

This supplementary basis for the imposition of conditions is required to ensure that parts of the road network that have been opened up to class 2 vehicles on the basis of additional conditions will not be lost as a consequence of the implementation of the Act. The regulation making power is intended to be used to capture a small number of standardised conditions to ensure the productivity benefits flowing from the use of notice-based authorities for these additional network segments is not diminished

**Clause 161** is a new section that authorises a road manager for a mass or dimension authority to consent to the grant of the authority subject to the condition that a stated travel condition (defined in section 154) is imposed on the authority

**Clause 162** replaces and does not materially amend section 139 of the Act.

**Clause 163** replaces section 140 and amends it in proposed subsection (1)(b)(ii) by clarifying that the basis on which the Regulator may request a road authority to review a decision of a road manager extends to the imposition of conditions imposed as a result of the amendments made under section 154 to the definition of *road condition*.

**Clause 164** replaces section 141 and amends subsection (2) by clarifying that the information notice to be provided to an applicant must comply with the new requirements set out in section 172.

**Clause 165** inserts a new section that sets out the minimum contents of an information notice where the Regulator grants a mass or dimension authority by giving a person a

permit and the authority is subject to a travel condition required by a relevant road manager. The amendment is a consequence of the inclusion of the new conditioning power provided in proposed section 161.

**Clause 166** replaces section 142 and amends subsection (2) to clarify that the information notice to be provided to an applicant must comply with the new requirements set out in proposed section 172 (Requirements for statement explaining adverse decision of road manager).

**Clause 167** is a new provision that establishes an expedited process for the renewal of certain mass and dimension authorities. The circumstances in which the process is available are set out in new subsection (1).

The circumstances in which the process is inapplicable or ceases to apply are set out in new subsection (2). These circumstances include material differences between the terms of the previous authority and the terms of the proposed replacement authority, an objection to the application by the road manager within the specified time limit, or the operation of a law of the jurisdiction that requires consultation with third parties before the grant of the proposed replacement authority,

This proposed section formalises best practice in a number of jurisdictions. The institution of this process is intended to provide productivity benefits by minimising the time required for the granting of consent as the road manager has previously consented to a grant of a mass or dimension authority in similar circumstances and the Regulator proposes to issue a replacement authority on the same conditions as the original authority.

Proposed subsection (3) provides that the consent of the relevant road manager must be deemed to have been granted on the same terms as the consent for the previous authority unless the road manager refuses consent, or lodges a notice of objection within the time limits specified in subsection (2).

**Clause 168** inserts a new section that suspends the operations of sections 156 to 166 while a proposed replacement authority is being dealt with under the expedited procedure under section 167.

**Clause 169** inserts a new section that authorises a relevant road manager to consent to grant of a mass or dimension authority for a trial period of no more than 3 months. Proposed subsection (3) provides that the trial can be undertaken only if all relevant road managers require that the access be trialled. The purpose of the time restriction is to encourage road managers to consent to future access once the impact of the access during the trial has been assessed.

**Clause 170** inserts a new section provides that the Regulator must, one month before the end of a trial initiated under proposed section 169, notify the relevant road managers that the trial is due to end and will automatically be re-granted by the Regulator unless a road manager advises the trial must end. If there is no written objection from road managers, the Regulator must

renew the trial access on the same terms and conditions. If there is a response to end the trial, the Regulator must not renew the trial access. Instead, the normal process for granting access for a vehicle and operation of the type contemplated must be followed.

**Clause 171** inserts a new section that applies at the granting or renewal of a mass or dimension authority under proposed sections 169 or 170 respectively. New subsection (2) provides that, in the case of a mass or dimension exemption (permit) or a class 2 heavy vehicle authorisation (permit), the period for which the permit applies must not exceed the length of the trial period.

Proposed subsection (3) provides that, in the case of a mass or dimension exemption (notice) or a class 2 heavy vehicle authorisation (notice), then, despite sections 120 or 141, the period for which the notice applies is so much of the period stated in the Commonwealth Gazette notice referred to in that section as does not exceed the trial period. This allows for the management of trials through notices and the broader productivity benefits this more efficient process can provide.

**Clause 172** inserts a new section that sets out the minimum requirements to be contained in a written statement required to be issued for various decisions by road managers in relation to applications for mass or dimension authorities under Chapter 4.

New subsection (2)(a) provides that the road manager must include in the notice its findings on material questions of fact, the evidence or other material on which those findings were based and giving the reasons for the road manager's decision.

New subsection (2)(b) requires the road manager to identify each document or part of a document that is relevant to the road manager's decision (without automatically requiring the production of the documents themselves).

### **Division 3            Amendment, cancellation or                                  suspension of mass or dimension                                  authority granted by Commonwealth                                  Gazette notice**

*Clause 173* replaces and does not materially amend section 143 of the Act.

*Clause 174* replaces section 144 and amends so that the grounds in subsection (1) upon which a relevant road manager for a mass or dimension authority may ask the Regulator to amend or cancel the mass or dimension authority. It now reflects the additional matters road conditions may be imposed to address as a result of the amendments to the definition of *road condition* in subsection 154. Subsection (2) is amended to authorise the road manager to request the Regulator to amend the authority by imposing or amending travel conditions.

Subsection 174(2)(a) is amended to clarify the actions specified in subsection (2)(a) that a road manager may request the Regulator to undertake in respect of a mass or dimension authority are exhaustive. This makes it clear so that the road manager may only ask for variations related to its power and functions under the Act.

*Clause 175* replaces section 145 and amends subsection (2) by making it clear that an immediate suspension of a mass or dimension authority remains in force until a notice to alter or cancel the exemption or authority takes effect, as opposed to when the notice to alter or cancel is published (a notice to alter or cancel only takes effect 28 days after it is published).

### **Division 4            Amendment, cancellation or                                  suspension of mass or dimension                                  authority granted by permit**

*Clause 176* replaces section 146 and amends subsection (2) by allowing for the imposition of a fee for the amendment or cancellation of a mass or dimension authority. The section is further amended by the inclusion of proposed subsection (4) which requires the Regulator to seek the consent of the relevant road manager unless the amendment of the mass or dimension authority seeks to omit an area or route or reducing an area or route in size.

The Regulator's power to amend a mass or dimension authority does not allow it to grant access to a road or amend road conditions linked to existing consents to access unless the existing process in Division 2 of Part 4.6 to consult with road managers and third parties is followed.

*Clause 177* replaces and does not materially amend section 147 of the Act.

*Clause 178* replaces section 148 and amends subsection (1) and (2) by extending the basis on which the road manager may refuse consent to reflect the additional matters road conditions may be imposed to address as a result of the amendments to subsection 154 (a)(ii) and (iii) and the road manager's capacity to impose travel conditions under section 161.

*Clause 179* replaces section 149 and amends subsection (2) to make it clear that an immediate suspension remains in force until a notice to alter or cancel the authority takes effect, as opposed to when the notice to alter or cancel is published (a notice to alter or cancel only takes effect 28 days after it is published).

*Clause 180* replaces and does not materially amend section 150.

## **Division 5            Provisions about permits for mass or dimension authorities**

*Clauses 181 and 182* replace and do not materially amend sections 151 and 152 of the Act.

## **Part 4.8            Extended liability**

*Clause 183* replaces section 153. Subsection (4) is amended by proposed subsection (5) to clarify that details stated in an infringement notice issued for the relevant offence are evidence that the offence happened at the time and place, and in the circumstances, stated in the infringement notice.

The amendment of the definition of *mass requirement* in section 5 allows a contravention against the previous section 154 (which is omitted through this Amendment Bill) to be addressed as a contravention of this section.

## **Part 4.9            Other offences**

### **Division 1            Towing restriction**

*Clause 184* replaces section 155 and amends it by including a head of power in subsection (2) for the making of regulations to authorise the towing of more than one vehicle. This power is required to address uncertainty as to whether mass or dimension authorities can effectively regulate current and future uses of multiple heavy vehicles. Standing exemption may be a more practical and efficient response to this concern over time than requiring operators to operate under notices or permits.

### **Division 2            Coupling requirements**

*Clause 185* replaces and does not materially amend section 156 of the Act.

### **Division 3            Transport documentation**

*Clauses 186 and 187* replace and do not materially amend sections 157 and 158 of the Act.

### **Division 4            Other offences about container weight declarations**

*Clauses 188 to 192* replace and do not materially amend sections 159 to 163 of the Act.

### **Division 5            Other offences**

*Clauses 193 and 194* replace and do not materially amend sections 164 and 165 of the Act.

## Part 4.10      Other provisions

**Clause 195** replaces section 166 of the Act and amends it by omitting subsection (1)(b), the definition of *mass exemption* and the example previously provided under subsection (2). Section 166 previously provided a rule to determine the relevant mass limit in the limited circumstances where a mass requirement of the vehicle in its entirety may have conflicted with a requirement applying to a component of the vehicle. This principle is relevant to and necessary for the resolution of a broader range of conflicting mass limits arising from limits imposed by official traffic signs and mass exemptions. Proposed subsection (2) requires the lower or lowest of the applicable mass limits to be applied in determining the mass limit for the vehicle.

**Clause 196** is a new section that provides the basis for determining which dimension requirement is to prevail in the case of conflicting requirements. For example, a vehicle may be exempted from a prescribed dimension requirement through a dimension exemption. The same vehicle may be subject to a temporary restriction imposed through an official traffic sign. Proposed subsection (2) requires the more or most (if there are two or more such requirements) restrictive of these to be applied in determining what are the relevant dimension requirements.

The section necessarily departs from the approach taken in respect to mass limits in section 195 in specifying that is the more or most ‘restrictive’ limit that applies, rather than the ‘shortest’ or ‘lowest’ requirement on the basis that in some (likely limited) circumstances the requirement imposed on the vehicle and intended to be applied may be longer than another requirement. For example a prescribed dimension requirement may establish that a heavy vehicle is compliant if the distance between two axle groups is more than 2.5 meters while a mass and dimension exemption may require the same distance to be more than 3 meters, in which case the 3 meter requirement is the most restrictive and the prescribed dimension requirement should be disregarded

**Clause 197** replaces section 167 and amends it by inserting subsection (5) to impose an obligation on the Regulator to notify the relevant road authority of the grant of an exemption under subsection (1) as soon as practicable after it is granted.

*Clauses 198 to 201* replace and do not materially amend sections 168 to 171 of the Act.

## **Chapter 5      Vehicle operations—speeding**

### **Part 5.1          Preliminary**

*Clauses 202 and 203* replace and do not materially amend sections 172 and 173 of the Act.

### **Part 5.2          Particular duties and offences**

#### **Division 1          Employers, prime contractors and operators**

*Clause 204* replaces and does not materially amend section 174 of the Act.

*Clause 205* replaces section 175 of the Act and amends it by excluding the mistake of fact defence for the employer of an employed driver where the employer has not satisfied their obligations under section 204 and has not reasonably satisfied him or herself that each scheduler for the vehicle has complied with the obligations in sections 207 and 208.

Allowing access to the defence introduces significant uncertainty in the operation of the law and increases the difficulty in successfully prosecuting the relevant offences given the broad range of matters that can be pleaded.

In many cases, the perceived injustice associated with the exclusion of a generally available defence is addressed through the amendment proposed to section 625(1) to expand the range of circumstances in which the reliance on a registered industry code of practice is to be taken as *prima facie* evidence of the taking of reasonable steps.

**Clause 206** replaces section 176 of the Act and amends it by excluding the mistake of fact defence for a prime contractor or operator where these parties have not satisfied their obligations under section 204 and have not reasonably satisfied themselves that each scheduler for the vehicle has complied with the obligations in sections 207 and 208.

The rationale for the exclusion is identical to that raised in relation to section 205.

## **Division 2            Schedulers**

**Clause 207** replaces and does not materially amend section 177 of the Act.

**Clause 208** replaces section 178 of the Act and amends it by excluding the mistake of fact defence for a scheduler for a heavy vehicle where the scheduler causes a driver to drive but has not satisfied him or herself of the obligations under section 207 and has not reasonably satisfied him or herself of the matters specified in section 208(1)(b) in relation to the driver's schedule.

The rationale for the exclusion is identical to that raised in relation to section 205.

## **Division 3            Loading managers**

**Clause 209** replaces section 179 of the Act and amends it by relocating the definition of *loading manager* to section 5.

## **Division 4            Particular consignors and consignees**

**Clauses 210 to 213** replace and do not materially amend sections 180 to 183 of the Act.

## **Division 5            Particular requests etc. and contracts etc. prohibited**

*Clauses 214 to 216* replace and do not materially amend sections 184 to 186 of the Act.

## **Division 6            Provisions about offences against this Part**

*Clauses 217 and 218* replace and do not materially amend sections 187 and 188 of the Act.

## **Part 5.3            Extended liability**

*Clause 219* replaces and amends section 189 of the Act in multiple areas. Subsection (1) removes the requirement for driver conviction as a trigger for liability to be extended against the parties nominated in subsections (1)(a) to (c).

Subsection (4) is incorporated to clarify that legal proceedings or any conviction against the driver for the speeding offence is irrelevant. Evidence of a conviction against the driver is evidence of certain matters, and details stated in an infringement notice issued for the relevant offence is evidence that the offence happened at the time and place, and in the circumstances, stated in the infringement.

## Chapter 6 Vehicle operations—driver fatigue

### Part 6.1 Preliminary

*Clause 220* replaces and does not materially amend section 190 of the Act.

*Clause 221* replaces section 191 and amends it in the following areas:

The definition of *ADR* (Australian Design Rule) is relocated to section 5.

The definition of *base* is relocated to section 5.

The definition of *cause of fatigue* is amended to clarify that this term includes anything that may have caused or contributed to the driver's fatigue, whether or not the cause arose while the driver was working.

The definition of *electronic work diary label* is amended to encompass any "form" used to receive an application or other information, including an electronic form.

The definition of *engage* is omitted to allow reliance on the ordinary meaning of the word and to clarify that it does not encompass only circumstances where, for example, a driver has been engaged under a contract for services (consequentially, a driver is now referred to as "undertaking work" rather than "engaging in work" throughout this chapter).

The definition of *loading manager* is relocated to section 5 as the term is used throughout the Act.

The definition of *sign of fatigue* is amended to expressly state that both a cause and sign of fatigue may arise or be exhibited before, during or after a driver drove a vehicle.

The definitions of *unload* and *unloader* have been relocated to section 5 as the term is used throughout the Act.

The definition of *work* is amended to specify that being in the driver's seat of a fatigue-regulated heavy vehicle while the engine is running may be treated as work for the purposes of the Act.

*Clause 222* replaces and does not materially amend section 192 of the Act.

## **Part 6.2            Duties relating to fatigue**

### **Division 1            Preliminary**

*Clause 223* replaces section 193 and amends the Act by including a head of power for the making of a regulation supplementing, clarifying or providing examples for any of the provisions of sections 223 to 226 (encompassing, the meaning of ‘fatigue’, the matters a court may consider in deciding whether a person was fatigued, the meaning of ‘impaired by fatigue’, and the matters a court may consider in deciding whether a person was impaired by fatigue).

*Clause 224* replaces section 194 by omitting duplicative terms and by omitting references to causes or signs of fatigue arising or being exhibited before, during or after a driver drove a vehicle as this concept is now included in the definitions of *causes of fatigue* and *signs of fatigue*.

*Clause 225* replaces section 195 by incorporating a simplified test for what it means to be ‘impaired by fatigue’ consistent with Regulation 44 of the *Road Transport (General) Regulation 2005* (NSW). The section now provides that impairment in this context arises where the driver’s ability to drive a fatigue-regulated heavy vehicle safely is affected by fatigue.

*Clause 226* replaces and amends section 196 to give effect to the amendments to the definitions of *cause of fatigue*, *sign of fatigue* and *impaired by fatigue*. It does so by omitting subsection 196(1)(c) and combining subsections 196(1)(a) and (b).

*Clause 227* replaces and does not materially amend section 197 of the Act.

### **Division 2            Duty to avoid and prevent fatigue**

*Clause 228* replaces section 198 by making provision for participating jurisdictions to classify offences under other state or territory laws as a “prescribed driver offence under another law”. When an offence under

another law of the jurisdiction (for instance, an occupational health and safety law) is so prescribed, then a driver cannot be convicted of both a heavy vehicle driver fatigue offence and the "prescribed driver offence under another law". This will provide drivers of fatigue-regulated heavy vehicle with protection from double jeopardy without having to rely on the, often uncertain, operation of general statutory or common law rules to the same effect.

*Clause 229* replaces section 199 and amends it by excluding the ability of a person charged with an offence under this provision (of failing to take all reasonable steps to ensure a person does not drive the vehicle while impaired by fatigue) to rely on the mistake of fact defence for the offence. This reflects the legal position embedded in the model law on which this provision was based, and agreed national policy.

### **Division 3                      Additional duties of employers, prime contractors and operators**

*Clause 230* replaces section 200 and amends it by excluding the ability of a person charged with an offence under this provision (of failing to take all reasonable steps to ensure the relevant party's business practices do not result in offences against the Act by the driver) to rely on the mistake of fact defence for the offence. This reflects the legal position embedded in the model law on which this provision was based, and agreed national policy.

*Clause 231* replaces section 201 and amends it by excluding the ability of a person charged with an offence under this provision (of failing to comply with the obligation in proposed section 230 and failing to ensure a scheduler has complied with his or her obligations) to rely on the mistake of fact defence for the offence. This reflects the legal position embedded in the model law on which this provision was based, and agreed national policy.

*Clause 232* replaces section 202 and amends it by excluding the ability of a person charged with an offence under this provision (of failing to comply with the obligation in proposed section 230 and failing to ensure a scheduler has complied with his or her obligations) to rely on the mistake of fact defence for the offence. This reflects the legal position embedded in the model law on which this provision was based, and agreed national policy.

## **Division 4            Additional duties of schedulers**

*Clause 233* replaces section 203 and amends it by excluding the ability of a person charged with an offence under this provision (of failing to take all reasonable steps to ensure the schedule for the vehicle's driver does not result in certain specified offences against the Act by the driver) to rely on the mistake of fact defence for the offence. This reflects the legal position embedded in the model law on which this provision was based, and agreed national policy.

*Clause 234* replaces section 204 and amends it by excluding the ability of a person charged with an offence under this provision (of failing to comply with the obligation in proposed section 233 and failing to ensure the driver's schedule allows for adequate rest time and traffic conditions and other delays) to rely on the mistake of fact defence for the offence. This reflects the legal position embedded in the model law on which this provision was based, and agreed national policy.

## **Division 5            Additional duties of consignors and consignees**

*Clause 235* replaces section 205 and amends it by excluding the ability of a person charged with an offence under this provision (of failing to take all reasonable steps to ensure the terms of consignment will not result in, encourage or provide an incentive to the vehicle's driver to commit certain specified offences against the Act) to rely on the mistake of fact defence for the offence. This reflects the legal position embedded in the model law on which this provision was based, and agreed national policy.

## **Division 6            Additional duties of loading managers**

*Clause 236* replaces section 206 and amends it by excluding the ability of a person charged with an offence under this provision to rely on the mistake of fact defence for the offence. This reflects the legal position embedded in

the model law on which this provision was based, and agreed national policy.

*Clause 237* replaces section 207 and amends it by excluding the ability of a person charged with an offence under this provision to rely on the mistake of fact defence for the offence. This reflects the legal position embedded in the model law on which this provision was based, and agreed national policy.

*Clause 238* replaces section 208 and amends it by excluding the ability of a person charged with an offence under this provision to rely on the mistake of fact defence for the offence. This reflects the legal position embedded in the model law on which this provision was based, and agreed national policy. The definition of *loading manger* has now been consolidated in section 5. Subsection 238(1) is amended to clarify that the offence may be committed by a loading manager ‘for goods in a heavy vehicle’.

*Clause 239* replaces section 209 and amends it by excluding the ability of a person charged with an offence under this provision to rely on the mistake of fact defence for the offence. This reflects the legal position embedded in the model law on which this provision was based, and agreed national policy.

## **Division 7                      Particular requests etc. and contracts etc. prohibited**

*Clause 240* replaces and does not materially amend section 210 of the Act.

*Clause 241* replaces and does not materially amend section 211 of the Act.

## **Division 8                      Provisions about offences against this Part**

*Clause 242* replaces and does not materially amend section 212 of the Act.

## **Part 6.3            Requirements relating to work time and rest time**

### **Division 1            Preliminary**

*Clauses 243 to 246* replace and do not materially amend sections 213 to 216 of the Act.

*Clause 247* replaces section 217 and amends it by replacing an example to better illustrate how time is to be counted after rest time ends.

*Clause 248* replaces and does not materially amend section 218 of the Act.

### **Division 2            Standard work and rest arrangements**

*Clauses 249 to 252* replace and do not materially amend sections 219 to 222 of the Act.

### **Division 3            BFM work and rest arrangements**

*Clauses 253 to 256* replace and do not materially amend sections 223 to 226 of the Act.

### **Division 4            AFM work and rest arrangements**

*Clauses 257 and 258* replace and do not materially amend sections 227 and 228 of the Act.

## **Division 5            Arrangements under work and rest hours exemption**

*Clauses 259 and 260* replace and do not materially amend sections 229 and 230 of the Act.

## **Division 6            Extended liability**

*Clause 261* amends section 231 in multiple areas. The new section 261 removes the requirement for driver conviction as a trigger for liability to be extended against the parties nominated in subsection (2). Subsection (5) is incorporated to clarify that legal proceedings or any conviction against the driver for a breach of work and rest requirements is irrelevant, evidence of a conviction against the driver is evidence of certain matters, and details stated in an infringement notice issued for the relevant offence is evidence that the offence happened at the time and place, and in the circumstances, stated in the infringement notice. This is consistent with the approach taken for other extended liability offences under the Act as amended.

## **Division 7            Changing work and rest hours option**

*Clauses 262 to 264* replace and do not materially amend sections 232 to 234 of the Act.

## **Division 8            Exemptions relating to work times and rest times**

### **Subdivision 1      Exemption for emergency services**

*Clause 265* replaces section 235 by inserting subsection (3), which provides that an emergency services exemption is only applicable when the

emergency service personnel have complied with any guidelines issued by any emergency service or for that service by an agency responsible for oversight of the emergency service. An example of this would be the South Australian Fire and Emergency Services Commission as the agency responsible for oversight of the South Australian Country Fire Service, which is an emergency service.

## **Subdivision 2 Exemptions by Commonwealth Gazette notice**

*Clauses 266 to 270* replace and do not materially amend sections 236 to 240 of the Act.

*Clause 271* replaces section 241 and amends it by including, through subsection (1)(a), a new ground for cancelling a work and rest hours exemption (notice). As a result of the amendment, the Regulator may amend or cancel the notice due to a change in relevant circumstances that would have resulted in a decision not to grant the exemption or grant it subject to conditions or different conditions had the facts existed at the original grant.

The section is further amended through the insertion of subsections (4) to (6) to provide that the Regulator's amendment or cancellation of a work and rest hours exemption (notice) takes effect in the same timeframe and circumstances as those for an amendment or cancellation of a work diary exemption (notice).

*Clause 272* is a new section that empowers the Regulator to immediately suspend a work and rest hours exemption (notice). The power is based on similar provisions in the Act relating to exemptions from registration, vehicle standards requirements, and mass and dimension authorities. It is exercisable where it is necessary to suspend the exemption immediately to prevent or minimise serious harm to public safety, and requires a public notification process to be undertaken.

### **Subdivision 3 Exemptions by permit**

*Clauses 273 to 279* replace and do not materially amend sections 242 to 248 of the Act.

*Clause 280* replaces section 249 and amends it by clarifying a fee (if prescribed) may need to accompany an application where the holder seeks amendment of a work and rest hours exemption (permit).

*Clause 281* replaces section 250 and amends it by including a new ground on which the Regulator may amend or cancel a work and rest hours exemption (permit). As a result of the amendment, the Regulator may cancel the permit due to a change in relevant circumstances that would have resulted in a decision not to grant the exemption or grant it subject to conditions or different conditions had the facts existed at the original grant.

*Clause 282* replaces section 251 and amends it in subsection (2) to clarify the circumstances under which the suspension ceases to have effect, and to allow the Regulator to cancel the suspension at any time should the concerns that led the Regulator to suspend the exemption be resolved.

*Clauses 283 to 285* replace and do not materially amend sections 252 to 254 of the Act.

### **Subdivision 4 Offences relating to operating under work and rest hours exemption etc.**

*Clause 286* replaces and does not materially amend section 255 of the Act.

*Clause 287* replaces section 256 and amends subsection (6) to clarify that details stated in an infringement notice issued for the relevant offence is evidence that the offence happened at the time and place, and in the circumstances, stated in the infringement notice. This is consistent with the approach taken for other extended liability offences under the Act as amended.

*Clause 288* replaces section 257 and amends subsection (6) to clarify that details stated in an infringement notice issued for the relevant offence is evidence that the offence happened at the time and place, and in the

circumstances, stated in the infringement notice. This is consistent with the approach taken for other extended liability offences under the Act as amended.

## **Part 6.4            Requirements about record keeping**

### **Division 1            Preliminary**

*Clause 289* replaces and does not materially amend section 258 of the Act.

*Clause 290* replaces and does not materially amend section 260 of the Act.

### **Division 2            Work diary requirements**

#### **Subdivision 1      Requirements to carry work diary**

*Clauses 291 to 293* replace and do not materially amend sections 261 to 263 of the Act.

#### **Subdivision 2      Information required to be included in work diary**

*Clause 294* replaces section 264 and amends it by clarifying that the information required to be recorded by a driver undertaking 100+km work under standard hours or working under BFM hours, AFM hours or a work and rest hours exemption is the information required by the national regulations under proposed section 295.

*Clause 295* inserts a new section that creates a broad head of power to allow the making of regulations in respect of various matters related to work

diaries including the information that is to be recorded, and the manner in which the information is to be recorded.

**Clause 296** inserts a new section that requires a driver to record information in the driver's work diary in the manner and at the time prescribed by the national regulations. The obligations previously imposed under section 267 are now enforceable under proposed sections 295(2)(b), in particular, and 296.

**Clause 297** replaces section 266 and amends it by allowing for information a driver is required to record immediately after the driver starts work on a day to be specified in the regulations, and specifies an offence (and defence) for failure to record the information equivalent to the offence (and defence).

**Clause 298** inserts a new section that requires the driver of a fatigue-regulated heavy vehicle to record the odometer reading in the manner prescribed by the national regulations if and when required to do so by the national regulations. This replaces the obligation previously found in section 267(1)(d). A defence is provided where at the time of the offence, the odometer was malfunctioning and the driver has complied with the requirements of section 397 in informing the relevant persons.

**Clause 299** inserts a new section that replaces the obligation previously found in section 267(2), which requires a driver who is a party to a two-up driving arrangement to provide the other two-up driver on request with the details relating to the arrangement that are prescribed by the national regulations.

### **Subdivision 3 How information must be recorded in work diary**

**Clauses 300 to 303** replace and do not materially amend sections 270 to 273 of the Act.

## **Subdivision 4 Requirements about work diaries that are filled up etc.**

*Clause 304* replaces and does not materially amend section 274 of the Act.

*Clause 305* replaces section 275 and clarifies that the period for which a supplementary record must be kept can be less than 3 years if a condition of an exemption authorises this.

*Clauses 306 to 311* replace and do not materially amend sections 276 to 281 of the Act.

*Clause 312* replaces section 282 and amends it by clarifying that the obligations in subsection (3) are intended to refer to a party the record keeper has engaged under a contract for services for the provision and management of an electronic work diary.

*Clause 313* replaces section 283 and amends it by clarifying that the obligations in subsections (3) and (4) are intended to refer to a party the record keeper has engaged under a contract for services for the provision and management of an electronic work diary.

## **Subdivision 5 Use of electronic work diaries**

*Clause 314* replaces and does not materially amend section 284 of the Act.

