Heavy Vehicle National Law Bill 2012

Explanatory Notes

Short title

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

Policy objectives and reasons for the Bill

The principal objectives of the bill are to:

- reconcile variations in state heavy vehicle laws to a single, unified approach applicable across all states and territories; and
- establish a National Heavy Vehicle Regulator responsible for the administration of those laws.

The bill marks the culmination of the heavy vehicle reform program which formally began in March 2008, when the Council of Australian Governments (COAG) committed to a microeconomic reform agenda for Australia, with a particular focus on health, water, regulatory reform and the broader productivity agenda. All members signed up to a National Partnership Agreement to Deliver a Seamless National Economy. The agreement commits to 'deliver more consistent regulation across jurisdictions and address unnecessary or poorly designed regulation, to reduce excessive compliance costs on business, restrictions on competition and distortions in the allocation of resources in the economy' (Department of Infrastructure, Transport, Regional Development and Local Government, *A national framework for regulation, registration and licensing of heavy vehicles: Regulatory Impact Statement,* May 2009, p. 8).

In September 2008, the Hon. Julia Gillard MP wrote to state and territory ministers proposing that a Regulatory Impact Statement (RIS) be developed in support of a single national heavy vehicle regulation, registration and licensing system. The Australian Transport Council (ATC) agreed to investigate a framework that would make this possible.

The ATC framework proposed:

- a single regulator to administer a body of national heavy vehicle laws

- a body of national heavy vehicle laws that encompasses existing heavy vehicle regulation
- a national heavy vehicle registration scheme
- a consistent approach to minimum standards for heavy vehicle driver competency
- a single, physical, national heavy vehicle driver licence.

Ministers further agreed that, over time, pricing and/or network access would also be investigated as part of the national reform.

The proposed framework was the subject of a Regulatory Impact Statement (RIS) developed by the Australian Government Department of Infrastructure, Transport, Regional Development and Local Government in 2009.

That RIS evaluated the case for a national approach to heavy vehicle registration and licensing against six key objectives for regulatory reform.

1. Uniform laws and administrative practices should achieve the 'same outcome in the same circumstances' across Australia.
2. Regulatory burden should not increase overall as a result of the reform.
3. Legal and administrative costs of regulatory compliance should be minimised.
4. Productivity, effectiveness and safety of the heavy vehicle industry should be increased.
5. Efficient, productive and sustainable freight and heavy vehicle operations should be facilitated, consistent with sustainable management of state and territory assets.
6. The framework should allow for regular review and evaluation of the regulation and supporting systems, to ensure their ongoing national relevance and efficiency.

Accordingly, on 2 July 2009, COAG agreed to establish the National Heavy Vehicle Regulator and a national body of law governing the regulation of all vehicles weighing more than 4.5 tonnes. COAG agreed that the basis for the Heavy Vehicle National Law (HVNL) should be the reforms developed by the National Transport Commission (NTC) and its predecessor, the National Road Transport Commission (NRTC). These reforms were mostly captured in model legislation.

On 19 August 2011, COAG signed an Intergovernmental Agreement on Heavy Vehicle Regulatory Reform to provide the framework for the HVNL and the National Heavy Vehicle Regulator. The following legislation was consolidated into the HVNL:

- Heavy vehicle registration
- Heavy vehicle registration regulations
- Australian Vehicle Standards Rules regulations
- Heavy vehicle registration charges
- Mass and loading regulations
- Oversize and overmass vehicles regulations
- Restricted access vehicles regulations
- Higher mass limits regulations
- Compliance and Enforcement Bill 2003
- Intelligent Access Program Act
- Heavy vehicle driver fatigue
- Heavy vehicle speeding compliance Acts
- Alternative compliance legislation (accreditation).

All of these reforms have been approved by the ATC (and its predecessors) and subsequently enacted, in whole or in part, by the states and territories. The NTC has also developed guidelines for the concessional mass limits and National Heavy Vehicle Accreditation Scheme reforms. Guidelines for the administration of vehicle registration and the operation of escort and pilot vehicles have also been developed.

On 4 November 2011, the Standing Committee on Transport and Infrastructure (SCOTI), the replacement body for the ATC, approved the draft Bill. The HVNL is being progressed in two stages. The draft Bill and the regulations to be made under it, provide the legislative framework for the establishment of the National Heavy Vehicle Regulator as well as the substantive consolidation of model laws into a single body of Law. However, some policy or technical matters remain unresolved either due to their complexity or the inability of the participating jurisdictions to reach agreement. As such, the drafting of an amendment Bill is expected to occur for approval in the second half of 2012 to enable resolution of those outstanding issues.

Once approved, the HVNL will be the primary source of regulation for heavy vehicles in Australia. However, it will not regulate such matters as transport of dangerous goods, traffic laws or public/passenger transport regulation. The HVNL does not currently include heavy vehicle driver licensing, although work is continuing on exploring a national licensing regime and may be included in the HVNL in the future (clause 21 of the Intergovernmental Agreement on Heavy Vehicle Regulation Reform, signed by COAG on 19 August 2011).

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.

Differences in legal and law enforcement systems, drafting preferences, local requirements and operational realities have meant that sometimes laws have been partially implemented, or not implemented at all. In other instances, local productivity variations have gone beyond thresholds given in the model laws. Consequently, despite significant progress towards national consistency, important variations remain.

The lack of a single administering body leaves operators to navigate a maze of government bodies for important decisions around registration, accreditation, vehicle conditions and access. There is no single repository of expertise for industry to refer to. Hence, operators seeking road access often face ambiguity when identifying appropriate decision makers and where to lodge an application. The divergent roles of transport agencies and the road manager may be unclear, and operators may face long delays in determinations. Rights of review have not been enshrined in law, and administrative mechanisms are inconsistent. Consequently, letters of complaint are often addressed to ministers, chief executives and other officials thought to be relevant, in the hope of a favourable response. Some operators may 'shop around' within and between departments in search of advice and information that best suits them.

Variations in law create particular problems for interstate operators. Even relatively small distinctions in regulation have compliance and enforcement consequences for cross-border operators. The more diversions

within law, the more resources interstate operators must expend on understanding and maintaining compliance.

The current cost of compliance is considerable. NatRoad estimates that the typical driver of heavy trucks receives approximately three days of compliance training per year. With 44 000 interstate drivers, this equates to 132 000 days of compliance training, at a total cost of $17 780 000 (Department of Infrastructure, Transport, Regional Development and Local Government, *A national framework for regulation, registration and licensing of heavy vehicles: Regulatory Impact Statement,* May 2009, p. 20). An operator wishing to cross a border into Western Australia may be a member of up to three accreditation schemes, all with fees and entry requirements (although efforts have been made to streamline the associated auditing and compliance regimes).

Variations in regulations have direct impacts on productivity for operators in cross-border regions. A study into the Sunraysia region (with borders in New South Wales, Victoria and South Australia) explored how wine producers in the region are, in effect, forced to comply with the 'lowest common denominator' regulation. The most efficient vehicle for transporting the grapes would be a road train, but these are not currently permitted on a stretch of highway linking two of the states and used by the carrier. Consequently, wine producers use less efficient semitrailers, leading to more trips, more emissions and higher consumer prices. 'If it is assumed that 50 per cent of grapes sourced need to cross borders and are using semi-trailers rather than more efficient road trains, then the cost to the wine industry, in the region, is around $1.6 to $2 million per annum' (Australian Logistics Council, *The cost impact of regulation disparity in cross border regions—a study encompassing the 'Sunraysia/Riverland region',* March 2009, p. 18).

Border crossings are a 'high-stress' node in the transport network (Castalia, *Securing a national approach to heavy vehicle regulation—report to the National Road Transport Operators Association (NatRoad),* February 2009, p. 22). According to industry sources, drivers who cross borders experience considerable 'compliance stress', with attendant health risks. Although this stress is non-quantifiable and has no direct economic impact, it influences drivers' quality of life and on-road focus. It could also conceivably be a risk factor in fatigue management.

The current complexity of the system (although perhaps based on local conditions in some instances) is a natural barrier to expansion. It creates an incentive for operators to stick to operations within their home jurisdiction

because of lack of time and resources to devote to mastering the different regulatory regimes. This provides a competitive advantage to incumbents and to larger operators with the resources to devote to acquiring such mastery.

The widely divergent regimes also create equity issues. Transport operators across states and territories are subject to different regulatory impacts. As explained in Section 9.4, on heavy vehicle inspections, in Western Australia, there are fewer than 0.1 inspections per heavy vehicle each year, whereas, in the Northern Territory, there are 1.4 inspections per heavy vehicle per year. Operators pay different fees for similar services, are subject to different technical requirements, are granted varying levels of access for the same vehicles seeking to operate on similar infrastructure, and incur divergent penalties for the same offences.

Issues of duplication, red tape, confusion, stress, equity and competitiveness need to be understood against the backdrop of the freight task to be fully appreciated. By 2030, the total national road freight task is expected to be 1.8 times its 2008 level (Department of Infrastructure and Transport, *Road freight estimates and forecasts in Australia: interstate, capital cities and rest of state,* research report 121, 2010, p. *v*). Importantly, it is the *interstate* road freight task that will drive this growth. A single, unified national law administered by an independent Regulator will best manage this anticipated growth from a productivity and safety perspective.

Alternative ways of achieving policy objectives

The Commonwealth RIS 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
- to create a single national statutory regulator that would administer uniform legislation and deliver services through the existing registration authorities.

Under the fourth option, the regulator would:

*… **administer the entire body of the national heavy vehicle law** … from the day-to-day matters such as registering trucks and administering licence testing to setting the standards for, and collating the results of, compliance and enforcement activities …*

The NHVR [National Heavy Vehicle Regulator] would administer the national heavy vehicle registration scheme including:

- *maintaining a national register and collecting registration fees in accordance with the legislation*
- *administering a scheme for regulating heavy vehicle standards and inspections in accordance with the legislation, including determining inspection, roadworthiness test and defect notice regimes …*

A key role for the NHVR would be in development of guidelines on decision making in implementing particular areas of the law where industry seeks consistency across jurisdictions, such as the provisions for variations for local productivity enhancement and access to local roads …

The NHVR would also act as a 'one-stop shop' for heavy vehicle business interactions with government where, for example, applications for access permits that cover a number of jurisdictions could be made and resolved …

Under Option 4 the national heavy vehicle law would make provision for the issuing of notices for classes of non-general access vehicles and permits for individual non-general access vehicles by the NHVR. To ensure consistency in decision making, criteria for the making of these decisions … would be set out in the legislation after consultation with jurisdictions and agencies …

The NHVR would facilitate consistency in services delivered through agreements with jurisdictions agencies … by establishing strategies, performance targets and operating procedures for jurisdictional agencies to implement the compliance and enforcement aspects of the national laws' (Department of Infrastructure, Transport, Regional Development and Local Government, A national framework for regulation, registration and licensing of heavy vehicles: Regulatory Impact Statement, May 2009, pp. 74–75). [author's emphasis]

This fourth option delivered the most significant benefits when measured against the key objectives for regulatory reform and was the option supported by the ATC. Accordingly, the Heavy Vehicle National Law is geared towards realising the vision of the Regulator endorsed by the ATC.

The 'consolidation' approach – rather than a wholesale rewrite and revamp of the laws - was considered the most appropriate for several reasons.

Firstly, some of the model laws (such as those around registration) have been in place for many years and are well understood and accepted by community and industry.

Secondly, the model laws had all been subject to rigorous scrutiny through processes such as RISs and reviews.

Thirdly, a consolidation approach would deliver the most timely and cost effective outcome.

The consolidation model involved the NTC and the states and territories reviewing existing model laws and undertaking a comprehensive stocktake of all known variations from those model laws. Nine 'stocktake' workshops with representatives from the states and territories were conducted, where variations were tabled and discussed. In all, 368 issues were identified that required resolution for the HVNL. These were resolved through several robust governance processes including an independent expert panel, a high level reference group, an industry advisory group and a public consultation process. A RIS was released in February 2011 and open for comment for ten weeks. Sixty four submissions were received and considered.

In addition, 18 industry forums were held in various locations across the country to solicit industry and stakeholder views and concerns. Ongoing discussions have been held with state and territory governments and other stakeholders to resolve new issues as they have become apparent. The evidence collected through this process is reflected in the Heavy Vehicle National Law.

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. Two separate methodologies were used. The first (based on previous RISs and the work of the Productivity Commission) estimated total net present value gains of around $12 billion over twenty years. The second methodology (based on new research and direct consultation) conservatively estimated gains in the order of $9 billion in net present value over twenty years.

These benefits will be predominately derived through red tape reduction and reduced regulatory burden to industry through the consistent and coordinated administration of a single, nationally applied heavy vehicle law.

As provided for in the COAG Intergovernmental Agreement on Heavy Vehicle Regulatory Reform (August 2011), the costs of establishing the National Heavy Vehicle Regulator will be funded by the Commonwealth Government.

The costs of establishing the National Heavy Vehicle Regulator will largely comprise the establishment of a basic information technology platform from which the Regulator will operate. To the extent possible, existing jurisdictional systems capability and functionality will be utilised to minimise systems development and build costs.

There will be costs incurred by individual jurisdictions in implementing transitional arrangements to apply the new national law within their jurisdiction and jurisdictions will be responsible for funding their own transitional costs.

However, costs incurred by individual jurisdictions in moving regulatory responsibility for heavy vehicles to the National Heavy Vehicle Regulator will be cost recovered from industry through the Heavy Vehicle Charges Determination. These costs will be largely comprised of system changes to facilitate effective information exchange and updated workflow processes for the delivery of national services under the national legislation.

On an ongoing basis, the National Heavy Vehicle Regulator will be self-funded through cost recovery from industry through the Heavy Vehicle Charges Determination and through the application of fees for the direct services that it provides. The draft bill establishes that the fees may be set by regulation or by the regulator. A cost recovery methodology will be used in the calculation of both charges and fees.

Consistency with Fundamental Legislative Principles

The principal objectives of this Bill are to reconcile variations in state heavy vehicle laws to a single, unified approach applicable across all states and territories, and to establish an independent National Heavy Vehicle Regulator to administer these laws.

In drafting this Bill, the Office of the Queensland Parliamentary Counsel (OQPC) has maintained the general policy expressed in the heavy vehicle

model laws except when instructed to amend the law to reflect outcomes achieved during the workshop process to resolve variations or to make amendments to ensure greater consistency within the law. It has also ensured that the Bill is consistent with Queensland's drafting practice and has sufficient regard to rights and liberties of individuals.

Generally, the Bill has sufficient regard to the rights and liberties of individuals as required by subsection 4(2) of the *Legislative Standards Act 1992* (LSA). Nonetheless, it has not entirely eliminated all potential breaches of the fundamental legislative principles (FLPs). The potential breaches of the FLPs together with justifications provided in respect of each provision are discussed below.

Institution of Parliament

Commencement of legislation

Clause 2 provides that the Act commences on a day to be fixed by proclamation. Subclause 2(2) seeks to extend the commencement date of the Bill by up to 3 years.