## **Subdivision 6 Extended liability**

*Clause 315* replaces section 285 and amends it by removing the requirement for driver conviction as a trigger for liability to be extended against for the parties nominated in subsection (2). Subsection (4) is incorporated to clarify that legal proceedings or any conviction against the driver for a breach of work and rest requirements is irrelevant, evidence of a conviction against the driver is evidence of certain matters, and details stated in an infringement notice issued for the relevant offence is evidence that the offence happened at the time and place, and in the circumstances, stated in

the infringement notice. This is consistent with the approach taken for other extended liability offences under the Act as amended.

## **Division 3        Records relating to drivers**

### **Subdivision 1    Preliminary**

*Clauses 316 and 317* replace and do not materially amend sections 286 and 287 of the Act.

### **Subdivision 2    Record keeping obligations relating to drivers engaging in 100km work under standard hours**

*Clause 318* replaces and does not materially amend section 288 of the Act.

*Clause 319* replaces section 289 and amends it so the requirement to record the registration of each heavy vehicle the driver drives is limited to the registration number of the towing vehicle only for a combination. This section has also been amended to clarify that the obligations in subsection (2) are intended to refer a party the record keeper has engaged under a contract for services for the provision and management of an electronic work diary.

### **Subdivision 3    Record keeping obligations relating to drivers engaging in 100+km work under standard hours or operating under BFM hours, AFM hours or exemption hours**

*Clause 320* replaces and does not materially amend section 290 of the Act.

**Clause 321** replaces section 291 and amends subsection (1)(b) to clarify that a self-employed driver who is also a record keeper is required to keep any supplementary record required to be made under Chapter 6.

**Clause 322** replaces section 292 by clarifying that the obligations in subsection (4) are intended to refer to a party the record keeper has engaged under a contract for services.

**Clause 323** replaces section 293 by clarifying that the obligations in subsection (3) are intended to refer to a party the record keeper has engaged under a contract for services

**Clause 324** replaces section 294 by clarifying that the obligations in subsection (2) are intended to refer to a party the record keeper has engaged under a contract for services for the provision and management of an electronic work diary

## **Division 4            Provisions about false representations relating to work records**

**Clauses 325 to 328** replace and do not materially amend sections 296 to 299 of the Act.

## **Division 5            Interfering with work records**

### **Subdivision 1    Work records generally**

**Clauses 329 to 332** replace and do not materially amend sections 300 to 303 of the Act.

## **Subdivision 2    Approved electronic recording systems**

*Clauses 333 and 334* replace and do not materially amend sections 304 and 305 of the Act.

*Clause 335* replaces section 306 and amends subsection (2) to clarify that tampering does not extend to conduct associated with maintaining an approved electronic recording system, or an authorised officer when exercising functions under this Law.

*Clause 336* replaces section 307 and amends subsection (1) by providing examples of persons who use an approved electronic recording system.

*Clause 337* replaces and does not materially section 308 of the Act.

## **Division 6            Obtaining written work diary**

*Clause 338* replaces and does not materially amend section 309 of the Act.

*Clause 339* replaces section 310 and amends it by allowing for the imposition of a fee for an application for a written work diary.

*Clause 340* replaces and does not materially amend section 311 of the Act.

## **Division 6A        Requirements about records record keeper must make or keep**

*Clause 341* relocates section 295 and through new subsection (4), clarifies that a driver who is also their own record keeper must ensure the record or a copy of the record is kept at the driver's record location in a way that ensures it is readily available to an authorised officer at the record location by the end of the 21-day period after the day the record is made.

## **Division 7            Approval of electronic recording systems**

### **Subdivision 1        Approval of electronic recording systems**

*Clause 342* replaces section 312 and amends it by allowing for the imposition of a fee for the approval of an electronic recording system.

*Clause 343 to 346* replace and do not materially amend sections 313 to 316 of the Act.

### **Subdivision 2        Provisions about electronic work diary labels**

*Clauses 347 to 350* replace and do not materially amend sections 317 to 320 of the Act.

### **Subdivision 3        Amendment or cancellation of approval**

*Clause 351* replaces section 321 and amends it by allowing for the imposition of a fee for the amendment or cancellation of an approval for an electronic recording system.

*Clause 352* replaces section 322 and amends the grounds on which the Regulator may amend or cancel an approval for an electronic recording system. The provision allows for such a decision where there has been a change in circumstances since the issuing of the approval that would have led the Regulator to refuse the grant or impose conditions or additional conditions upon it at the time of the original grant.

*Clauses 353 to 355* replace and do not materially amend sections 323 to 325 of the Act.

## **Division 8 Exemptions from work diary requirements**

### **Subdivision 1 Exemption for emergency services**

*Clause 356* replaces section 326 to exempt a person who is acting for an emergency service from compliance with duties under Part 6.4 Division 2 (Work diary requirements) if, at the time, the circumstances detailed in subsection 326(1) or subsection 326(2) apply and the person complies with any guidelines regarding the management of fatigue issued by the emergency service or an agency responsible for oversight of the emergency service.

### **Subdivision 2 Exemptions by Commonwealth Gazette notice**

*Clauses 357 to 361* replace and do not materially amend sections 327 to 331 of the Act.

*Clause 362* replaces and section 332 and amends the grounds on which the Regulator may amend or cancel a work diary exemption (notice). The provision allows for such a decision where there has been a change in circumstances since the issuing of the approval that would have led the Regulator to refuse the grant, or impose conditions or additional conditions upon it, at the time of the original grant.

### **Subdivision 3 Exemptions by permit**

*Clause 363* replaces section 333 and amends it by restricting the parties who are eligible to apply for a work diary exemption (permit) to a driver who is driving under standard hours or the employer of an employed driver who is driving under standard hours.

**Clauses 364 to 369** replace and do not materially amend sections 334 to 339 of the Act.

**Clause 370** replaces section 340 and amends it by allowing for the imposition of a fee where the holder of a permit for a work diary exemption (permit) applies to the Regulator for an amendment or cancellation of the exemption.

**Clause 371 to 374** replace and do not materially amend sections 341 to 344 of the Act.

## **Subdivision 4 Operating under work diary exemption**

**Clause 375** replaces and does not materially amend section 345 of the Act.

**Clause 376** replaces section 346 and amends it so that liability for a driver's failure to keep a relevant document in their possession while operating under a work diary exemption (notice) extends to the driver's employer(s), prime contractor or operator. New section 376 only applies where a condition of a notice requires the driver of a fatigue-regulated heavy vehicle who is operating under the exemption to keep a relevant document in the driver's possession. A person to whom liability is so extended may rely on the defence of the taking of reasonable steps but does not have the benefit of the mistake of fact defence for the offence.

**Clause 377** replaces and does not materially amend section 347 of the Act.

## **Division 8A Exemptions from fatigue record keeping requirements of Division 3**

Division 8A is a new division based on similar provisions in the Act in relation to exemptions from work and rest hours, and work diary requirements.

## **Subdivision 1 Exemptions by Commonwealth Gazette notice**

*Clause 378* is a new section that creates a power on the part of the Regulator to exempt record keepers for drivers of fatigue-regulated heavy vehicles carrying out a class of work from any or all of the fatigue record keeping requirements contained in Division 3 of Part 6.4 of the Act for a period of not more than 3 years, through the use of a fatigue record keeping exemption (notice). In exercising the power the Regulator must have regard to any approved guidelines.

*Clause 379* is a new section that empowers the Regulator to impose a range of conditions on a notice issued under proposed section 378, including but not limited to any conditions prescribed in the national regulations.

*Clause 380* is a new section that establishes the period for which a fatigue record keeping exemption (notice) applies, being the time when the Commonwealth Gazette notice for the exemption is published, or such later period as stated in that gazette notice.

*Clause 381* is a new section that sets out the minimum requirements a gazette notice issued for a fatigue record keeping exemption (notice) must contain and imposes an obligation on the Regulator to publish a copy of the Commonwealth Gazette notice on the Regulator's website.

*Clause 382* is a new section that empowers the Regulator to amend or cancel a fatigue record keeping exemption (notice). The section establishes the grounds on which the notice may be amended or cancelled and specifies the procedure to be followed where the power is intended to be exercised. This procedure imposes public notice requirements and obliges the Regulator to consider representations by affected persons.

## **Subdivision 2 Exemptions by permit**

*Clause 383* is a new section that empowers the Regulator to exempt a record keeper for one or more drivers of a fatigue-regulated heavy vehicle from any or all of the fatigue record keeping requirements contained in of Division 3

of Part 6.4 of the Act for a period of not more than 3 years through a fatigue record keeping exemption (permit).

**Clause 384** is a new section that establishes the procedures to be followed in the making of an application for a fatigue record keeping exemption (permit).

**Clause 385** is a new section that empowers the Regulator to impose a range of conditions on a permit applied for under proposed section 384, including but not limited to any conditions prescribed in the national regulations.

**Clause 386** is a new section that stipulates the period for which fatigue record keeping exemption (permit) applies, being the period nominated in the permit itself.

**Clause 387** is a new section that requires the Regulator to provide a copy of a record keeping exemption (permit) to the applicant. Where conditions have been imposed on the permit, or it has been granted for less than the period sought by the applicant, the Regulator must also provide an information notice for the decision. This section also stipulates the information the Regulator is required to include in the permit.

**Clause 388** is a new section requiring the Regulator to give the applicant an information notice where the Regulator has decided to refuse an application for a fatigue record keeping exemption (permit).

**Clause 389** is a new section that enables the holder of a fatigue record keeping exemption (permit) to apply to the Regulator for an amendment or cancellation of the exemption. The section outlines the procedure the applicant must follow in seeking the power to be exercised for their benefit, and the procedures to be followed by the Regulator in granting the application or refusing to grant the application.

**Clause 390** is a new section that empowers the Regulator to amend or cancel a fatigue record keeping exemption (permit) on its own initiative. The section sets out the grounds upon which the power may be exercised as well as the procedures to be followed where the Regulator considers a ground exists to amend or cancel the permit. These procedures include a requirement on the part of the Regulator to notify the holder of the proposed action and invite representations as to why the action should not be taken.

**Clause 391** is a new section that allows the Regulator to make a minor amendment of a fatigue record keeping exemption (permit) for formal or

clerical reasons or other reasons that do not adversely affect the holder's interests on the giving of notice to the holder.

*Clause 392* is a new section that provides that where a person's fatigue record keeping exemption (permit) is amended or cancelled, the Regulator may, by notice given to the person, require the person to return the person's permit for the exemption to the Regulator

*Clause 393* is a new section that requires the holder of a fatigue record keeping exemption (permit) that is defaced, destroyed, lost or stolen to apply to the Regulator for a replacement permit as soon as reasonably practicable after becoming aware of the matter.

### **Subdivision 3 Exemptions by national regulations**

*Clause 394* is a new section that creates a head of power to make regulations for the exemption of record keepers for drivers of fatigue-regulated heavy vehicles from the requirement to comply with all or stated provisions of Division 3. There is currently no such capacity to allow for 'enduring' exemptions to be prescribed in regulations but it is likely there will be a need for these in future and they already may found in jurisdictional laws (for example, regulation 115E of the *Road Transport (General) Regulations* (NSW) that exempt motor hire, repair etc. companies who drive vehicles locally from record keeping).

### **Subdivision 4 Other provisions**

*Clause 395* is a new provision that creates an offence for a person who contravenes a condition of a fatigue record keeping exemption.

### **Division 9 Requirements about odometers**

*Clause 396* replaces section 348 and amends it by allowing the requirement to fit and maintain an odometer to arise through the regulations, rather than

the Australian Design Rules; the latter having omitted any such requirement in the current edition.

**Clause 397** replaces section 349 and amends it by removing subsections (4) to (6), which extend extended liability to a range of other parties in the event of the driver's failure to fulfil the requirement to advise the parties in subsection (2). The extended liability requirement was omitted on the basis it would be unreasonable and inappropriate to impose liability for a matter virtually entirely within the control of a given driver (even where the defendant could rely on the defence of reasonable steps).

**Clauses 398 and 399** replace and do not materially amend sections 350 and 351 of the Act.

## **Chapter 7 Intelligent Access Program**

### **Part 7.1 Preliminary**

**Clause 400** replaces and does not materially amend section 352 of the Act.

**Clause 401** is a new section that introduces the concept of the 'Intelligent Access Program' and explains its purpose. The term has been historically applied to the regulatory activities incorporated in Chapter 7 and is well understood by users in industry and government. The retention of this concept allows for the clearer differentiation between regulatory telematics required as condition of access and non-regulatory systems used for other purposes. The Chapter 7 heading is amended accordingly and various consequential amendments made to related terms used through the Act.

**Clause 402** replaces and does not materially amend section 353 of the Act.

**Clause 403** replaces section 354 of the Act and amends or inserts defined terms used in Chapter 7. The following definitions have been amended or inserted:

*approved intelligent transport system* is amended to refer to the approval by TCA for the purposes of the Intelligent Access Program.

*Intelligent Access Program* is a new definition included as a result of the incorporation of the concept of the Intelligent Access Program to qualify various terms used throughout Chapter 7.

*intelligent access vehicle* is amended to clarify the provisions of Chapter 7 apply, irrespective of whether the heavy vehicle is ‘operating’ under an exemption or authority subject to intelligent access conditions. There are some provisions under Chapter 7 that should apply even when the vehicle is not operating under a mass or dimension exemption or an HML authority, such as the obligations to report tampering.

## **Part 7.2                    Duties and obligations of operators of intelligent access vehicles**

**Clause 404** replaces and does not materially amend section 355 of the Act.

**Clause 405** replaces section 356 of the Act and amends it by making it clear that the information to which the driver has access is “personal information” rather than any information acquired or stored by an approved intelligent transport system (which may also capture data unrelated to the Intelligent Access Program and to which the driver would have no reasonable claim).

**Clause 406** replaces section 357 and amends subsection (1) by requiring an operator of an intelligent access vehicle who becomes aware that a part of an approved intelligent transport system fitted to the vehicle is malfunctioning or has malfunctioned, to report the matter to the Regulator as soon as is practicable. The section previously required the report to be made immediately, however this obligation was unduly onerous given the range and nature of the potential malfunctions in question.

**Clause 407** replaces and does not materially amend section 358 of the Act.

## **Part 7.3                    Obligations of drivers of intelligent access vehicles**

*Clause 408* replaces section 359 and amends subsection (1) by requiring a driver of an intelligent access vehicle who becomes aware that a part of an approved intelligent transport system fitted to the vehicle is malfunctioning or has malfunctioned, to report the matter to the vehicle's operator as soon as is practicable. The section previously required the report to be made immediately, however this obligation was unduly onerous given the range and nature of the potential malfunctions in question.

## **Part 7.4                    Powers, duties and obligations of intelligent access service providers**

*Clauses 409 to 413* replace and do not materially amend sections 360 to 364 of the Act.

*Clause 414* replaces section 365 and amends it by requiring an intelligent access service provider to, on the request by a person, give the person access to their personal information. This section previously required the information to be provided without undue delay however for consistency with other similar requirements contained in this Chapter, this wording has been replaced with the words 'as soon as practicable'.

*Clauses 415 to 417* replace and do not materially amend sections 366 to 368 of the Act.

*Clause 418* replaces section 369 of the Act and amends it by varying the circumstances in which, and persons to whom, an intelligent access service provider may disclose intelligent access information.

Subsection (2) is amended to restrict disclosure of this information, to the Regulator and not an individual authorised officer.

New subsection (3) is inserted to clarify that an intelligent access service provider may disclose intelligent access information to—

- an authorised officer, other than a police officer, for *law enforcement purposes* (a defined term in section 5) if so authorised by a warrant issued under this Law; or
- an authorised officer who is a police officer, for law enforcement purposes if so authorised by a warrant issued under this Law or another law.

New subsection (4) is inserted to define the circumstances in which an authorised officer or a police officer to whom a disclosure has been made under this section may further use or disclose the information. Those circumstances include law enforcement purposes, or a purpose otherwise authorised under this Law or any other law.

Subsection (6) is inserted to clarify the limitations applying to the disclosure by an intelligent access service provider that a noncompliance report has been made under subsection (5).

The current reference in subsection (4)(c) to information from which it could reasonably be inferred is omitted on the basis that such a restriction was impractical given the conditions through which the relevant data is produced and acquired.

Subsection (6)(c) is included to restrict disclosure of information disclosed under the authority of a warrant as referred to (now) in subsection (3).

**Clauses 419 to 422** replace and do not materially amend sections 370 to 373 of the Act.

**Clause 423** replaces section 374 and amends it by inserting a new subsection (2) requiring an intelligent access service provider to notify TCA of its knowledge or suspicion that a *back-office intelligent transport system* (a defined term) has been tampered with.

**Clause 424** replaces section 375 and amends subsection (1) by excluding TCA as an entity to whom a prohibited disclosure is unlawful, where that disclosure is made in accordance with section 423. A consequential amendment is made to subsection (3) to similarly exclude TCA from the class of persons to whom it would be an offence to disclose the matters in subsection (3)(a) and (b).

## **Part 7.5                      Functions, powers, duties and obligations of TCA**

**Clause 425** replaces section 377 and amends it by inserting an additional provision that enables TCA to engage individuals, consultants and contractors to assist it in the performance of its audit functions. The section also makes it clear that TCA's functions include cancelling the approval of intelligent transport systems for use by intelligent access service providers and approving and cancelling the certification of intelligent access service providers.

Subsection (2) is included to clarify that an approval, certification or engagement under subsection (1) may be given or made unconditionally or subject to stated conditions imposed or varied from time to time.

**Clauses 426 to 429** replace and do not materially amend sections 378 to 381 of the Act.

**Clause 430** replaces and does not materially amend section 382 of the Act.

**Clause 431** replaces and does not materially amend section 383 of the Act.

**Clauses 432 and 433** replace and do not materially amend sections 384 and 385 of the Act.

**Clause 434** replaces section 386 and amends it by converting the section from an authorisation for TCA to disclose certain information where satisfied it is accurate, complete and up to date, to an offence for disclosing the information without being satisfied as to those matters.

**Clause 435** replaces and does not materially amend section 387 of the Act.

**Clause 436** replaces and does not materially amend section 388 of the Act.

**Clause 437** replaces section 389 and amends subsection (1) by providing that TCA must destroy intelligent access information collected by it where the information is required for law enforcement purposes as soon as practicable after the information ceases to be required for law enforcement purposes. The provision previously required this destruction to be undertaken immediately.

**Clause 438** replaces section 390 and amends subsections (1) and (2) by expanding the range of matters in respect of which TCA must report known

or suspected tampering with or malfunction of an approved intelligent transport system to the Regulator. The obligation is clarified to ensure that any tampering with the system is reportable, including tampering with a back-office intelligent transport system.

*Clause 439* replaces section 391 and amends subsections (1) and (2) by expanding the range of matters TCA is prohibited from disclosing, other than to the Regulator, to include any tampering with the system, including tampering with a back-office intelligent transport system.

## **Part 7.6 Powers, duties and obligations of intelligent access auditors**

*Clauses 440 to 453* replace and do not materially amend sections 392 to 405 of the Act.

## **Part 7.7 Other provisions**

*Clauses 454 and 455* replace and do not materially amend sections 406 and 407 of the Act.

## **Chapter 8 Accreditation**

### **Part 8.1 Preliminary**

*Clauses 456 and 457* replace and do not materially amend sections 408 and 409 of the Act.

## **Part 8.2            Grant of heavy vehicle accreditation**

*Clause 458* replaces section 410 and amends subsection (a) to clarify that the exemption from pre-registration inspections afforded by maintenance management accreditation is linked to renewal of registration only, rather than first registration.

*Clauses 459 to 466* replace and do not materially amend sections 411 and 418 of the Act.

## **Part 8.3            Operating under heavy vehicle accreditation**

*Clause 467* replaces and does not materially amend section 419 of the Act.

*Clause 468* replaces section 420 and amends it by removing from subsection (3) the requirement for driver conviction as a trigger for liability to be extended to an operator for the vehicle where a driver of a of a heavy vehicle fails to carry the documents set out in subsections (a) and (b).

Subsection (6) is amended to provide that evidence of the details in an infringement notice issued for the offence is evidence the offence happened at the time and place, and in the circumstances, stated in the infringement notice.

*Clause 469* replaces and does not materially amend section 421 of the Act.

*Clause 470* replaces section 422 and amends subsection (4) to only require an operator who is the holder of:

- AFM or BFM accreditation to keep a list of the drivers operating under the accreditation; and
- mass management accreditation or maintenance management accreditation to keep a current list of heavy vehicles to which the operator's accreditation relates.

*Clause 471* replaces and does not materially amend section 423 of the Act.

## **Part 8.4            Amendment or cancellation of heavy vehicle accreditation**

*Clause 472* replaces section 424 of the Act and amends subsection (2)(a)(b) by allowing a fee to be imposed for an application for the Amendment or cancellation of heavy vehicle accreditation

*Clause 473* replaces section 425 of the Act and amends it through the inclusion of a new subsection (1)(d) to provide a new ground on which the Regulator may amend, suspend or cancel a heavy vehicle accreditation. The new ground is that since the accreditation was granted, there has been a change in the circumstances that were relevant to the Regulator's decision to grant the accreditation and, had the changed circumstances existed when the accreditation was granted, the Regulator would not have granted the accreditation or would have granted the accreditation subject to conditions or different conditions.

*Clause 474* replaces section 426 and amends subsection (2) to clarify that the immediate suspension of an accreditation operates until the Regulator gives the holder an information notice under subsection 473(4) and the decision takes effect under subsection 473(5).

*Clause 475* replaces and does not materially amend section 427 of the Act.

## **Part 8.5            Other provisions about heavy vehicle accreditations**

*Clauses 476 and 477* replace and do not materially amend sections 428 and 429 of the Act.

*Clause 478* replaces section 430 and amends it through the insertion of a new subsection (2) to prohibit a person from falsely representing that the person is an auditor of a particular approved class. For example, the section as amended would prevent an auditor approved for the purposes of mass management accreditation representing the person was approved for the purpose of AFM accreditation, when no such approval was held. Subsection

inserts a new definition for *approved class*, to support the amendment to subsection (2).

## **Chapter 9      Enforcement**

### **Part 9.1          General matters about authorised officers**

#### **Division 1          Functions**

*Clause 479* replaces and does not materially amend section 431 of the Act.

#### **Division 2          Appointment**

*Clause 480* replaces and does not materially amend section 432 of the Act.

*Clause 481* replaces section 433 and amends subsection (1) by expanding the range of persons the Regulator may appoint as an authorised officer for the purposes of the Act. The Act currently allows the Regulator to appoint employees of the State, employees of local government authorities or persons of a prescribed class as authorised officers. However, the Regulator will not be a State entity, it will be an independent statutory authority. The amendment addresses uncertainty under the current drafting as to whether the Regulator could appoint its own employees as authorised officers. This amendment addresses this concern.

*Clause 482 to 484* replace and do not materially amend sections 434 to 436 of the Act.

#### **Division 3          Identity cards**

*Clauses 485 to 488* replace and do not materially amend sections 437 to 440 of the Act.

## **Division 4            Miscellaneous provisions**

*Clauses 489 and 490* replace and do not materially amend sections 441 and 442 of the Act.

*Clause 491* is a new section that clarifies the Act does not authorise the use of force against any person by an authorised officer, or a person assisting them or acting under their direction in the exercise or purported exercise of a function under the Act.

This restriction extends to warrants issued under the Act. An exception is allowed where the application Act for a jurisdiction authorises the use of force against a person by a police officer. This exception is necessary to ensure the existing powers of police officers are not inadvertently constrained as a consequence of enactment of the this Act.

*Clause 492* inserts a new section that clarifies the circumstances in which an authorised officer may use force against property in the exercise of a function under the Act.

The use of force is authorised under various sections of the National Law. For example, in proposed subsection 498(6) an authorised officer may use force that is reasonably necessary for gaining entry to places mentioned in proposed subsection (2), where the officer reasonably believes there may evidence of an offence be at the place against the National Law that may be concealed or destroyed unless the place is immediately entered and searched. Section 492 provides for this and other sections where the use of force against property is authorised, it is a condition of that use that the use of force is authorised under the application Act. This approach reflects the divergent and irreconcilable law and policy governing this issue in the states and territories.

The restriction does not extend to police officers, who may use force in the circumstances provided in the Act (and in any other law of the jurisdiction) without further legislative reference.

New subsection (4) provides that the application Act of a jurisdiction may include additional circumstances in which an authorised officer, whether or not a police officer, may use force against property in the exercise or purported exercise of a function under this Chapter. This response is

demanded by the conflicting policies applying to these matters in the states and territories.

*Clause 493* is a new section that makes it clear the powers provided under the Act are exercisable in relation to light vehicles only where the light vehicle is a pilot vehicle or escort vehicle, or where the exercise is necessary to determine whether the vehicle is a heavy vehicle.

## **Part 9.2 Powers in relation to places**

### **Division 1 Preliminary**

*Clause 494* replaces section 443 of the Act and amends it by including proposed subsection (2) and amending subsection (1)(b). In combination, these amendments provide that the various provisions of the Act that authorise entry of an authorised officer to relevant places to exercise powers, may extend to premises where temporary or casual sleeping or other accommodation is provided there for drivers of heavy vehicles.

Subsection (2) is inserted to clarify that the use of the premises for residential purposes (where entry would not be authorised) need only be its predominant, rather than sole, purpose in determining whether the place is being used for residential purposes under subsection (1)(b).

### **Division 2 Entry of relevant places for monitoring purposes**

*Clause 495* replaces section 444 of the Act and amends it by including a new requirement that an authorised officer who enters a place under the belief that it is attended, must leave immediately upon determining that it is unattended.

*Clause 496* replaces and does not materially amend section 445 of the Act.

### **Division 3            Entry of places for investigation purposes**

*Clause 497* replaces section 446 and amends it by including a new requirement in subsection (6) that an authorised officer who enters a place under the belief that it is attended, must leave immediately upon determining that it is unattended. Subsection (5) now uses the term ‘residential purposes’ in determining whether the officer may enter the premises under this section.

Subsection (2) is inserted to clarify that the requisite belief that triggers the investigation powers in this section can be formed during, after or independently of the monitoring of premises under Division 2 (*Entry of relevant places for monitoring purposes*).

*Clause 498* replaces section 447 and amends it by including a new requirement through subsection (4) that an authorised officer who enters a place under the belief that it is attended, must leave immediately upon determining that it is unattended.

*Clause 499* replaces section 448 and amends it by including a new requirement through proposed subsection (5) that an authorised officer who enters a place under the belief that it is attended, must leave immediately upon determining that it is unattended.

New subsection (3) is included to restrict the power to enter a place under this section in relation to an incident that involves the death, or injury to, to an authorised officer who is a police officer.

Subsection (4) is amended to clarify that entry to a place under this section is not authorised without the occupier’s consent or a warrant where a place, or part of a place, is unattended or is used predominantly for residential purposes.

*Clause 500* replaces section 449 and amends it through the inclusion of subsection (10) to clarify that it does not include a power to search a person.

Subsection (9) is included to clarify that the requisite belief that triggers the investigation powers in this section can be formed during or after or independently of the monitoring of premises under Division 2 (*Entry of relevant places for monitoring purposes*).

## **Division 4            Procedure for entry by consent**

*Clause 501* replaces and does not materially amend section 450 of the Act.

*Clause 502* replaces section 451 and amends it by clarifying that an authorised officer must not enter land or a part of a place for the purpose of asking the occupier for the consent without the occupier's consent, or a warrant, if the officer knows or ought reasonably to know the place is unattended.

The section is further amended by the inclusion of proposed subsection (3), requiring an authorised officer who enters a place under a belief that it is attended, to immediately leave the place upon discovering that the place is unattended.

*Clause 503* replaces and does not materially amend section 452 of the Act.

*Clause 504* replaces 453 and amends it through the insertion of subsection (5)(a) to ensure that non-compliance by an authorised officer with the requirements in subsection (2) does not automatically invalidate the exercise of the powers (and by extension compromise any compliance action undertaken as a result of the exercise of the powers). To do otherwise may allow a defendant to establish a defence based on the officer's failure to accurately stipulate the power, when the power was available and otherwise legitimately exercised. To prevent injustice, new subsections (5)(b) and (6) have been incorporated. Subsection (5) applies where the acknowledgement states some but not all the powers exercised or intended to be exercised to achieve the purpose of the entry and allows the court to determine the validity in any subsequent proceedings.