OQPC notes that the Scrutiny of Legislation Committee may oppose provisions, that completely or indefinitely exclude the operation of section 15DA of the *Acts Interpretation Act 1954* (AIA). This section embodies the principle that it is inappropriate for Parliament to relinquish control indefinitely over the commencement of an Act it has passed.

However, OQPC notes that the committee may allow a provision that extended the postponement available under section 15DA to 2 years when further extensions were also prevented (see AD 2001/3, pp. 12–13).

Response: The extension of the automatic commencement is considered necessary to provide maximum flexibility, given the number of variables that may lead to an unexpected delay to commencement. The potential breach of clause 2 has been made less objectionable by limiting the delayed commencement to a maximum of 3 years from the assent day.

Rights and liberties of individuals

Delegation of legislative power

Clause 602 of this Bill allows the Regulator to delegate any of its functions to a broad range of persons including: (a) the chief executive of an entity or a department of government of a participating jurisdiction, or the

Commonwealth; or (b) the chief executive officer or another member of the staff of the Regulator; or a person engaged as a contractor by the Regulator. Subclause (2) permits the subdelegation of the function to an appropriately qualified person. Delegation to a person or body outside the administering government agency or outside government is uncommon because it is perceived as allowing circumvention of the traditional means of accountability applicable to the public sector.

Response: Broad delegation and subdelegation powers are necessary to ensure that the Regulator is able to delegate its functions to existing state or territory transport agencies; and in some circumstances to other government agencies or external contractors used by the existing state or territory transport agencies. The administration of the Bill requires extensive resources due to the wide range of subject matters covered, the volume of administrative tasks, and the need to administer this law in remote areas. It will not be possible for the Regulator to engage its own staff to perform all administration tasks required by the Bill on its commencement. Also, administering the heavy vehicle registration scheme in isolation from the administration of the light vehicle registration scheme is not necessarily practicable or cost effective in all circumstances.

The Regulator will also still be legally accountable for all decisions made by its delegates and subdelegates. Administrative arrangements will be in place to ensure that the delegates and subdelegates are complying with business rules and other directions of the Regulator.

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

Part 4.9 includes several offences that override the mistake of fact defence and, in its place, provide for the reasonable steps defence. These offences are contained in clauses 67, 68, 75, 78, 84, 92, 113, 114, 132, 133, 153, 154, 157, 158, 161, 162, 163, 164, 172, 189, 220, 221, 224, 226, 228, 230, 231, 233, 234, 256, 257, 281, 282, 283, 285, 289, 291, 292, 294, 295, 306, 307, 308, 348, 349, 350, 351 and 420. OQPC notes that overriding the mistake of fact defence may infringe the rights and liberties of individuals. However, it notes that the potential infringement is made less objectionable (and possibly even justified) in situations where the charged persons are given the benefit of the reasonable steps defence.

Response: The aforementioned clauses may potentially breach the fundamental legislative principles that legislation should have sufficient regard to the rights and liberties of individuals, by overriding relevant

no-fault criminal excuses. This exposes defendants to an absolute liability offence, without access to a defence for making an honest and reasonable mistake of fact or attempting to avoid breaches. For instance, clauses 153 and 154 create chain of responsibility offences against parties for non-compliance with mass requirements that apply to heavy vehicles. These clauses attach liability for breaches to those persons considered influential in ensuring compliance (the parties in the chain of responsibility). Although the relevant no-fault criminal excuses, such as mistake of fact, are excluded from being raised by the defendant, a reasonable steps defence is able to be raised.

The reasonable steps defence is provided for in Division 1 and 2 of Part 10.4. The defence is available if the defendant can prove that they did not know, and could not reasonably be expected to have known of the contravention, and they either took all reasonable steps to prevent the contravention or there were no steps the person could reasonably be expected to have taken to prevent the contravention. Its availability to all parties in the chain of responsibility is considered a reasonable benefit to justify the exclusion of no-fault criminal excuses. This is because the defence encourages parties to consider steps that must be taken to prevent on-road breaches. In some circumstances where reasonable steps have not been taken, it is considered inappropriate for a defendant to rely on a no fault criminal excuse such as mistake of fact. The defendant should be exposed to absolute liability if they are not actively taking steps to ensure that their actions do not cause or contribute to on-road breaches.

The approach is also considered to be in the public interest as the requirements to which the offences relate are mainly prescriptive in nature and align with the general purpose of public safety assurance. The parties in the chain of responsibility should be able to identify the actual on-road breaches that may result from their activities and then apply appropriate measures to manage the risk of an on-road breach.

Reversal of the burden of proof

OQPC notes that legislation should not reverse the onus of proof in criminal proceedings without adequate justification. Several provisions in this Bill contain a reverse onus of proof.

OQPC has expressed concerns about a number of clauses. These include clause 96 (proof of contravention of loading requirement), clause 162 (duty of operator with respect to container weight declarations), clause 576 (liability of executive officers of corporation), clause 577 (treatment of unincorporated bodies), clause 578 (treatment of partnerships), and clause 639 (discrimination against or victimisation of employees).

OQPC has also noted that the recognition of the Load Restraint Guide in the Bill could be seen to confer legislative power on the National Transport Commission.

Response: Clause 96(1) is relevant to proceedings against a person accused of contravening the loading requirements applying to the vehicle. This provision deems evidence that a load on a heavy vehicle was not placed, secured or restrained in a way that met a performance standard stated in the Load Restraint Guide as in force at the time of the offence is evidence the load was not placed, secured or restrained in compliance with a loading requirement applying to the vehicle. In particular, this clause requires a court to presume a document presented by the prosecution as "Load Restraint Guide" is that document until the defence disproves that fact.

This provision potentially breaches the fundamental legislative principle that legislation should have sufficient regard to the rights and liberties of individuals given that an additional burden is imposed on the defendant. The additional burden for the defence is that of proving a contravention of a loading requirement did not occur despite the fact that the Load Restraint Guide was not complied with. It is arguably easier to prove a contravention of the Load Restraints Guide than a contravention of a loading requirement, and this is a justification offered for including the provision. The practical effect would be that the defendant has the onus of proving there has not been a contravention of a loading requirement, even though a performance standard mentioned in the Load Restraints Guide has not met.

The proposal to place onus on the defence is considered to be reasonably justified in circumstances where the matter that is the subject of proof is within the defendant's knowledge and would be difficult for the prosecution to prove. Proving contravention of a loading requirement in line with the Load Restraint Guide would be difficult for the prosecution to

establish. It is therefore considered that reversing the onus is essential for the enforceability and effectiveness of the National Law.

With respect to the concern that recognition of Load Restraint Guide confers legislative power on the NTC it is noted that the current edition of the Load Restraint Guide was approved for release by the ATC in December 2003 after consultation by the NTC and the Roads and Traffic Authority of New South Wales with stakeholders. It is anticipated that future editions of the Load Restraint Guide will be subject to similar procedures. It is also noted that the performance standards in the Load Restraint Guide has been available and used since 1994 and a number of jurisdictions have implemented a law substantially the same as clause 96.

Subclause 162(2) provides that when a driver of a heavy vehicle is detected not carrying a complying container weight the operator of that vehicle is deemed to contravene the obligation to not permit the driver to transport a freight container by road using the vehicle unless they have been provided with a complying container weight declaration. It is noted that the matter is specifically within the operator's knowledge and it would be difficult for the prosecution to do more than prove that the driver does not have the complying container weight declaration for the freight container. The reversal is consistent with the provision as the operator has the onus of showing that he or she took reasonable action to comply with the obligation. It should not be too onerous for an operator to keep records of complying container weight declarations and there being provided to drivers of specific heavy vehicles.

Clauses 576 and 578 extend liability to the management of operators and other parties in the chain of responsibility and reverse the onus of proof, requiring the individual management officers or partners to prove they were not in a position to influence the relevant conduct or exercised reasonable diligence to ensure compliance. It is noted that the intent of these provisions is to allow prosecutions to better target those chiefly responsible for the breaches of road law and to enhance the effectiveness of the law by deterring offending behaviour.

There are compelling public policy reasons to require managers to prove that they exercised due diligence or were not in a position to influence the relevant conduct. Firstly, the chain of responsibility provisions, including the provisions to capture managers, extend liability for prescriptive offences that are important to ensuring that heavy vehicles used on public roads are used in a safe manner. Extending the liability is intended to ensure parties in a position to control, influence, prevent or encourage

on-road breaches are discouraged from such behaviour and more importantly take active steps to prevent on-road breaches.

Secondly, the chain of responsibility provisions, including clauses 576 and 578, are intended to allow for the prosecution of all parties whose actions, or inactivity, may cause on-road breaches. All parties in the supply chain, including the managers in that chain, should be subject to similar requirements and expected to prove that they take reasonable action, whether it be reasonable steps or due diligence, to prevent on-road breaches.

Thirdly, extending liability to managers is fairer as many parties in the transport industry, and especially operators, are small business where the controlling mind of the manager cannot be distinguished from the business. The chain of responsibility provisions should already encourage these managers to take active steps to prevent on-road breaches. There are other parties that will be substantial businesses and the managers of these businesses may in the absence of these provisions not be subject to the same encouragement to prevent on-road breaches.

Fourthly, these prescriptive offences have relatively low penalties compared to other laws that impose criminal responsibility on managers – such as the Work Health and Safety laws. Extending liability to managers does not expose the manager to excessive financial risk.

Clause 639 provides for the reversal of the onus of proof in respect of the reason for the defendant's conduct when it is alleged that they have dismissed or other prejudiced the employees' employment. The prosecution only has to show an employee or prospective employee was dismissed after they helped or gave information to an agency or made a complaint about a contravention or alleged contravention. The defendant has to prove that the dismissal was not for the reason that the employee or prospective employee helped a public agency. The reversal of the onus of proof potentially infringes the rights and liberties of individuals. However, the reversal is justified on the basis that the employer is best placed to explain the reason for taking the adverse action against the employee or prospective employee. This is considered necessary to deter employers from taking adverse action, and to encourage employees and prospective employees to help enforce this law without fear of adverse action being taken against them.

Cost recovery principles

Clause 137 provides for the payment of a fee for a route assessment if required under the law of the jurisdiction applicable to the road manager. OQPC suggests inclusion of some limitations on the fee, for example, that it be reasonable and no more than the cost of conducting the route assessment. However, it is noted that the jurisdictional law prescribing the fee may itself be subject to similar limitations.

Response: The fee is imposed only in circumstances where an application for a mass or dimension authority is made. To grant mass or dimension authorities for a class of heavy vehicles, the road manager and Regulator may incur significant costs of conducting route assessments. As such, it is reasonably justified for the Regulator to be able to recover the costs which generally relate to individualised routes that are relevant only to the applicant concerned. The costs to the road manager in conducting these one-off route assessments need to be recoverable. It is noted that in some jurisdiction there is no fee or the fee is lower than the cost of providing the service so that operators are not discouraged by the high costs and possibly resort to illegal use of the roads.

Review of road manager decisions

Decisions of road managers that have been internally reviewed are not subject to further appeal. These decisions include refusing to consent to the granting of a mass or dimension authority, imposing road conditions as a condition to consent to a mass or dimension authority, and requesting an amendment or cancellation by the Regulator of a mass or dimension authority. While these matters may affect policy considerations and balancing the interests of all road users, the essential question to be asked by a tribunal or court is whether the national law has been applied properly. The question is whether the decision-maker was correct to deny access on the sole ground provided in the national law – because there was a likelihood of damage to a road or road infrastructure or an adverse effect on public amenity.

Response: The road manager has a number of policy considerations to consider when deciding whether to consent to a grant of access by way of a mass or dimension authority under Chapter 4 of the National Law. These include but are not limited to: the appropriate use of its road network, the effects on public amenity, the risk of damage to road infrastructure, and the cost of maintaining the road network. Road managers perform a number of functions other than maintain roads and being compelled to grant access

may have adverse effects on the operations and finances of the road managers. Access decisions may also have significant impacts on other parties, including other road users and occupants of land adjoining or near roads. It is not proposed to allow these other parties to have decisions reviewed and allowing applicants for access to appeal these decisions to the exclusion of these other parties allows the latter an advantage over these other parties who have a legitimate interest in the access decision.

It is noted that a person aggrieved by a decision under the National Law may have a right to seek judicial review of that decision if there is a question of law to be determined.

Stay of decisions

Clauses 583 and 589 deal with the stay of reviewable decisions made by the Regulator or an authorised officer. OQPC notes that this clause excludes a stay of reviewable decisions made by road managers or the Regulator that were made on public safety grounds. OQPC notes that a stay will have no application in relation to the initial registration, exemption, authorisation or accreditation decision. The absence of the ability to stay decisions of the Regulator on public safety grounds is also supported on the grounds it would be inappropriate to allow for a stay of such decisions given the potential impact on public safety.

Response: Clause 583 allows a person aggrieved by a reviewable decision made by the Regulator or an authorised officer, who has applied for an internal review of that decision, to also apply for a stay of the decision to a relevant appeal body. Clause 589 is allows a person aggrieved by a stay decision relating to a reviewable decision, who has appealed against the review decision to also apply for a stay.

The exclusion of a stay of a decisions to amend road conditions or to cancel a mass or dimension authority is considered justified because the initial grant of an exemption confers above 'as of right' access to some heavy vehicle operators. This extends the ability of the operator to access a road network beyond that which is accessible to others. When there is evidence that the exemption or authorization is unsafe and needs to be cancelled or amended it is important that such decisions be implemented as quickly as possible.

Moreover, this approach is consistent with the nationally agreed position that a person should not be able to appeal the decisions of road managers regarding access to their road network. A road manager's decision regarding access to their road network is based on comprehensive and

specialised engineering assessments reports about safety risks and risks of damage to road infrastructure. One of the underlying reasons for refusing to grant access may be a potentially risk to their road infrastructure, which includes bridges where the granting of the access may expose other road users to serious harm.

Finally, all exemptions are issued subject to the express condition of amendment or cancellation. This express condition is coupled with the requirement that notice of any amendment or cancellation must be given to the person 28 days prior to the amendment or cancellation coming into force. It is considered that this safeguard reasonably allows those relying on an exemption to manage the risk of a possible amendment or cancellation and sufficient time to adjust their business activities accordingly.

Extension of time to institute proceedings for offences

Clause 647 extends the time to commence proceedings for an offence from the usual period of 1 year to 2 years. This may infringe the fundamental legislative principle that legislation should have sufficient regard to the rights and liberties of individuals.

OQPC notes that the period within which a proceeding may be commenced under subsection (2) is longer than what is normally allowed in Queensland under section 52 of the Justices Act 1886, which provides that a complaint must be made within 1 year from the time the matter of complaint arose.

Response: Strong road safety enforcement grounds exist to justify the extension of time. The proposed amendment recognises that in some cases, due to the nature of the chain of responsibility offences, it might take longer to identify other parties in the chain. Generally, the process involved in determining who the other parties are in the chain can take up to 18 months alone. Therefore, to allow enforcement action to be taken against other parties in the chain, it is necessary to extend the time to commence proceedings from 1 to 2 years. A shorter limitation period may discourage enforcement of the chain of responsibility provisions and result in the traditional practice of only enforcing against the driver and perhaps the operator to continue.

Extended Liability

Several provisions in this Bill extend liability for mass, dimension and loading offences, fatigue offences and speeding offences (relevant

requirements) to persons other than the driver and operator of a heavy vehicle. These persons include:

- owners of heavy vehicles;
- employers of drivers;
- prime-contractors of self-employed drivers;
- schedulers;
- consignors of goods;
- consignees of goods;
- packers of goods;
- loading managers of goods;
- loaders of goods; and
- unloaders of goods.

The imposition of extended liability potentially infringes the rights and liberties of individuals. The liability has been extended on the basis that persons other than the driver and operator of heavy vehicles are often responsible for a breach of the relevant requirements. Extended liability is intended to provide for increased fairness by providing for penalties to be imposed on all persons responsible for breaches of the relevant requirements. Further it is expected that extended liability will create greater incentives for compliance with the relevant requirements.

These provisions are modeled on the national Road Transport Reform (Compliance and Enforcement) Bill (the Model Bill) that was developed by the National Road Transport Commission. Current Queensland legislation contains extended liability provisions similar to the proposed provisions for the Heavy Vehicle National Law. Therefore, these do not introduce a new concept. Similar laws are also in place in New South Wales, Victoria and South Australia.

However, extending liability to these parties does potentially limit the fundamental legislative principle that legislation should have sufficient regard to the rights and liberties of individuals by expanding the scope of legal liability beyond the driver and operator of a heavy vehicle to persons whose actions directly influence or control compliance with the relevant requirements.

The principle that underpins the extension of liability is accountability for acts or omissions by all those responsible for compliance with relevant requirements. It is recognised that pressure to breach relevant requirements is not solely attributable to the drivers and operators of heavy vehicles but extends to those who possess an equal level of influence or control over compliance. This extension of liability ensures that all parties responsible for conduct which affects compliance are made accountable for failure to discharge that responsibility. Each of the parties who are expressly identified is considered to play an integral part in breaches of relevant requirements. Their specification is therefore considered justified. The following outlines the reasons for each party's inclusion in the chain of responsibility.

Employers of drivers and prime-contractors of self-employed drivers

Employers of drivers and prime-contractors of self-employed drivers are in a clear position to understand what requirements are applicable to the heavy vehicle, heavy trailer or heavy combination their employee must comply with when operating a heavy vehicle. The nature of these relationships also places employers and prime-contractors of drivers in a direct position of control over employees and the contracts for the transport of goods that employees and self-employed drivers perform. It is therefore considered appropriate, subject to the reasonable steps defence, that employers of drivers and prime-contractors of self-employed drivers be held liable.

Schedulers

Schedulers set the timing for the transport of goods or passengers and may also schedule a driver's work and rest times. They have direct influence over the timing of the transport task and a failure of their part to specify legal or reasonable times for this task may result in on-road breaches. It is therefore reasonable to extend liability to schedulers for breaches of fatigue and speeding requirements. Furthermore, a reasonable steps defence is available to all persons within the chain of responsibility. The reasonable steps defence is provided for in Divisions 1 and 2 of Part 10.4 and its availability to all parties in the chain of responsibility is considered a reasonable benefit to justify the expansion of scope of legal liability. This is because the defence encourages parties to consider steps that must be taken to prevent on-road breaches.

It is acknowledged that schedulers have limited influence over the load of the heavy vehicle and are therefore excused from extended liability for the mass, dimension and load restraint requirements.

Consignors

Consignors of goods engage third parties to carry such goods on their behalf. It is recognised that consignors possess a level of control that directly influences the mass of a heavy vehicle and the timing of transport of goods. As a result, potential circumstances may arise, for example, to save on transport costs, where consignors exert pressure on drivers and operators to engage in overmass transport, or breach speed or fatigue requirements to meet time limits. It is therefore considered appropriate that consignors of goods bear a responsibility to ensure compliance with relevant requirements applicable to the heavy vehicle that carries goods on their behalf. Furthermore, a reasonable steps defence is available to all persons within the chain of responsibility. The reasonable steps defence is provided for in Divisions 1 and 2 of Part 10.4 and its availability to all parties in the chain of responsibility is considered a reasonable benefit to justify the expansion of scope of legal liability. This is because the defence encourages parties to consider steps that must be taken to prevent on-road breaches.

Consignees

Consignees or receivers of goods do not necessarily engage third parties to carry goods on their behalf but do influence the transport task by specifying times for delivery of goods or passengers. A failure by a consignee to specify a reasonable time for delivery of goods may result in on-road breaches. It is therefore reasonable to extend liability for fatigue and speeding offences to consignees. Furthermore, a reasonable steps defence is available to all persons within the chain of responsibility. The reasonable steps defence is provided for in Divisions 1 and 2 of Part 10.4 and its availability to all parties in the chain of responsibility is considered a reasonable benefit to justify the expansion of scope of legal liability. This is because the defence encourages parties to consider steps that must be taken to prevent on-road breaches.

It is acknowledged that consignees have limited influence over the load of the heavy vehicle and are therefore excused from extended liability for the mass, dimension and load restraint requirements.

Loaders and Packers

Loaders and packers of goods onto heavy vehicles are directly involved in the on-road operations of heavy vehicles that transport goods. It is therefore appropriate that loaders and packers of goods ensure that the vehicle load does not cause the vehicle's mass, dimension and load restraint requirements be exceeded.

The potential limitation of the FLP is considered justified as the extended liability provisions are crucial measures to help ensure compliance with heavy vehicle mass, dimension and load restraint requirements and therefore significantly contribute to the general purpose of public safety assurance. Furthermore, a reasonable steps defence is available to all persons within the chain of responsibility. The reasonable steps defence is provided for in Divisions 1 and 2 of Part 10.4 and its availability to all parties in the chain of responsibility is considered a reasonable benefit to justify the expansion of scope of legal liability. This is because the defence encourages parties to consider steps that must be taken to prevent on-road breaches.

Unloaders

Unloaders of goods from heavy vehicles can cause of contribute to breaches of fatigue requirements by delaying the unloading of a heavy vehicle. Delays in the unloading of a heavy vehicle, especially if the vehicle is queued, can cause the driver to breach work and rest hour requirements or eventually fatigue the driver. For this reason, it is reasonable to extend liability to unloaders for breaches of fatigue requirements.

Averments and evidentiary certificates

In a proceeding for an offence, clause 650 allows the Regulator to provide information relating to certain matters, from its Heavy Vehicle Register, in a statement or certificate for the court to consider and accept as evidence, unless evidence to the contrary is proved.

OQPC notes that clauses 650, 651 and 654 potentially breach the FLP that legislation should not reverse the onus of proof in criminal proceedings without adequate justification. This potential breach is made less objectionable as the evidentiary certificates are for administrative convenience for non-contentious matters and the averment matters are generally for matters that the defendant is better placed to prove.

Subclause 650(2) is identified as being particularly objectionable as it goes directly to the matter of whether an offence has in fact been committed and would require the defendant to carry the evidential burden that they did not in fact commit an offence.

Response: Justification is required for relaxation of the normal rules of evidence applicable to legal proceedings. In this case, these provisions are justified because:

- the evidence in evidentiary certificates is not conclusive and the defence can lead evidence in rebuttal of the evidence;
- the evidence provided in a statement or certificate is often information extracted from the register of heavy vehicles or other records maintained by the Regulator relating, for example, to matters such as category or type of heavy vehicle, name and address of registered operator and other like matters that are not likely to be non-contentious;
- the statements in averments are for matters that should be non-contentious but if incorrect can be rebutted by the defendant.

The purpose of subclause 650(2) is to allow the statement that a heavy vehicle and driver of that vehicle alleged to have committed the offence were at a particular place at the particular time, date or period to be prima facie evidence. While this appears to determine the matter, usually the essential fact that decides the charge against the defendant remains unproven by this averment. For example, the actual mass or dimensions of the heavy vehicle or the actual hours of work and rest by a driver still need to be proven by the prosecution. The benefit of subclause 650(2) is that it allows relatively non-contentious matters to be proven without the need for a full trial and allows instead for concentration on the contentious and essential matters that are in dispute if the charge is defended.

Power of entry without warrant

Division 3 in Part 9.2 of the Law provides powers to authorised officers to enter a place without consent or a warrant, and therefore potentially infringe the rights and liberties of individuals. These provisions are contained in clauses 446, 447 and 448.

For example, clause 448 has been included to allow for investigations after a crash involving a heavy vehicle. The power seems to be directed at dangerous situations and the Parliamentary Counsels' Committee (PCC)

has questioned whether this Law, which does not directly deal with safety or dangerous situations is an appropriate Law for this power.

In particular, it is expected that general transport legislation and police powers legislation of the various jurisdictions will include similar powers. Also, to make the potential breach less objectionable, PCC has questioned whether there needs to be an additional element to require the immediate action. For example, that entry be allowed only when it is considered that evidence at the place may be concealed or destroyed unless the place is immediately entered and searched as provided in section 443(1)(b).

Response: The power to enter a place without consent or a warrant is limited to circumstances involving a heavy vehicle crash. This clause potentially breaches the fundamental legislative principle that legislation should have sufficient regard to the rights and liberties of individuals by allowing entry to a place without consent or a warrant. These powers may only be exercised in circumstances where an authorised officer reasonably believes that a heavy vehicle has been involved in an incident involving a person's death, injury to a person or damage to property. In these circumstances, such measures are reasonably justified on the grounds that any delay that may be encountered in obtaining a warrant or the occupier's consent could have serious negative consequences. Therefore, this provision is reasonably justifiable and is proportionate to the need to minimise substantial risks to public safety and to maximise the ability of authorised officers to obtain relevant information about breaches of the National Law. The power is limited to the purpose of establishing compliance with the National Law or the National Regulation. The power is also necessary to ensure that the requirements of this law are being complied with and that the potential safety risks associated with heavy vehicle access to road networks and national safety standards are minimised.

Right to privacy

Division 4 in Part 9.4 of the Law allows an authorised officer to require information about a heavy vehicle or information about another person. For example, clause 514 allows an authorised officer to require a person to disclose personal information about another person. This potentially infringes the rights and liberties of individuals as it invades a person's right to privacy. The reason for this requirement is to allow an authorised officer to identify each person responsible for the commission of the offence. These persons are, in most cases, automatically taken to have committed an offence unless they can show they took reasonable steps. OQPC has

indicated that the potential infringement may be made less objectionable by excluding the operation of this provision to people like packers and loaders.

Response: Personal information is necessary to ensure the effectiveness of the heavy vehicle enforcement. The power granted under this provision is cast in narrow terms and extends only to information that is relevant to the Regulator's functions. For example, the information sought will relate to a current or intended journey of the vehicle and will include the location of the start; the route and the location of the destination of the journey or intended journey, as well as personal information about the person. This provision is essential in enabling authorised officer to easily identify registered operators for enforcement purposes.

Appeal rights

Clause 581 provides that the decision made by an authorised officer to seize a thing or issue an embargo notice, is not reviewable under this Law. This potentially infringes the rights and liberties of individuals. The effect of a seizure or embargo notice could be that individuals are unable to carry on a business, or an individual's business may be significantly and adversely affected by the seizure or embargo notice. This is a kind of decision that would normally be reviewable, and similar decisions under other transport legislation in Queensland are reviewable. The proposed justification for the absence of review is that there are other avenues for scrutinising the authorised officer's actions (e.g. applications to the ombudsman or the court proceedings for the offence in relation to which the thing was seized or embargo notice issued). These other avenues are not as effective and efficient as a merits review process.

Additionally, decisions of authorised officers who are police officers to give or amend an improvement notice are not reviewable under this Law. This means that decisions of police officers are treated differently to decisions of non-police officers. As a result, a person's right of review differs depending on the status of the person giving the notice. No justification for this policy has been provided. PCC does not support the absence of the review rights on the basis that this Law does not provide for appropriate review of these decisions.

Response: The justification for failing to have a review of the decision to seize a thing or issue of an embargo notice as described by the drafter fairly represents the policy position on this issue. The expected limited use of

embargo notices and availability of other avenues for reviewing inappropriate actions with respect to such notices should be adequate.

The lack of review for decisions by authorised officers who are police regarding the giving and amendment of improvement notices is justified on the basis that it was not intended that the Heavy Vehicle National Law impose additional review requirements on the actions of police officers that are inconsistent with existing practice. As there are different approaches across jurisdictions to the review of these decisions, it is preferred that the national law remains silent on this issue. Jurisdictions may use their application laws to include a review process consistent with their existing arrangements if the issue is not addressed adequately by existing laws and it is considered appropriate by their parliaments to address this issue.

Absence of Merits Review

A number of clauses in this Bill provide for amendment or cancellation of various exemptions and mass or dimension authorities. For example, clause 34 allows for amendment or cancellation of a registration exemption. Similarly, clause 53 allows amendment or cancellation of a vehicle standards exemption. Other similar clauses include clauses 143, 144, 241 and 332.

OQPC notes that in the absence of merits review, these provisions potentially infringe the rights and liberties of individuals. And whilst these exemptions are of general application and not directed at a particular individual, a person's ability to conduct a business may be affected by the Regulator's decision. The decision is of a kind for which merits review would normally be expected.

Response: The exclusion of merits review in respect of a decision to amend or cancel an exemption granted by a permit or a notice in the Commonwealth Gazette is reasonably justified because of a number of factors. First, the granting of the initial exemption or mass or dimension authority confers above 'as of right' access to some heavy vehicle operators. Be it an exemption from registration or a mass or dimension authority, the notice allows operators who qualify an opportunity to not comply with usual legal requirements and instead comply with more flexible or accommodating requirements.

All exemptions are issued subject to the possibility of amendment or cancellation. This possibility is coupled with the requirement that notice of any amendment or cancellation must be given to the person 28 days prior to the amendment or cancellation coming into force. Decisions to amend or

cancel an exemption should not be common and they will only be made if sufficient grounds exist to justify the making of the decision, such as if the use of the heavy vehicles on the road has caused, or is likely to cause, a significant safety risk.

If a decision is made to amend or cancel an exemption made by Gazette notice (which may apply to a large number of operators and vehicles) then operators who have been relying on the notice could apply for a permit to continue operating. It may be possible for permits to be issued which include conditions addressing the problem that led to the decision to amend or cancel the exemption made by Gazette notice.

It is considered that these safeguards reasonably allow those relying on an exemption to manage the risk of possible amendment or cancellation and sufficient time to adjust their business activities accordingly. For example, persons are given a 28 day notice to ensure they can change their business practices in line with the amendment or cancellation, or to apply for conditional registration.

This provision is essential in safeguarding the road assets and ensuring public safety.