*Clause 505* is a new section that establishes the requirements for an authorised officer intending to ask the occupier for consent to enter a place under this Division (otherwise than under proposed section 502). Before asking for consent, an authorised officer other than a police officer, or who is a police officer not in uniform, must produce documentary evidence establishing the officer's appointment under the Act or as a police officer.

## **Division 5            Entry under warrant**

*Clauses 506 to 510* replace and do not materially amend sections 454 to 458 of the Act.

## **Part 9.3            Powers in relation to heavy vehicles**

### **Division 1            Preliminary**

*Clause 511* replaces and does not materially amend section 459 of the Act.

*Clause 512* replaces section 460 and amends it by including in the reference to a ‘driver’, a person an authorised officer who is present at the scene reasonably believes is the vehicle’s driver. Section 460 previously referred to a person who ‘appeared’ to be the driver and this term provided too wide an ambit for the exercise of the relevant powers as well as being insufficiently legally precise.

### **Division 2            Stopping, not moving or not interfering with heavy vehicle etc.**

*Clause 513* replaces section 461 and amends it by omitting the requirement previously contained in subsection (5) that obliged an authorised officer to identify him or herself as a precondition for the exercise of the power to stop a heavy vehicle to enable the exercise of other powers. This requirement was impractical and inconsistent with well-established and sound methods of stopping heavy vehicles currently relied on throughout Australia.

New subsection (5) will require an authorised officer to produce evidence of their appointment as soon as practicable, where section 461(6) previously required this to be produced immediately after stopping the vehicle. This

requirement was not practical given the diversity of environments and circumstances the power may be required to be exercised in and departed from accepted operating practices.

*Clause 514* replaces and does not materially amend section 462 of the Act.

### **Division 3            Moving heavy vehicle**

*Clause 515* replaces and does not materially amend section 463 of the Act.

*Clause 516* replaces and does not materially amend section 465 of the Act.

*Clause 517* replaces section 466 and amends subsection (1) by providing that an authorised officer may direct the driver or operator of the heavy vehicle to move the vehicle, or cause it to be moved, to the extent necessary to avoid the harm or obstruction or where the vehicle is likely to obstruct traffic. The Act currently provides that the obstruction must have already materialised for the power to be exercised.

*Clause 518* replaces section 467 and amends subsection (7) by imposing a requirement on an authorised officer who has moved an unattended heavy vehicle on road to exercise another power to ensure the driver or operator is notified that the vehicle has been moved and the place to which it has been moved. Subsection (8) is inserted to stipulate the way in which the notification may be given.

*Clause 519* replaces section 468 and amends subsection (1) by providing that an authorised officer may direct the driver or operator of the heavy vehicle to move the vehicle, or cause it to be moved, to the extent necessary to avoid the harm or obstruction or where the vehicle is likely to obstruct traffic. The Act currently provides that the obstruction must have already materialised for the power to be exercised.

### **Division 4            Inspecting and searching heavy vehicles**

*Clause 520* replaces section 469 and amends it by clarifying that the power to inspect, examine or film under subsection (1) extends to any part of a

heavy vehicle's equipment, rather than simply the goods component of the vehicle's load. The amendment ensures that the powers can be exercised in relation to, for example a tarpaulin or other load restraint device, as well as the load and the vehicle.

**Clause 521** replaces section 470 and amends it by omitting, in subsection (1)(b) the word 'just' that previously qualified the words "has been, used to commit an offence against this Law" on the basis that the requirement as previously drafted would have impeded the effective enforcement of the Act and on the basis of its subjectivity.

New subsection (6) is incorporated to clarify that the section does not authorise an authorised officer to exercise a power under this section in relation to an incident that involves the death of, or injury to, a person unless the authorised officer is a police officer.

New subsection (7) is incorporated to clarify that the power to search under this section does not include a power to search a person.

**Clause 522** is a new section that establishes the power for an authorised officer to order the presentation of a heavy vehicle for inspection. The exercise of the power is limited to circumstances where the officer believes the vehicle has within the previous 30 days been defective, is of a kind used by a driver other than in compliance with the Act, or does not comply with the law. The power is exercisable by the service of a statutory notice on the person in charge of the heavy vehicle, its registered operator, or its owner. The section makes provision for a person to request a change in the place or time of inspection. Failure by the recipient to produce or allow a heavy vehicle to be inspected as required under this section constitutes an offence and is a ground for suspending the registration of the vehicle.

## **Division 5            Other powers in relation to all heavy vehicles**

**Clause 523** replaces section 471 and amends it through the insertion of subsection (7) to clarify that 'starting' the vehicle, includes running its engine.

**Clause 524** replaces section 472 and amends it by expanding the circumstances in which an authorised officer may issue a direction under subsections (2) and (3) to the driver of a heavy vehicle or any other person accompanying the driver. The ground included through the addition of subsection (1)(c) is that the authorised officer reasonably believes it would be unsafe to inspect or search a heavy vehicle or any part of it or any part of its equipment or load while the driver occupies the driver's seat or is in the vehicle or another person accompanying the driver is in the vehicle. The amendment is required to address various occupational safety risks associated with allowing the driver or other person to occupy the vehicle while the authorised officer inspects under the vehicle, for example.

## **Division 6            Further powers in relation to heavy vehicles concerning heavy vehicle standards**

**Clause 525** replaces section 473 and amends the definition of *defect label*. This allows a defect label to be attached to heavy vehicles for minor and major defects.

The previous references to *major defect notice*, *minor defect notice* and *vehicle defect notice* have been omitted on the basis the substantive definitions are provided in sections 5 and 526 respectively.

**Clause 526** replaces section 474 and amends it by providing a mechanism through subsection (5) by which the operator of a heavy vehicle, that is the subject of a defect notice, may request permission for the vehicle to be used on a road during a period stated in the permission. The request may only be granted where the conditions in subsection 5(a) to (d) have been met. The permission may be extended under subsection (6) on the same grounds. Subsection (7) stipulates the form of the permission or its extension and empowers the officer to impose reasonable conditions on it.

**Clause 527** replaces section 475 and amends it by incorporating a general power under subsection (2) for an authorised officer to impose conditions the officer considers appropriate for the use of the vehicle on a road on the use of the defective heavy vehicle. The breadth of the conditions that may

be imposed is a consequence of the diversity of the particular defect/s that may be involved.

**Clause 528** replaces section 476 and amends it by allowing (but not requiring) an authorised officer to attach a defective vehicle label to the vehicle under subsection (2). Attaching a defective vehicle label remains mandatory for major defect notices but for minor defect notices it remains at the discretion of the authorised officer, reflecting existing jurisdictional practice for light and heavy vehicles.

**Clauses 529 and 530** replace and do not materially amend sections 477 and 478.

**Clause 531** replaces section 479 and amends it by clarifying the circumstances in which vehicle defect notices issued by police officers may be withdrawn or amended. The proposed subsection (1) provides that a vehicle defect notice issued in this jurisdiction by an authorised officer who is a police officer may be amended or withdrawn by any authorised officer who is:

- a police officer of this jurisdiction;
- a police officer of another jurisdiction if the Application Act of this jurisdiction permits this to be done; or
- a class of authorised officers approved by the Regulator for the purposes of this subsection.

Proposed subsection (2) enables the Regulator to approve a class of authorised officers who may amend or withdraw a vehicle defect notice issued by any other authorised officer who is not a police officer. This is intended to assist in the delivery of services in regional areas, in particular.

New subsections (1) and (2) empower the Regulator and the participating jurisdictions to transparently address potential inconsistencies in the training and capabilities of police officers and other authorised officers in this area.

## **Division 7            Further powers in relation to heavy vehicles concerning mass, dimension or loading requirements**

*Clause 532* replaces and does not materially amend section 480 of the Act.

*Clause 533* replaces section 481 and amends it through the insertion of subsection (4) clarifying that an authorised officer may authorise the driver or operator to continue of a journey if there has been a minor risk breach of a mass, dimension or loading requirement relating to the vehicle. The section constrains the authorisation to circumstances where the officer has not issued a direction under subsection (2) and reasonably believes the driver or operator is not, or is no longer, subject to a direction for the rectification of the breach.

*Clause 534* replaces section 482 and amends it by including additional examples of reasonable places that an authorised officer may direct the driver or operator to move their vehicle to under subsection (2)(b). The previous examples did not adequately indicate the intended breadth of the places and may have placed constraints on the exercise of the power to the detriment of the authorised officer and the recipient of the direction.

*Clause 535* replaces section 483 and amends it by including additional examples of safe locations that an authorised officer may direct the driver or operator to move their vehicle to under subsection (2)(b). The previous examples did not adequately indicate the intended breadth of the places and may have placed constraints on the exercise of the power to the detriment of the authorised officer and the recipient of the direction

*Clause 536* replaces and does not amend section 484 of the Act.

## **Division 8            Further powers in relation to fatigue-regulated heavy vehicles**

*Clause 537* replaces and does not materially amend section 485 of the Act.

*Clause 538* replaces section 486 and amends it by imposing an obligation under subsection (4) on an authorised officer, who has issued a requirement under subsection (2) or (3) for a contravention of a maximum work

requirement, to record the details of the requirement in the driver's work diary.

**Clause 539** replaces section 487 and amends it by imposing a requirement under subsection (4) on an authorised officer, who has issued a requirement under subsection (2) or (3) for a contravention of a minimum rest requirement, to record the details of the requirement in the driver's work diary

**Clause 540** replaces section 488 and amends it by creating a head of power under subsection (3) to make a regulation prescribing the matters in respect of which the reasonableness of the period for which an authorised officer may require a driver to immediately stop work and not work again is to be determined.

Proposed subsection (3) omits the matters previously stipulated in subsection (3)(a) to (f) by which the reasonableness of this period would have been established.

New subsection (4) imposes a requirement on an authorised officer who has issued a requirement under subsection (2) to record the details of the requirement in the driver's work diary

**Clauses 541 and 542** replace and do not materially amend sections 489 and 490 of the Act.

## **Part 9.4            Other powers**

### **Division 1           Powers relating to equipment**

**Clauses 543 and 544** replace and do not materially amend sections 491 and 492 of the Act.

## **Division 2      Seizure and embargo notices**

### **Subdivision 1    Power to seize**

*Clause 545* replaces and does not materially amend section 493 of the Act.

*Clause 546* replaces section 494 and amends it by omitting subsection 494(5) on the basis that if an item constitutes evidence of an offence, it may be seized under subsections (2) to (4). If it has been used in committing an offence, but provides no evidence of that offence, then it should not be subject to seizure.

*Clauses 547 to 550* replace and do not materially amend sections 495 to 498 of the Act.

*Clause 551* is a new section that inserts a power for an authorised officer to seize a number plate for a heavy vehicle where the officer reasonably believes any of the matters outlined in subsections (2) and (3). Proposed subsection (4) empowers the officer to retain the number plates for the period necessary to facilitate the investigation of offences against the Act or another applicable law. New subsection (5) creates a head of power for determining an appropriate authority to which the number plates must be returned, and the making of guidelines to similar effect.

*Clause 552* is a new section that restricts the seizure of a heavy vehicle, a thing, or a thing of a class, prescribed by the national regulations unless the Application Act of the participating jurisdiction in which the vehicle or thing is located provides that the heavy vehicle or thing can be impounded or seized.

Concerns as to the potential for this power to be used to unjustly deprive an individual of their property is mitigated by the introduction of *Division 3 - Forfeiture and transfer*.

### **Subdivision 2    Powers to support seizure**

*Clause 553* replaces and does not materially amend section 499 of the Act.

### **Subdivision 3    Safeguards for seized things or samples**

*Clause 554* replaces section 500 and amends it by omitting subsections (5) and (6) on the basis they appeared to implicitly authorise the covert seizure of things or samples otherwise than in accordance with the processes set down in the Act.

*Clause 555* replaces and does not materially amend section 501 of the Act.

*Clause 556* replaces section 502 and amends it by removing the general requirement to return a thing or sample after two years, and providing further specificity regarding the circumstances in which a seized thing or sample should be returned.

This amendment limits the circumstances in which an authorised officer is required to return a thing or sample and provides that an authorised officer must be satisfied that the continued retention of the thing or sample is not necessary to prevent the thing or sample being used to continue, or repeat, any offence against this Law. Section 502(3)(b) of the Act relates only to the offence for which the thing or sample was seized.

Clause 556 further amends section 502 of the Act by including a provision that an authorised officer must also be satisfied that the thing or sample is not subject to a dispute as to ownership, which would be appropriately resolved by making an application to the relevant tribunal or court for the return of the thing or sample.

Clause 556 further amends section 502 of the Act by providing for the seized thing or sample to be returned to the person from whom it was seized, or the owner if that person is not entitled to possess it. Section 502 (2) and (3) of the Act refer only to the owner.

Clause 556 further amends section 502 of the Act by providing for application to the relevant tribunal or court for the return of a seized thing or sample, as well as the circumstances in which the relevant tribunal or court may make an order for return. This amendment also provides a regulation-making power for procedures to be followed – including notification of the Regulator – when an application is made.

Clause 556 further amends section 502 of the Act by specifying that this section does not prevent the return of a thing or sample to its owner if the Regulator considers there is no reason for its continued retention.

## **Subdivision 4 Embargo notices**

*Clauses 557 to 559* replace and do not materially amend sections 503 to 505 of the Act.

*Clause 560* replaces and amends section 506 of the Act by replacing references to *Magistrates Court* with *relevant court or tribunal*.

## **Division 3 Forfeiture and transfers**

*Clause 561* replaces and amends section 507 of the Act by including subsection (4) that provides that a thing or sample seized by a police officer cannot be forfeited to the Regulator and must be dealt with under the national regulations, except as provided by applicable state or territory legislation.

*Clause 562* replaces and amends section 508 of the Act by expanding the classes of persons in subsection (1) to whom information notices must be given and limiting the circumstance under subsection (2) in which the Regulator may give an information notice by leaving it in a place instead of by post.

The amendment to subsection (1) provides that – in addition to the former owner – the person from whom the thing or sample was seized, and each person having a registered interest in the thing or sample must also be given information notices.

The amendment to subsection (1) restricts the option to give an information notice by leaving it – instead of posting it – to those given to the person from whom the thing or sample was seized. The amendment further provides that the notice must be left at the place where the thing or sample was taken or seized.

*Clause 563* replaces and does not materially amend section 509 of the Act.

**Clause 564** replaces and amends section 510 of the Act by providing a requirement for the Regulator to give notice of its intention to deal with a thing or sample that has become the property of the Regulator. The amendment requires the Regulator to give 28 days' notice to the person from whom the thing or sample was seized; the former owner of the thing or sample; and each person having a registered interest in the thing or sample.

**Clause 565** is a new section that provides for third party protection in the event that a thing or sample becomes the property of the Regulator. The new section provides for applications for an order in relation to the thing or sample to be made to a relevant tribunal or court by the owner or a person with a registered interest in the thing or sample. The new section further provides that such applications may be made in relation to the proceeds of a thing or sample already sold or otherwise disposed of.

**Clause 566** is a new section that provides a regulation-making power for the circumstances in which the Regulator must apply to the Registrar of Personal Property Securities to register, amend or cancel an instrument in relation to a sample or thing. The section further provides a regulation-making power for the priority in which the proceeds of disposal of anything under this Division are to be applied.

## **Division 4            Information-gathering powers**

**Clause 567** replaces section 511 and amends it throughout by extending the power to require a person's date of birth, in addition to their name and address. This power is required in the circumstances where it is relevant in determining whether the person held the correct category of driver's license for the heavy vehicle.

Subsection (1)(b) now omits the word 'just' that previously qualified the words "committed an offence against this Law" on the basis that the requirement as previously drafted would have impeded the effective enforcement of the Act and on the basis of its subjectivity.

Subsection (1)(d) is amended to extend the classes of person to whom a requirement under this section may be issued, to include other person in charge of a heavy vehicle that has been or may have been involved in an incident.

New subsection (3)(a) imposes a new requirement on an authorised officer to reasonably suspect that the stated name, address or date of birth is incorrect before requiring the person to give evidence of the correctness of the stated name, address or date of birth.

Subsection (8) restricts the circumstances in which an authorised officer may impose a requirement under this section so that it does not extend to an incident that involves the death of, or injury to, a person unless the authorised officer is a police officer.

**Clause 568** replaces section 512 and amends it by removing the power of an authorised officer to require production of a driver licence. Participating states and territories will address this issue through the retention of existing laws that already provide for this matter.

**Clause 569** replaces section 513 and amends it by extending the classes of documents that may be the subject of a requirement under subsection (1) to include *journey documentation* (a defined term), and documents relating to the person's business practices.

**Clause 570** replaces section 514 and amends it by removing the obligation in subsection (3) for an authorised officer to provide a warning before issuing a requirement under subsection (1). The giving of such a warning is not common practice and the retention of the requirement may have adversely affected the ability of authorised officers to effectively enforce the provisions of the Act.

## **Division 5           Improvement notices**

**Clause 571** replaces and does not materially amend section 515 of the Act.

**Clause 572** replaces section 516 and amends subsections (1) and (2) to authorise the issuing of an improvement notice in circumstances where a person is contravening a provision of this Law in circumstances that make it likely that the contravention will continue or be repeated. The section previously allowed for the issuing of the notice in circumstances where a person was 'likely to contravene a provision' of the Act.

The amendment is necessary to address concerns that the contravention of a notice issued in these circumstances would be problematic to establish to the relevant standard of proof.

*Clauses 573 to 576* replace and do not materially amend sections 517 to 520 of the Act.

## **Division 6            Powers to require reasonable help**

*Clause 577* replaces section 521 and amends subsection (3) to expand the range of matters in respect of which a requirement under subsections (1) and (2) may be issued to encompass the following actions:

- helping the authorised officer to operate equipment or facilities for a purpose relevant to the power being or proposed to be exercised; and
- providing access free of charge to photocopying equipment for the purpose of copying any records or other material.

Subsection (6) is amended to clarify that the example used within, is not exhaustive of the matters that may be relied on as a reasonable excuse. That subsection is further amended so that it is not a reasonable excuse for a person to fail to comply with a requirement made under subsection (1) or (2), in relation to a document or information that is the subject of the requirement, if doing so might tend to incriminate the person or make the person liable to a penalty. There are limitations on the uses to which this information can be put under section 588. The previous subsection (7) becomes redundant as a result of the amendment proposed to subsection (6) and is to be omitted.

Subsection (4) is omitted so that an authorised officer is no longer required to provide a warning before issuing a requirement under this section. The giving of such a warning is not common practice and the retention of the requirement may have adversely affected the ability of authorised officers to effectively enforce the provisions of the Act

## **Part 9.5                    Provisions about exercise of powers**

### **Division 1                Damage in exercising powers**

*Clause 578* replaces and does not materially amend section 522 of the Act.

*Clause 579* replaces section 523 and amends subsection (1) to only require an authorised officer to restore damaged things where there has been an improper or unreasonable exercise of a power or the use of unauthorised force.

*Clause 580* replaces section 524 and amends subsection (2) by excluding any requirement on the part of an authorised officer to notify the relevant person of any damage resulting from the exercise of powers under the law and where the damage was not caused by an improper or unreasonable exercise of a power or the use of unauthorised force.

### **Division 2                Compensation**

*Clause 581* replaces section 525 and amends subsection (2) by excluding the capacity of a person to claim compensation from the Regulator if the person incurs costs, damage or loss because of an exercise, or purported exercise, of a power by or for an authorised officer.

### **Division 3                Provision about exercise of particular powers**

*Clause 582* replaces and does not materially amend section 526 of the Act.

## **Part 9.6            Miscellaneous provisions**

### **Division 1           Powers of Regulator**

*Clause 583* replaces section 527 and amends subsection (1) by clarifying that the powers conferred on an authorised officer and exercisable by the Regulator are functions of the Regulator and therefore delegable by the Regulator to its own staff.

### **Division 2           Other offences relating to authorised officers**

*Clause 584* replaces section 528 and amends it by removing capacity of a person to claim the obstruction was a product of a reasonable excuse as previously provided in subsection (1). As a consequence of this omission, the procedural steps set out in subsection (2) become redundant and have been omitted.

*Clause 585* replaces and does not materially amend section 529 of the Act.

### **Division 3           Other provisions**

*Clause 586* replaces and does not materially amend section 530 of the Act.

*Clause 587* is a new section of general operation that clarifies that a person is not excused from compliance with a requirement imposed by an authorised officer under this Chapter on the ground that compliance might incriminate the person or make the person liable to a penalty. The amendment is necessary to nullify an argument by a person who refused to comply with a requirement issued under the Act that the refusal was justified by protections against self incrimination provided under the general law.

**Clause 588** replaces and amends section 531 of the Act by providing that certain specified documents relating to the Act's regulatory scheme that have been required by an authorised officer to be produced by an individual are not inadmissible in evidence on the ground that the document might incriminate the individual.

The new subsection (3) applies only to documents required by an authorised officer to be produced under subsections 569 (1)(c) to (f) or section 577. Such documents relate directly to a person's participation in the regulatory scheme.

Subsection (2) amends the Act by restricting use and derivative use immunity to information provided by an individual in compliance with a requirement under sections 570 or 577. The immunity is removed for documents specified in new subsection (3).

This abrogation of the privilege against self-incrimination is necessary for compliance and enforcement purposes. In the absence of a provision compelling the production of documents and further providing for the use of those documents as evidence, prosecuting breaches of the Act – particularly offences detected during the course of on-road enforcement – would require far greater investigative resources. Public safety is liable to be compromised if prosecution of heavy vehicle offences is more difficult under the Act than existing jurisdictional laws.

**Clause 589** is a new section that provides that any evidence obtained (including any evidence seized) up to the time the consent is withdrawn after an authorised officer enters a place with the occupier's consent, is not invalid or inadmissible in proceedings for a contravention of this Law merely because the consent was withdrawn.

## **Chapter 10 Sanctions and provisions about liability for offences**

### **Part 10.1 Formal warnings**

**Clause 590** replaces and does not materially amend section 532 of the Act.

## **Part 10.2            Infringement notices**

*Clause 591* is a new provision that establishes a general power for an authorised officer to issue infringement notices for prescribed offences against the Act. The section further provides that procedures to be followed in connection with infringement notices issued for the purposes of this Law as applied in this jurisdiction are to be the procedures prescribed by or under the Infringement Notice Offences Law of this jurisdiction. Subsection (3) allows for the prescription of the offences in the Act for which infringement notices may be issued through the inclusion of the definition *prescribed offences*.

*Clause 592* replaces section 533 and amends it by including the new subsection (2)(c). This amendment allows information in a record of an infringement notice issued for the purposes of the Act and kept by the Regulator to be used in a proceeding for a relevant extended liability offence. Relevant extended liability offences are expressly identified through the Act by provisions authorising the use of details stated in the infringement notice as evidence in the proceedings.

## **Part 10.3            Court sanctions**

### **Division 1            General provisions**

*Clauses 593 to 595* replace and do not materially amend sections 534 to 536 of the Act.

### **Division 2            Provisions about imposing fines**

*Clause 596* replaces and does not materially amend section 537 of the Act.

### **Division 3            Commercial benefits penalty orders**

*Clause 597* replaces and does not materially amend section 539 of the Act.

### **Division 4            Cancelling or suspending registration**

*Clause 598* replaces section 540 and amends it by including subsection (5) requiring a court to notify the Regulator when a decision has been made to suspend or cancel the registration of a vehicle.

### **Division 5            Supervisory intervention orders**

*Clause 599 and 600* replace and do not materially amend sections 541 and 542 of the Act.

*Clause 601* replaces section 543 and amends it by incorporating two additional grounds a court may have regard to in deciding whether to make a supervisory intervention order. The first of these grounds arises through the inclusion of the new subsection (b), which authorises the court to consider offences against the Act or a previous corresponding law for which the person has been proceeded against by way of unwithdrawn infringement notices. The second of these grounds arises through the amendment of subsection (c), which authorises the court to have regard to a broader range of matters (such as cancellation or suspension of exemptions, accreditations and permits) in making the order.

*Clause 602 to 605* replace and do not materially amend sections 544 to 547 of the Act.

### **Division 6            Prohibition orders**

*Clause 606 and 607* replace and do not materially amend sections 548 and 549 of the Act.

*Clause 608* replaces section 550 and amends it by incorporating two additional grounds a court may have regard to in deciding whether to make

a prohibition order. The first of these grounds arises through the inclusion of the new subsection (b), which authorises the court to consider offences against the Act or a previous corresponding law for which the person has been proceeded against by way of unwithdrawn infringement notices. The second of these grounds arises through the amendment of subsection (c), which authorises the court to have regard to a broader range of matters (such as cancellation or suspension of exemptions, accreditations and permits) in making the order.

*Clauses 609 and 610* replace and do not materially amend sections 551 and 552 of the Act.

## **Division 7            Compensation orders**

*Clauses 611 and 612* replace and do not materially amend sections 553 and 554 of the Act.

*Clause 613* replaces section 555 and amends subsection (3) by requiring a defendant who intends to challenge the accuracy of any measurement, analysis or reading in the certificate submitted by a road authority to assist a court to make a compensation order to state the basis for the claimed inaccuracy and state the measurement, analysis or reading that the defendant considers to be correct.

*Clauses 614 to 617* replace and do not materially amend sections 556 to 559 of the Act.

## **Part 10.4            Provisions about liability**

### **Division 1            Reasonable steps defence**

*Clause 618* replaces and does not materially amend section 560 of the Act.

## **Division 2                    Matters relating to reasonable steps**

*Clauses 619 to 624* replace and do not materially amend sections 561 to 566 of the Act.

*Clause 625* replaces and amends section 567 of the Act. Subsection (1) is amended to expand the range of offences in which a person may raise evidence of compliance with all relevant standards and procedures under a registered industry code of practice, in relation to matters to which the offence relates as evidence that the person took all reasonable steps. Reliance on a registered code may now be raised for offences where a duty is imposed to take reasonable steps to avoid or secure a particular outcome.

Subsection (2) is amended to clarify that the defence is intended to be limited to compliance with all relevant standards and procedures under a registered industry code of practice. The Act currently allows the defence to be raised where evidence of compliance with “all relevant standards and procedures” could be shown. This concept is ambiguous and derogates from the intent of registering industry codes.

New subsection (5) is included to clarify the evidence that is relevant in rebutting the presumption established in favour of a defendant relying on the defence of reliance on a registered code of practice. It now expressly provides that a court may consider the matters in sections 620 (Matters court may consider for deciding whether person took all reasonable steps—mass, dimension or loading offences) and 622 (Matters court may consider for deciding whether person took all reasonable steps—speeding or fatigue management offences in determining whether reliance on a registered industry code of practice was reasonable in the circumstances of the particular offence).

## **Division 3                    Other defences**

*Clauses 626 to 628* replace and do not materially amend sections 569 to 571 of the Act

*Clause 629* is a new section that provides a defence for a person charged under the Act where the person can establish that the conduct constituting the offence was done in compliance with a direction given by the Regulator,

an authorised officer, or a person authorised under a law of a state or territory.

**Clause 630** is a new section that provides a defence for a person charged under the Act where the person can establish that the conduct constituting the offence occurred in response to circumstances of sudden or extraordinary emergency.

**Clause 631** is a new section that provides a defence for a person charged under the Act where the person can establish that the conduct constituting the offence is authorised or excused by or under a law.

## **Division 4            Other provisions about liability**

**Clauses 632 to 635** replace and do not materially amend sections 572 to 575 of the Act.

**Clause 636** replaces and amends section 576. The new subsection (1) narrows the offences under which derivative liability attaches to an executive officer. An executive officer is currently deemed liable for all offences committed by a corporation. Subsection (1) provides instead that derivative liability attaches to executive officers for a range of offences committed by a corporation where it can be established the executive officer knowingly authorised or permitted the conduct constituting the offence. These offences are set out in column 2 of Schedule 4 of this Heavy Vehicle National Law Amendment Act 2012.