Consultation

The draft RIS was released on 28 February 2011 and was available for public consultation until 6 May 2011. A total of 63 submissions were received from the following parties:

Allied Industry

- Insurance Council of Australia
- Motor Accident Insurance Board Tasmania
- Motor Accidents Compensation Scheme (Northern Territory)
- Suncorp
- Tourism Central Australia

Government

- Australian Assembly of Volunteer Fire Brigade Associations (AAVFBA)
- Australian Local Government Association (ALGA)
- Brisbane City Council

- Comcare
- Local Government Association of Queensland
- Local Government Association of South Australia
- New South Wales Road Transport Authority and Department of Transport
- Queensland Government
- South Australian Department for Transport, Energy and Infrastructure (inclusive of the South Australian Police and the Motor Accident Commission)
- State Government of Victoria
- Tasmanian Department of Infrastructure, Energy and Resources
- Transport Certification Australia
- Transport Workers Union of Australia (TWU)
- Vice Chief of the Defence Force
- Western Australian Department of Transport (inclusive of comments from Main Roads WA, WA Police, Insurance Commission of WA, Department of Treasury and Finance and Worksafe WA)
- Western Australian Local Government Association (WALGA)

Individuals

- Mr Chris Begley
- Mr Harry Carna
- Mr Stephen McCartney
- Mr Wal Cichocki
- Mr Geoffrey Cocks
- Mr Michael D Jordan
- Mr Garry Page
- Mr Adrian Peterson
- Ms Lorraine Pountney
- Ian Wright & Associates

Industry

- All Size Equipment Transport
- Brookfield's Transport Services
- CBCI
- Engistics
- Linfox
- Logistics Safety Solutions Pty Ltd
- Toll Group
- Transedel Livestock Transport
- Transport Consultancy Solutions
- Truckright
- Whyte's Transport Pty Ltd

Industry Peak Bodies

- AgForce Grains
- Australian Heavy Vehicle Repairers Association
- Australian Logistics Council (ALC)
- Australian Trucking Association (ATA)
- Bus Industry Confederation (BIC)
- BusNSW
- Cattle Council of Australia
- Cement Concrete and Aggregates
- Commercial Vehicle Industry Association of Qld (CVIAQ)
- Crane Association of WA (CAWA)
- Livestock and Rural Transport Association of WA (LRTA)
- Livestock Transporters Association of Victoria
- Motor Traders Association of NSW
- National Farmers Federation (NFF)
- National Pilot Vehicle Drivers Association

- National Road Freighters Association
- NatRoad
- NSW Farmers Association
- Truck Industry Council
- Victorian Farmers Federation

In addition to the formal submissions, 18 forums were held across the country to explain the intent of the proposed law and the likely impacts. The forums attracted around 780 stakeholders, and included question and answer sessions that provided attendees with direct access to the regulatory bodies that were developing the laws and establishing the regulator. Evaluation sheets were also provided at each forum to enable stakeholders to put their questions, comments and concerns in writing. The question and answer sessions, and the evaluation forms have all been considered in the development of the National Law and accompanying RIS.

Key stakeholders, such as the ATA, Australian Livestock Transporters Association, NatRoads, ALC, National Farmers' Federation, Australian Local Government Association and TWU have all been directly consulted at least once.

The submissions reveal an overwhelming support for the concept of a National Heavy Vehicle Regulator (NHVR). Industry is enthusiastic about a 'one stop shop' and supportive of the new decision making frameworks and the potential to improve access arrangements. Local Governments have welcomed the prospect of improved technical assistance regarding pavements and bridges and all parties strongly support the ability of the regulator to chart and respond to access 'hot spots'. The potential for the regulator to take a decisive leadership role in chain of responsibility investigations is warmly embraced by virtually all stakeholders.

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 their own jurisdiction. Western Australia has indicated an intention to mirror the legislation.

Notes on Provisions

Part 1 Preliminary

Clause 1 provides that the short title of the Act is the *Heavy Vehicle National Law Act 2012*.

Clause 2 provides that the Act commences on a day to be fixed by proclamation. It is planned to commence the Heavy Vehicle National Law in all states and territories on a common agreed date, currently scheduled for the middle of 2013. It is also planned to commence the provisions establishing the National Heavy Vehicle Regulator in late 2012. This will allow for the Regulator Board to be appointed and to establish the corporate framework and structures of the Regulator progressively before functional operation and administration of the Heavy Vehicle National Law commences.

As national scheme legislation, the Heavy Vehicle National Law relies on each jurisdiction passing its application laws before the agreed commencement date. To allow for any contingencies that may occur in other jurisdictions passing their application laws, the time for automatic commencement of legislation in section 15DA of the *Acts Interpretation Act 1954* has been increased from 1 year to 2 years and the period for which a regulation may extend automatic commencement has been increased from 2 years to 3 years.

Clause 3 sets out the meanings of the terms "local application provisions of this Act" and "Heavy Vehicle National Law (Queensland)".

Part 2 Adoption of Heavy Vehicle National Law

Clause 4 applies the Heavy Vehicle National Law set out in the schedule as a law of Queensland.

Clause 5 excludes the operation of certain Queensland legislation for the Heavy Vehicle National Law (Queensland) and instruments made under the Law. To ensure that the Heavy Vehicle National Law scheme can operate in a consistent way in all jurisdictions, administrative and machinery legislation usually applying in Queensland is excluded. For example, Queensland Acts dealing with the interpretation of legislation, financial matters, auditing and the employment of public servants will not apply to the Heavy Vehicle National Law (Queensland). In their place, the Heavy Vehicle National Law enacts consistent provisions covering these matters. Clause 636 of the National Law applies the *Information Privacy Act 2009*, *Public Records Act 2002* and *Right to Information Act 2009* of Queensland to the Regulator and this national scheme. National regulations will be used to modify the Queensland Acts to ensure they can operate effectively for this scheme in all participating jurisdictions. In particular, the national regulations will be used to make necessary adjustments to cater for administrative arrangements.

Some functions will be exercised under the Heavy Vehicle National Law (Queensland) by entities of the State. For example, the Queensland Police Service will continue to enforce provisions of the Heavy Vehicle National Law (Queensland) and the Department of Transport and Main Roads will be the road manager for State-controlled roads. It is appropriate that Queensland legislation continues to apply to these entities of the State while they are exercising their usual state-based functions under the Heavy Vehicle National Law (Queensland). Subsection (5) achieves this outcome and applies the Queensland laws without any modifications made by the national regulations.

Clause 6 sets out the purpose of division 2.

Clause 7 defines terms used in the Heavy Vehicle National Law (Queensland).

Clause 8 makes declarations for particular Queensland laws for the purposes of the Heavy Vehicle National Law (Queensland).

Clause 9 declares the Brisbane City Council and local governments under the *Local Government Act 2009* to be local government authorities for the Heavy Vehicle National Law (Queensland).

Clause 10 declares that QCAT is the relevant tribunal or court for the purposes of the Heavy Vehicle National Law (Queensland). The term "QCAT" is defined in the *Acts Interpretation Act 1954*.

Clause 11 declares the chief executive of the department which administers the *Transport Operations (Road Use Management) Act 1995* to be the road authority for the purposes of the Heavy Vehicle National Law (Queensland).

Clause 12 declares certain entities to be road managers for particular types of roads for the purposes of the Heavy Vehicle National Law (Queensland).

Clause 13 declares that police officers are authorised officers for the purposes of the Heavy Vehicle National Law (Queensland).

Clause 14 declares that magistrates are authorised warrant officials for the purposes of the Heavy Vehicle National Law (Queensland). The term "magistrate" is defined in the *Acts Interpretation Act 1954*.

Clause 15 declares that a busway as defined by the *Transport Infrastructure Act 1994* is a road for the purposes of the Heavy Vehicle National Law (Queensland).

Clause 16 declares that a person charged with an offence under the Heavy Vehicle National Law (Queensland), which states that the person does not have the benefit of the mistake of fact defence, means that section 24 of the Criminal Code does not apply to the person in relation to the offence. That section provides that a person who does or omits to do an act under an honest and reasonable, but mistaken, belief in the existence of any state of things is not criminally responsible for the act or omission to any greater extent than if the real state of things had been such as the person believed to exist.

Part 3 National regulations

Clause 17 deals with matters relating to the making and Parliamentary scrutiny of national regulations for the Heavy Vehicle National Law.

Clause 17(1) provides that sections 49 to 51 of the *Statutory Instruments Act 1992* apply to national regulations. This ensures that national regulations are subject to the usual tabling and disallowance procedures that apply in Queensland under the *Statutory Instruments Act 1992*. Under clause 17(1)(b), a national regulation must be tabled in the Legislative Assembly within 14 days after it is published on the New South Wales

legislation website in accordance with clause 670(1) of the Heavy Vehicle National Law (Queensland).

Clause 17(2) provides that part 4 of the *Legislative Standards Act 1992* applies to national regulations. Part 4 of the *Legislative Standards Act 1992* outlines the requirements for explanatory notes for Acts and regulations.

Clause 17(3) provides that a committee of the Legislative Assembly may deal with and report on national regulations under the *Parliament of Queensland Act 2001* in the same way as a regulation made under a Queensland Act.

Clause 17(4) provides that the references to subordinate legislation in section 4 of the *Legislative Standards Act 1992* regarding fundamental legislative principles apply to national regulations.

Clause 17(5) provides that if a national regulation ceases to have effect under clause 17(1) in Queensland, the cessation does not have any effect on the application of the regulation in any other jurisdiction. Clause 17(6) defines national regulation for this section.

Part 4 Provisions specific to this jurisdiction

Clause 18 provides that the provisions of Chapter 9 of the Heavy Vehicle National Law (Queensland) which correspond to provisions of the *Police Powers and Responsibilities Act 2000* do not apply to an authorised officer who is a police officer. This replicates section 20(4) of the *Transport Operations (Road Use Management) Act 1995*, which currently applies to the exercise of authorised officer powers by police officers for both light and heavy vehicles. As a result of the enactment of the Heavy Vehicle National Law (Queensland), this clause is required to maintain the status quo in relation to the exercise of authorised officer powers for heavy vehicles by police officers.

Clause 19 provides that a reference in the Heavy Vehicle National Law (Queensland) to an appeal against a decision is a reference to a review of the decision provided under the *Queensland Civil and Administrative Tribunal Act 2009*. Section 20 of that Act provides that the purpose of the

review of a reviewable decision is to produce the correct and preferable decision and that QCAT must hear and decide the review by way of a fresh hearing on the merits.

Schedule Heavy Vehicle National Law

Chapter 1 Preliminary

Part 1.1 Introductory matters

Clause 1 provides for the Law to be cited as the *Heavy Vehicle National Law.*

Clause 2 specifies the commencement date for the Law in Queensland by reference to the commencement provision specified in the Heavy Vehicle National Law (Queensland), being a day to be fixed by proclamation. This clause reflects the intention that each State and Territory will enact the Law and will individually determine in its applied law the commencement date of the Law in its jurisdiction. It is planned to commence the Law in all States and Territories on a common agreed date, currently scheduled for the middle of 2013. It is also planned to commence the provisions establishing the National Heavy Vehicle Regulator in late 2012. This will allow for the Regulator Board to be appointed and to establish the corporate framework and structures of the Regulator progressively before functional operation and administration of the Law commences.

Clause 3 identifies the object of the Law, in establishing a national scheme for facilitating and regulating the use of heavy vehicles on roads in a way that:

- promotes public safety;
- manages the impact of heavy vehicles on the environment, road infrastructure and public amenity;

- provides for efficient road transport of goods and passengers by heavy vehicles; and
- encourages and promotes efficient, innovative, productive and safe business practices.

Clause 4 sets out the regulatory framework to achieve the object of the Law as one that:

- establishes an entity called the National Heavy Vehicle Regulator (the Regulator);
- provides for the national registration of heavy vehicles;
- prescribes specified requirements for the driving and use of heavy vehicles;
- imposes duties and obligations on persons whose activities may influence compliance with such requirements; and
- includes measures to allow improved access to the road network in certain circumstances.

Part 1.2 Interpretation

Clause 5 defines numerous technical and other terms used throughout the Law.

Clause 6 defines the key term 'heavy vehicle' to mean a vehicle that has a gross vehicle mass (as defined in clause 5) of more than 4.5 tonnes. It also includes light vehicles (vehicles with a gross vehicle mass of 4.5 tonnes or less) when used in a combination with a heavy vehicle, but does not include light vehicles for the purposes of the registration requirements. However, it does not include 'rolling stock' (for example, trains, trams, wagons and monorail vehicles) as defined in clause 6(4).

Clause 7 defines the term 'fatigue-regulated heavy vehicle' to mean a motor vehicle with a gross vehicle mass (as defined in clause 5) of more than 12 tonnes; a combination with a gross vehicle mass of more than 12 tonnes; or a fatigue-regulated bus (defined in clause 5 as a motor vehicle built or fitted to carry more than 12 adults, including the driver). The clause clarifies that, in the case of a truck or a truck in a combination, the gross vehicle mass includes any machine or implement attached to the

truck. However, the term does not include a motorhome or (except in the case of truck or a combination with a truck that has a machine or implement attached to it) a motor vehicle built or modified to operate primarily as an off-road machine or implement or on a road-related area or a on a road under construction and which is not capable of carrying goods or passengers by road.

The term is of particular importance to 'Chapter 6-Vehicle operations-driver fatigue', as the driver fatigue provisions of the Law only apply in respect of drivers of these fatigue-regulated heavy vehicles.

Clause 8 defines two other key terms in the Law, being 'road' and 'road-related area'. The terms are important as the Law regulates the use of heavy vehicles on roads and road-related areas. Also note that clause 13 (see below) states that a reference in the Law to a road includes a reference to a road-related area, unless a contrary intention appears in the Law.

Clause 9 defines the terms 'convicts' and 'convicted' as per their usual meaning. However, clause 9(3) provides that for specified sections of the Law, a person is to be taken to be 'convicted' of an offence if that person pays a fine sought by an infringement notice for the offence. The purpose of this expanded definition of 'convicted' is to allow for extended liability to apply to various parties even though a driver has not been charged and taken to court for the commission of an offence but the driver has paid a fine imposed by an infringement notice, thereby effectively admitting the offence.

Clause 10 provides that Schedule 1 applies to the Law. This schedule contains miscellaneous interpretation provisions of a kind usually contained in the Interpretation Act of a State or Territory. The schedule is necessary to provide consistency in interpretation across jurisdictions.

Clause 11 provides that a reference in this Law, either generally or specifically to a law or a provision of a law of the Commonwealth or a State or Territory (including this Law) includes a reference to each instrument (including a regulation) made or in force under the law or provision as well as each instrument made or in force under any such instrument.

Clause 12 states that a reference to 'this Law as applied in a participating jurisdiction' in the Law means the law of a participating jurisdiction that substantially corresponds to the Law, or a law prescribed by the national regulations for the purposes of paragraph (a)(iii) of the definition of 'participating jurisdiction' (as defined in clause 5), enacted in a

participating jurisdiction. This clause is necessary to acknowledge that the Law is intended to apply across Australia even if a jurisdiction mirrors the Law or makes minor amendments to its application of the Law.

Clause 13 states that a reference in the Law to a road includes a reference to a road-related area (as defined in clause 8), unless a contrary intention appears.

Clause 14 states that where the provision of the Law expressly states that a person is not to have the benefit of the mistake of fact defence for the offence, then the effect of that provision in a participating jurisdiction will be the effect that is declared by a law of that jurisdiction. This clause allows for each jurisdiction to ensure that the mistake of fact defence as used in that jurisdiction does not apply for the purpose of this Law in respect of a number of offences under the Law that are to be absolute liability offences. These are offences where the mistake of fact defence is not to apply, so that the person cannot rely on honest and reasonable mistakes of fact to excuse his or her behaviour. Note that most of the absolute liability offences in this Law are subject to the reasonable steps defence created by clause 560 of this Law.

Thus, clause 16 of the Heavy Vehicle National Law (Queensland) specifies that section 24 of the Criminal Code does not apply. This has the effect of excluding the mistake of fact defence in respect of those absolute liability offences.

Part 1.3 Application and operation of Law

Clause 15 provides for the extraterritorial operation of the Law so far as it is possible so that the national regulation scheme for heavy vehicles is effective.

Clause 16 provides that the Law binds the State (as defined in clause 5). However, subclause 16(2) states that no criminal liability attaches to the State itself (as distinct from its agents, instrumentalities, officers and employees) under the Law.

Clause 17 sets out the relationship of the Law with the primary work health and safety (WHS) law in a participating jurisdiction. In essence, the Law and WHS laws are to operate independently of each other. Thus, subclause

17(3) clarifies that compliance with the Law is not by itself evidence that a person has complied with the primary WHS law, regulations made under the WHS law or with a common law duty of care. However, subclause 17(2) provides that evidence of a contravention of this Law is admissible in any proceedings under the primary WHS law.

Chapter 2 Registration

Part 2.1 Preliminary

Clause 18 states that the main purpose of Chapter 2 is to establish a scheme for the national registration of heavy vehicles that meets safety objectives, allows for identification of heavy vehicles and those responsible for them, and ensures compliance with compensation legislation. The clause also recognises that unregistered heavy vehicles may be used in particular circumstances without posing significant safety risks.

Part 2.2 Registration scheme

Division 1 Preliminary

Clause 19 provides a head of power for national regulations to prescribe procedures for the registration of heavy vehicles. The types of matters that may be prescribed cover a broad spectrum including eligibility for registration requirements, conditional registration, registration charges, unregistered heavy vehicle permits, registration transfers, surrenders and renewals, amendment, suspension or cancellation of registration or unregistered heavy vehicle permits, and arrangements for the collection of third party insurance and vehicle registration duty.

Clause 20 states that the registration of a heavy vehicle under the Law is not evidence of title to the heavy vehicle. This clause intends to maintain the distinction between registration of a heavy vehicle and ownership of a heavy vehicle at law as the registered operator of a heavy vehicle may not be the owner or sole owner of the heavy vehicle.

Division 2 Requirement for heavy vehicle to be registered

Clause 21 creates an offence for a person to use, or permit to be used, on a road an unregistered heavy vehicle or one whose registration has been suspended. The maximum penalty for non-compliance is $8000. Note that the inclusion of 'permit to be used' in clause 21 extends the responsibility beyond the driver of the heavy vehicle and is intended to require persons responsible for a vehicle to prevent the use of that vehicle while it is unregistered or the registration has been suspended.

An exception to the above is set out in subclause 21(2): no offence is committed if the vehicle is being used under an unregistered heavy vehicle permit, or if the use of the unregistered heavy vehicle is authorised under Division 3. That Division specifies various circumstances in which an unregistered heavy vehicle is authorised to be used on a road without an unregistered heavy vehicle permit issued under the national regulations.

Division 3 Authorised use of unregistered heavy vehicle

Clause 22 specifies that the purpose of Division 3 is to state the circumstances in which an unregistered heavy vehicle is authorised to be used on a road without an unregistered heavy vehicle permit issued under the national regulations.

Clause 23 authorises the use of an unregistered heavy vehicle on a road when that vehicle is travelling, by the most direct or convenient route, to a 'registration place', as defined in subclause 23(2). A registration place is a place where a heavy vehicle is taken for the purpose of obtaining registration and includes a place where the vehicle may be first weighed or inspected for checking its compliance with the heavy vehicle standards.

However, the requirements of any third party insurance legislation required by the local jurisdiction in which the heavy vehicle is being used must be complied with and the vehicle must not be carrying goods.

Clause 24 authorises the use of an unregistered heavy vehicle on a road if it is registered in a foreign country and temporarily in Australia, and the registration requirements of that country are satisfied, so far as is reasonably practicable. The requirements of third party insurance legislation of the local jurisdiction in which the heavy vehicle is being used must also be complied with. The intention is to allow the use of foreign registered heavy vehicles in Australia for a limited time period without the requirement for registration in Australia. This clause does not intend to authorise the use of foreign registered heavy vehicles on a road in Australia for an indefinite time period.

Clause 25 authorises the use of an unregistered heavy vehicle on a road if a road authority has authorised the use of the vehicle on the road for short-term purposes (usually known as 'trade plates' or 'dealer plates'), if, so far as is reasonably practicable, any relevant conditions imposed by the authority are complied with, and any third party insurance requirements of the local jurisdiction in which the heavy vehicle is being used are complied with.

Clause 26 authorises the use of an unregistered heavy vehicle on a road if the vehicle is on a journey between two parcels of land used solely or mainly for primary production, is travelling by the most direct or convenient route between the places, and for a distance of no more than 500 metres. The requirements of any third party insurance legislation of the local jurisdiction in which the heavy vehicle is being used must also be complied with.

Clause 27 authorises the use of an unregistered heavy vehicle on a road if it falls within either of the following categories:

- the vehicle is an 'agricultural implement' (defined in clause 5) being towed by a registered 'agricultural machine' (defined in clause 5) that is suitably matched to the implement or another registered heavy vehicle of a suitable size for towing the implement;
- the vehicle is a trailer being towed by a registered agricultural machine that is being used to perform 'agricultural tasks' (defined in clause 5) for which it was built or a conditionally registered heavy vehicle.

The requirements of any third party insurance legislation of the local jurisdiction in which the heavy vehicle is being used must also be complied with.

Clause 28 authorises the use of an unregistered heavy vehicle on a road if it is of a category of heavy vehicles exempted from the requirement to be registered under Part 2.2, Division 4. The requirements of any third party insurance legislation of the local jurisdiction in which the heavy vehicle is being used must also be complied with. This clause recognises the Regulator's power to issue registration exemptions for categories of vehicles.

Division 4 Exemption from requirement to be registered

Clause 29 empowers the Regulator to exempt a category of heavy vehicles from the requirement to be registered, for a period of not more than one year. An exemption made under this clause is referred to as a '*registration exemption'*. Such exemptions must be issued by the Regulator by way of a Commonwealth Gazette notice that complies with clause 33. This power has been included in the Law to allow for the preservation of current local productivity initiatives in jurisdictions and for the implementation of future productivity initiatives which authorise the use of unregistered vehicles.

Clause 30 limits the Regulator's power to grant a registration exemption by specifying that it may only grant an exemption if it is satisfied that:

- it is not reasonable to require heavy vehicles of the category to be registered; and
- the use of heavy vehicles of that category on a road without being registered will not pose a significant safety risk.

In deciding whether to grant a registration exemption, the Regulator must have regard to the 'approved guidelines' (defined in clause 5 as guidelines approved by responsible Ministers under clause 594) for granting registration exemptions.

Clause 31 authorises the Regulator to make registration exemptions subject to any conditions that it considers appropriate. For example, conditions could relate to route and time restrictions for the use of the vehicle, the documentation the driver of a heavy vehicle must carry and the signs or

other things that must be displayed on a heavy vehicle. The examples provided in this clause are not intended to operate as prescriptive requirements for conditions nor limit the scope of conditions that may be imposed by the Regulator.

Clause 32 states that a registration exemption takes effect when the Commonwealth Gazette notice for the exemption is published or, if a later time is stated in the notice, at the later time. The registration exemption applies for the period stated in the Commonwealth Gazette notice. However, this is limited by the requirement in Clause 30 that a registration exemption must be a period of not more than one year.

Clause 33 specifies the matters to be set out in a Commonwealth Gazette notice for a registration exemption and that a copy of the notice must be published on the Regulator's website.

Clause 34 gives the Regulator discretion to amend or cancel a registration exemption on either or both of two grounds:

- the use of heavy vehicles on a road under the exemption has caused, or is likely to cause, a significant safety risk;
- since the exemption was granted, there has been a change in the circumstances and had these changed circumstances existed when the exemption was granted, the Regulator would not have granted the exemption in the first instance or would have granted the exemption subject to conditions or different conditions.

It also sets out procedural requirements, including notification of the proposal to amend or cancel the registration exemption, giving affected persons at least 14 days to make written representations as to why the Regulator should not amend or cancel the registration exemption, considering all written representations made and giving notice of the decision to amend or cancel the registration exemption. It also specifies when the amendment or cancellation takes effect.

The intent of these requirements is to ensure transparency and fairness in the decision-making process. This is achieved by requiring adequate notice to be given to those affected by a proposed amendment or cancellation and by ensuring that possible adverse consequences of such action can be presented to the Regulator for consideration. An additional benefit of this clause is in allowing those who may be adversely affected by a decision to amend or cancel a registration exemption time in which to adjust their business practices.

Part 2.3 Vehicle register

Clause 35 requires the Regulator to keep a register of heavy vehicles (the vehicle register) that enables the identification of a heavy vehicle used on a road and of the person who is responsible for it. Subclause 35(2) stipulates that the heavy vehicle register must be kept in the way, and contain the particulars, prescribed by the national regulations. Subclause 35(3) enables the Regulator to also include any other information in the register that it considers reasonable and relevant for the purposes of Chapter 2.

Part 2.4 Other provisions relating to registration

Clause 36 clarifies that a 'registration item' (defined in clause 5 to mean documents, number plates and labels relating to registration or purported registration of a heavy vehicle or an unregistered heavy vehicle permit) issued by the Regulator remains the property of the Regulator.

Clause 37 creates various registration offences. Subclause 37(1) makes it an offence to attempt to obtain registration by making a false or misleading statement or representation or in another dishonest way and imposes a maximum penalty of $10000 for non-compliance. Subclause 37(2) makes it an offence to, without a reasonable excuse, possess a registration item obtained in a way specified in sub-clause 37(1) and imposes a maximum penalty of $10000 for non-compliance. Any registration item that is obtained by a person in this way is declared void under subclause 37(3).

Clause 38 empowers the Regulator to cancel an incorrect registration item. It further enables the Regulator, if it considers it is appropriate to do so, to issue a replacement registration item or to give the registered operator a notice requiring it to return the incorrect item to the Regulator. Subclause 38(3) creates an offence to fail to comply with a notice and imposes a maximum penalty of $1600 for non-compliance.

Whilst clause 38 is an enabling provision, it is not intended to place a duty on the Regulator to replace or recover every incorrect registration item issued.

Clause 39 authorises the Regulator, by notice, to require the operator of a heavy vehicle registered under the Law or the subject of an unregistered heavy vehicle permit to produce documents, or to present the vehicle for inspection, so that the Regulator can verify the records about that vehicle. Subclause 39(4) creates an offence for a person to fail to comply with such a notice without a reasonable excuse and imposes a maximum penalty of $800 for non-compliance.

Part 2.5 Written-off and wrecked heavy vehicles

Clause 40 states that the purpose of Part 2.5 is to provide for the collection and recording of information about written-off or wrecked heavy vehicles to ensure that such vehicles are registered only in circumstances where the identity of the vehicle and its operator is certain and the vehicle is safe.

Certainty in the identity of the vehicle and its operator and the safety of the vehicle are important because of the incidence of theft, fraud, and dangerous disassembly and reassembly practices which attempt to disguise the true identity or origin of written-off or wrecked vehicles or parts of vehicles.

Clause 41 defines 'insurer', 'wrecked' and 'written-off' for the purposes of Part 2.5.

Clause 42 requires the Regulator to keep a register of written-off and wrecked heavy vehicles. It stipulates that the register must be kept in the way, and contain the particulars, prescribed by the national regulations. The clause also requires the types of matters that the national regulations may provide for in relation to entries in the register, access to the register and the giving of information contained in the register. Subclause 42(3) enables the Regulator to also include any other information it considers reasonable and relevant to the purpose of Part 2.5.

Part 2.6 Other provisions

Clause 43 empowers the Regulator to specify the gross combination mass (see the definition of GCM in clause 5) for a motor vehicle, being the total maximum loaded mass of the vehicle and any vehicles it may lawfully tow at any given time for the purposes of the Law in the circumstances specified in the provision.

Clause 44 empowers the Regulator to specify the gross vehicle mass (see the definition of GVM in clause (5) for a vehicle for the purposes of this Law in the circumstances specified in the provision.

Chapter 3 Vehicle operations—standards and safety

Part 3.1 Preliminary

Clause 45 states that the main purpose of Chapter 3 is to ensure heavy vehicles used on roads are of a standard and in a condition that prevents or minimises safety risks.

Part 3.2 Compliance with heavy vehicle standards

Division 1 Requirements

Clause 46 provides a head of power for regulations to prescribe vehicle standards (heavy vehicle standards), with which heavy vehicles must

comply to use roads. These may include requirements applying to heavy vehicles, components of heavy vehicles or equipment of heavy vehicles.

Clause 47 creates an offence for a person to use, or permit to be used, on a road a heavy vehicle that contravenes a heavy vehicle standard applying to the vehicle. The maximum penalty for non-compliance is $2000.

The inclusion of the phrase 'permit to be used' in subclause 47(1) extends the responsibility beyond the driver of the heavy vehicle and is intended to require persons responsible for a heavy vehicle to ensure the vehicle complies with heavy vehicle standards applying to it.

Subclause 47(2) clarifies that the offence does not apply in either of the following circumstances:

- the heavy vehicle is travelling to a place for the repair of the vehicle or any of its components or equipment by the most direct or convenient route, is not carrying goods and is used in a way that does not pose a safety risk; or
- the heavy vehicle is on a road for testing or analysis of the vehicle or any of its components or equipment to check its compliance with the heavy vehicle standards, is not carrying goods and is used in a way that does not pose a safety risk.

Subclause 47(3) specifies that a person does not commit an offence if and to the extent that the noncompliance with a heavy vehicle standard was known to the Regulator when the vehicle was registered. However, a person only has the benefit of this provision if the heavy vehicle and its use on the road complies with the conditions of registration, as per subclause 47(5).

Subclause 47(4) specifies the circumstances in which the Regulator is taken to have known of the noncompliance at the time of registration.

Division 2 Exemptions by Commonwealth Gazette notice

Clause 48 empowers the Regulator to exempt a category of heavy vehicles from the requirement to comply with a heavy vehicle standard for a period of not more than 5 years. This must be done by Commonwealth Gazette notice complying with clause 52. An exemption made under this clause is

referred to as a *vehicle standards exemption (notice)*. This power has been included in the Law to allow for the preservation of current local productivity initiatives in jurisdictions and for the implementation of future productivity initiatives which exempt categories of vehicles from compliance with heavy vehicle standards.