New subsection (2) is inserted which establishes a second, alternative, basis for derivative liability where an offence is committed and the executive director knew or ought reasonably to have known of the conduct constituting the offence or that there was a substantial risk that the offence would be committed. The range of offences for which derivative liability might arise is set out in column 3 of Schedule 4 of this Heavy Vehicle National Law Amendment Act 2012.

Subsection (3)(a) provides a simplified due diligence defence for an executive officer charged under this section.

These amendments are intended to bring the obligations of executive officers as far as practicable into conformity with the COAG-agreed

principles for assessment of directors' liability provisions. It is intended this section forms the subject of a more comprehensive review in future to ensure the adequacy of the approach taken.

Not all offences created under the Act satisfy the requirements of the COAG principles. Accordingly the range of offences set out in Schedule 4 for which derivative liability may arise does not encompass all offences created under the Law. An explanation of the basis on which offences were selected for incorporation is set out at Appendix 2.

**Clause 637** replaces section 578 and amends it to align with the approach adopted for section 636 and for the same reasons. Accordingly, derivative liability will attach to a partner in an unincorporated partnership only where the partner knew knowingly authorised or permitted the conduct constituting the offence, or ought reasonably to have known of the conduct constituting the offence or that there was a substantial risk that the offence would be committed.

However, whereas executive officers for a corporation are liable only for the offences stipulated in Schedule 4, partners remain liable on behalf of the partnership for all offences that would have been otherwise committed by the partnership (which itself has no legal personality and cannot be the subject of enforcement action) to avoid the possibility no person would be liable for an offence on behalf of the partnership.

The section is amended throughout to clarify that it applies to unincorporated partnerships (incorporated partnerships being necessarily captured by new section 636).

**Clause 638** replaces section 579 and amends it to align with the approach adopted for proposed sections 636 and 637 and for the same reasons. As for partners, the management members for an unincorporated body remain liable for all offences that would have been otherwise committed by the unincorporated body.

**Clause 639** replaces and does not materially amend section 580 of the Act.

## **Chapter 11 Reviews and appeals**

### **Part 11.1 Preliminary**

*Clause 640* replaces and does not materially amend section 581 of the Act.

### **Part 11.2 Internal review**

*Clause 641* replaces section 582 and amends it by allowing for the imposition of a prescribed fee for the making of an application for internal review of a decision made under the Act.

*Clause 642 to 646* replace and do not materially amend sections 583 to 587 of the Act.

### **Part 11.3 Appeals**

*Clauses 647 to 650* replace and do not materially amend sections 588 to 591 of the Act.

## **Chapter 12 Administration**

### **Part 12.1 Responsible Ministers**

*Clause 651* replaces and does not materially amend section 592 of the Act.

*Clause 652* replaces section 593 and amends that section to clarify that any fee charged by the Regulator when dealing with a request by a responsible Minister is not subject to new subsections 740(2) to (4).

**Clause 653** replaces section 594 and amends it by updating the matters for which the responsible Ministers may approve guidelines relating to exemptions, authorisations, permits and other authorities as a result of other amendments included in this Bill.

**Clauses 654 and 655** replace and do not materially amend sections 595 and 596 of the Act.

## **Part 12.2 National Heavy Vehicle Regulator**

### **Division 1 Establishment, functions and powers**

**Clauses 656 to 658** replace and do not materially amend sections 597 to 599 of the Act.

**Clause 659** replaces section 600 and amends subsection (j)(iii) to more closely relate the functions of the Regulator to the intended outcomes for industry summarised in the *Intergovernmental Agreement on Heavy Vehicle Regulatory Reform*.

**Clauses 660 and 661** replace and do not materially amend sections 601 and 602 of the Act.

**Clauses 662 to 686**, Part 12.2, Divisions 2 to 4, replace and do not materially amend the equivalent corresponding provisions of the Act, sections 603 to 627.

## **Part 12.3 Miscellaneous**

### **Division 1 Finance**

**Clause 687** replaces and does not materially amend section 628 of the Act.

**Clause 688** replaces section 629 and amends it through the insertion of the new subsection (2) to clarify that, with regards to registration charges, the road user component of the charge is not automatically payable into the

Regulator Fund but the regulatory component of registration charges is automatically payable into the Regulator Fund. The regulatory component will be defined by a national regulation.

*Clauses 689 to 691* replace and do not materially amend sections 630 to 632 of the Act.

*Clause 692* inserts a new section to clarify that the Regulator can establish accounts for moneys that are payable to other entities, such as money collected by the Regulator on behalf of jurisdictions.

## **Division 2            Reporting and planning arrangements**

*Clause 693* replaces section 633 and amends subsection (2)(a) by expanding the range of matters to be included in an annual report. The report is now required to include performance-reporting requirements for the Regulator aligned with the standards and indicators outlined in the National Performance Standards.

*Clause 694* replaces and does not materially amend section 634 of the Act.

*Clause 695* replaces section 635 and amends it at subsection (2) to require the Regulator's corporate plan to include National Performance Measures, including the standards and indicators for the term of the plan.

## **Division 3            Oversight of the Regulator and Board**

*Clause 696* replaces section 636 and amends it to clarify the application of the Queensland oversight laws to the Regulator and jurisdictional agencies. These amendments ensure jurisdictional agencies, including the Department of Transport and Main Roads in Queensland, road managers, and police services continue to be required to apply their local oversight laws even where they are performing services for the Regulator under a service agreement or delegation. The modified Queensland oversight laws will apply to the activities of the Regulator regardless of which jurisdiction it operates in. This section has also been amended to make it clear a national regulation can be used to modify the operation of new subsection 696(5).

## **Division 4            Provisions relating to persons exercising functions under Law**

*Clause 697* replaces and does not materially amend section 637 of the Act.

*Clause 698* replaces section 638 and amends it by clarifying that not only natural persons who are performing functions for the Regulator (including the Regulator Board) are protected from personal liability. An individual who constitutes a body corporate (such as the Roads Corporation under the *Transport Integration Act 2010* (Vic)) is also protected and other persons or classes of persons can be included by national regulations.

## **Chapter 13    General**

### **Part 13.1            General offences**

#### **Division 1            Offence about discrimination or victimisation**

*Clauses 699 and 700* replace and do not materially amend sections 639 and 640 of the Act.

#### **Division 2            Offences about false or misleading information**

*Clause 701* replaces and does not materially amend section 641 of the Act.

*Clause 702* replaces section 642 and amends it by removing the qualifications previously provided for the obligations in subsection 642(2). As amended, the obligation to advise of false or misleading information, and what is the correct information, is absolute.

**Clause 703** replaces section 643 and amends it by including a new subsection (2), which prohibits the reckless provision of false or misleading information by one responsible person for a heavy vehicle to another. This complements and provides a lower penalty than the knowledge based offence for the giving of false or misleading information in subsection (1). Subsection (3) is also amended to restrict the circumstances in which the offences in subsections (1) and (2) are disapplied.

**Clause 704** replaces and does not materially amend section 644 of the Act.

## **Part 13.2            Industry codes of practice**

**Clause 705** replaces and does not materially amend section 645 of the Act.

**Clause 706** replaces section 646 and amends it by requiring the Regulator to impose a series of statutory conditions on an industry code of practice at registration. Those conditions were previously provided as examples of conditions that may be applied under subsection (2). The conditions require regular review, the designation of persons to maintain the code, and an obligation to update the code following changes to the guidelines for the preparation and content of the industry code of practice that is in force.

Subsection (6) is inserted to clarify the circumstances in which the conditions included through subsection (2) may be amended.

Subsection (7) is inserted to clarify that the Regulator incurs no liability for loss or damage suffered by a person because the person relied on a registered industry code of practice.

## **Part 13.3            Legal proceedings**

### **Division 1            Proceedings**

**Clause 707** replaces and does not materially amend section 647 of the Act.

## **Division 2            Evidence**

*Clauses 708 to 718* replace and do not materially amend sections 648 to 658 of the Act.

*Clause 719* replaces section 659 and amends it through the inclusion of subsections (1)(c) to (e). These new provisions authorise the admission of transport and journey documentation to provide evidence of the location of a person, the time and date at which a range of events took place, and the location of anything mentioned in the documentation.

*Clauses 720 to 722* replace and do not materially amend sections 660 to 662 of the Act.

*Clause 723* is a new section that establishes a series of evidential presumptions to facilitate the admissibility of IAP maps in legal proceedings. Subsection (1) establishes a conclusive presumption that a particular certified map was or was not the intelligent access map as issued by TCA on a stated date or during a stated period. Subsections (2) and (3) establish rebuttable presumptions as to the correctness of the contents of the certified map, and the authority of the signatory respectively.

*Clause 724 to 726* replace and do not materially amend sections 663 to 665 of the Act.

## **Part 13.4            Protected information**

*Clause 727* replaces and amends section 666.

New subsection (1)(a) clarifies that an authorised use for protected information extends to a use required or authorised under the Act (whether explicitly or by implication).

Subsection (1) further extends the range of authorised uses for protected information in subsections (1)(h), (i), (j), (k) and (m). Subsections (h) to (i) describe entities that currently and reasonably have access to this class of information (such as toll road operators and compulsory third party insurers). Subsection (k) allows for the class of authorised uses to be extended under a law of a jurisdiction.

Subsection (2) clarifies that it is also an authorised use of protected information disclosed to or otherwise held by a police agency for any purpose or for a particular purpose to disclose the information to another police agency authorised to hold protected information (whether or not for the same purpose).

Subsection (3) clarifies that the authorised disclosure of protected information to an entity includes a reference to the disclosure of the information to a duly authorised employee or agent of the entity.

*Clauses 728 and 729* replace and do not materially amend sections 667 and 668 of the Act.

## **Part 13.5            National regulations**

*Clause 730* replaces and does not materially amend section 669 of the Act.

*Clause 731* is a new section that authorises the making of regulations to establish and manage a scheme for persons performing vehicle examination functions under the Act. Subsection (2) allows for the recognition of existing schemes by which comparable entities are currently managed under state and territory laws as an interim measure to prevent dislocation during the establishment of the new scheme.

*Clause 732* is a new section that allows for the making of regulations to specify particular matters contained in or relating to agreements with States or Territories to provide services that are to be published on the Regulator's website.

*Clause 733* replaces and does not materially amend section 670 of the Act.

*Clause 734* is a new section that introduces a process to allow responsible Ministers to give due consideration to, and advice on, issues raised during jurisdictional parliamentary scrutiny of national regulations with the aim of avoiding possible disallowance.

Subsection (1) requires the responsible Minister for a participating jurisdiction to refer any adverse report about a national regulation from a legislation scrutiny body for that jurisdiction to the responsible Ministers for consideration and advice.

Subsection (2) requires responsible Ministers to prepare advice on the adverse report and provide a report to the relevant responsible Minister about the issues raised.

The process provides an avenue for the responsible Ministers to be advised of issues raised, and to provide advice that may assist a local Minister in maintaining national consistency across the regulatory scheme.

## **Part 13.6            Other**

*Clause 735* replaces and does not materially section 671.

*Clause 736* replaces and does not materially amend section 672 of the Act.

*Clause 737* is a new section that allows for the indexation of penalties for offences against the Act. The indexation mechanism is to be set out in regulations and is intended to be derived from generally accepted indexes such as inflation, for example, or the consumer or labour price indexes published by the Australian Bureau of Statistics. The note to subsection (2) recognises that the application of the index may result in no increase at all in a given year.

In addition to the ordinary requirement of a unanimous recommendation required for regulations made under the Act in section 730, a regulation establishing the index referred to in subsection (2) requires responsible Ministers to be satisfied that the method generally accords with increases in relevant inflation indexes or similar indexes.

*Clauses 738 and 739* replace and do not materially amend sections 673 and 674 of the Act.

*Clause 740* replaces and amends section 675. This clause inserts a new subsection (3) which provides a head of power for the making of national regulations to provide that stated kinds of fees may be set by the Regulator for inspection services, except so far as those fees are provided for under another law of this jurisdiction.

The section also inserts a new subsection (6), which allows the Regulator to waive fees in circumstances prescribed by national regulations.

A new subsection (7) is included to clarify that a decision maker can decline to deal with a matter if the fee is not paid.

*Clauses 741 to 743* replace and do not materially amend sections 676 to 678 of the Act.

## **Chapter 14 Savings and transitional provisions**

### **Part 14.1 Interim provisions relating to Ministers and Board**

*Clause 744 and 745* replace and do not materially amend sections 679 and 680 of the Act.

### **Part 14.2 General provisions**

Part 14.2 contains new sections that have been inserted to provide general savings and transitional arrangements. Part 14.2 will work with national regulations and provisions in local application laws (that is the provisions in local laws that apply the National Law) to collectively manage the savings and transitional arrangements. The savings and transitional provisions in Part 14.2 ensure or facilitate the following:

- As a general principle, from commencement of the National Law in a jurisdiction, matters relating to the administration of heavy vehicles under the National Law will be transferred from the jurisdictional agency to the Regulator, unless excluded. For example, applications for permits which have not yet been decided by the jurisdictional agency will move to the Regulator for finalisation. However, the transitional arrangement will still support a cooperative arrangement between the Regulator and jurisdiction in finalising these matters.

- Permits, notices or other exemption instruments in force prior to the commencement day will continue for a period as if they were made under the National Law. Consequently, after the commencement day these matters will be subject to the National Law and may be cancelled as if they were issued under the National Law.
- Permits will be saved for up to 3 years from commencement unless they sooner expire or are cancelled.
- Notices and similar exemption instruments of a class nature, will continue for a maximum of 5 years from commencement in the jurisdiction unless they sooner expire, are cancelled or are replaced by a new notice or instrument that covers the same matters in a substantially similar way as the previous notice.
- Industry Codes of Practice will be preserved for up to 3 years unless they have an earlier review date.
- The bulk of the administrative aspects of the PBS scheme and the instruments and decisions made under the scheme prior to the commencement of the Heavy Vehicle National Law will continue until the arrangements introduced by the Heavy Vehicle National Law Amendment Act 2012 are implemented.

As a general principle, matters relating to offences under local laws or decisions already made under local laws (including for example, review and appeals of decisions or prosecutions made under local laws) are not to be automatically transferred to the Regulator.

The savings and transitional scheme is intentionally designed to be flexible enough to provide an effective response for savings and transitional matters across a broad range of matters that may arise through implementation.

## **Schedule 1      Miscellaneous provisions relating to interpretation**

*Schedule 1* replaces and does not materially amend Schedule 1 of the Heavy Vehicle National Law (National Law) which is a schedule to the Act.

## **Schedule 2     Subject matter for conditions of mass or dimension authorities**

*Schedule 2* replaces and does not materially amend Schedule 2 of the Heavy Vehicle National Law (National Law) which is a schedule to the Act.

## **Schedule 3     Reviewable decisions**

*Schedule 3* of the National Law sets out the decisions that are reviewable decisions for the purposes of Chapter 11 of the National Law. Part 1 identifies the reviewable decisions of the Regulator, Part 2 identifies the reviewable decisions of an authorised officer, and Part 3 identifies reviewable decisions of a relevant road manager – see proposed section 581.

Decisions under the following sections have been added to this schedule:

- section 22;
- section 23;
- section 76;
- section 77;
- section 161;
- section 383;
- section 385;
- section 387;
- section 388;
- section 389;
- section 390; and
- section 393.

## **Schedule 4      Provisions specified for liability of executive officers for offences by corporation**

*Schedule 4* is inserted to outline the provisions specified for liability of executive officers for offences by corporations.

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## Appendix 1 Penalties for offences against the Heavy Vehicle National Law Amendment Act 2012

Section Number and Provision	Maximum Penalty (\$)
<i>Chapter 2: Registration</i>	
30 Registration requirement	10,000
39 Driver to carry proof of compliance with third party insurance legislation	3,000
50 (1) Obtaining registration or registration items by false statements	10,000
50 (2) Obtaining registration or registration items by false statements.	10,000
51 (3) Replacement and recovery of incorrect registration items	4,000
52 (4) Verification of particular records.	3,000
<i>Chapter 3: Vehicle Operations – standards and safety</i>	
60 (1)(a) Compliance with heavy vehicle standards	3,000
60 (1)(b) Compliance with heavy vehicle standards	6,000
79 (2) Return of permit	4,000
80 (1) Replacement of defaced permit	4,000
81 (1) Contravening condition of vehicle standards exemption	3,000

<b>Section Number and Provision</b>	<b>Maximum Penalty (\$)</b>
81(2) Contravening condition of vehicle standards exemption	3,000
81 (3) Contravening condition of vehicle standards	3,000
82 (2) Keeping relevant document while driving under vehicle standards exemption (notice).	3,000
82 (3) Keeping relevant document while driving under vehicle standards exemption (notice)	3,000
83 (1) Keeping copy of permit while driving under vehicle standards exemption (permit)	3,000
83 (2) Keeping copy of permit while driving under vehicle standards exemption (permit)	3,000
83 (3) Keeping copy of permit while driving under vehicle standards exemption (permit)	3,000
85 (1) Modifying heavy vehicle requires approval	3,000
85 (2) Modifying heavy vehicle requires approval	3,000
86 (2) Approval of modifications by approved vehicle examiners	3,000
89 (1) Safety requirement	6,000
90 (1) Requirement about properly operating emission control system	3,000
90 (2) Requirement about properly operating emission control system	3,000
90 (3) Requirement about properly operating emission control system	3,000

<b>Section Number and Provision</b>	<b>Maximum Penalty (\$)</b>
91 (1) Person must not tamper with emission control system fitted to heavy vehicle	10,000
91 (2) Person must not tamper with emission control system fitted to heavy vehicle	10,000
92(2) Display of warning signs required by Heavy Vehicle Standards on vehicles to which requirement does not apply	3,000
93(1) Person must not tamper with speed limiter fitted to heavy vehicle	10,000
93(2) Person must not tamper with speed limiter fitted to heavy vehicle	10,000
93 (3) Person must not tamper with speed limiter fitted to heavy vehicle	10,000
<i>Chapter 4: Vehicle Operations – mass, dimension and loading</i>	
96 (1) Compliance with mass requirements <ul style="list-style-type: none"> <li>• Minor: 4,000</li> <li>• Substantial: 6,000</li> <li>• Severe: 10,000, Plus an additional maximum \$500 for every additional 1% over a 120% overload (but so that the additional maximum penalty does not exceed \$20000).</li> </ul>	
102(1)(a) Compliance with dimension requirements	3,000
102 (1)(b) Compliance with dimension requirements <ul style="list-style-type: none"> <li>• Minor: 3,000</li> <li>• Substantial: 5,000</li> </ul>	

Section Number and Provision	Maximum Penalty (\$)
<ul style="list-style-type: none"> <li>• Severe: 10,000</li> </ul>	
109 (2) Warning signals required for rear projection of loads	3,000
111 (1) Compliance with loading requirements <ul style="list-style-type: none"> <li>• Minor: 3,000</li> <li>• Substantial: 5,000</li> <li>• Severe: 10,000</li> </ul>	
129 (1) Contravening condition of mass or dimension exemption generally	6,000
129 (2) Contravening condition of mass or dimension exemption generally	6,000
129 (3) Contravening condition of mass or dimension exemption generally	6,000
130 (2) Contravening condition of mass or dimension exemption relating to pilot or escort vehicle	6,000
130 (3) Contravening condition of mass or dimension exemption relating to pilot or escort vehicle	6,000
131 (1) Using pilot vehicle with a heavy vehicle that contravenes mass or dimension exemption	6,000
132 (2) Keeping relevant document while driving under mass or dimension exemption (notice)	3,000
132 (3) Keeping relevant document while driving under mass or dimension exemption (notice)	3,000
133 (1) Keeping copy of permit while driving under mass or dimension exemption (permit)	3,000

<b>Section Number and Provision</b>	<b>Maximum Penalty (\$)</b>
133 (2) Keeping copy of permit while driving under mass or dimension exemption (permit)	4,000
133(3) Keeping copy of permit while driving under mass or dimension exemption (permit)	3,000
134 (1) Displaying warning signs on vehicles if not required by dimension exemption	3,000
134 (2) Displaying warning signs on vehicles if not required by dimension exemption	3,000
137 Using class 2 heavy vehicle	6,000
150 (1) Contravening condition of class 2 heavy vehicle authorisation	6,000
151 (2) Keeping relevant document while driving under class 2 heavy vehicle authorisation (notice)	3,000
151 (3) Keeping relevant document while driving under class 2 heavy vehicle authorisation (notice)	3,000
152 (1) Keeping copy of permit while driving under class 2 heavy vehicle authorisation (permit)	3,000
152 (2) Keeping copy of permit while driving under class 2 heavy vehicle authorisation (permit)	4,000
152 (3) Keeping copy of permit while driving under class 2 heavy vehicle authorisation (permit)	3,000
NEW – 153 (1) Keeping copy of PBS vehicle approval while driving under class 2 heavy vehicle authorisation	3,000

<b>Section Number and Provision</b>	<b>Maximum Penalty (\$)</b>
NEW - 153 (2) If Keeping copy of PBS vehicle approval while driving under class 2 heavy vehicle authorisation	3,000
181(3) Return of permit	4,000
182(1) Replacement of defaced etc. permit	4,000
183 (2) Liability of employer etc. for driver's contravention of mass, dimension or loading requirement: An amount equal to the maximum penalty for the relevant offence	
184 (1) Towing restriction	3,000
185 (1) Requirements about coupling trailers	6,000
185 (2) Requirements about coupling trailers	6,000
186 (2) False or misleading transport documentation for goods	10,000
186 (3) False or misleading transport documentation for goods	10,000
186 (4) False or misleading transport documentation for goods	10,000
186 (5) False or misleading transport documentation for goods	10,000
187 (2) False or misleading information in container weight declaration	10,000
187 (3) False or misleading information in container weight declaration	10,000
190 (1) Duty of responsible entity	6,000

<b>Section Number and Provision</b>	<b>Maximum Penalty (\$)</b>
191 (1) Duty of operator	6,000
191 (3) Duty of operator	6,000
192 (1) Duty of driver	6,000
192 (2) Duty of driver	3,000
193 (2) Weight of freight container exceeding weight stated on container or safety approval plate	10,000
194 (1) Conduct of consignee resulting or potentially resulting in contravention of mass, dimension or loading requirement	10,000
<i>Chapter 5: Vehicle operations - speeding</i>	
204 (1) Duty of employer, prime contractor or operator to ensure business practices will not cause driver to exceed speed limit	10,000
205 Duty of employer not to cause driver to drive if particular requirements not complied with	4,000
206 (2) Duty of prime contractor or operator not to cause driver to drive if particular requirements not complied with	4,000
207 (1) Duty to ensure driver's schedule will not cause driver to exceed speed limit	10,000
208 (1) Duty not to cause driver to drive if particular requirements not complied with	4,000
209 (1) Duty to ensure loading arrangements will not cause driver to exceed speed limit	10,000

Section Number and Provision	Maximum Penalty (\$)
212 (1) Duty to ensure terms of consignment will not cause driver to exceed speed limit	10,000
212 (2) Duty to ensure terms of consignment will not cause driver to exceed speed limit	10,000
213 Duty not to make a demand that may result in driver exceeding the speed limit	6,000
215 Particular requests etc. prohibited	10,000
216 (1) Particular contracts etc. prohibited	10,000
216 (2) Particular contracts etc. prohibited	10,000
<p>219 (1) Liability of employer etc. for driver's contravention of speeding offence</p> <p><b>Limit 50km/h- 60km/h</b></p> <ul style="list-style-type: none"> <li>• By less than 15km/h - 3,000</li> </ul> <p><b>Limit of 70km/h – 80km/h</b></p> <ul style="list-style-type: none"> <li>• By less than 15km/h - 3,000</li> <li>• By 15km/h or more - 5,000</li> </ul> <p><b>Limit of 90km/h</b></p> <ul style="list-style-type: none"> <li>• By less than 15km/h - 3,000</li> <li>• By 15km/h or more - 5,000</li> </ul> <p><b>Limit of 90km/h (Road Train)</b></p> <ul style="list-style-type: none"> <li>• By less than 15km/h - 5,000</li> <li>• By 15km/h or more - 10,000</li> </ul>	

<b>Section Number and Provision</b>	<b>Maximum Penalty (\$)</b>
<b>Limit of 100km/h</b> <ul style="list-style-type: none"> <li>• By less than 15km/h - 5,000</li> <li>• By 15km/h or more - 10,000</li> </ul>	
<i>Chapter 6: Vehicle operations – driver fatigue</i>	
228 Duty of driver to avoid driving while fatigued	6,000
229 (1) Duty of party in the chain of responsibility to prevent driver driving while fatigued	10,000
230 (1) Duty of employer, prime contractor or operator to ensure business practices will not cause driver to drive while fatigued by fatigue etc	6,000
231 Duty of employer not to cause driver to drive if particular requirements not complied with	4,000
232 (2) Duty of prime contractor or operator not to cause driver to drive if particular requirements not complied with	4,000
233 (1) Duty to ensure driver's schedule will not cause driver to drive while fatigued	6,000
234 (1) Duty not to cause driver to drive if particular requirements not complied with	6,000
235 (1) Duty to ensure terms of consignment will not cause driver to drive while fatigued	10,000
235 (2 ) Duty to ensure terms of consignment will not cause driver to drive while fatigued	10,000
236 (1) Duty not to cause driver to drive if particular requirements not complied with	4,000

Section Number and Provision	Maximum Penalty (\$)
237(1) Duty not to make a demand that may result in driver driving while fatigued	10,000
238 (1) Duty to ensure loading arrangements will not cause driver to drive while fatigued	10,000
239 (2) Duty to ensure drivers can rest in particular circumstances	6,000
240 Particular requests prohibited	10,000
241 (1) Particular contracts prohibited	10,000
241 (2) Particular contracts prohibited	10,000
<p>250 (1) Operating under standard hours—solo drivers.</p> <ul style="list-style-type: none"> <li>• Minor: 4,000</li> <li>• Substantial: 6,000</li> <li>• Severe: 10,000</li> <li>• Critical: 15,000</li> </ul>	
<p>251 (1) Operating under standard hours—two-up drivers</p> <ul style="list-style-type: none"> <li>• Minor: 4,000</li> <li>• Substantial: 6,000</li> <li>• Severe: 10,000</li> <li>• Critical: 15,000</li> </ul>	
<p>254 (1) Operating under BFM hours—solo drivers</p> <ul style="list-style-type: none"> <li>• Minor: 4,000,</li> <li>• Substantial: 6,000,</li> </ul>	

<b>Section Number and Provision</b>	<b>Maximum Penalty (\$)</b>
<ul style="list-style-type: none"> <li>• Severe: 10,000,</li> <li>• Critical: 15,000</li> </ul>	
<p>256 (1) Operating under BFM hours—two-up drivers</p> <ul style="list-style-type: none"> <li>• Minor: 4,000</li> <li>• Substantial: 6,000</li> <li>• Severe: 10,000</li> <li>• Critical: 15,000</li> </ul>	
<p>258 (1) Operating under AFM hours</p> <ul style="list-style-type: none"> <li>• Minor: 4,000</li> <li>• Substantial: 6,000</li> <li>• Severe: 10,000</li> <li>• Critical: 15,000</li> </ul>	
<p>260 (1) Operating under exemption hours</p> <p>Minor: 4,000 Substantial: 6,000 Severe: 10,000 Critical: 15,000</p>	
<p>261(2) Liability of employer etc. for driver’s contravention of maximum work requirement or minimum rest requirement</p> <ul style="list-style-type: none"> <li>• Minor: - 4,000</li> <li>• Substantial: - 6.000</li> <li>• Severe: - 10,000</li> <li>• Critical: - 15,000</li> </ul>	
<p>263 (1) Operating under new work and rest hours option after change.</p>	4,000