Clause 49 limits the Regulator's power to grant a vehicle standards exemption (notice). Under subclause 49(1) a vehicle standards exemption (notice) may only be granted if:

- the Regulator is satisfied that the use of heavy vehicles of that category under the exemption will not pose a significant safety risk; and
- one of the following applies:
    - the Regulator is satisfied complying with the relevant standard would prevent heavy vehicles of that category from operating as they were built or modified;
    - the Regulator is satisfied heavy vehicles of that category are experimental vehicles, prototypes or similar vehicles that could not reasonably be expected to comply with the relevant standard;
    - the exemption has been requested by a road authority for a participating jurisdiction for the use of heavy vehicles of that category in that jurisdiction; or
    - the category of heavy vehicles consists of heavy vehicles that were, immediately before the commencement of this section in a participating jurisdiction, registered under an Australian road law of that jurisdiction and not required to comply with a similar standard at that time.

In deciding whether to grant a vehicle standards exemption (notice), the Regulator must have regard to the approved guidelines (defined in clause 5 as guidelines approved by responsible Ministers under clause 594) for granting vehicle standards exemptions.

Clause 49 ensures that the Regulator always has regard to the safety risks of granting an exemption and limits the granting of a vehicle standards exemption (notice) to highly specific circumstances. If those requirements are not met, the Regulator is not empowered to grant the vehicle standards exemption (notice).

Clause 50 authorises the Regulator to make a vehicle standards exemption (notice) subject to any conditions it considers appropriate. Such conditions could include, but are not limited to, conditions about protecting road infrastructure from damage and a condition requiring the driver of a heavy vehicle to keep documentation regarding the exemption in his or her possession.

Clause 51 states that a vehicle standard exemption (notice) takes effect when the Commonwealth Gazette notice for the exemption is published or, if a later time is stated on the Commonwealth Gazette notice, at the later time. The exemption applies for the period stated in the Commonwealth Gazette notice. However, this is limited by the requirement in clause 48 that a vehicle standard exemption (notice) must be for a period of not more than 5 years.

Clause 52 specifies the matters to be set out in a Commonwealth Gazette notice for a vehicle standard exemption (notice) and that a copy of the notice must be published on the Regulator's website.

Clause 53 gives the Regulator discretion to amend or cancel a vehicle standards exemption (notice) on either or both of two grounds:

- the use of heavy vehicles on a road under the exemption has caused, or is likely to cause, a significant safety risk;
- since the exemption was granted, there has been a change in the circumstances and had these changed circumstances existed when the exemption was granted, the Regulator would not have granted the exemption in the first instance or would have granted the exemption subject to conditions or different conditions.

It also sets out procedural requirements, including notification of the proposal to amend or cancel the vehicle standards exemption (notice), giving affected persons at least 14 days to make written representations as to why the Regulator should not amend or cancel the vehicle standards exemption (notice), considering all written representations made and giving notice of the decision to amend or cancel the vehicle standards exemption (notice). It also specifies when the amendment or cancellation takes effect.

The intent of these requirements is to ensure transparency and fairness in the decision-making process. This is achieved by requiring adequate notice to be given to those affected by a proposed amendment or cancellation and by ensuring that possible adverse consequences of such action can be

presented to the Regulator for consideration. An additional benefit of this clause is in allowing those who may be adversely affected by a decision to amend or cancel a vehicle standards exemption (notice) time in which to adjust their business practices.

Division 3 Exemptions by permit

Clause 54 empowers the Regulator to exempt a heavy vehicle from the requirement to comply with a heavy vehicle standard for a period not more than 3 years. This must be done by giving a permit to a person in accordance with clause 59. An exemption under this clause is referred to as a *vehicle standards exemption (permit)* and may apply to 1 or more heavy vehicles. This power has been included in the Law to allow for the preservation of current local productivity initiatives in jurisdictions and for the implementation of future productivity initiatives which exempt categories of vehicles from compliance with heavy vehicle standards.

Clause 55 sets out requirements for an application for a vehicle standards exemption (permit). It includes the requirement that an application must be in the approved form and be accompanied by the relevant prescribed fee (defined in clause 5 as a fee prescribed by the national regulations under clause 675(1)).

Clause 56 limits the Regulator's power to grant a vehicle standards exemption (permit). Under subclause 56(1) a vehicle standards exemption (permit) may only be granted if:

- the Regulator is satisfied that the use of the heavy vehicle under the exemption will not pose a significant safety risk; and
- one of the following applies:
    - the Regulator is satisfied complying with the relevant standard would prevent the heavy vehicle from operating as built or modified;
    - the Regulator is satisfied the heavy vehicle is an experimental vehicle, prototype or similar vehicle that could not reasonably be expected to comply with the relevant standard; or
    - the heavy vehicle was, immediately before the commencement of this section in a participating jurisdiction, registered under an

Australian road law of that jurisdiction and not required to comply with a similar standard at that time.

In deciding whether to grant a vehicle standards exemption (permit), the Regulator must have regard to the approved guidelines (defined in clause 5 as guidelines approved by responsible Ministers under clause 594) for granting vehicle standards exemptions.

This clause ensures that the Regulator always has regard to the safety risks of granting an exemption and limits the granting of a vehicle standards exemption (permit) to highly specific circumstances. If those requirements are not met, the Regulator must not grant the vehicle standards exemption (permit).

Clause 57 authorises the Regulator to make a vehicle standards exemption (permit) subject to any conditions it considers appropriate. Such conditions could include, but are not limited to, a condition about protecting road infrastructure from damage.

Clause 58 sets out that a vehicle standards exemption (permit) applies for the period stated in the permit for the exemption. However, this is limited by the requirement in clause 54 that the exemption must be for a period of not more than 3 years. Subclause 58(1) clarifies that the time period may be less than the period sought by the applicant for the permit.

Clause 59 sets out what the Regulator must provide to an applicant to whom a permit is granted, including the information which must be stated in the permit.

Clause 60 requires the Regulator to give the applicant an information notice for the decision if the Regulator refuses an application for a vehicle standards exemption (permit). An information notice is defined in clause 5 as a notice stating the decision, the reasons for the decision and the review and appeal information (also defined in clause 5) for the decision.

Clause 61 empowers the holder of a vehicle standards exemption (permit) to apply to the Regulator for an amendment or cancellation of the exemption. This application must be in the approved form, be accompanied by the permit and, if for an amendment, state clearly the amendment sought and the reasons for it. The Regulator must decide this application as soon as practicable after receiving it.

The Regulator is empowered by subclause 61(3) to require any additional information from the applicant that is reasonably required to decide the application.

The Regulator must give notice to the applicant if it decides to grant the application. The amendment or cancellation takes effect when notice of the decision is given to the applicant or, if a later time is stated in the notice, at that time. If the exemption has been amended, the Regulator must give the applicant a replacement permit for the exemption as amended.

If the Regulator decides not to amend or cancel the exemption in the way sought by the applicant, subclause 61(6) requires the Regulator to give the applicant an information notice for the decision and return the permit for the exemption to the applicant. An information notice is defined in clause 5 as a notice stating the decision, the reasons for the decision and the review and appeal information (also defined in clause 5) for the decision.

Clause 62 allows the Regulator to amend or cancel a vehicle standards exemption (permit) on the following grounds:

- the exemption was granted because of a false or misleading documentation or representation or one that was obtained or made in an improper way;
- the holder of the permit has contravened a condition of the exemption;
- the use of a heavy vehicle on a road under the exemption has caused, or is likely to cause, a significant safety risk;
- since the exemption was granted, there has been a change in the circumstances and had these changed circumstances existed when the exemption was granted, the Regulator would not have granted the exemption in the first instance or would have granted the exemption subject to conditions or different conditions.

It also sets out procedural requirements, including notification of the proposal to amend or cancel the vehicle standards exemption (permit), giving the permit holder at least 14 days to make written representations as to why the Regulator should not amend or cancel the vehicle standards exemption (permit), considering all written representations made and giving notice of the decision to amend or cancel the vehicle standards exemption (permit). It also specifies when the amendment or cancellation takes effect.

The intent of these requirements is to ensure transparency and fairness in the decision-making process. This is achieved by requiring adequate notice to be given to the permit holder and by ensuring that possible adverse consequences of such action can be presented to the Regulator for consideration.

Clause 63 empowers the Regulator, by notice given to the holder of a permit for a vehicle standards exemption (permit), to make minor amendments to a vehicle standards exemption (permit). Under this clause, an amendment is considered minor if it is for a formal or clerical reason or does not adversely affect the holder's interest.

As such amendments would not adversely affect the permit holder's interest, there is no need to follow the procedural requirements that apply when an amendment or cancellation occurs under clause 62.

Clause 64 provides that the Regulator may require, by notice, a person to return a permit for a vehicle standards exemption (permit) to the Regulator if it has been amended or cancelled. It is an offence for a person to fail to comply with that notice within 7 days or within any longer period stated in the notice. The maximum penalty for non-compliance is $2000.

In the case of an exemption that has been amended, the Regulator must give the person a replacement permit in accordance with subclause 64(3).

Clause 65 requires a person to apply for a replacement permit as soon as practicable after becoming aware that their permit is defaced, destroyed lost or stolen. The maximum penalty for a person not doing so is $2000.

Subclause 65(2) states that if the Regulator is satisfied the permit has been defaced, destroyed, lost or stolen the Regulator must give the person a replacement permit as soon as practicable. The only valid reason why the Regulator could refuse the application for a replacement permit is if the Regulator is not satisfied that the permit has been defaced, destroyed, lost or stolen.

Subclause 65(3) states that if the Regulator decides not to give a replacement permit the Regulator must give the person an information notice for the decision. An information notice is defined in clause 5 as a notice stating the decision, the reasons for the decision and the review and appeal information (also defined in clause 5) for the decision.

Division 4 Operating under vehicle standards exemption

Clause 66 creates a number of offences, each with a maximum penalty of $2,000, where there has been a contravention of a vehicle standards exemption.

Under subclause 66(1) it is an offence for a person to contravene a condition of an exemption. This does not apply to a condition referred to in subclause (7), relating to the requirement for the driver of a heavy vehicle who is driving under a vehicle standards exemption (notice) to keep a copy of the Commonwealth Gazette notice or an information sheet about the exemption. This is because contravention of such a condition is an offence under clause 67.

Under subclause 66(2) it is an offence for a person to use or permit the use of a vehicle on a road where that vehicle contravenes a condition of a vehicle standards exemption.

Under subclause 66(3) it is an offence for a person to use or permit a heavy vehicle to be used on a road in a way that contravenes a condition of a vehicle standards exemption.

Subclause 66(4) clarifies that, if a heavy vehicle is exempt from compliance with a heavy vehicle standard, no offence is committed against this Law in relation to non-compliance with the standard from which it is exempt, so long as the heavy vehicle and its use on the road complies with the conditions of that exemption.

Subclause 66(5) specifies that, if a person commits an offence against subclauses 66(1), 66(2) or 66(3), the person does not have the benefit of the exemption. The exemption does not operate in the person's favour while the contravention continues and the relevant exemption must be disregarded in deciding whether the person has committed an offence in relation to a contravention of a heavy vehicle standard.

Subclause 66(6) operates to prevent any double jeopardy arising because a person has been denied the benefit of an exemption under subclause 66(5). A person can be charged with either the offence against this clause or the offence against the contravention of the vehicle standard but must not be charged with both offences.

Clause 67 applies if a vehicle standards exemption (notice) is subject to the condition that the driver of a heavy vehicle who is driving the vehicle under the exemption must keep a *relevant document* in the driver's possession. A relevant document is either a copy of the Commonwealth Gazette notice for the exemption or a copy of an information sheet about the exemption.

If the driver does not comply with the condition both the driver and each relevant party for the driver commit an offence. A maximum penalty of $2000 applies for both offences. A relevant party for the driver means:

- if the driver is employed, the employer of the driver;
- if the driver is a self-employed driver, a prime contractor of the driver;
- if the driver is making a journey for the operator of a vehicle, an operator of the vehicle.

Extending liability for the driver's non-compliance to the employer, prime contractor or operator is to encourage all parties responsible for the use of the heavy vehicle to ensure that the exemption documentation is with the vehicle at all times. This will assist compliance, by ensuring drivers are aware of the exemption conditions and enabling authorised officers to readily ascertain whether a vehicle is exempted from vehicle standards and the conditions applying to the exemption.

When the relevant party is charged with an offence under this clause that person does not have the benefit of the mistake of fact defence for the offence. However, that person does have the benefit of the reasonable steps defence. That defence is set out in Divisions 1 and 2 of Part 10.4. The reasonable steps defence requires that person charged must actively consider the appropriate steps to prevent an on-road breach from occurring and cannot rely on a honest and reasonable mistake alone.

Subclause 67(6) specifies certain matters that are irrelevant in a proceeding and matters that constitute evidence in a proceeding against a relevant party. It provides that:

- it is irrelevant whether or not the driver has been or will be proceeded against or convicted. Thus it is not necessary to take action against a driver or to obtain a conviction against a driver in order to proceed against a relevant party;
- evidence a court has convicted a driver is evidence that the offence happened at the time and place, and in the circumstances, stated in the charge resulting in the conviction or evidence that the driver has paid an infringement penalty, is evidence that the offence happened at the time and place, and in the circumstances, stated in the infringement notice. These are intended to facilitate proof of the relevant facts.

Clause 68 requires a driver of a heavy vehicle driving under a vehicle standards exemption (permit) to keep a copy of the permit in the driver's possession.

If the driver does not do so, both the driver and each relevant party for the driver commit an offence. A maximum penalty of $2000 applies for both offences. A relevant party for the driver means:

- if the driver is employed, the employer of the driver;
- if the driver is a self-employed driver, a prime contractor of the driver;
- if the driver is making a journey for the operator of a vehicle, an operator of the vehicle.

Extending liability for the driver's non-compliance to the employer, prime contractor or operator is to encourage all parties responsible for the use of the heavy vehicle to ensure that the permit is with the vehicle at all times. This will assist compliance, by ensuring drivers are aware of the exemption conditions and enabling authorised officers to readily ascertain whether a vehicle is exempted from vehicle standards and the conditions applying to the exemption.

When the relevant party is charged with an offence under this clause that person does not have the benefit of the mistake of fact defence for the offence. However, that person does have the benefit of the reasonable steps defence. That defence is set out in Divisions 1 and 2 of Part 10.4. The reasonable steps defence requires that a person charged must actively consider the appropriate steps to prevent an on-road breach from occurring and cannot rely on a honest and reasonable mistake alone.

Subclause 68(6) specifies certain matters that are irrelevant in a proceeding and matters that constitute evidence in a proceeding against a relevant party. It provides that:

- it is irrelevant whether or not the driver has been or will be proceeded against or convicted. Thus it is not necessary to take action against a driver or to obtain a conviction against a driver in order to proceed against a relevant party;
- evidence a court has convicted a driver is evidence that the offence happened at the time and place, and in the circumstances, stated in the charge resulting in the conviction or evidence that the driver has paid an infringement penalty is evidence that the offence happened at the time and place, and in the circumstances, stated in the infringement notice. These are intended to facilitate proof of the relevant facts.