<b>Section Number and Provision</b>	<b>Maximum Penalty (\$)</b>
264 (2) Duty of employer, prime contractor, operator and scheduler to ensure driver compliance	6,000
284 (2) Return of permit	6,000
285 (1) Replacement of defaced permit	4,000
286(1) Contravening condition of work and rest hours exemption	6,000
287 (2) Keeping relevant document while operating under work and rest hours exemption (notice)	3,000
287 (3) Keeping relevant document while operating under work and rest hours exemption (notice)	3,000
288 (1) Keeping copy of permit while driving under work and rest hours exemption (permit)	3,000
288 (2) Keeping copy of permit while driving under work and rest hours exemption (permit)	4,000
288 (3) Keeping copy of permit while driving under work and rest hours exemption (permit)	3,000
293 (1) Driver of fatigue-regulated heavy vehicle must carry work diary	6,000
296 (1) Recording information under the national regulations—general	1,500
297 (2) Information required to be recorded immediately after starting work	3,000
298 (1) Failing to record information about odometer reading	1,500

<b>Section Number and Provision</b>	<b>Maximum Penalty (\$)</b>
299 Two-up driver to provide details	3,000
301 Recording information in written work diary	1,500
302 Recording information in electronic work diary	1,500
303 Time zone of driver's base must be used	1,500
305 (1) Driver must make supplementary records in particular circumstances	6,000
305 (2) Driver must make supplementary records in particular circumstances	3,000
305 (3) Driver must make supplementary records in particular circumstances	1,500
306 Driver must notify Regulator if written work diary filled up	3,000
307(2) Driver must notify Regulator if electronic work diary filled up	3,000
308 (1) What driver must do if lost or stolen written work diary found or returned	3,000
309 (2) Driver must notify record keeper if electronic work diary filled up	6,000
310 (2) Intelligent access reporting entity must notify record keeper if approved electronic recording system malfunctioning	6,000
311 (2) What record keeper must do if electronic work diary filled up	6,000

<b>Section Number and Provision</b>	<b>Maximum Penalty (\$)</b>
312 (2) What record keeper must do if electronic work diary destroyed, lost or stolen	6,000
313 (2) What record keeper must do if electronic work diary not in working order or malfunctioning	6,000
314 (2) How electronic work diary must be used	3,000
314 (3) How electronic work diary must be used	6,000
315 (2) Liability of employer etc. for driver's contravention of particular requirements of this Division	6,000
319(1) Records record keeper must have.	6,000
321 (1) Records record keeper must have	6,000
321 (2) Records record keeper must have	6,000
322 (2) General requirements about driver giving information to record keeper	3,000
322 (4) General requirements about driver giving information to record keeper	3,000
323 (2) Requirements about driver giving information to record keeper if driver changes record keeper	3,000
323 (3) Requirements about driver giving information to record keeper if driver changes record keeper	3,000
324 (2) Record keeper must give printouts of information from electronic work diary	3,000
325 (1) False or misleading entries	10,000

<b>Section Number and Provision</b>	<b>Maximum Penalty (\$)</b>
326 (1) Keeping 2 work diaries simultaneously prohibited	10,000
326 (2) Keeping 2 work diaries simultaneously prohibited	10,000
327 Possession of purported work records etc. prohibited	10,000
328 False representation about work records prohibited n.	10,000
329 Defacing or changing work records etc. prohibited	10,000
330 Making entries in someone else's work records prohibited	10,000
331 Destruction of particular work records prohibited	10,000
332 Offence to remove pages from written work diary	10,000
335 (1) Person must not tamper with approved electronic recording system -	10,000
336 (1) Person using approved electronic recording system must not permit tampering with it	10,000
337 (2) Intelligent access reporting entity must not permit tampering with approved electronic recording system	10,000
341 (1) Period for which, and way in which, records must be kept	6,000
341 (2) Period for which, and way in which, records must be kept	6,000
341(3) Period for which, and way in which, records must be kept	3,000
341(4) Period for which, and way in which, records must be	3,000

<b>Section Number and Provision</b>	<b>Maximum Penalty (\$)</b>
kept	
341(5) Period for which, and way in which, records must be kept	6,000
347 (2) Placing electronic work diary label on device	10,000
347 (3) Placing electronic work diary label on device	10,000
350 (1) Prohibition on using device as electronic work diary if it is not, and is not a part of, an approved electronic recording system	10,000
350 (2) Prohibition on using device as electronic work diary if it is not, and is not a part of, an approved electronic recording system	10,000
354 (3) Requirements if approval amended	6,000
354 (5) Requirements if approval amended	6,000
355 (2) Requirements if approval cancelled	6,000
355 (4) Requirements if approval cancelled	6,000
355(6) Requirements if approval cancelled	6,000
355 (8) Requirements if approval cancelled	6,000
373 (2) Return of permit	6,000
374 (1) Replacement of defaced permit	4,000
375 Contravening conditions of work diary exemption	6,000
376 (2) Keeping relevant document while operating under work diary exemption (notice)	3,000

<b>Section Number and Provision</b>	<b>Maximum Penalty (\$)</b>
376 (3) Keeping relevant document while operating under work diary exemption (notice)	3,000
377 (1) Keeping copy of permit while operating under work diary exemption (permit)	3,000
392 (2) Return of permit.	6,000
393 (1) Replacement of defaced etc. Permit	4,000
395 Contravening condition of fatigue record keeping exemption	6,000
396 (2) Owner must maintain odometer	6,000
397 (2) Driver must report malfunctioning odometer	3,000
398 (2) What owner must do if odometer malfunctioning -	6,000
399 (2) What employer or operator must do if odometer malfunctioning	6,000
<i>Chapter 7: Intelligent access</i>	
404 (1) Offence to give false or misleading information to intelligent access service provider	10,000
404 (4) Offence to give false or misleading information to intelligent access service provider	10,000
405 (1) Advising vehicle driver of collection of information by intelligent access service provider.	6,000
406 (1) Reporting system malfunctions to Regulator	6,000

<b>Section Number and Provision</b>	<b>Maximum Penalty (\$)</b>
406 (2) Reporting system malfunctions to Regulator	6,000
407 (1) Advising driver of driver's obligations about reporting system malfunctions	6,000
408(1) Reporting system malfunctions to operator	6,000
408 (2) Reporting system malfunctions to operator -	6,000
410 (1) Collecting intelligent access information	6,000
410 (2) Collecting intelligent access information	6,000
411(1) Keeping records of intelligent access information collected	6,000
412 Protecting intelligent access information	6,000
413 (1) Making individuals aware of personal information held	6,000
413(2) Making individuals aware of personal information held	6,000
414(1) Giving individuals access to their personal information	6,000
415 (2) Correcting errors	6,000
415 (4) Correcting errors	6,000
416 General restriction on use and disclosure of intelligent access information	6,000
417 Giving intelligent access auditor access to records	6,000
419 (1) Keeping record of use or disclosure of intelligent	6,000

<b>Section Number and Provision</b>	<b>Maximum Penalty (\$)</b>
access information	
419 (3) Keeping record of use or disclosure of intelligent access information	6,000
420 (2) Keeping noncompliance report	6,000
421 (1) Destroying intelligent access information	6,000
422 (2) Reporting relevant contraventions to Regulator -	6,000
423 (1) Reporting tampering or suspected tampering with approved intelligent transport system	6,000
423 (2) Reporting tampering or suspected tampering with approved intelligent transport system	6,000
424(1) Restriction on disclosing information about tampering or suspected tampering with approved intelligent transport system	6,000
424(3) Restriction on disclosing information about tampering or suspected tampering with approved intelligent transport system	6,000
424(4) Restriction on disclosing information about tampering or suspected tampering with approved intelligent transport system.	6,000
427 (1) Collecting intelligent access information	6,000
427 (2) Collecting intelligent access information	6,000
428 Protecting intelligent access information collected	6,000
429 (1) Making individuals aware of personal information	6,000

<b>Section Number and Provision</b>	<b>Maximum Penalty (\$)</b>
held	
429 (2) Making individuals aware of personal information held	6,000
430 (1) Giving individuals access to their personal information	6,000
431 (2) Correcting errors etc	6,000
431 (5) Correcting errors etc	6,000
432 General restriction on use and disclosure of intelligent access information	6,000
434 Restriction about intelligent access information that may be used or disclosed	6,000
435(1) Keeping record of use or disclosure of intelligent access information	6,000
435(3) Keeping record of use or disclosure of intelligent access information	6,000
436 Keeping noncompliance reports	6,000
437 (1) Destroying intelligent access information or removing personal information from it	6,000
438 (1) Reporting tampering or suspected tampering with, or malfunction or suspected malfunction of, approved intelligent transport system to Regulator	6,000
439 (1) Restriction on disclosing information about tampering or suspected tampering with approved intelligent transport system	6,000

<b>Section Number and Provision</b>	<b>Maximum Penalty (\$)</b>
439 (3) Restriction on disclosing information about tampering or suspected tampering with approved intelligent transport system	6,000
441 (1) Collecting intelligent access information	6,000
441 (2) Collecting intelligent access information	6,000
442 Protecting intelligent access information collected -	6,000
443 (1) Making individuals aware of personal information held	6,000
444(1) Giving individuals access to their personal information	6,000
445 (2) Correcting errors	6,000
445 (4) Correcting errors	6,000
446 General restriction on use and disclosure of intelligent access information	6,000
448 Restriction about intelligent access information that may be used or disclosed	6,000
449 (1) Keeping record of use or disclosure of intelligent access Information	6,000
449 (2) Keeping record of use or disclosure of intelligent access Information	6,000
449 (3) Keeping record of use or disclosure of intelligent access Information	6,000
450 (1) Destroying intelligent access information or removing	6,000

<b>Section Number and Provision</b>	<b>Maximum Penalty (\$)</b>
personal information from it	
451 Reporting contraventions by intelligent access service providers to TCA	6,000
452 Reporting tampering or suspected tampering with approved intelligent transport system to Regulator or TCA	6,000
453 (1) Restriction on disclosing information about tampering or suspected tampering with approved intelligent transport system	6,000
453 (2) Restriction on disclosing information about tampering or suspected tampering with approved intelligent transport system	6,000
454 (1) Offence to tamper with approved intelligent transport System	10,000
454 (2) Offence to tamper with approved intelligent transport system	8,000
<i>Chapter 8: Accreditation</i>	
467 Compliance with conditions of BFM accreditation or AFM Accreditation	6,000
468 (1) Driver must carry accreditation details	3,000
468 (3) Driver must carry accreditation details	3,000
469 (2) Driver must return particular documents if stops operating under accreditation	4,000
470 (2) General requirements applying to operator with heavy vehicle accreditation	6,000

<b>Section Number and Provision</b>	<b>Maximum Penalty (\$)</b>
470 (3) General requirements applying to operator with heavy vehicle accreditation	6,000
470 (4) General requirements applying to operator with heavy vehicle accreditation	6,000
470 (5) General requirements applying to operator with heavy vehicle accreditation.	6,000
470 (6) General requirements applying to operator with heavy vehicle accreditation	3,000
470 (8) General requirements applying to operator with heavy vehicle accreditation	3,000
471 (2) Operator must give notice of amendment, suspension or ending of heavy vehicle accreditation	6,000
471 (3) Operator must give notice of amendment, suspension or ending of heavy vehicle accreditation	4,000
476 (2) Return of accreditation certificate.	6,000
477 (1) Replacement of defaced etc. accreditation certificate	4,000
478 (1) Offences relating to auditors	10,000
478 (2) Offences relating to auditors	10,000
478 (3) Offences relating to auditors	10,000
478 (4) Offences relating to auditors	10,000
<i>Chapter 9: Enforcement</i>	

<b>Section Number and Provision</b>	<b>Maximum Penalty (\$)</b>
488 Return of identity card	3,000
513 (4) Direction to stop heavy vehicle to enable exercise of other powers	6,000
514 (3) Direction not to move or interfere with a heavy vehicle to enable exercise of other power	6,000
516 (3) Direction to move heavy vehicle to enable exercise of other powers	6,000
517 (4) Direction to move heavy vehicle if causing harm	6,000
522 (5) Power to order presentation of heavy vehicles for inspection	6,000
524(5) Direction to leave heavy vehicle	6,000
526 (4) Issue of vehicle defect notice -	3,000
528 (3) Defective vehicle labels	3,000
529 Using defective heavy vehicles contrary to defect vehicle Notice	3,000
533 (7) Powers for minor risk breach of mass, dimension or loading requirement	10,000
534 (5) Powers for substantial risk breach of mass, dimension or loading requirement	10,000
535 (5) Powers for severe risk breach of mass, dimension or loading requirement.	10,000
542 (1) Compliance with requirement under this Division -	10,000

<b>Section Number and Provision</b>	<b>Maximum Penalty (\$)</b>
553(3) Requirement of person in control of thing to be seized	10,000
558 (1) Noncompliance with embargo notice	10,000
558 (3) Noncompliance with embargo notice	10,000
559(3) Power to secure embargoed thing	10,000
559 (4) Power to secure embargoed thing	10,000
559 (5) Power to secure embargoed thing -	10,000
567 (4) Power to require name and address -	3,000
568 (3) Power to require production of document etc. required to be in driver's possession: An amount equal to the amount of the maximum penalty for an offence of failing to keep the document, device or other thing in the driver's possession.	
568 (7) Power to require production of document etc. required to be in driver's possession	3,000
569 (2) Power to require production of documents etc. generally	6,000
569 (7) Power to require production of documents generally	3,000
570 (3) Power to require information about heavy vehicles	6,000
573 (1) Contravention of improvement notice	10,000
577 (4) Power to require reasonable help	10,000
584 (1) Obstructing authorised officer	10,000
585 Impersonating authorised officer	10,000

Section Number and Provision	Maximum Penalty (\$)
<i>Chapter 10: Sanctions and provisions about liability for offences</i>	
604 Contravention of supervisory intervention order	10,000
610 Contravention of prohibition order	10,000
636 (1) Liability of executive officers of corporations: The penalty for a contravention of the provision by an individual.	
636 (2) Liability of executive officers of corporation: The penalty for a contravention of the provision by an individual.	
<i>Chapter 12: Administration</i>	
697(3) General duties of persons exercising functions under this Law	10,000
<i>Chapter 13: General</i>	
699 (1) Discrimination against or victimisation of employees	10,000
699 (2) Discrimination against or victimisation of employees	10,000
700 (4) Order for damages or reinstatement.	10,000
701 (1) False or misleading statements	10,000
701 (2) False or misleading statements	8,000
702 (1) False or misleading documents.	10,000
702 (3 ) False or misleading documents	8,000
703 (1) False or misleading information given by responsible person to another responsible person	10,000

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<b>Section Number and Provision</b>	<b>Maximum Penalty (\$)</b>
703 (2) False or misleading information given by responsible person to another responsible person	8,000
704 (1) Offence to falsely represent that heavy vehicle authority is held	10,000
704 (2) Offence to falsely represent that heavy vehicle authority is held	10,000
704 (3) Offence to falsely represent that heavy vehicle authority is held	10,000
728 (1) Duty of confidentiality	20,000
729 (1) Protected information only to be used for authorised use	20,000
729 (3) Protected information only to be used for authorised use	20,000

## Appendix 2                      Offences prescribed for the purposes of proposed section 636 (Executive Officer liability)

In the following table, the column headed ‘636(1)’ refers to the provision specified for the purposes of section 636(1) and the column headed ‘636(2)’ refers to the provision specified for the purposes of section 636(2).

Section of this Law	636(1)	636(2)	Basis for not exempting liability
<b>Chapter 2 - Registration</b>			
30 Registration requirement	30(1)	30(1)	<p>This section implements section 20 of the <i>Road Transport Reform (Heavy Vehicles Registration) Act 1997</i> (Cwth). Registration laws were expressly contemplated as road laws to which executive officer liability may attach under section 149 of the Road Transport Reform (Compliance and Enforcement) Bill 2003.</p> <p>The requirement is central to the regulatory scheme. Without a reliable registration the identification of the vehicles and operators is more expensive and less certain and there is less certainty that the vehicle meets basic safety and operational requirements before it is used on the road network</p> <p>Management of the registration of a heavy vehicle (particular for fleets of vehicles) is a matter that would naturally fall within the internal management systems of a corporate entity.</p> <p>The offence is not confined to the actions of an individual (driver or otherwise) being largely an administrative activity and executive officers can readily control the relevant corporate conduct.</p>

Section of this Law	636(1)	636(2)	Basis for not exempting liability
			The maximum penalty for an individual offender is \$10,000; the second highest penalty provided for under the Bill.
50 Obtaining Registration by false statement	50(1), 50(2)	---	<p>This section implements section 21 of the <i>Road Transport Reform (Heavy Vehicles Registration) Act 1997</i> (Cwth). Registration laws were expressly contemplated as road laws to which executive officer liability may attach under section 149 of the Road Transport Reform (Compliance and Enforcement) Bill 2003.</p> <p>The offences may be committed by an individual or corporation directly authorising or permitting the offence. The proposed subsections 50(1) and (2) import sufficient elements of personal knowledge as to exclude the possibility of a charge based around recklessness on the part of executive officers as a basis for liability, hence the offence is not specified for the purposes section 636(2).</p> <p>There are financial incentives for noncompliance by mis-stating registration categories and noncompliance would adversely impact the underlying objectives of registration discussed for section 30.</p> <p>The maximum penalty for an individual offender is \$10,000; the second highest penalty provided for under the Bill.</p>
<b>Chapter 3 - Vehicle Operations – standards and safety</b>			
60 Compliance with heavy vehicle standards	60(1)	60(1)	This section implements Regulation 10 of the <i>Road Transport Reform (Heavy Vehicle Standards) Regulations</i> . These regulations were made under the <i>Road Transport Reform (Vehicles and Traffic) Act 1993</i> . This Act was expressly contemplated as a

Section of this Law	636(1)	636(2)	Basis for not exempting liability
			<p>road law to which executive officer liability may attach under section 149 of the Road Transport Reform (Compliance and Enforcement) Bill 2003.</p> <p>The physical elements of the offence are not exclusively confined to the actions and judgement of a given individual (driver or otherwise) and executive officers can therefore reasonably control the relevant corporate conduct (appropriate purchasing and maintenance policies can ensure compliance and are matters that fall within the ordinary control of a properly managed entity).</p> <p>While these penalties are in the middle to lower range of the Bill respectively, non-compliance has potentially serious safety implications either through degradation of the vehicle's performance, inappropriate construction or after market modification. These implications extend to death or disabling injury to individuals from excessive overhang, inadequate warning lights <i>etc.</i></p> <p>The maximum penalty for an individual offender is \$6000 for contravention of a heavy vehicle standard relating to a speed limiter and \$3,000 otherwise.</p>
79 Return of Permit	79(2)	79(2)	<p>This section implements Regulation 38 of the <i>Road Transport Reform (Vehicle Standards) Regulations 1998</i>.</p> <p>These regulations were made under the <i>Road Transport Reform (Vehicles and Traffic) Act 1993</i>. This Act was expressly contemplated as a road law to which executive officer liability may attach under section 149 of the Road Transport Reform</p>

Section of this Law	636(1)	636(2)	Basis for not exempting liability
			<p>(Compliance and Enforcement) Bill 2003.</p> <p>A permit provides evidence of the granting of a legal concession and the suspension of the relevant ordinarily applicable operating rules.</p> <p>An offence is created under this provision only where the Regulator has amended or cancelled the document and the holder is unable or unwilling to return the permit no receipt of written requirement.</p> <p>The retention of the permit may facilitate non-compliance in circumstances where the Regulator has determined the permit is no longer appropriate in the form originally issued.</p> <p>The Regulator is only authorised to issue such a notice where the permit:</p> <ul style="list-style-type: none"> <li>• was dishonestly obtained;</li> <li>• has been contravened;</li> <li>• has caused, or is likely to cause, a significant safety risk; or</li> <li>• where circumstances have changed to the extent the Regulator would not have issued the permit had they been operative at that time</li> </ul> <p>These restrictions on the circumstances in which the offence can materialise indicate the potential seriousness of any noncompliance.</p> <p>The offence is not confined to the actions of an individual (driver or otherwise) being exclusively an administrative matter, and executive officers can therefore readily</p>

Section of this Law	636(1)	636(2)	Basis for not exempting liability
			<p>control the relevant corporate conduct.</p> <p>The maximum penalty for an individual offender is \$4,000, a mid-range penalty.</p>
<p>81 Contravening condition of vehicle standards exemption</p>	<p>81(1), 81(2), 81(3)</p>	<p>81(1), 81(2), 81(3)</p>	<p>This section implements Regulation 19 of the <i>Road Transport Reform (Vehicle Standards) Regulations 1998</i>.</p> <p>These regulations were made under the <i>Road Transport Reform (Vehicles and Traffic) Act 1993</i>. This Act was expressly contemplated as a road law to which executive officer liability may attach under section 149 of the Road Transport Reform (Compliance and Enforcement) Bill 2003.</p> <p>The extension of liability to executive officers for contravention of a condition of a vehicle standards exemption is justifiable on the same grounds as contravention of a vehicle standard set out for section 60.</p> <p>There are sound arguments such noncompliance should attract additional blameworthiness on the basis the ordinarily applicable rules of operation have been suspended on the basis the conditions of the concession would be complied with.</p> <p>The offences are not confined to the actions of an individual (driver or otherwise) and executive officers can therefore readily control the relevant corporate conduct. There may be some conditions noncompliance with which may not fall within this rule however this cannot be known at this time and it is more appropriate to allow for such liability to potentially arise, than to exclude it in all circumstances.</p> <p>The maximum penalty for an individual offender is \$3,000, a low-range penalty</p>

Section of this Law	636(1)	636(2)	Basis for not exempting liability
			under the Bill.
85 Modifying heavy vehicle requires approval	85(1), 85(2)	85(2)	<p>Using or permitting the use of a vehicle that has been unlawfully modified raises similar considerations as discussed above for the contravention of a vehicle standard or exemption in sections 60 and 81.</p> <p>The physical elements of the offence are not exclusively confined to the actions and judgement of a given individual (driver or otherwise) and executive officers can therefore reasonably control the relevant corporate conduct.</p> <p>The maximum penalty for an individual offender is \$3,000, a low-range penalty under the Bill.</p>
89 Safety requirement	89(1)	89(1)	<p>This section implements Regulation 11 of the <i>Road Transport Reform (Vehicle Standards) Regulations 1998</i>. These regulations were made under the <i>Road Transport Reform (Vehicles and Traffic) Act 1993</i>. This Act was expressly contemplated as a road law to which executive officer liability may attach under section 149 of the <i>Road Transport Reform (Compliance and Enforcement) Bill 2003</i>.</p> <p>By definition, the commission of an offence against this provision suggests the potential for the real possibility of death or disabling injury to members of the public or drivers of the vehicle in question.</p> <p>The requirement contemplates a wide range of circumstances in which an offence may be committed. There may be some offences arising from circumstances in which noncompliance with which may not fall within this rule however this cannot be</p>

Section of this Law	636(1)	636(2)	Basis for not exempting liability
			<p>known beforehand. It is therefore more appropriate to allow for derivative liability to potentially arise, than to exclude it in all circumstances and restrict the obligation to individual drivers and involved corporations.</p> <p>The maximum penalty for an individual offender is \$6,000, a mid-range penalty under the Bill.</p>
93 Person must not tamper with speed limiter	93(1)	93(1)	<p>The speed limiting of nominated classes of heavy vehicles is a regulatory requirement intended to protect members of the public and drivers. Tampering with these devices represents wilful circumvention of the law, enables unfair competition through dangerous practices, and jeopardises the safety of road users and drivers.</p> <p>The incentives for tampering are well known and tampering itself requires alteration of the physical condition of the vehicle. Tampering may be identified through an effective maintenance management system or secondary evidence such as work diaries. Executive officers can therefore reasonably be expected to control the relevant corporate conduct.</p> <p>The maximum penalty for an individual offender is \$10,000; the second highest penalty provided for under the Bill.</p>
<b>Chapter 4 - Vehicle Operations – mass, dimension and loading</b>			
129 Contravening condition of mass or dimension exemption	129(1), 129(2), 129(3)	129(1), 129(2), 129(3)	<p>An equivalent offence against which executive officer liability may attach was provided under section 114 (Offence of contravening condition) of the Road Transport Reform (Compliance and Enforcement) Bill 2003.</p>

Section of this Law	636(1)	636(2)	Basis for not exempting liability
generally			<p>The maximum penalty for an individual offender is \$6,000, a mid-range penalty under the Bill</p> <p>This is a composite offence creating liability for a range of offences. Non-compliance with dimension and load restraint offences creates risks to safety of other road users. These offences and mass non-compliances present risks to infrastructure that may impose significant costs to the community. Only the most serious of mass noncompliance will create risks to public safety (through bridge or culvert collapse, for example). The most obvious outcome of systematic noncompliance with mass requirements is to distort the market for transport services.</p> <p>There are sound arguments such noncompliance should attract additional blameworthiness on the basis the ordinarily applicable rules of operation have been suspended on the basis the conditions of the concession would be complied with.</p> <p>The physical elements of the offence are not exclusively confined to the actions and judgement of a given individual (driver or otherwise) and executive officers can therefore reasonably be expected to control the relevant corporate conduct. (the specific reference to an offence by an ‘operator’ supports this conclusion which may have been less reasonable had the offence been confined to the actions of the driver alone).</p>
130 Contravening condition of	130(3)	130(3)	This section implements Regulation 14 of the <i>Road Transport Reform (Oversize and Overmass Vehicles) Regulation</i> . The

Section of this Law	636(1)	636(2)	Basis for not exempting liability
mass or dimension exemption relating to pilot or escort vehicle			<p>Model Regulations were made by the Commonwealth on 6 June 1995 under the <i>Road Transport Reform (Vehicles and Traffic) Act 1993</i> (Cwth). This Act was expressly contemplated as a road law to which executive officer liability may attach under section 149 of the Road Transport Reform (Compliance and Enforcement) Bill 2003.</p> <p>The use of pilots and escorts provides a warning to road users that an over-dimensional (especially over wide) vehicle is on the road and that they need to take special care when driving in the vicinity of the oversize vehicle.</p> <p>There are sound arguments such noncompliance should attract additional blameworthiness on the basis the ordinarily applicable rules of operation have been suspended on the basis the conditions of the concession would be complied with.</p> <p>The physical elements of the offence are not exclusively confined to the actions and judgement of a given individual (driver or otherwise) and executive officers can therefore reasonably be expected to control the relevant corporate conduct.</p> <p>The maximum penalty for an individual offender is \$6,000, a mid-range penalty under the Bill</p>
137 Using class 2 heavy vehicle	137	137	<p>This section implements Regulation 8 of the <i>Road Transport Reform (Restricted Access Vehicles) Regulations</i>. The Model Regulations were made under the <i>Road Transport Reform (Vehicles and Traffic) Act 1993</i> (Cwth). This Act was expressly contemplated as a road law to which</p>

Section of this Law	636(1)	636(2)	Basis for not exempting liability
			<p>executive officer liability may attach under section 149 of the Road Transport Reform (Compliance and Enforcement) Bill 2003.</p> <p>Class 2 vehicles can only be made subject to a limited range of conditions (prescribed in regulations) as well as route and time restrictions. These vehicles include road trains, b-doubles, controlled access buses less than 14.5 metres long, certain vehicles carrying animals, and certain combinations carrying other vehicles.</p> <p>Regulation 8 of the Model Regulations provides that it is an offence to drive or operate a Class 2 vehicle except in accordance with a Class 2 permit or notice.</p> <p>There are sound arguments such noncompliance should attract additional blameworthiness on the basis the ordinarily applicable rules of operation have been suspended on the basis the conditions of the concession would be complied with.</p> <p>The breadth of the conditions able to be applied to these vehicles is narrower than that applicable to vehicles operating under mass and dimension exemption permits, however it is still conceivable they may extend to matters beyond the actions and judgement of a given individual (driver or otherwise). Given the potential breadth and nature of these conditions executive officers can reasonably be expected to control the relevant corporate conduct.</p> <p>The maximum penalty for an individual offender is \$6,000, a mid-range penalty under the Bill</p>
150	150(1)	150(1)	This section implements Regulation 8 of

Section of this Law	636(1)	636(2)	Basis for not exempting liability
Contravening condition of class 2 heavy vehicle authorisation			<p>the <i>Road Transport Reform (Restricted Access Vehicles) Regulations</i>. The Model Regulations were made under the <i>Road Transport Reform (Vehicles and Traffic) Act 1993</i> (Cwth). This Act was expressly contemplated as a road law to which executive officer liability may attach under section 149 of the <i>Road Transport Reform (Compliance and Enforcement) Bill 2003</i>.</p> <p>A contravention of this provision raises similar considerations as discussed above for the use of the vehicle contrary to contravention of heavy vehicle authorisation, vehicle standard or exemption in sections 60 and 81. The same considerations apply, except that the offence in question relates to individual conditions, rather than failing to comply with the notice at all.</p> <p>The maximum penalty for an individual offender is \$6,000, a mid-range penalty under the Bill</p>
181 Return of Permit	181(3)	---	<p>A permit provides evidence of the granting of a legal concession and the suspension of the ordinarily applicable requirements under the National Law.</p> <p>An offence is created under this provision only where the Regulator has amended or cancelled the document and the holder is unable or unwilling to the permit no receipt of written requirement form the Regulator.</p> <p>The retention of the permit may facilitate non-compliance in circumstances where the Regulator has determined the permit is no longer appropriate in the form originally issued. The Regulator is authorised to issue such a notice where the</p>

Section of this Law	636(1)	636(2)	Basis for not exempting liability
			<p>permit:</p> <ul style="list-style-type: none"> <li>• was dishonestly obtained;</li> <li>• has been contravened; and</li> <li>• has caused, or is likely to cause, a significant safety risk</li> </ul> <p>These restrictions on the circumstances in which the offence can materialise indicate the potential seriousness of any noncompliance.</p> <p>Liability has not been extended to executive officers for an offence against this provision under subsection 636(2) on the basis that it encompasses a range of offences for which there may be no obvious safety implications (although there may be adverse infrastructure and amenity consequences).</p> <p>The maximum penalty for an individual offender is \$4,000, a mid-range penalty.</p>
<p>183 Liability of employer etc. for contravention of mass, dimension or loading requirement</p>	<p>183(2)</p>	<p>183(2)</p>	<p>This section implements Division 5 (Liability for breaches of mass, dimension or load restraint requirements) of the Road Transport Reform (Compliance and Enforcement) Bill 2003. Executive officer liability attached to these offences under section 149 of that Bill.</p> <p>These offences are central to the regulatory regime. The rationale for extending liability in these circumstances is to better target those chiefly responsible for the breaches of road law and to enhance the effectiveness of the law by deterring offending behaviour.</p> <p>This is a composite offence creating</p>

Section of this Law	636(1)	636(2)	Basis for not exempting liability
			<p>liability for a range of statutory or administrative requirements. Non-compliance with dimension and load restraint requirements creates risks to safety of other road users. These offences and mass noncompliances present risks to infrastructure that may impose significant costs to the community.</p> <p>Only the most serious mass noncompliance will create risks to public safety (through bridge or culvert collapse for example). The most frequent outcome of systematic noncompliance with mass requirements is to distort the market for transport services.</p> <p>The range parties on whom the obligation is imposed and the nature of the obligation itself mean the offence is not exclusively confined to the actions and judgement of a given individual (driver or otherwise) and executive officers can therefore reasonably control the relevant corporate conduct.</p> <p>The criteria for severe dimension (section 107(3)(b)) and loading breaches (section 114) expressly stipulate the safety considerations that inform these offences.</p> <p>A graduated penalty regime is created under which the maximum penalty for a severe risk breach is \$10,000, plus an additional maximum \$500 for every additional 1% over a 120% overload for mass limits breaches (but so that the additional maximum penalty does not exceed \$20000). This is a high range penalty.</p>
185 Requirements about coupling	185(1), 185(2)	185(1), 185(2)	This section implements Part 3.2 of the Schedule to the <i>Road Transport Reform (Mass and Loading) Regulations</i> . The

Section of this Law	636(1)	636(2)	Basis for not exempting liability
trailers			<p>Model Regulations were made under the <i>Road Transport Reform (Vehicles and Traffic) Act 1993</i> (Cwth). This Act was expressly contemplated as a road law to which executive officer liability may attach under section 149 of the Road Transport Reform (Compliance and Enforcement) Bill 2003.</p> <p>The offences for which liability arises under this section relate to both the coupling of vehicles within a combination and the compatibility and proper connection of components of the coupling.</p> <p>Improper coupling may allow for the uncontrolled release of trailers or other unsafe movement. This imposes a safety risk on other road users and drivers.</p> <p>The maximum penalty for an individual offender is \$6000, a mid-range penalty under the Bill</p>
186 False or misleading transport documentation for goods	186(2), 186(3), 186(4), 186(5)	186(2), 186(3), 186(4), 186(5)	<p>This section implements section 112 of the Road Transport Reform (Compliance and Enforcement) Bill 2003. Executive officer liability attached to these offences under section 149 of that Bill.</p> <p>The making of such representations distorts the market for transport services, prejudices the capacity of other duty holders to manage their own obligations and operates to conceal and promote noncompliance. Misleading documentation may have safety implications where it contributes to the unsafe loading or overloading of a vehicle and the attendant degradation in on road performance.</p> <p>The maximum penalty for an individual</p>

Section of this Law	636(1)	636(2)	Basis for not exempting liability
			offender is \$10 000; the second highest penalty provided for under the Bill.
187 False or misleading information in container weight declaration	187(2), 187(3)	187(2), 187(3)	<p>This section implements section 112 of the Road Transport Reform (Compliance and Enforcement) Bill 2003. Executive officer liability attached to these offences under section 149 of that Bill.</p> <p>The making of such representations distorts the market for transport services, prejudices the capacity of other duty holders to manage their own obligations and operates to conceal and promote noncompliance. The misrepresentation may have safety implications where it contributes to the unsafe loading or overloading of a vehicle and the attendant degradation in on road performance.</p> <p>The maximum penalty for an individual offender is \$10,000; the second highest penalty provided for under the Bill.</p>
190 Duty of responsible entity	190(1)	190(1)	<p>This section implements section 103 of the Road Transport Reform (Compliance and Enforcement) Bill 2003. Executive officer liability attached to these offences under section 149 of that Bill.</p> <p>The offence can be committed by the full range of responsible persons for the container as defined in section 5. Given the physical elements of the offence are not exclusively confined to the actions and judgement of a given individual (driver or otherwise) executive officers can reasonably be expected control the relevant corporate conduct.</p> <p>The making of such representations</p>

Section of this Law	636(1)	636(2)	Basis for not exempting liability
			<p>distorts the market for transport services, prejudices the capacity of other duty holders to manage their own obligations and operates to conceal and promote noncompliance.</p> <p>The maximum penalty for an individual offender is \$6000, a mid-range penalty under the Bill</p>
191 Duty of operator	191(1), 191(3)	191(1), 191(3)	<p>This section implements section 104 of the Road Transport Reform (Compliance and Enforcement) Bill 2003. Executive officer liability attached to these offences under section 149 of that Bill.</p> <p>The offence may only be committed by an operator who permits transport of a freight container in the absence of a complying container weight declaration, or fails to provide such a declaration. The physical elements of the offence are not exclusively confined to the actions and judgement of a given individual (driver or otherwise) and executive officers can therefore reasonably control the relevant corporate conduct.</p> <p>The making of such representations distorts the market for transport services, prejudices the capacity of other duty holders to manage their own obligations and operates to conceal and promote noncompliance</p> <p>The maximum penalty for an individual offender is \$6000, a mid-range penalty under the Bill</p>
193 Weight of freight container exceeding	193(2)	193(2)	<p>This section implements section 106 of the Road Transport Reform (Compliance and Enforcement) Bill 2003. Executive officer liability attached to these offences under</p>

Section of this Law	636(1)	636(2)	Basis for not exempting liability
weight stated on container or safety approval plate			<p>section 149 of that Bill.</p> <p>This is an extended liability offence for which liability attaches to consignors and packers.</p> <p>The making of such representations distorts the market for transport services, prejudices the capacity of other duty holders to manage their own obligations and operates to conceal and promote noncompliance.</p> <p>The offence would be committed in the ordinary course of the relevant party's duties and executive officers can therefore reasonably control the relevant corporate conduct.</p> <p>The maximum penalty for an individual offender is \$10,000; the second highest penalty provided for under the Bill.</p>
194 Conduct of consignee resulting or potentially resulting in contravention of mass, dimension or loading requirement	194(1)	194(1)	<p>This section implements section 96 of the Road Transport Reform (Compliance and Enforcement) Bill 2003. Executive officer liability attached to these offences under section 149 of that Bill</p> <p>This is a extended liability offence for which liability attaches to consignees</p> <p>The offence may be committed in circumstances of intent, recklessness and negligence. It is as a result of the last of these mental elements that the possibility of the extension of derivative liability is justified</p> <p>The making of such representations distorts the market for transport services, prejudices the capacity of other duty holders to manage their own obligations and operates to conceal and promote</p>

Section of this Law	636(1)	636(2)	Basis for not exempting liability
			<p>noncompliance. The safety implications of dimensional and loading breaches have been discussed above.</p> <p>The maximum penalty for an individual offender is \$10,000; the second highest penalty provided for under the Bill.</p>
<b>Chapter 5 - Vehicle operations—speeding</b>			
<p>204 Duty of employer, prime contractor or operator to ensure business practices will not cause driver to exceed speed limit</p>	204(1)	204(1)	<p>The offence implements section 17 of the Model Act on Heavy Vehicle Speeding Compliance. Executive officer liability is applied to this offence through section 8.</p> <p>This section is an extended liability provision. It is integral to the regulatory objective of ensuring heavy vehicle safety through the contribution it makes to managing heavy vehicle speeding.</p> <p>The breadth of the duty and range of parties to whom it applies means the elements of the offence are not exclusively confined to the actions and judgement of a given individual (driver or otherwise) and executive officers can therefore reasonably control the relevant corporate conduct.</p> <p>The maximum penalty for an individual offender is \$10,000; the second highest penalty provided for under the Bill.</p>
<p>205 Duty of employer not to cause driver to drive if particular Requirements not complied with</p>	205(1)	205(1)	<p>The offence implements section 17 of the Model Act on Heavy Vehicle Speeding Compliance. Executive officer liability is applied to this offence through section 8.</p> <p>This section imposes an obligation on the employer to ensure observance on its own part and that of all relevant parties with the obligation in section 204. The imposition of derivative liability is justified in on the</p>

Section of this Law	636(1)	636(2)	Basis for not exempting liability
			<p>same grounds as it is for those parties under section 204.</p> <p>This section is an extended liability provision. It is integral to the regulatory objective of ensuring heavy vehicle safety through the contribution it makes to managing heavy vehicle speeding.</p> <p>The maximum penalty for an individual offender is \$4,000, a mid-range penalty under the Bill.</p>
<p>206 Duty of prime contractor or operator not to cause driver to drive if particular Requirements not complied with</p>	<p>206(2)</p>	<p>206(2)</p>	<p>The offence implements section 17 of the Model Act on Heavy Vehicle Speeding Compliance. Executive officer liability is applied to this offence through section 8.</p> <p>This section imposes an obligation on a prime contractor or operator to ensure observance on its own part and that of all relevant parties with the obligation in section 204. Imposition of derivative liability is justified in on the same grounds as it is for those parties under section 204.</p> <p>This section is an extended liability provision. It is integral to the regulatory objective of ensuring heavy vehicle safety through the contribution it makes to managing heavy vehicle speeding.</p> <p>The maximum penalty for an individual offender is \$4,000, a mid-range penalty under the Bill.</p>
<p>207 Duty to ensure driver's schedule will not cause driver to exceed speed limit</p>	<p>207(1)</p>	<p>207(1)</p>	<p>Section 207 implements section 20 of the Model Act on Heavy Vehicle Speeding Compliance. Executive officer liability is applied to this offence through section 8.</p> <p>This section is an extended liability provision. It is integral to the regulatory objective of ensuring heavy vehicle safety</p>

Section of this Law	636(1)	636(2)	Basis for not exempting liability
			<p>through the contribution it makes to managing heavy vehicle speeding.</p> <p>The physical elements of the offences are not exclusively confined to the actions and judgement of a given individual (driver or otherwise) and executive officers can therefore reasonably control the relevant corporate conduct.</p> <p>The maximum penalty for an individual offender is \$10,000 for an offence against section 207 and \$4000 for an offence against section 208.</p>
<p>208 Duty not to cause driver to drive if particular Requirements not complied with</p>	<p>208(1)</p>	<p>208(1)</p>	<p>Section 208 implements section 20 of the Model Act on Heavy Vehicle Speeding Compliance. Executive officer liability is applied to this offence through section 8.</p> <p>It is an extended liability provisions that creates a duty to take all reasonable steps to ensure their activities will not cause speeding and prescribes specific minimum mandatory steps to be taken to prevent inappropriate scheduling. It is integral to the regulatory objective of ensuring heavy vehicle safety.</p> <p>The prescription of this offence for derivative liability is justified on the same grounds as the offence in section 207(1)</p>
<p>209 Duty to ensure loading arrangements will not cause driver to exceed speed limit</p>	<p>209(1)</p>	<p>209(1)</p>	<p>The offence implements section 22 of the Model Act on Heavy Vehicle Speeding Compliance. Executive officer liability is applied to this offence through section 8.</p> <p>This section is an extended liability provision that creates an obligation to safely manage speeding vehicles. It is integral to the regulatory objective of</p>

Section of this Law	636(1)	636(2)	Basis for not exempting liability
			<p>ensuring heavy vehicle safety.</p> <p>The physical elements of the offence are not exclusively confined to the actions and judgement of a given individual (driver or otherwise) and executive officers can therefore reasonably control the relevant corporate conduct.</p> <p>The maximum penalty for an individual offender is \$10,000; the second highest penalty provided for under the Bill.</p>
<p>212 Duty to ensure terms of consignment will not cause driver to exceed speed limit</p>	<p>212(1), 212(2)</p>	<p>212(1), 212(2)</p>	<p>This section implements section 25 of the Model Act on Heavy Vehicle Speeding Compliance. Executive officer liability is applied to this offence through section 8.</p> <p>This section is an extended liability provision. It is integral to the regulatory objective of ensuring heavy vehicle safety through the contribution it makes to managing heavy vehicle speeding.</p> <p>The physical elements of the offence are not exclusively confined to the actions and judgement of a given individual (driver or otherwise) and executive officers can therefore reasonably control the relevant corporate conduct.</p> <p>The maximum penalty for an individual offender is \$10,000; the second highest penalty provided for under the Bill</p>
<p>213 Duty not to make a demand that may result in driver exceeding the speed limit</p>	<p>213</p>	<p>213</p>	<p>This section implements section 25 of the Model Act on Heavy Vehicle Speeding Compliance. Executive officer liability is applied to this offence through section 8.</p> <p>This section is an extended liability provision. It is integral to the regulatory objective of ensuring heavy vehicle safety through the contribution it makes to</p>

Section of this Law	636(1)	636(2)	Basis for not exempting liability
			<p>managing heavy vehicle speeding.</p> <p>The physical elements of the offence are not exclusively confined to the actions and judgement of a given individual (driver or otherwise) and executive officers can therefore reasonably control the relevant corporate conduct.</p> <p>The maximum penalty for an individual offender is \$6000, a mid-range penalty under the Bill</p>
215 Particular requests etc. prohibited	215	215	<p>This section implements section 26 of the Model Act on Heavy Vehicle Speeding Compliance. Executive officer liability is applied to this offence through section 8.</p> <p>This section is an extended liability provision that creates a duty to safely manage speeding vehicles. It is integral to the regulatory objective of ensuring heavy vehicle safety.</p> <p>The physical elements of the offence are not exclusively confined to the actions and judgement of a given individual (driver or otherwise) and executive officers can therefore reasonably control the relevant corporate conduct.</p> <p>The range parties on whom the obligation is imposed and the nature of the obligation itself mean the offence is not exclusively confined to the actions and judgement of a given individual (driver or otherwise) and executive officers can therefore reasonably control the relevant corporate conduct.</p> <p>The maximum penalty for an individual offender is \$10,000; the second highest penalty provided for under the Bill</p>

Section of this Law	636(1)	636(2)	Basis for not exempting liability
216 Particular contracts etc. prohibited	216(1), 216(2)	216(1), 216(2)	<p>This section implements section 27 of the Model Act on Heavy Vehicle Speeding Compliance. Executive officer liability is applied to this offence through section 8.</p> <p>This section is an extended liability provision. It is integral to the regulatory objective of ensuring heavy vehicle safety through the contribution it makes to managing heavy vehicle speeding.</p> <p>A broad range of natural persons may commit the offences and bodies corporate and these offences are largely administrative in nature (arising from contract formation). The physical elements of the offence are not exclusively confined to the actions and judgement of a given individual (driver or otherwise) and executive officers can therefore reasonably control the relevant corporate conduct.</p> <p>The maximum penalty for an individual offender is \$10,000; the second highest penalty provided for under the Bill.</p>
219 Liability of employer etc. for speeding offence	219(1)	219(1)	<p>The offence implements section 27 of the Model Act on Heavy Vehicle Speeding Compliance. Executive officer liability is applied to this offence through section 8.</p> <p>This section is an extended liability provision. It is integral to the regulatory objective of ensuring heavy vehicle safety through the contribution it makes to managing heavy vehicle speeding.</p> <p>The range parties on whom the obligation is imposed and the nature of the obligation itself mean the offence is not exclusively confined to the actions and judgement of a given individual (driver or otherwise) and executive officers can therefore reasonably</p>

Section of this Law	636(1)	636(2)	Basis for not exempting liability
			<p>control the relevant corporate conduct.</p> <p>A range of graduated offences are provided under this section up to a maximum penalty for an individual offender is \$10,000; the second highest penalty provided for under the Bill</p>
<b>Chapter 6 - Vehicle operations – driver fatigue</b>			
<p>229 Duty of party in the extended liability to prevent driver driving while fatigued</p>	<p>229(1)</p>	<p>229(1)</p>	<p>The offence implements section 29 of the Heavy Vehicle Driver Fatigue National Model Legislation. Executive officer liability is applied to this offence through section 8.</p> <p>This section is an extended liability provision that imposes a duty on a party in the extended liability to prevent driver driving while fatigued. It is integral to the regulatory objective of ensuring heavy vehicle safety.</p> <p>The range parties on whom the obligation is imposed and the nature of the obligation itself mean the offence is not exclusively confined to the actions and judgement of a given individual (driver or otherwise) and executive officers can therefore reasonably control the relevant corporate conduct.</p> <p>The maximum penalty for an individual offender is \$10,000; the second highest penalty provided for under the Bill</p>
<p>230 Duty of employer, prime contractor or operator to ensure business practices will</p>	<p>230(1)</p>	<p>230(1)</p>	<p>The offence implements section 30 of the Heavy Vehicle Driver Fatigue National Model Legislation. Executive officer liability is applied to this offence through section 8 of that law.</p> <p>This section is an extended liability provision. It is integral to the regulatory</p>

Section of this Law	636(1)	636(2)	Basis for not exempting liability
not cause driver to drive while fatigued			<p>objective of ensuring heavy vehicle safety through the contribution it makes to managing driver fatigue.</p> <p>The breadth of the duty and range of parties to whom it applies means the elements of the offence are not exclusively confined to the actions and judgement of a given individual (driver or otherwise) and executive officers can therefore reasonably control the relevant corporate conduct.</p> <p>The maximum penalty for an individual offender is \$6000, a mid-range penalty under the Bill</p>
231 Duty of employer not to cause driver to drive if particular requirements not complied with	231(1)	231(1)	<p>The offence implements section 30 of the Heavy Vehicle Driver Fatigue National Model Legislation. Executive officer liability is applied to this offence through section 8 of that law</p> <p>This section is an extended liability provision. It is integral to the regulatory objective of ensuring heavy vehicle safety through the contribution it makes to managing driver fatigue.</p> <p>This offence may only be committed by an employer, and not a given individual (driver or otherwise). Executive officers can therefore reasonably control the relevant corporate conduct.</p> <p>The maximum penalty for an individual offender is \$4,000, a mid-range penalty under the Bill</p>
232 Duty of prime contractor or operator not to cause driver to	232(2)	232(2)	<p>The offence implements section 30 of the Heavy Vehicle Driver Fatigue National Model Legislation. Executive officer liability is applied to this offence through section 8 of that legislation.</p>

Section of this Law	636(1)	636(2)	Basis for not exempting liability
drive if particular Requirements not complied with			<p>This section is an extended liability provision. It is integral to the regulatory objective of ensuring heavy vehicle safety.</p> <p>The range of parties on whom the obligation is imposed and the nature of the obligation itself mean the offence is not exclusively confined to the actions and judgement of a given individual (driver or otherwise) and executive officers can therefore reasonably control the relevant corporate conduct.</p> <p>The maximum penalty for an individual offender is \$4,000, a mid-range penalty under the Bill</p>
233 Duty to ensure driver's schedule will not cause driver to drive while fatigued	233(1)	233(1)	<p>The offence implements section 31 of the Heavy Vehicle Driver Fatigue National Model Legislation. Executive officer liability is applied to this offence through section 8 of that legislation.</p> <p>This section is an extended liability provision. It is integral to the regulatory objective of ensuring heavy vehicle safety through the contribution it makes to managing driver fatigue.</p> <p>The maximum penalty for an individual offender is \$6000, a mid-range penalty under the Bill</p>
234 Duty not to cause driver to drive if particular Requirements not complied with	234(1)	234(1)	<p>The offence implements section 31 of the Heavy Vehicle Driver Fatigue National Model Legislation. Executive officer liability is applied to this offence through section 8 of that legislation.</p> <p>This section is an extended liability provision. It is integral to the regulatory objective of ensuring heavy vehicle safety through the contribution it makes to</p>

Section of this Law	636(1)	636(2)	Basis for not exempting liability
			<p>managing driver fatigue.</p> <p>The maximum penalty for an individual offender is \$6000, a mid-range penalty under the Bill</p>
<p>235 Duty to ensure terms of consignment will not cause driver to drive while fatigued</p>	<p>235(1), 235(2)</p>	<p>235(1), 235(2)</p>	<p>The offence implements section 32 of the Heavy Vehicle Driver Fatigue National Model Legislation. Executive officer liability is applied to this offence through section 8 of that legislation.</p> <p>This section is an extended liability provision. It is integral to the regulatory objective of ensuring heavy vehicle safety through the contribution it makes to managing driver fatigue.</p> <p>The maximum penalty for an individual offender is \$10,000; the second highest penalty provided for under the Bill</p>
<p>236 Duty not to cause driver to drive if particular Requirements not complied with</p>	<p>236(1)</p>	<p>236(1)</p>	<p>The offence implements section 32 of the Heavy Vehicle Driver Fatigue National Model Legislation. Executive officer liability is applied to this offence through section 8.</p> <p>This section is an extended liability provision. It is integral to the regulatory objective of ensuring heavy vehicle safety through the contribution it makes to managing driver fatigue.</p> <p>The maximum penalty for an individual offender is \$4,000, a mid-range penalty under the Bill.</p>
<p>237 Duty not to make a demand that may result in driver driving while</p>	<p>237(1)</p>	<p>237(1)</p>	<p>The offence implements section 32 of the Heavy Vehicle Driver Fatigue National Model Legislation. Executive officer liability is applied to this offence through section 8 of that legislation.</p>

Section of this Law	636(1)	636(2)	Basis for not exempting liability
fatigued			<p>This section is an extended liability provision. It is integral to the regulatory objective of ensuring heavy vehicle safety through the contribution it makes to managing driver fatigue.</p> <p>The maximum penalty for an individual offender is \$10,000; the second highest penalty provided for under the Bill</p>
238 Duty to ensure loading arrangements will not cause driver to drive while fatigued.	238(1)	238(1)	<p>The offence implements section 33 of the Heavy Vehicle Driver Fatigue National Model Legislation. Executive officer liability is applied to this offence through section 8 of that legislation.</p> <p>This section is an extended liability provision. It is integral to the regulatory objective of ensuring heavy vehicle safety through the contribution it makes to managing driver fatigue.</p> <p>The maximum penalty for an individual offender is \$10,000; the second highest penalty provided for under the Bill</p>
239 Duty to ensure drivers can rest in particular circumstances	239(2)	239(2)	<p>The offence implements section 33 of the Heavy Vehicle Driver Fatigue National Model Legislation. Executive officer liability is applied to this offence through section 8 of that legislation.</p> <p>This section is an extended liability provision. It is integral to the regulatory objective of ensuring heavy vehicle safety through the contribution it makes to managing driver fatigue.</p> <p>The maximum penalty for an individual offender is \$6000, a mid-range penalty under the Bill</p>
240 Particular	240	240	The offence implements section 34 of the

Section of this Law	636(1)	636(2)	Basis for not exempting liability
requests etc. Prohibited			<p>Heavy Vehicle Driver Fatigue National Model Legislation. Executive officer liability is applied to this offence through section 8 of that legislation.</p> <p>This section is an extended liability provision. It is integral to the regulatory objective of ensuring heavy vehicle safety through the contribution it makes to managing driver fatigue.</p> <p>The physical elements of the offence are not exclusively confined to the actions and judgement of a given individual (driver or otherwise) and executive officers can therefore reasonably control the relevant corporate conduct.</p> <p>The maximum penalty for an individual offender is \$10,000; the second highest penalty provided for under the Bill</p>
241 Particular contracts etc. Prohibited	241(1), 241(2)	241(1), 241(2)	<p>The offence implements section 34 of the Heavy Vehicle Driver Fatigue National Model Legislation. Executive officer liability is applied to this offence through section 8.</p> <p>This section is an extended liability provision. It is integral to the regulatory objective of ensuring heavy vehicle safety through the contribution it makes to managing driver fatigue.</p> <p>The offences may be committed by a broad range of natural persons and bodies corporate and these offences are largely administrative in nature (arising from contract formation). The physical elements of the offence are not exclusively confined to the actions and judgement of a given individual (driver or otherwise) and executive officers can therefore reasonably</p>

Section of this Law	636(1)	636(2)	Basis for not exempting liability
			<p>control the relevant corporate conduct</p> <p>The maximum penalty for an individual offender is \$10,000; the second highest penalty provided for under the Bill</p>
<p>261 Liability of employer etc. for driver's contravention of maximum work requirement or minimum rest requirement</p>	<p>261(2)</p>	<p>261(2)</p>	<p>The offence implements section 91 of the Heavy Vehicle Driver Fatigue National Model Legislation. Executive officer liability is applied to this offence through section 8 of that legislation.</p> <p>This section is an extended liability provision. It is integral to the regulatory objective of ensuring heavy vehicle safety through the contribution it makes to managing driver fatigue.</p> <p>The range of parties on whom the obligation is imposed and the nature of the obligation itself mean the offence is not exclusively confined to the actions and judgement of a given individual (driver or otherwise) and executive officers can therefore reasonably control the relevant corporate conduct.</p> <p>The maximum penalty that may be imposed for an offence under this section is \$15,000 for a critical risk breach; the highest penalty provided for under the Bill.</p>
<p>264 Duty of employer, prime contractor, operator and scheduler to ensure driver compliance</p>	<p>264(2)</p>	<p>264(2)</p>	<p>The offence implements section 53 of the Heavy Vehicle Driver Fatigue National Model Legislation. Executive officer liability is applied to this offence through section 8 of that legislation.</p> <p>This section is an extended liability provision. It is integral to the regulatory objective of ensuring heavy vehicle safety through the contribution it makes to</p>