It is anticipated that to comply with the requirements of clause 68, the relevant party will give a driver of a heavy vehicle driving under a vehicle standards exemption (permit) a copy of the permit granted to the relevant party. Subclause 68(2) makes it an offence for a driver who is driving the vehicle under a heavy vehicle standards (permit) granted to a relevant party who stops working for that relevant party to fail to return the copy of the

permit to the relevant party as soon as reasonably practicable after the driver stops working for that party. The maximum penalty for the offence is $2000.

Part 3.3 Modifying heavy vehicles

Clause 69 creates offences in relation to unauthorised vehicle modifications.

Under subclause 69(1) it is an offence for a person to modify a heavy vehicle unless the modification has been approved by an authorised entity under clause 70 or by the Regulator under clause 71. The maximum penalty for this offence $2000.

Under subclause 69(2) it is an offence for a person to use or permit to be used on a road a heavy vehicle that has been modified unless the modification has been approved by an authorised entity under clause 70 or by the Regulator under clause 71. The maximum penalty for this offence is $2000.

It is intended that under clause 68, responsibility for any unauthorised modifications to heavy vehicles be extended to all persons involved in the modification process and in the use of the modified vehicle.

Clause 70 empowers the Regulator to authorise an entity to approve modifications of heavy vehicles. That entity may only approve a modification if the modification complies with a code of practice prescribed by the national regulations for this clause.

Unlike a modification approved by the Regulator under clause 71, the entity does not have to consider whether the modification will constitute a significant safety risk. This is because the authorised entity does not have the same broad discretion to approve a modification even if it does not comply with a prescribed code of practice.

Subclause 70(3) specifies what an authorised entity must do if it approves a modification. It must give a certificate approving the modification in the approved form to the registered operator of the vehicle or, if there is no registered operator of the vehicle, to an owner of the vehicle and must ensure a plate, in the approved form that is stamped or engraved with details of the modification is fitted to a conspicuous part of the vehicle.

Failure to comply with this requirement is an offence, with a maximum penalty of $2000.

Clause 71 authorises the Regulator to approve a modification of a heavy vehicle if the Regulator is satisfied the use on a road of the heavy vehicle as modified will not pose a significant safety risk.

Unlike an authorised entity under clause 70, the Regulator may approve a modification even if the modification does not comply with a prescribed code of practice.

This is intended to enable the Regulator to approve a modification where a code of practice approving such a modification is not yet published or published code does not apply. However, the Regulator is bound by the duty to be satisfied that the modification will not pose a significant safety risk.

Similar to the requirements placed on an approved entity under subclause 70(3), subclause 71(3) specifies what the Regulator must do if it approves a modification. It must give a certificate approving the modification in the approved form to the registered operator of the vehicle or, if there is no registered operator of the vehicle, to an owner of the vehicle and must ensure a plate, in the approved form that is stamped or engraved with details of the modification is fitted to a conspicuous part of the vehicle.

Part 3.4 Other offences

Clause 72 creates an offence for a person to use, or permit to be used, on a road a heavy vehicle that is unsafe. The maximum penalty for non-compliance is $2000.

The inclusion of the phrase ‘permit to be used’ in subclause 72(1) extends the responsibility beyond the driver of the heavy vehicle and is intended to require persons responsible for a heavy vehicle to ensure the vehicle is safe.

Subclause 72(2) specifies that a heavy vehicle is unsafe only if the condition of the vehicle, or any of its components or equipment makes the use of the vehicle unsafe, or endangers public safety. A number of examples are provided of when a heavy vehicle may be unsafe, though these examples are not exhaustive.

Subclause 72(3) clarifies that the offence does not apply in either of the following circumstances:

- the heavy vehicle is travelling to a place for the repair of the vehicle or any of its components or equipment by the most direct or convenient route; or
- the heavy vehicle is on a road for testing or analysis of the vehicle or any of its components or equipment to check its compliance with the heavy vehicle standards.

Clause 73 sets out requirements about properly operating emission control systems for a relevant emission. A relevant emission refers to a gas, particles or noise emission. An emission control system refers to a device or system fitted to a vehicle that reduces the emission of a relevant emission from the vehicle.

Subclause 73(1) creates an offence for a person to use, or permit to be used on a road a heavy vehicle that is not fitted with an emission control system for a relevant emission, the maximum penalty for non-compliance being $2000.

Subclause 73(2) creates an offence for a person to use, or permit to be used on a road a heavy vehicle fitted with such a system if the system is not operating substantially in accordance with the system's original intended purpose. The maximum penalty for non-compliance is $2000.

The inclusion of the phrase 'permit to be used' in subclauses 73(1) and 73(2) extends the responsibility beyond the driver of the heavy vehicle and is intended to require persons responsible for a heavy vehicle to ensure the vehicle is compliant. Requiring that the emission control system must be operating substantially in accordance with the system's intended purpose is to ensure that persons cannot escape liability for having an ineffective or damaged emission control system.

Subclause 73(3) clarifies that offence in subclause 73(2) does not apply if the vehicle is travelling on the most direct or convenient route to a place of repair for the emission control system, or any of the vehicle's components or equipment that affect the operation of the system.

Clause 74 states that if, under the heavy vehicle standards, a warning sign is required to be displayed on a heavy vehicle of a particular type, size or configuration (such as a sign showing the words 'LONG VEHICLE' or 'ROAD TRAIN') a person must not use, or permit to be used, on a road a heavy vehicle that has the warning sign displayed on it unless the vehicle is

of the particular type, size or configuration. The maximum penalty for non-compliance is $2000.

This clause is intended to ensure that warning signs are only used for vehicles that, under the heavy vehicle standards, are required to use them.

Clause 75 creates an offence for a person to tamper with a speed limiter that is required under an Australian road law to be, and is, fitted to a heavy vehicle.

A speed limiter is defined as a device or system used to limit the maximum road speed of a heavy vehicle to which it is fitted. To tamper with a speed limiter means to alter, damage, remove or otherwise interfere with the speed limiter to the effect of enabling the vehicle to be driven at a higher speed than the speed limiter would permit.

Subclause 75(2) clarifies that, if the relevant conduct is associated with the repair of a malfunctioning speed limiter, no offence is committed.

The maximum penalty for tampering with a speed limiter is $6000, which is significantly higher than other offences in this Chapter. This indicates the gravity of, and safety risks associated with, the offence.

A person charged with an offence for tampering with a speed limiter does not have the benefit of the mistake of fact defence for the offence. However the person does have the benefit of the reasonable steps defence for the offence. That defence is set out in Divisions 1 and 2 of Part 10.4. The reasonable steps defence requires that person charged must actively consider the appropriate steps to prevent an on-road breach from occurring and cannot rely on a honest and reasonable mistake alone.

Clause 75 is different to other offence provisions in this Chapter as it does not extend responsibility to a person who uses, or permits to be used, a heavy vehicle with a tampered speed limiter. The offence is intended to be limited to the person who physically performs or authorises the tampering.

Chapter 4 Vehicle operations—mass, dimension and loading

Part 4.1 Preliminary

Clause 76 states that the main purposes of Chapter 4. The main purposes are:

- To improve public safety by decreasing risks to public safety caused by excessively loaded heavy vehicles; and
- To minimise any adverse impact of excessively loaded heavy vehicles on road infrastructure or public amenity.

Subclause 76(2) states that these purposes are achieved by:

- imposing mass limits for heavy vehicles, particular components of heavy vehicles, and loads on heavy vehicles;
- imposing restrictions about the size of heavy vehicles and the projections of loads on heavy vehicles;
- imposing requirements about securing loads on heavy vehicles; and
- restricting access to roads by heavy vehicles of a particular mass, size or configuration even if the vehicles comply with the mass limits, restrictions and requirements mentioned above (Class 2 vehicles).

However, subclause 76 (3) states that particular heavy vehicles that do not comply with mass limits, restrictions and requirements (Class 1 and Class 3 vehicles) may be permitted to be used on roads subject to conditions when such use would be allowed for the efficient road transport of goods or passengers by heavy vehicles provided that its use does not compromise the safety or infrastructure protection purposes of Chapter 4.

Part 4.2 Mass requirements

Division 1 Requirements

Clause 77 authorises regulations to prescribe requirements about the mass of heavy vehicles and their components. The requirements apply not only to the heavy vehicle as a whole but also to combinations and to parts of the vehicle or combination. These requirements are referred to as *mass requirements.* In addition, subclause 77 (4) authorises regulations to prescribe requirements that are not mass requirements but are about the use, on roads, of heavy vehicles under particular mass limits such as Higher Mass Limits. Examples are provided of requirements that the regulations are authorised to make including route restrictions and requirements to display signs on heavy vehicles.

Clause 78 states that a person must not drive on a road a heavy vehicle that (together with its load) does not, or whose components do not, comply with the mass requirements applying to the vehicle. The maximum penalty for contravening this requirement depends on the extent of the breach and whether it is classified as a: minor (maximum penalty $3750); substantial (maximum penalty $6000) or severe (maximum penalty $10000) risk breach. These categories of breach are defined in Part 4.2, Division 2 of this Bill (clauses 79 to 82).

A person charged with an offence under this clause does not have the benefit of the mistake of fact defence for the offence. However, in a proceeding for an offence under this clause the person does have the benefit of the reasonable steps defence for the offence. That defence is set out in Divisions 1 and 2 of Part 10.4. The reasonable steps defence requires that person charged must actively consider the appropriate steps to prevent an on-road breach from occurring and cannot rely on a honest and reasonable mistake alone.

Division 2 Categories of breaches of mass requirements

Clause 79 defines the terms ***severe risk breach lower limit*** and ***substantial risk breach lower limit***. These terms are important for determining the maximum penalty applying to a breach of a mass requirement.

The substantial risk breach lower limit, in relation to a mass requirement applying to a heavy vehicle, is a mass equalling 105% of the maximum mass (rounded up to nearest 0.1t) permitted for the vehicle under the mass requirements or 0.5t over the maximum mass permitted for the vehicle. The effect of this definition is that the substantial risk breach lower limit will never be reached if the heavy vehicle's mass is less than 0.5t over the mass permitted for the vehicle.

The severe risk breach lower limit is a mass equalling 120% of the maximum mass (rounded up to nearest 0.1t) permitted for the vehicle under the mass requirements.

Clauses 80, 81 and 82 combine to apply the definitions of ***substantial risk breach lower limit*** and ***severe risk breach lower limit*** to effect that a contravention of a mass requirement applying to a heavy vehicle will be classified as:

- A minor risk breach if the subject matter of the contravention is less than the substantial risk breach lower limit for the requirement. Note: A heavy vehicle with a total mass less than 0.5t over the maximum mass permitted for the vehicle will always be a minor risk breach under this Division.
- A substantial risk breach if the subject matter of the contravention is equal to or greater than the substantial risk breach lower limit for the requirement and less than the severe risk breach lower limit for the requirement.
- A severe risk breach if the subject matter of the contravention is equal to or greater than the severe risk breach lower limit.

The operation of the penalty regime for breaches of a mass requirement can be summarised in the following flowchart:

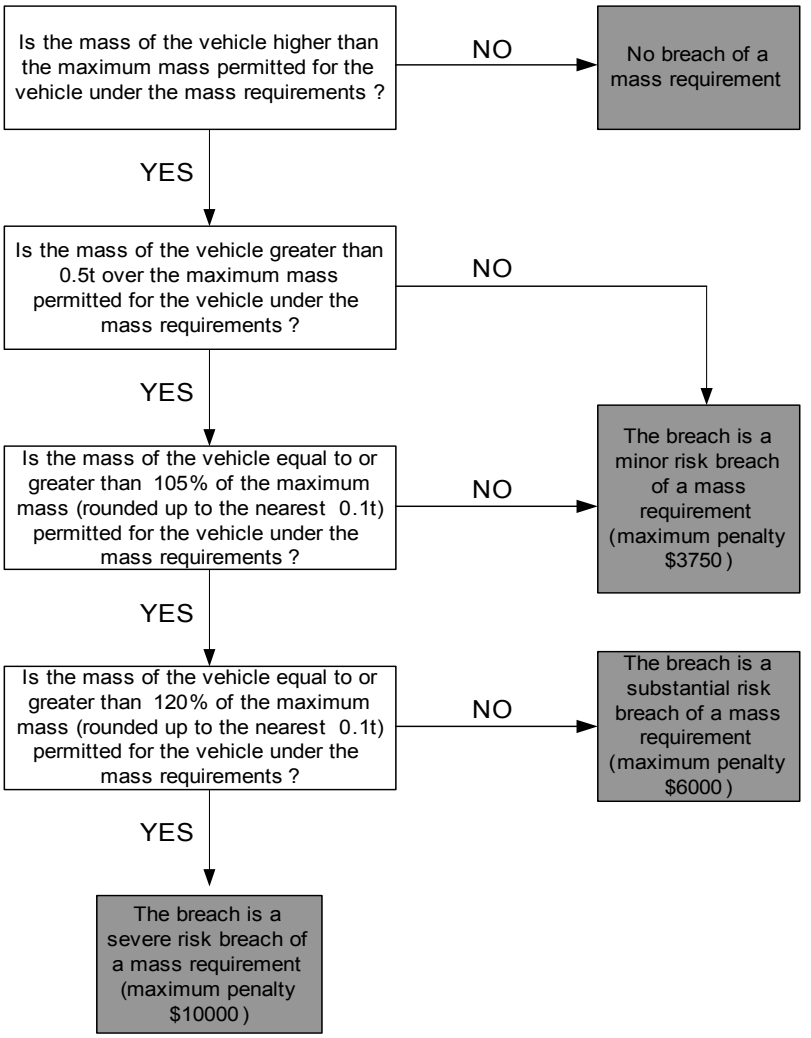

Figure 1 – Flowchart summarising penalty regime for breaches of a mass requirement by a heavy vehicle

Part 4.3 Dimension requirements

Division 1 Requirements

Clause 83 authorises regulations to prescribe requirements about the dimensions of a heavy vehicle, a component of a heavy vehicle and the dimensions of a heavy vehicle's load. These requirements are referred to as *dimension requirements.* In addition, subclause 83 (3) authorises the national regulations to prescribe requirements that are not dimension requirements but are about the use of a vehicle to which a dimension requirement applies. This regulation making power is used to impose such requirements as using warning signs and having a heavy vehicle accompanied by an escort or pilot vehicle.

Clause 84 states that a person must not drive on a road a heavy vehicle that (together with its load) does not, or whose components do not, or whose load does not, comply with the dimension requirements applying to the vehicle.

If the heavy vehicle does not have goods or passengers in it the maximum penalty for an offence under this clause is $3000. If the heavy vehicle does have goods or passengers in it, the extent of the penalty will depend on whether the breach is categorised as a minor risk breach (maximum penalty $3000), a substantial risk breach (maximum penalty $5000) or a severe risk breach (maximum penalty $10000). These categories of breach are defined in Part 4.3, Division 2 of this Bill (clauses 86 – 88).

A person charged with an offence under this clause does not have the benefit of the mistake of fact defence for the offence. However, in a proceeding for an offence under this clause the person does have the benefit of the reasonable steps defence for the offence. That defence is set out in Divisions 1 and 2 of Part 10.4. The reasonable steps defence requires that person charged must actively consider the appropriate steps to prevent an on-road breach from occurring and cannot rely on a honest and reasonable mistake alone.