Section of this Law	636(1)	636(2)	Basis for not exempting liability
			<p>managing driver fatigue.</p> <p>The maximum penalty for an individual offender is \$6000, a mid-range penalty under the Bill</p>
284 Return of permit	284(2)	284(2)	<p>The offence implements section 101 of the Heavy Vehicle Driver Fatigue National Model Legislation. Executive officer liability is applied to this offence through section 8 of that legislation.</p> <p>The grounds on which a permit may be cancelled are set out in sections 280 and 281 and include cases where the permit was dishonestly obtained, or it is no longer assured of achieving the outcomes intended at its grant due to changing circumstances</p> <p>Failure to return a permit may facilitate noncompliance with the fatigue duties provided under the Act and prejudices the capacity of other duty holders to manage their own obligations.</p> <p>The maximum penalty for an individual offender is \$6000, a mid-range penalty under the Bill</p>
286 Contravening condition of work, and rest hours exemption	286(1)	286(1)	<p>The offence implements section 94B of the Heavy Vehicle Driver Fatigue National Model Legislation. Executive officer liability is applied to this offence through section 8 of that legislation.</p> <p>This section is an extended liability provision. It is integral to the regulatory objective of ensuring heavy vehicle safety through the contribution it makes to managing driver fatigue.</p> <p>There is arguably a higher level of blameworthiness arising from an offence</p>

Section of this Law	636(1)	636(2)	Basis for not exempting liability
			<p>under this provision given it only applies in circumstances where the ordinary operation of the Act has been suspended through the issuing of a work and rest hours exemption.</p> <p>The maximum penalty for an individual offender is \$6000, a mid-range penalty under the Bill</p>
<p>310 Intelligent access reporting entity must notify record keeper if approved electronic recording system malfunctioning</p>	<p>310(2)</p>	<p>310(2)</p>	<p>The offence implements section 59 of the Heavy Vehicle Driver Fatigue National Model Legislation. Executive officer liability is applied to this offence through section 8 of that legislation.</p> <p>The obligation imposed under this section will apply to a limited range of service providers with specialist expertise.</p> <p>Failure to discharge the obligation impacts the ability of other duty holders to satisfy their legal requirements including the management of driver safety. It is integral to the regulatory objective of ensuring heavy vehicle safety through the contribution it makes to managing driver fatigue.</p> <p>The maximum penalty for an individual offender is \$6000, a mid-range penalty under the Bill</p>
<p>311 What record keeper must do if electronic work diary destroyed, lost or stolen</p>	<p>311(2)</p>	<p>311(2)</p>	<p>The offence implements section 59 of the Heavy Vehicle Driver Fatigue National Model Legislation. Executive officer liability is applied to this offence through section 8 of that legislation.</p> <p>The obligation imposed under this section will apply to a limited range of service providers with specialist expertise.</p>

Section of this Law	636(1)	636(2)	Basis for not exempting liability
			<p>Failure to discharge the obligation impacts the ability of other duty holders to satisfy their legal requirements including the management of driver safety. It is integral to the regulatory objective of ensuring heavy vehicle safety through the contribution it makes to managing driver fatigue.</p> <p>The maximum penalty for an individual offender is \$6000, a mid-range penalty under the Bill</p>
<p>312 What record keeper must do if electronic work diary destroyed, lost or stolen</p>	<p>312(2)</p>	<p>312(2)</p>	<p>The offence implements section 59 of the Heavy Vehicle Driver Fatigue National Model Legislation. Executive officer liability is applied to this offence through section 8 of that legislation.</p> <p>The obligation imposed under this section will apply to a limited range of service providers with specialist expertise.</p> <p>Failure to discharge the obligation impacts the ability of other duty holders to satisfy their legal requirements including the management of driver safety. It is integral to the regulatory objective of ensuring heavy vehicle safety through the contribution it makes to managing driver fatigue.</p> <p>The maximum penalty for an individual offender is \$6000, a mid-range penalty under the Bill</p>
<p>313 What record keeper must do if electronic work diary not in working order or</p>	<p>313(2)</p>	<p>313(2)</p>	<p>The offence implements section 59 of the Heavy Vehicle Driver Fatigue National Model Legislation. Executive officer liability is applied to this offence through section 8 of that legislation.</p> <p>The obligation in respect of which liability</p>

Section of this Law	636(1)	636(2)	Basis for not exempting liability
malfunctioning.			<p>arises is relevant to the regulatory objective of ensuring heavy vehicle safety through the contribution it makes to managing driver fatigue.</p> <p>The obligation imposed under this section will apply to a limited range of service providers with specialist expertise.</p> <p>Failure to discharge the obligation impacts the ability of other duty holders to satisfy their legal requirements including the management of driver safety. It is integral to the regulatory objective of ensuring heavy vehicle safety through the contribution it makes to managing driver fatigue.</p> <p>The maximum penalty for an individual offender is \$6000, a mid-range penalty under the Bill</p>
314 How electronic work diary must be used	314(3)	---	<p>The offence implements section 76B of the Heavy Vehicle Driver Fatigue National Model Legislation. Executive officer liability is applied to this offence through section 8 of that legislation.</p> <p>The obligation imposed under this section (to comply with the conditions of use for the electronic work diary) applies to the actions of the driver and is therefore largely under his or her control. Given that fact, it is unreasonable to extend derivative liability to an executive officer on the basis of recklessness and the offence is therefore not a provision prescribed for the purposes of section 636(2).</p> <p>Failure to discharge the obligation impacts the ability of the driver as well as other duty holders to satisfy their legal</p>

Section of this Law	636(1)	636(2)	Basis for not exempting liability
			<p>requirements including the management of driver safety. It is integral to the regulatory objective of ensuring heavy vehicle safety through the contribution it makes to managing driver fatigue.</p> <p>The maximum penalty for an individual offender is \$6000, a mid-range penalty under the Bill</p>
<p>315 Liability of employer etc. for driver's contravention of particular requirements for this division</p>	<p>315(2)</p>	<p>315(2)</p>	<p>The offence implements section 61 of the Heavy Vehicle Driver Fatigue National Model Legislation. Executive officer liability is applied to this offence through section 8 of that legislation.</p> <p>This section establishes the primary extended liability offence to ensure compliance with the record-keeping obligations in the Bill. It applies to a range of clearly identified parties.</p> <p>Accurate record keeping, electronic or otherwise, is an essential tool in the management and self-management of fatigue in drivers of heavy vehicles. The records produced also provide enforcement agencies with the necessary information to ensure compliance.</p> <p>The obligation in respect of which liability arises is relevant to the regulatory objective of ensuring heavy vehicle safety through the contribution it makes to managing driver fatigue.</p> <p>The range parties of parties on whom the obligation is imposed and the nature of the obligation itself mean the offence is not exclusively confined to the actions and judgement of a given individual (driver or otherwise) and executive officers can therefore reasonably control the relevant</p>

Section of this Law	636(1)	636(2)	Basis for not exempting liability
			<p>corporate conduct.</p> <p>The maximum penalty for an individual offender is \$6000, a mid-range penalty under the Bill</p>
319 Records record keeper must have	319(1)	319(1)	<p>The offence implements section 62 of the Heavy Vehicle Driver Fatigue National Model Legislation. Executive officer liability is applied to this offence through section 8 of that legislation.</p> <p>The offence contemplates the contracting out of the obligations under subsection (1).</p> <p>Accurate record keeping, electronic or otherwise, is an essential tool in the management and self-management of fatigue in drivers of heavy vehicles. The records produced also provide enforcement agencies with the necessary information to ensure compliance.</p> <p>The obligation in respect of which liability arises is relevant to the regulatory objective of ensuring heavy vehicle safety through the contribution it makes to managing driver fatigue.</p> <p>The maximum penalty for an individual offender is \$6000, a mid-range penalty under the Bill</p>
321Records record keeper must have	321(1), 321(2)	321(1), 321(2)	<p>The offence implements section 62 of the Heavy Vehicle Driver Fatigue National Model Legislation. Executive officer liability is applied to this offence through section 8 of that legislation.</p> <p>Accurate record keeping, electronic or otherwise, is an essential tool in the management and self-management of fatigue in drivers of heavy vehicles. The</p>

Section of this Law	636(1)	636(2)	Basis for not exempting liability
			<p>records produced also provide enforcement agencies with the necessary information to ensure compliance.</p> <p>The obligations in respect of which liability arises are relevant to the regulatory objective of ensuring heavy vehicle safety through the contribution the make to managing driver fatigue.</p> <p>The maximum penalty for an individual offender is \$6000, a mid-range penalty under the Bill</p>
322 General Requirements about driver giving information to record keeper	322(4)	322(4)	<p>The offence implements section 62 of the Heavy Vehicle Driver Fatigue National Model Legislation. Executive officer liability is applied to this offence through section 8 of that legislation.</p> <p>The obligation in respect of which liability arises is relevant to the regulatory objective of ensuring heavy vehicle safety through the contribution it makes to managing driver fatigue.</p> <p>The offence contemplates the contracting out of the obligations under subsection (1) and the use of records produced through the use of an electronic work diary. Given the involvement of these parties, it is unreasonable to exclude derivative liability for this offence on the basis the elements of the offence are primarily or exclusively within the knowledge and control of the driver or another given individual. .</p> <p>The maximum penalty for an individual offender is \$3,000, a low-range penalty under the Bill.</p>
323 Requirements	323(3)	323(3)	The offence implements section 62 of the Heavy Vehicle Driver Fatigue National

Section of this Law	636(1)	636(2)	Basis for not exempting liability
<p>about driver giving information to record keeper if driver changes record keeper</p>			<p>Model Legislation. Executive officer liability is applied to this offence through section 8 of that legislation.</p> <p>Accurate record keeping, electronic or otherwise, is an essential tool in the management and self-management of fatigue in drivers of heavy vehicles. The records produced also provide enforcement agencies with the necessary information to ensure compliance.</p> <p>The obligation in respect of which liability arises is relevant to the regulatory objective of ensuring heavy vehicle safety through the contribution it makes to managing driver fatigue.</p> <p>The maximum penalty for an individual offender is \$3,000, a low-range penalty under the Bill.</p>
<p>324 Record keeper must give printouts of information from electronic work diary</p>	<p>324(2)</p>	<p>324(2)</p>	<p>The offence implements section 62 of the Heavy Vehicle Driver Fatigue National Model Legislation. Executive officer liability is applied to this offence through section 8 of that legislation.</p> <p>Accurate record keeping, electronic or otherwise, is an essential tool in the management and self-management of fatigue in drivers of heavy vehicles. The records produced also provide enforcement agencies with the necessary information to ensure compliance.</p> <p>The obligation in respect of which liability arises is relevant to the regulatory objective of ensuring heavy vehicle safety through the contribution it makes to managing driver fatigue.</p> <p>The maximum penalty for an individual</p>

Section of this Law	636(1)	636(2)	Basis for not exempting liability
			offender is \$3,000, a low-range penalty under the Bill.
327 Possession of purported work records etc. prohibited	327	327	<p>The offence implements section 66 of the Heavy Vehicle Driver Fatigue National Model Legislation. Executive officer liability is applied to this offence through section 8 of that legislation.</p> <p>Accurate record keeping, electronic or otherwise, is an essential tool in the management and self-management of fatigue in drivers of heavy vehicles. The records produced also provide enforcement agencies with the necessary information to ensure compliance.</p> <p>The offence may be committed by drivers or record keepers but is justified for retention primarily on the basis of the seriousness of the offence involved.</p> <p>The maximum penalty for an individual offender is \$10,000; the second highest penalty provided for under the Bill.</p>
328 False representation about work records prohibited	328	---	<p>The offence implements section 68 of the Heavy Vehicle Driver Fatigue National Model Legislation. Executive officer liability is applied to this offence through section 8 of that legislation.</p> <p>Accurate record keeping, electronic or otherwise, is an essential tool in the management and self-management of fatigue in drivers of heavy vehicles. The records produced also provide enforcement agencies with the necessary information to ensure compliance.</p> <p>Given the commission of an offence is likely to substantially involve the actions and judgement of a given individual it</p>

Section of this Law	636(1)	636(2)	Basis for not exempting liability
			<p>would be unreasonable to extend derivative liability to an executive officer on the basis of recklessness by specifying it for the purposes of section 636(2). However, given the seriousness of the offence, the breadth of circumstances in which it could be committed and range of potential offenders suggests it is reasonable for inclusion as an offence specified for the purposes of section 636(1).</p> <p>The maximum penalty for an individual offender is \$10,000; the second highest penalty provided for under the Bill.</p>
<p>329 Defacing or changing work records etc. prohibited</p>	<p>329</p>	<p>---</p>	<p>The offence implements section 67 of the Heavy Vehicle Driver Fatigue National Model Legislation. Executive officer liability is applied to this offence through section 8 of that legislation.</p> <p>Accurate record keeping, electronic or otherwise, is an essential tool in the management and self-management of fatigue in drivers of heavy vehicles. The records produced also provide enforcement agencies with the necessary information to ensure compliance.</p> <p>Given the commission of an offence is likely to substantially involve the actions and judgement of a given individual it would be unreasonable to extend derivative liability to an executive officer on the basis of recklessness by specifying it for the purposes of section 636(2). However, given the seriousness of the offence, the breadth of circumstances in which it could be committed and range of potential offenders suggests it is reasonable for inclusion as an offence specified for the</p>

Section of this Law	636(1)	636(2)	Basis for not exempting liability
			<p>purposes of section 636(1).</p> <p>The maximum penalty for an individual offender is \$10,000; the second highest penalty provided for under the Bill.</p>
330 Making entries in someone else's work records prohibited	330(1)	---	<p>The offence implements section 69 of the Heavy Vehicle Driver Fatigue National Model Legislation. Executive officer liability is applied to this offence through section 8 of that legislation.</p> <p>Accurate record keeping, electronic or otherwise, is an essential tool in the management and self-management of fatigue in drivers of heavy vehicles. The records produced also provide enforcement agencies with the necessary information to ensure compliance.</p> <p>Given the commission of an offence is likely to substantially involve the actions and judgement of a given individual it would be unreasonable to extend derivative liability to an executive officer on the basis of recklessness by specifying it for the purposes of section 636(2). However, given the seriousness of the offence, the breadth of circumstances in which it could be committed and range of potential offenders suggests it is reasonable for inclusion as an offence specified for the purposes of section 636(1).</p> <p>The maximum penalty for an individual offender is \$10,000; the second highest penalty provided for under the Bill.</p>
331 Destruction of particular work records	331	---	<p>The offence implements section 70 of the Heavy Vehicle Driver Fatigue National Model Legislation. Executive officer liability is applied to this offence through</p>

Section of this Law	636(1)	636(2)	Basis for not exempting liability
prohibited			<p>section 8 of that legislation.</p> <p>The obligation in respect of which liability arises is relevant to the regulatory objective of ensuring heavy vehicle safety through the contribution it makes to managing driver fatigue.</p> <p>Given the commission of an offence is likely to substantially involve the actions and judgement of a given individual it would be unreasonable to extend derivative liability to an executive officer on the basis of recklessness by specifying it for the purposes of section 636(2). However, given the seriousness of the offence, the breadth of circumstances in which it could be committed and range of potential offenders suggests it is reasonable for inclusion as an offence specified for the purposes of section 636(1).</p> <p>The maximum penalty for an individual offender is \$10,000; the second highest penalty provided for under the Bill.</p>
332 Offence to remove pages from written work diary	332	---	<p>There is no directly corresponding provision for this offence in the model laws on which the Act is based.</p> <p>Accurate record keeping, electronic or otherwise, is an essential tool in the management and self-management of fatigue in drivers of heavy vehicles. The records produced also provide enforcement agencies with the necessary information to ensure compliance.</p> <p>Given the commission of an offence is likely to substantially involve the actions and judgement of a given individual it would be unreasonable to extend derivative</p>

Section of this Law	636(1)	636(2)	Basis for not exempting liability
			<p>liability to an executive officer on the basis of recklessness by specifying it for the purposes of section 636(2). However, given the seriousness of the offence, the breadth of circumstances in which it could be committed and range of potential offenders suggests it is reasonable for inclusion as an offence specified for the purposes of section 636(1).</p> <p>The maximum penalty for an individual offender is \$10,000; the second highest penalty provided for under the Bill.</p>
335 Person must not tamper with approved electronic recording system	335(1)	335(1)	<p>The offence implements section 71 of the Heavy Vehicle Driver Fatigue National Model Legislation. Executive officer liability is applied to this offence through section 8.</p> <p>Accurate record keeping, electronic or otherwise, is an essential tool in the management and self-management of fatigue in drivers of heavy vehicles. The records produced also provide enforcement agencies with the necessary information to ensure compliance with regulatory obligations.</p> <p>The range parties on whom the obligation is imposed and the nature of the obligation itself mean the offence is not exclusively confined to the actions and judgement of a given individual (driver or otherwise) and executive officers can therefore reasonably control the relevant corporate conduct.</p> <p>The maximum penalty for an individual offender is \$10,000; the second highest penalty provided for under the Bill.</p>
336 Person using approved	336(1)	336(1)	The offence implements section 71 of the Heavy Vehicle Driver Fatigue National

Section of this Law	636(1)	636(2)	Basis for not exempting liability
electronic recording system must not permit tampering with it			<p>Model Legislation. Executive officer liability is applied to this offence through section 8 of that legislation.</p> <p>Accurate record keeping, electronic or otherwise, is an essential tool in the management and self-management of fatigue in drivers of heavy vehicles. The records produced also provide enforcement agencies with the necessary information to ensure compliance with regulatory obligations.</p> <p>The maximum penalty for an individual offender is \$10,000; the second highest penalty provided for under the Bill.</p>
337 Intelligent access reporting entity must not permit tampering with approved electronic recording system	337(2)	337(2)	<p>The offence implements section 71 of the Heavy Vehicle Driver Fatigue National Model Legislation. Executive officer liability is applied to this offence through section 8 of that legislation.</p> <p>Accurate record keeping, electronic or otherwise, is an essential tool in the management and self-management of fatigue in drivers of heavy vehicles. The records produced also provide enforcement agencies with the necessary information to ensure compliance with regulatory obligations.</p> <p>The maximum penalty for an individual offender is \$10,000; the second highest penalty provided for under the Bill.</p>
341 Period for which, and in which, records must be kept	341(1), 341(2), 341(3), 341(4)	341(1), 341(2), 341(3), 341(4)	<p>Accurate record keeping, electronic or otherwise, is an essential tool in the management and self-management of fatigue in drivers of heavy vehicles. The records produced also provide enforcement agencies with the necessary information to</p>

Section of this Law	636(1)	636(2)	Basis for not exempting liability
			<p>ensure compliance with regulatory obligations.</p> <p>The nature of the duty is largely administrative and this fact, in combination with the range of parties to whom it applies means the elements of the offence are not exclusively confined to the actions and judgement of a given individual (driver or otherwise) and executive officers can therefore reasonably control the relevant corporate conduct.</p> <p>Penalties for contraventions of this section range from \$3,000 (a low range penalty) to \$6000 (a mid range penalty)</p>
347 Placing electronic work diary label on device	347(2), 347(3)	---	<p>The offence implements section 74A of the Heavy Vehicle Driver Fatigue National Model Legislation. Executive officer liability is applied to this offence through section 8 of that legislation.</p> <p>Accurate record keeping, electronic or otherwise, is an essential tool in the management and self-management of fatigue in drivers of heavy vehicles. The records produced also provide enforcement agencies with the necessary information to ensure compliance with regulatory obligations. An offence under this section may misrepresent the authorisation of capability of an electronic work diary and interfere with those objectives. The nature of the offence suggests however that it would be unreasonable to specify it for the purposes of section 636 (2).</p> <p>The nature of the obligation is largely administrative and this fact, in combination with the range of parties to whom it applies means the elements of the offence are not</p>

Section of this Law	636(1)	636(2)	Basis for not exempting liability
			<p>exclusively confined to the actions and judgement of a given individual (driver or otherwise) and executive officers can therefore reasonably control the relevant corporate conduct.</p> <p>The maximum penalty for an individual offender is \$10,000; the second highest penalty provided for under the Bill.</p>
<p>350 Prohibition on using device as electronic work diary if it is not, and is not a part of an approved electronic recording system.</p>	<p>350(1), 350(2)</p>	<p>350(1), 350(2)</p>	<p>The offence implements section 74A of the Heavy Vehicle Driver Fatigue National Model Legislation. Executive officer liability is applied to this offence through s section 8 of that legislation.</p> <p>Accurate record keeping, electronic or otherwise, is an essential tool in the management and self-management of fatigue in drivers of heavy vehicles. The records produced also provide enforcement agencies with the necessary information to ensure compliance with regulatory obligations.</p> <p>The maximum penalty for an individual offender is \$10,000; the second highest penalty provided for under the Bill.</p>
<p>354 Requirements if approval amended</p>	<p>354(3), 354(5)</p>	<p>354(3), 354(5)</p>	<p>The offence implements section 76A of the Heavy Vehicle Driver Fatigue National Model Legislation. Executive officer liability is applied to this offence through section 8 of that legislation.</p> <p>Accurate record keeping, electronic or otherwise, is an essential tool in the management and self-management of fatigue in drivers of heavy vehicles. The records produced also provide enforcement agencies with the necessary information to ensure compliance with regulatory</p>

Section of this Law	636(1)	636(2)	Basis for not exempting liability
			<p>obligations.</p> <p>This offence only arises where in the Regulator’s opinion, the amendment will, or is likely to, significantly affect the way the electronic recording system the subject of the approval is to be used, and on receipt of the relevant notice. Failure to comply with a requirement therefore self-evidently raises serious safety concerns as well as prejudicing the ability of other duty holders to manage their obligations under the Act.</p> <p>The maximum penalty for an individual offender is \$6000, a mid-range penalty under the Bill</p>
<p>355 Requirements if approval cancelled</p>	<p>355(2), 355(4), 355(6), 355(8)</p>	<p>355(2), 355(4), 355(6), 355(8)</p>	<p>The offence implements section 75A of the Heavy Vehicle Driver Fatigue National Model Legislation. Executive officer liability is applied to this offence through section 8 of that legislation.</p> <p>Accurate record keeping, electronic or otherwise, is an essential tool in the management and self-management of fatigue in drivers of heavy vehicles. The records produced also provide enforcement agencies with the necessary information to ensure compliance with regulatory obligations</p> <p>Noncompliance with the obligations in section 355 may prejudice the ability of other duty holders to manage their own obligations fatigue management obligations.</p> <p>The grounds on which such an approval can be cancelled are set out in section 352 and strongly suggest that continued use of the approval after cancellation is likely to</p>

Section of this Law	636(1)	636(2)	Basis for not exempting liability
			<p>be unsafe.</p> <p>The maximum penalty for an individual offender is \$6000, a mid-range penalty under the Bill</p>
373 Return of work diary exemption (permit)	373(2)	---	<p>The offence implements section 101 of the Heavy Vehicle Driver Fatigue National Model Legislation. Executive officer liability is applied to this offence through section 8.</p> <p>Failure to return a permit may facilitate noncompliance with the fatigue duties provided under the Act. And prejudice the capacity of other duty holders to manage their own obligations.</p> <p>Given the offence may only be committed in response to a notice provided under the Act, it would be inappropriate to prescribe it for the purposes of section 636(2)</p> <p>The maximum penalty for an individual offender is \$6000, a mid-range penalty under the Bill</p>
375 Contravening condition of work diary exemption	375	375	<p>The offence implements section 94B of the Heavy Vehicle Driver Fatigue National Model Legislation. Executive officer liability is applied to this offence through section 8 of that legislation.</p> <p>Work diary exemptions may only be issued where the Regulator is satisfied the class of work to which the exemption is to apply will not pose:</p> <ul style="list-style-type: none"> <li>• a significant risk to public safety; or</li> <li>• a significant risk of the drivers to whom the exemption is to apply</li> </ul>

Section of this Law	636(1)	636(2)	Basis for not exempting liability
			<p>driving on a road while impaired by fatigue.</p> <p>The conditions imposed in the exemption are likely to be included to mitigate the above risks. By implication contravening such a condition is likely to produce the adverse safety outcomes the conditions sought to avoid.</p> <p>There are sound arguments such noncompliance should attract additional blameworthiness on the basis the ordinarily applicable rules of operation have been suspended on the basis the conditions of the concession would be complied with.</p> <p>Given the range of circumstances in which the offence may be committed there is no basis to assume the physical elements of the offence will inevitably be exclusively confined to the actions and judgement of a given individual (driver or otherwise). Executive officers can therefore reasonably control the relevant corporate conduct in most if not all plausible cases.</p> <p>The maximum penalty for an individual offender is \$6000, a mid-range penalty under the Bill</p>
396 Owner must maintain odometer	396(2)	396(2)	<p>The offence implements section 60 of the Heavy Vehicle Driver Fatigue National Model Legislation. Executive officer liability is applied to this offence through section 8 of that legislation.</p> <p>A properly functioning odometer is likely to remain necessary for the majority of fatigue regulated duty holders to meet their obligations under the Act for the foreseeable future. The absence of such will compromise the capacity of drivers</p>

Section of this Law	636(1)	636(2)	Basis for not exempting liability
			<p>and other parties to safely manage their record keeping and fatigue management obligations with obvious safety implications.</p> <p>Given this offence arises in relation to the mechanical condition of the vehicle there is no basis to assume the physical elements of the offence will inevitably be exclusively confined to the actions and judgement of a given individual (driver or otherwise). Executive officers can therefore reasonably control the relevant corporate conduct in most if not all plausible cases.</p> <p>The maximum penalty for an individual offender is \$6000, a mid-range penalty under the Bill</p>
398 What owner must do if odometer malfunctioning	398(2)	398(2)	<p>The offence implements section 60 of the Heavy Vehicle Driver Fatigue National Model Legislation. Executive officer liability is applied to this offence through section 8 of that legislation.</p> <p>The prescription of this offence for derivative liability is justified on the same grounds as the offence in section 396.</p> <p>The maximum penalty for an individual offender is \$6000, a mid-range penalty under the Bill</p>
399 What employer or operator must do if odometer malfunctioning	399(2)	399(2)	<p>The offence implements section 60 of the Heavy Vehicle Driver Fatigue National Model Legislation. Executive officer liability is applied to this offence through section 8 of that legislation.</p> <p>The prescription of this offence for derivative liability is justified on the same</p>

Section of this Law	636(1)	636(2)	Basis for not exempting liability
			<p>grounds as the offence in section 396.</p> <p>This offence may only be committed by an employer, and not a given individual (driver or otherwise). Executive officers can therefore reasonably control the relevant corporate conduct.</p> <p>The maximum penalty for an individual offender is \$6000, a mid-range penalty under the Bill</p>
<b>Chapter 7 - Intelligent Access Program</b>			
404 Offence to give false or misleading information to intelligent access service provider	404(1), 404(4)	404(1), 404(4)	<p>The offence implements section 10 of the Model Legislation — Intelligent Access Program. Executive officer liability is applied to this offence through section 5 of that legislation.</p> <p>The IAP may be used to monitor a broad range of conditions potentially including speed and fatigue management. The provision of misleading information may compromise the integrity of the monitoring system as a whole to ensure compliance with these conditions with the obvious safety implications.</p> <p>The maximum penalty for an individual offender is \$10,000; the second highest penalty provided for under the Bill.</p>
405 Advising vehicle driver of collection of information by intelligent access service provider	405(1)	---	<p>The offence implements section 11 of the Model Legislation — Intelligent Access Program. Executive officer liability is applied to this offence through section 5 of that legislation.</p> <p>The maximum penalty for an individual offender is \$6,000, a mid-range penalty under the Bill</p>
406 Reporting	406(1),	406(1)	The offence implements section 12 of the

Section of this Law	636(1)	636(2)	Basis for not exempting liability
system malfunctions to Regulator	406(2)		<p>Model Legislation — Intelligent Access Program. Executive officer liability is applied to this offence through section 5 of that legislation.</p> <p>Failure to abide by this obligation may compromise the integrity of the monitoring system as a whole to ensure compliance with these conditions with the obvious safety implications.</p> <p>The maximum penalty for an individual offender is \$6,000, a mid-range penalty under the Bill</p>
417 Giving intelligent access auditor access to records	417	---	<p>The offence implements section 15 of the Model Legislation — Intelligent Access Program. Executive officer liability is applied to this offence through section 5 of that legislation.</p> <p>The nature of the offence suggests it would unlikely if not impossible to arise in circumstances of (mere) recklessness so it is inappropriate to prescribe it for the purposes of sections 636(2).</p> <p>The maximum penalty for an individual offender is \$6000, a mid-range penalty under the Bill</p>
422 Reporting relevant contraventions to Regulator	422(2)	422(2)	<p>The offence implements section 20 of the Model Legislation — Intelligent Access Program. Executive officer liability is applied to this offence through section 5 of that legislation.</p> <p>The maximum penalty for an individual offender is \$6,000, a mid-range penalty under the Bill</p>
423 Reporting tampering or	423(1)	423(1)	<p>The offence implements section 21 of the Model Legislation — Intelligent Access</p>

Section of this Law	636(1)	636(2)	Basis for not exempting liability
suspected tampering with approved intelligent transport system.			<p>Program. Executive officer liability is applied to this offence through section 5 of that legislation.</p> <p>Failure to abide by this obligation may compromise the integrity of the monitoring system as a whole to ensure compliance with these conditions with the obvious safety implications.</p> <p>The maximum penalty for an individual offender is \$6000, a mid-range penalty under the Bill</p>
424 Restriction on disclosing information about tampering or suspected tampering with approved intelligent transport system.	424(1), 424(3)	424(1), 424(3)	<p>The offence implements section 21 of the Model Legislation — Intelligent Access Program. Executive officer liability is applied to this offence through section 5 of that legislation.</p> <p>The commission of an offence under this section may impede the proper administration of the Act and compromise compliance activity.</p> <p>The maximum penalty for an individual offender is \$6000, a mid-range penalty under the Bill</p>
451 Reporting contraventions by intelligent access service providers to TCA	451	451	<p>The offence implements section 42 of the Model Legislation — Intelligent Access Program. Executive officer liability is applied to this offence through section 5 of that legislation.</p> <p>The commission of an offence under this section may impede the proper administration of the Act and compromise compliance activity.</p> <p>The maximum penalty for an individual offender is \$6000, a mid-range penalty under the Bill</p>

Section of this Law	636(1)	636(2)	Basis for not exempting liability
452 Reporting tampering or suspected tampering with approved intelligent transport system to Regulator or TCA	452	452	<p>The offence implements section 43 of the Model Legislation — Intelligent Access Program. Executive officer liability is applied to this offence through section 5 of that legislation.</p> <p>The commission of an offence under this section may impede the proper administration of the Act and compromise compliance activity.</p> <p>The maximum penalty for an individual offender is \$6000, a mid-range penalty under the Bill</p>
453 Restriction on disclosing information about tampering or suspected tampering with approved intelligent transport system	453(1), 453(2)	453(1), 453(2)	<p>The commission of an offence under this section may impede the proper administration of the Act and compromise compliance activity.</p> <p>The commission of an offence under this section may impede the proper administration of the Act and compromise compliance activity.</p> <p>The maximum penalty for an individual offender is \$6000, a mid-range penalty under the Bill.</p>
454 Offence to tamper with approved intelligent transport system	454(1), 454(2)	454(1), 454(2)	<p>The offence implements section 45 of the Model Legislation — Intelligent Access Program. Executive officer liability is applied to this offence through section 5 of that legislation.</p> <p>Failure to abide by this obligation may compromise the integrity of the monitoring system as a whole to ensure compliance with these conditions with the obvious safety implications.</p> <p>The breadth of the duty and range of parties to whom it applies means the</p>

Section of this Law	636(1)	636(2)	Basis for not exempting liability
			<p>elements of the offence are not exclusively confined to the actions and judgement of a given individual (driver or otherwise) and executive officers can therefore reasonably control the relevant corporate conduct.</p> <p>The maximum penalty for an individual offender for a contravention of subsection (1) and (2) is \$10,000; the second highest penalty provided for under the Heavy Vehicle National Law and \$8000 (a high range penalty)</p>
<b>Chapter 8 - Accreditation</b>			
<p>467 Compliance with conditions of BFM accreditation or AFM accreditation</p>	467	467	<p>The offence implements sections 80 and 85 of the Heavy Vehicle Driver Fatigue National Model Legislation. Executive officer liability is applied to this offence through section 8 of that legislation.</p> <p>AFM and BFM accreditation represent alternative compliance arrangements to facilitate more intensive operations and may be subject to a broad range of conditions. Noncompliance with the conditions on which the accreditation is issued avoids the mitigating actions that are put in place to manage the risks associated with these more intensive operations.</p> <p>There are sound arguments such noncompliance should attract additional blameworthiness on the basis the ordinarily applicable rules of operation have been suspended on the basis the conditions of the concession would be complied with.</p> <p>The maximum penalty for an individual offender is \$6000, a mid-range penalty under the Bill</p>

Section of this Law	636(1)	636(2)	Basis for not exempting liability
<p>470 General Requirements applying to operator with heavy vehicle accreditation</p>	<p>470(2), 470(3), 470(4), 470(5), 470(6)</p>	<p>470(2), 470(3), 470(4), 470(5), 470(6)</p>	<p>The offence implements sections 81 and 87 of the Heavy Vehicle Driver Fatigue National Model Legislation. Executive officer liability is applied to this offence through section 8 of that legislation.</p> <p>Given the range of circumstances in which the offence may be committed there is no basis to assume the physical elements of the offence will inevitably be exclusively confined to the actions and judgement of a given individual (driver or otherwise). Executive officers can therefore reasonably control the relevant corporate conduct in most if not all plausible cases.</p> <p>The conditions that will be attached to the accreditation will most likely be directly relevant to ensuring the proper management of the work and rest of the driver, an issue with obvious safety implications.</p> <p>There are sound arguments such noncompliance should attract additional blameworthiness on the basis the ordinarily applicable rules of operation have been suspended on the basis the conditions of the concession would be complied with.</p> <p>The maximum penalty for an individual offender is \$6000, a mid-range penalty under the Bill</p>
<p>471 Operator must give notice of amendment, suspension or ending of heavy vehicle</p>	<p>471(2)</p>	<p>471(2)</p>	<p>The offence implements section 82 and 88 of the Heavy Vehicle Driver Fatigue National Model Legislation. Executive officer liability is applied to this offence through section 8 of that legislation.</p> <p>Failure to provide the notice may facilitate non-compliance in circumstances where</p>

Section of this Law	636(1)	636(2)	Basis for not exempting liability
accreditation			<p>the Regulator has determined the accreditation should be suspended or amended. This may also adversely impact the ability of other duty holders to safely manage their own activities and their legal obligations.</p> <p>(2) The maximum penalty for an individual offender is \$6000, a mid-range penalty under the Bill</p>
476 Return of accreditation certificate	476(2)	476(2)	<p>The offence implements section 101 of the Heavy Vehicle Driver Fatigue National Model Legislation. Executive officer liability is applied to this offence through section 8 of that legislation.</p> <p>Failure to return the certificate may facilitate non-compliance in circumstances where the Regulator has determined the accreditation should be suspended. This may also adversely impact the ability of other duty holders to safely manage their own activities and their legal obligations.</p> <p>The maximum penalty for an individual offender is \$6000, a mid-range penalty under the Bill.</p>
478 Offences relating to auditors	478(1), 478(2), 478(3), 478(4)	---	<p>The offence implements section 103 of the Heavy Vehicle Driver Fatigue National Model Legislation. Executive officer liability is applied to this offence through section 8</p> <p>The maximum penalty for an individual offender is \$10,000, the second highest penalty provided for under the Bill.</p>
<b>Chapter 9- Enforcement</b>			
514 Direction not to move or interfere with	514(3)	---	<p>This section implements section 28 of the Road Transport Reform (Compliance and Enforcement) Bill 2003. Executive officer</p>

Section of this Law	636(1)	636(2)	Basis for not exempting liability
heavy vehicle etc. to enable exercise of other powers			<p>liability attached to these offences under section 149 of that Bill.</p> <p>The commission of an offence under this section may impede the proper administration of the Act and compromise compliance activity.</p> <p>Given the commission of the offence is likely to substantially involve the actions and judgement of a given individual (driver or operator), it would be unreasonable to extend derivative liability to an executive officer on the basis of recklessness by specifying it under section 636(2)</p> <p>The maximum penalty for an individual offender is \$6000, a mid-range penalty under the Bill</p>
516 Direction to move heavy vehicle to enable exercise of other powers	516(3)	---	<p>This section implements section 29 of the Road Transport Reform (Compliance and Enforcement) Bill 2003. Executive officer liability attached to these offences under section 149 of that Bill.</p> <p>The commission of an offence under this section may impede the proper administration of the Act and compromise compliance activity.</p> <p>Given the commission of the offence is likely to substantially involve the actions and judgement of a given individual (driver or operator), it would be unreasonable to extend derivative liability to an executive officer on the basis of recklessness by specifying it under section 636(2)</p> <p>The maximum penalty for an individual offender is \$6000, a mid-range penalty</p>

Section of this Law	636(1)	636(2)	Basis for not exempting liability
			under the Bill
517 Direction to move heavy vehicle if causing harm etc.	517(4)	---	<p>This section implements section 30 of the Road Transport Reform (Compliance and Enforcement) Bill 2003. Executive officer liability attached to these offences under section 149 of that Bill.</p> <p>The commission of an offence under this section may impede the proper administration of the Act and compromise compliance activity.</p> <p>Given the commission of the offence is likely to substantially involve the actions and judgement of a given individual (driver or operator), it would be unreasonable to extend derivative liability to an executive officer on the basis of recklessness by specifying it under section 636(2).</p> <p>The maximum penalty for an individual offender is \$6000, a mid-range penalty under the Bill</p>
528 Defective vehicle labels	528(3)	---	<p>This section implements Regulation 40 of the <i>National Transport Commission (Road Transport Legislation -- Heavy Vehicles Registration Regulations) Regulations 2006</i>, Schedule 1. These regulations were made under the <i>Road Transport Reform (Heavy Vehicles Registration) Act 1997</i> (Cwth). This Act was expressly contemplated as a road law to which executive officer liability may attach under section 149 of the Road Transport Reform (Compliance and Enforcement) Bill 2003.</p> <p>A defect notice the subject of this offence may be issued where the authorised officer reasonably believes the vehicle presents an imminent and serious safety risk.</p>

Section of this Law	636(1)	636(2)	Basis for not exempting liability
			<p>Accordingly, there are substantial safety implications for other road users should such a direction be ignored. While the range of circumstances in which the offence can be committed justify extension of derivative liability under section 636(1), the act of removing or defacing the label is likely to be so far the product of the actions and judgement of a given individual (driver or operator), it would be unreasonable to extend derivative liability to an executive officer on the basis of recklessness by specifying it under section 636(2)</p> <p>The maximum penalty for an individual offender is \$3,000, a low-range penalty under the Bill.</p>
529 Using defective heavy vehicles contrary to vehicle defect notice	529	529	<p>This section implements Regulation 42 of the <i>National Transport Commission (Road Transport Legislation -- Heavy Vehicles Registration Regulations) Regulations 2006</i>, Schedule 1. These regulations were made under the <i>Road Transport Reform (Heavy Vehicles Registration) Act 1997</i> (Cwth). This Act was expressly contemplated as a road law to which executive officer liability may attach under section 149 of the <i>Road Transport Reform (Compliance and Enforcement) Bill 2003</i>.</p> <p>A defect notice, defacement or removal of which is the subject of this offence, may be issued where the authorised officer reasonably believes the vehicle presents an imminent and serious safety risk.</p> <p>Accordingly, there are substantial safety implications for other road users should such a direction be ignored.</p>

Section of this Law	636(1)	636(2)	Basis for not exempting liability
			The maximum penalty for an individual offender is \$3,000, a low-range penalty under the Bill.
533 Powers for minor risk breach of mass, dimension or loading requirement	533(7)	---	<p>This section implements sections 82 and 85 of the Road Transport Reform (Compliance and Enforcement) Bill 2003. Executive officer liability attached to these offences under section 149 of that Bill.</p> <p>Given the commission of the offence is likely to substantially involve the actions and judgement of a given individual (driver or operator), it would be unreasonable to extend derivative liability to an executive officer on the basis of recklessness by specifying it under section 636(2)</p> <p>The maximum penalty for an individual offender is \$10,000; the second highest penalty provided for under the Bill.</p>
534 Powers for substantial risk breach of mass, dimension or loading requirement	534(5)	---	<p>This section implements section 83 of the Road Transport Reform (Compliance and Enforcement) Bill 2003. Executive officer liability attached to these offences under section 149 of that Bill.</p> <p>Given the powers are only exercisable in relation to substantial breaches, there are substantial safety implications for other road users should such a direction be ignored.</p> <p>Given the commission of an offence is likely to substantially involve the actions and judgement of a given individual (driver or operator), it would be unreasonable to extend derivative liability to an executive officer on the basis of recklessness by specifying it under section</p>

Section of this Law	636(1)	636(2)	Basis for not exempting liability
			<p>636(2).</p> <p>The maximum penalty for an individual offender is \$10,000; the second highest penalty provided for under the Bill.</p>
<p>535 Powers for severe risk breach of mass, dimension or loading requirement</p>	<p>535(5)</p>	<p>---</p>	<p>This section implements section 84 of the Road Transport Reform (Compliance and Enforcement) Bill 2003. Executive officer liability attached to these offences under section 149 of that Bill.</p> <p>Given the powers are only exercisable in relation to severe breaches, there are substantial safety implications for other road users should such a direction be ignored.</p> <p>Given the commission of an offence is likely to substantially involve the actions and judgement of a given individual (driver or operator), it would be unreasonable to extend derivative liability to an executive officer on the basis of recklessness by specifying it under section 636(2)</p>
<p>553 Requirement of person in control of thing to be seized</p>	<p>553(3)</p>	<p>---</p>	<p>An offence against this section may result in the loss or destruction of evidence, compromising the capacity of the Regulator to effectively prosecute a range of offences under the law.</p> <p>The commission of an offence under this section may impede the proper administration of the Act and compromise compliance activity.</p> <p>Given fact the offence will be enlivened only on the receipt of a formal notice, specifying recklessness as a basis for extending derivative liability appears</p>

Section of this Law	636(1)	636(2)	Basis for not exempting liability
			<p>inappropriate.</p> <p>The maximum penalty for an individual offender is \$10,000; the second highest penalty provided for under the Bill.</p>
558 Non compliance with embargo notice	558(1), 558(3)	558(1), 558(3)	<p>This section implements section 55 of the Road Transport Reform (Compliance and Enforcement) Bill 2003. Executive officer liability attached to these offences under section 149 of that Bill</p> <p>An offence against this section may result in the loss or destruction of evidence, compromising the capacity of the Regulator to effectively prosecute a range of offences under the law.</p> <p>The section expressly contemplates the commission of an offence through the issuing of instructions, a matter within the ordinary prerogatives of management. Given the physical elements of the offence are not exclusively confined to the actions and judgement of a given individual (driver or otherwise) executive officers can reasonably be expected to control the relevant corporate conduct and derivative liability appropriate.</p> <p>The maximum penalty for an individual offender is \$10,000; the second highest penalty provided for under the Bill.</p>
559 Power to secure embargoed thing	559(3), 559(4), 559(5)	559(3), 559(4), 559(5)	<p>The commission of an offence under this section may impede the proper administration of the Act and compromise compliance activity.</p> <p>Given the breadth of the range of circumstances in which the power may be exercised and an offence committed, the exclusion of derivative liability would be</p>

Section of this Law	636(1)	636(2)	Basis for not exempting liability
			<p>inappropriate.</p> <p>The maximum penalty for an individual offender is \$10 000; the second highest penalty provided for under the Bill.</p>
<p>567 Power to require name, address and date of birth</p>	<p>567(4)</p>	<p>---</p>	<p>This section implements section 42 of the Road Transport Reform (Compliance and Enforcement) Bill 2003. Executive officer liability attached to these offences under section 149 of that Bill</p> <p>This offence extends to responsible persons and other persons involved in commission of an offence or may possess information to assist in the investigation of an offence against this law. It is conceivable therefore that there are circumstances in which the relevant person may be subject to the direct control of their employer or whose behaviour may be able to be otherwise influenced by their employer. On this basis there is justification for extending derivative liability to an executive officer.</p> <p>Given the offence inevitably involves the participation of a driver at some level, it would not be reasonable to further extend liability to an executive officer on the basis of recklessness alone.</p> <p>Obtaining this information in an accurate and timely way may be critical to the investigation of serious offences under the law, and the provisions justified on being central to the regulatory scheme on that basis.</p> <p>The maximum penalty for an individual offender is \$3,000, a low-range penalty under the Bill.</p>

Section of this Law	636(1)	636(2)	Basis for not exempting liability
568 Power to require production of document etc. required to be in drivers possession	568(7)	---	<p>This section implements sections 41 and 44 of the Road Transport Reform (Compliance and Enforcement) Bill 2003. Executive officer liability attached to these offences under section 149 of that Bill</p> <p>While an offence against this section may only be committed by a driver, it may be committed in circumstances (particularly for 568(1)(b)) where it would be reasonably expected the driver was under the supervision of his or her employer. On this basis it is reasonable to extend derivative liability to an executive officer where their management systems fail to adequately ensure compliance. The documents that may be the subject of such a requirement are critical evidential tools in determining compliance (work diaries etc.).</p> <p>The commission of an offence under this section may impede the proper administration of the Act and compromise compliance activity.</p> <p>Given the offence inevitably involves the participation of a driver at some level, it would not be reasonable to further extend liability to an executive officer on the basis of recklessness alone.</p> <p>The maximum penalty for an individual offender is \$3,000, a low-range penalty under the Bill.</p>
569 Power to require production of documents etc. generally	569(2), 569(7)	---	<p>This section implements sections 41 and 44 of the Road Transport Reform (Compliance and Enforcement) Bill 2003. Executive officer liability attached to these offences under section 149 of that Bill.</p> <p>The offences can be committed by the full</p>

Section of this Law	636(1)	636(2)	Basis for not exempting liability
			<p>range of responsible persons and in relation to a similarly broad spectrum of documents and devices.</p> <p>This power is essential to facilitate the investigation of most if not all offences under the Bill. The commission of an offence under this section may impede the proper administration of the Act and compromise compliance activity.</p> <p>The maximum penalty for an individual offender is \$6000, a mid-range penalty under the Bill</p>
570 Power to require information about heavy vehicles	570(3)	---	<p>This section implements section 45 of the Road Transport Reform (Compliance and Enforcement) Bill 2003. Executive officer liability attached to these offences under section 149 of that Bill</p> <p>Offences may be committed by responsible persons and the requirements issued under this section may extend to information about persons, vehicle and loads extending well beyond the immediate knowledge of a driver.</p> <p>The commission of an offence under this section may impede the proper administration of the Act and compromise compliance activity.</p> <p>Given the above it is reasonable to assume the management of the response to this issue could be regulated through the ordinary internal management processes of a corporation and it would be reasonable to extend derivative liability for the purposes of section 636(1). However, given the offence may be committed in on the basis of failing to provide the personal</p>

Section of this Law	636(1)	636(2)	Basis for not exempting liability
			<p>information in subsection (1)(b), it would not be reasonable to prescribe this section for the purposes of subsection 636(2).</p> <p>The maximum penalty for an individual offender is \$6000, a mid-range penalty under the Bill</p>
573 Contravention of improvement notice	573(1)	573(1)	<p>This section implements section 119 of the Road Transport Reform (Compliance and Enforcement) Bill 2003. Executive officer liability attached to these offences under section 149 of that Bill.</p> <p>The stated action to be implemented through service of an improvement notice may and likely will extend beyond the operation of a heavy vehicle or other such localised matters. Implementing the terms of the notice and ensuring observation of the relevant obligations to make certain there is no repetition or continuation of the offence is matter executive officers can reasonably control. Given the above it is reasonable to extend derivative liability under this section.</p> <p>The commission of an offence under this section may impede the proper administration of the Act and compromise compliance activity.</p> <p>The maximum penalty for an individual offender is \$10,000; the second highest penalty provided for under the Bill.</p>
577 Power to require reasonable help	577(4)	---	<p>This section implements section 46 of the Road Transport Reform (Compliance and Enforcement) Bill 2003. Executive officer liability attached to these offences under section 149 of that Bill.</p> <p>Failure to comply with a requirement</p>

Section of this Law	636(1)	636(2)	Basis for not exempting liability
			<p>issued under this provision inhibits the effective enforcement of the law, and may render the performance of an authorised officer's functions more dangerous.</p> <p>The obligation imposed under this section is most likely to an individual driver and is therefore largely under his or her control. Given that fact, it is unreasonable to extend derivative liability to an executive officer on the basis of recklessness and the offence is therefore not a provision prescribed for the purposes of section 636(2).</p> <p>The maximum penalty for an individual offender is \$10,000; the second highest penalty provided for under the Bill.</p>
<b>Chapter 10 - Sanctions and provisions about liability for offences</b>			
604 Contravention of supervisory intervention order	604	604	<p>This section implements section 137 of the Road Transport Reform (Compliance and Enforcement) Bill 2003. Executive officer liability attached to these offences under section 149 of that Bill.</p> <p>The purpose of this instrument is to adopt a proactive approach to improving the performance of systematic or persistent offenders. It allows for the imposition of conditions that necessarily co-ordinate managerial involvement (e.g. the acceptance of supervision by an auditor, appointing or removing certain staff from particular positions, implementing training and supervision as required, installing monitoring, compliance management or operational equipment, implementing practices, systems or procedures). Executive officers can reasonably be expected to be to control these aspects of</p>

Section of this Law	636(1)	636(2)	Basis for not exempting liability
			<p>corporate conduct.</p> <p>The circumstances in which the orders may be made provide a strong argument for the extension of derivative liability for corporate non-compliance.</p> <p>The maximum penalty for an individual offender is \$10,000; the second highest penalty provided for under the Bill.</p>
<p>610 Contravention of prohibition order</p>	<p>610</p>	<p>610</p>	<p>This section implements section 139 of the Road Transport Reform (Compliance and Enforcement) Bill 2003. Executive officer liability attached to these offences under section 149 of that Bill.</p> <p>This sanction is reserved for systematic or persistent offending against the Bill and is the most severe sanction available under the law. It may be contravened through the person subject to the order and a person who ignores it in employing such a person.</p> <p>The management of employment relationships is by definition a managerial function and executive officers can reasonably be expected to be to control the relevant corporate conduct</p> <p>The past behaviour of a person subject to the order suggests that their continuing involvement in the industry is likely to lead to a continuation or repeat of behaviour which is likely to have had significant adverse safety or financial implications previously.</p> <p>The maximum penalty for an individual offender is \$10,000; the second highest penalty provided for under the Bill.</p>
<p><b>Chapter 13 - General</b></p>			

Section of this Law	636(1)	636(2)	Basis for not exempting liability
<p>699 Discrimination against or victimisation of employees</p>	<p>699(1), 699(2)</p>	<p>699(1), 699(2)</p>	<p>This section implements section 181 of the Road Transport Reform (Compliance and Enforcement) Bill 2003. Executive officer liability attached to these offences under section 149 of that Bill.</p> <p>The offence may be made can only be committed by an employer, and that employer may be a natural person or body corporate. The termination of employment relationships is by definition a managerial function and Executive officers can reasonably be expected to be to control the relevant corporate conduct.</p> <p>The victimisation of employees operates to prejudice the proper enforcement of provisions of the Bill and in acting as a deterrent to the notification of noncompliance, seeks to facilitate evasion of regulatory obligations. The underlying offences in respect of which behaviour is protected extends from the minor, to the most critical of offences, under the Bill.</p> <p>The maximum penalty for an individual offender is \$10,000; the second highest penalty provided for under the Bill.</p>
<p>700 Order for damages or reinstatement</p>	<p>700(4)</p>	<p>700(4)</p>	<p>This section implements section 181 of the Road Transport Reform (Compliance and Enforcement) Bill 2003. Executive officer liability attached to these offences under section 149 of that Bill.</p> <p>An order able to be made under this section relates to the payment of a financial penalty and or management of the employment relationship with the employee(s) concerned. Both matters are inherently managerial functions and executive officers can reasonably be</p>

Section of this Law	636(1)	636(2)	Basis for not exempting liability
			<p>expected to be to control the relevant corporate conduct.</p> <p>The maximum penalty for an individual offender is \$10,000; the second highest penalty provided for under the Bill.</p>
702 False or misleading documents	702(1), 702(3)	---	<p>This section implements section 183 of the Road Transport Reform (Compliance and Enforcement) Bill 2003. Executive officer liability attached to these offences under section 149 of that Bill.</p> <p>The documents referred to throughout this section maybe produced by a range of parties and the offence is therefore not necessarily limited to the actions judgement and control of a given individual (driver or otherwise). Executive officers can reasonably be expected to be to control the relevant corporate conduct.</p> <p>The offences under this section require proof of sufficient knowledge of or recklessness of the falsity of the relevant documents so as to make it unreasonable to extend derivative liability on the basis of recklessness alone, to an executive officer.</p> <p>The offence may be committed in relation to all domains of regulation under the Bill and extension of derivative liability is justifiable on the same grounds as operating in contravention of the relevant authority The making of such representations distorts the market for transport services, prejudices the capacity of other duty holders to manage their own obligations and operates to conceal and promote noncompliance.</p> <p>The maximum penalty for an individual offender is \$10,000; the second highest</p>

Section of this Law	636(1)	636(2)	Basis for not exempting liability
			penalty provided for under the Bill.
703 False or misleading information given by responsible person to another responsible person	703(1), 703(2)	---	<p>This section implements section 184 of the Road Transport Reform (Compliance and Enforcement) Bill 2003. Executive officer liability attached to these offences under section 149 of that Bill.</p> <p>The information referred to throughout this section is not limited to the making of oral statements and is therefore not limited to the actions and judgement of a given individual (driver or otherwise). Executive officers can reasonably be expected to be to control the relevant corporate conduct.</p> <p>The offences under this section require proof of sufficient knowledge of or recklessness of the falsity of the relevant information so as to make it unreasonable to extend derivative liability on the basis of recklessness alone, to an executive officer.</p> <p>The offence may be committed in relation to all domains of regulation under the Bill and extension of derivative liability is justifiable on the same grounds as operating in contravention of the relevant authority The making of such representations distorts the market for transport services, prejudices the capacity of other duty holders to manage their own obligations and operates to conceal and promote noncompliance.</p> <p>The penalties for offences under this section \$10,000 and \$8,000 mid to high range penalties under the law</p>
704 Offence to falsely represent that	704(1), 704(2), 704(3)	---	The representations mentioned in 704(1) are not limited to oral statements. Similarly, the possession of the relevant

Section of this Law	636(1)	636(2)	Basis for not exempting liability
heavy vehicle authority is held			<p>documents is not limited to the actions and judgement of a given individual (driver or otherwise) and executive officers can therefore reasonably control the relevant corporate conduct.</p> <p>The offences under this section require proof of sufficient knowledge of the relevant facts (explicitly in the case of the offence under subsection 704(3)) so as to make it unreasonable to extend liability on the basis of recklessness alone, to an executive officer.</p> <p>The offence may be committed in relation to all domains of regulation under the Bill and extension of derivative liability is justifiable on the same grounds as operating in contravention of the relevant authority The making of such representations distorts the market for transport services and operates to conceal and arguably promote noncompliance.</p> <p>The maximum penalty for an individual offender is \$10,000; the second highest penalty provided for under the Bill.</p>
728 Duty of confidentiality	728(1)	728(1)	<p>This section implements section 182 of the Road Transport Reform (Compliance and Enforcement) Bill 2003. Executive officer liability attached to these offences under section 149 of that Bill</p> <p>This offence primarily, if not exclusively, applies to regulatory functions under the law (the internal management of government agencies) and is not within the contemplation of the COAG principles.</p> <p>The maximum penalty for an individual offender is \$20,000; the highest penalty range provided for under the Bill however</p>

Section of this Law	636(1)	636(2)	Basis for not exempting liability
			this penalty is not one to which regulated persons are exposed.
729 Protected information only to be used for authorised use	729(1), 729(3)	729(1), 729(3)	<p>This offence primarily, if not exclusively, applies to regulatory functions under the law (the internal management of government agencies) and is not within the contemplation of the COAG principles.</p> <p>The maximum penalty for an individual offender is \$20,000; the highest penalty range provided for under the Bill however this penalty is not one to which regulated persons are exposed.</p>