Division 2 Categories of breaches of dimension requirements

Clause 85 provides definitions for the terms ***severe risk breach lower limit*** and ***substantial risk breach lower limit*** in relation to dimension requirements. These terms are used to classify a breach of a dimension requirement as a minor, substantial or severe risk breach under this Division. These definitions provide for the operation of both terms in relation to length, width, height and load projection dimensions of the heavy vehicle.

A 'substantial risk breach lower limit' means:

- In relation to a dimension requirement concerning length: the maximum length permitted for the vehicle under the dimension requirements plus 350mm.
- In relation to a dimension requirement concerning width: the maximum width permitted for the vehicle under the dimension requirements plus 40mm.
- In relation to a dimension requirement concerning height: the maximum height permitted for the vehicle under the dimension requirements plus 150mm.
- In relation to a dimension requirement concerning the projection of a load, the maximum load projection permitted for the vehicle under the dimension requirements plus 40mm.

A 'severe risk breach lower limit' means:

- In relation to a dimension requirement concerning length: the maximum length permitted for the vehicle under the dimension requirements plus 600mm.
- In relation to a dimension requirement concerning width: the maximum width permitted for the vehicle under the dimension requirements plus 80mm.
- In relation to a dimension requirement concerning height: the maximum height permitted for the vehicle under the dimension requirements plus 300mm.

- In relation to a dimension requirement concerning the projection of a load: the maximum load projection permitted for the vehicle under the dimension requirements plus 80mm.

Clause 86 states when a contravention of a dimension requirement is a ***minor risk breach***. Under clause 86, a contravention of a dimension requirement is a minor risk breach if the subject matter of the contravention is less than the substantial risk breach lower limit for the requirement.

Clause 87 states when a contravention of a dimension requirement is a substantial risk breach. A contravention of a dimension requirement is a substantial risk breach if the subject matter of the contravention is equal to or greater than a substantial risk breach lower limit for the requirement and less than the severe risk breach lower limit for the requirement.

However, a breach that would ordinarily be classified as a minor risk breach of the dimension requirement under clause 85 is to be treated as a substantial risk breach if any escalating factors mentioned in subclauses 87(2) or (3) are present.

The escalating factors are:

- where the contravention relates to length:
    - a warning sign or device is not carried on the rear of the vehicle's load as required by the national regulations; or
    - the vehicle's load projects in a way that is dangerous to persons or property;
- where the contravention relates to width:
    - the contravention happens at night; or
    - the contravention happens in hazardous weather conditions causing reduced visibility.

Providing for the risk category to be escalated from minor to substantial in certain circumstances recognises that in these circumstances the risk of adverse consequences arising from the breach is increased. Providing for risk categories to be escalated on this basis allows situations of contravention of requirement occasioning a greater risk to attract a greater maximum penalty.

Clause 88 states when a contravention of a dimension requirement is a severe risk breach. A contravention of a dimension requirement is a severe

risk breach when the subject matter of the contravention is equal to or greater than a severe risk breach lower limit for the requirement.

However, a breach that would ordinarily be classified as a substantial risk breach under paragraph 87 (1) (a) is to be regarded as a severe risk breach if any escalating factors mentioned in subclause 88 (2) or (3) are present.

The escalating factors are:

- For a contravention relating to length:
    - a warning sign or device is not carried on the rear of the vehicle's load as required by the national regulations; or
    - the vehicle's load projects in a way that is dangerous to persons or property.
- For a contravention relating to width:
    - the contravention happens at night; or
    - the contravention happens in hazardous weather conditions causing reduced visibility.

Providing for the risk category to be escalated from substantial to severe in certain circumstances recognises that in these circumstances the risk of adverse consequences arising from the breach is increased. Providing for risk categories to be escalated on this basis allows situations of contravention of requirement occasioning a greater risk to attract a greater maximum penalty.

The following flowchart summarises the operation of the basic penalty regime for contravention of a dimension requirement by a heavy vehicle.

(***NOTE: This flowchart does not include contraventions of a dimension requirement under clause 89)***:

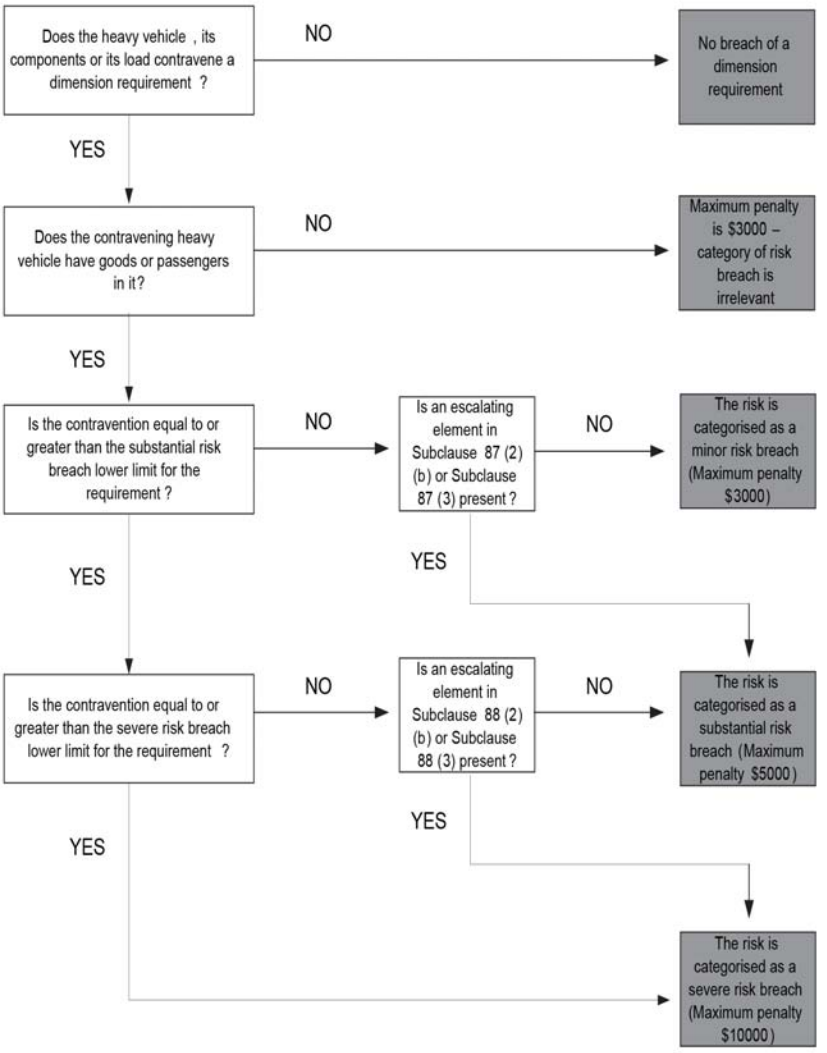

Figure 2 – Summary of basic penalty regime for breaches of a dimension requirement for a heavy vehicle

Division 3 Other provisions relating to load projections

Clause 89 states that when a load projects in a way dangerous to persons or property a minor risk breach of a dimension requirement occurs even if all dimension requirements, warning and other requirements are met. If such a load projection contravention happens at night or in hazardous weather conditions causing reduced visibility, the contravention is escalated to a substantial risk breach of a dimension requirement. Complying with dimension and related requirements is not sufficient to avoid a penalty when the load projects in a way dangerous to persons or property.

Clause 90 provides for warning signals for rear projections loads when the load projects more than 1.2 metres behind a heavy vehicle or the load projects from a pole-type trailer or the load projects in a way that would not be readily visible to a person following immediately behind the vehicle. These warning signals provide an indication to following road users that the project of the load is greater than they may otherwise expect.

Under this clause, a person commits an offence if a load projects behind a heavy vehicle as described above and a warning flag (required when the vehicle is operated during the day time) or a warning light (required when the vehicle is operated during the night time) is not fixed to the extreme back of the load. The maximum penalty for not complying with the requirements of this clause is $5000.

Part 4.4 Loading requirements

Division 1 Requirements

Clause 91 authorises regulations to prescribe requirements about securing a load on a heavy vehicle or a component of heavy vehicle. These regulations are referred to as *loading requirements*. The regulations may include, but are not limited to, including requirements about the restraint or positioning of a load or any part of it on a motor vehicle or trailer.

Clause 92 states that persons must not drive on a road a heavy vehicle that does not, or whose load does not, comply with the loading requirements applying to the vehicle. The penalty for not complying with loading requirements will depend on the extent of the breach and whether it is classified as a minor risk breach (maximum penalty $3000); substantial risk breach (maximum penalty $5000); or severe risk breach (maximum penalty $10000).

A person charged with an offence under this clause does not have the benefit of the mistake of fact defence for the offence. However, in a proceeding for an offence under this clause the person does have the benefit of the reasonable steps defence for the offence. That defence is set out in Divisions 1 and 2 of Part 10.4. The reasonable steps defence requires that person charged must actively consider the appropriate steps to prevent an on-road breach from occurring and cannot rely on a honest and reasonable mistake alone.

Division 2 Categories of breaches of loading requirements

Clauses 93, 94 and ***95*** provide when a contravention of a leading requirement will be categorised as a ***minor, substantial*** or ***severe risk*** breach to determine the extent of penalty applying to an offence of breaching a loading requirement.

In clauses 93 – 95, determining whether a risk breach is minor, substantial or severe depends on:

- Whether the contravention involved an actual loss or shifting of the load; and
- The actual or potential effect of a contravention on safety, road infrastructure or public amenity.

If the subject matter of the contravention involved no actual loss or shifting of the load:

- the contravention can never be classified as a severe risk breach of a loading requirement under this division and;
- the contravention is a substantial risk breach if, had the loss or shifting of the load occurred, it would likely have involved an appreciable

safety risk, an appreciable risk of damage to road infrastructure or an appreciable risk of causing an adverse affect on public amenity. If the consequences of the contravention would not likely have given rise to these effects, the contravention is classified as a minor risk breach.

If the subject matter of the contravention does involve an actual loss or shifting of the load:

- the contravention can never be classified as a minor risk breach of a loading requirement under this division and;
- the contravention is a severe risk breach if the loss or shifting of the load involves an appreciable safety risk or an appreciable risk of damage to road infrastructure or an appreciable risk of causing an adverse affect on public amenity. If the consequences of the contravention would not likely have given rise to these effects, the contravention is classified as a substantial risk breach.

The flowchart on the following page summarises the operation of the penalty regime for the breach of a loading requirement applying to a heavy vehicle.

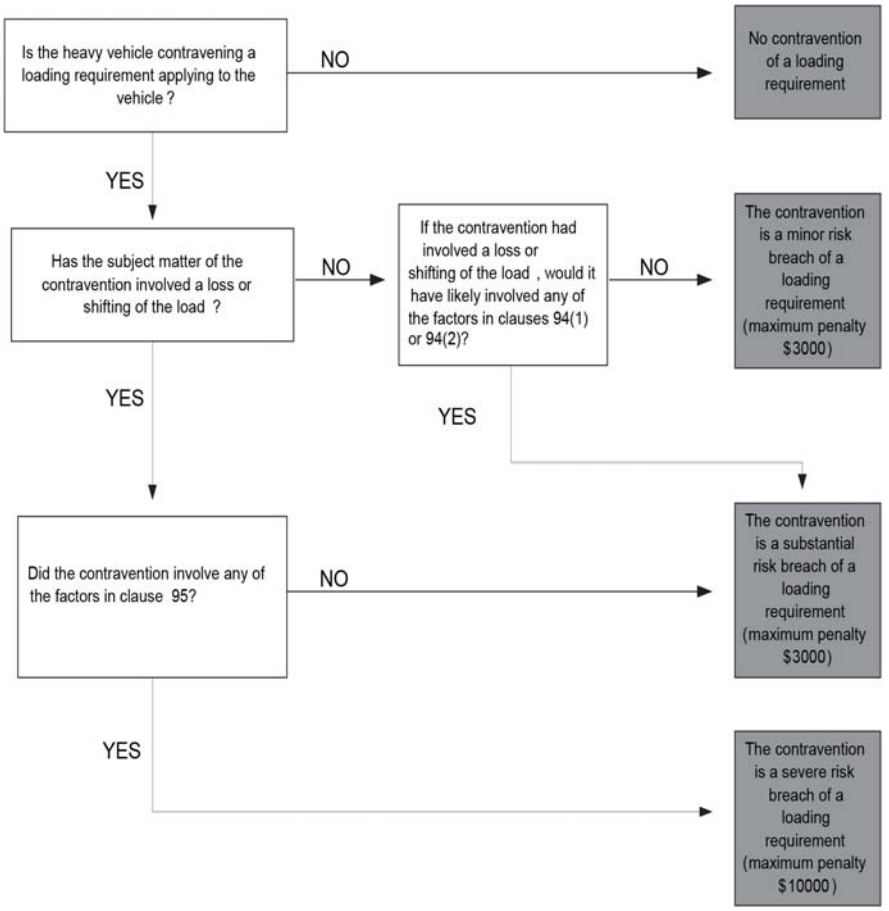

Figure 3 - Summary of penalty regime for breaches of a loading requirement for a heavy vehicle

Division 3 Evidentiary provision

Clause 96 concerns certain evidence in proceedings for an offence in regard to a contravention of a loading requirement. Under this clause:

- evidence that a load on a heavy vehicle was not placed, secured or restrained in a way that met a performance standard in the Load Restraint Guide as in force at the time, is evidence that the load was not placed, secured or restrained in compliance with a loading requirement applying to the vehicle.
- evidence that a load, or part of the load, has fallen off a heavy vehicle is evidence that the load was not properly secured.
- a court must presume a document purporting to be the Load Restrain Guide, as in force at the time of the offence is the Load Restraint Guide as in force at the time of offence, until the contrary is proved.

Subclause (2) defines *Load Restraint Guide* as a document of that name prepared by the National Transport Commission and published in the Commonwealth Gazette, from time to time. A legislative note indicates that this is able to be accessed from the National Transport Commission's website. Clause 96 gives the content of the Load Restraint Guide, produced by the National Transport Commission, a critical role in determining and proving what a contravention of a loading requirement is. The Load Restraint Guide is developed by the National Transport Commission after consultation with stakeholders.

Part 4.5 Exemptions for particular overmass or oversize vehicles

Division 1 Preliminary

Clause 97 defines when a heavy vehicle is a *class 1 heavy vehicle* or a *class 3 heavy vehicle.* These definitions are important for determining exemptions under this chapter as there are differences in the types of conditions that are imposed on class 1 heavy vehicles as compared to class 3 heavy vehicles. Class 1 heavy vehicles are subject to specific conditions to ensure that they may be used safely on public roads. The effect of the definitions of class 1 and class 3 heavy vehicles in this clause is that all heavy vehicles that do not comply with mass or dimension requirements applying to it are either class 1 or class 3 heavy vehicles. Part 4.5 of the

Bill provides that these vehicles may only operate on public roads if the Regulator issues a Class 1 or Class 3 notice or permit.

Subclause 97(1) defines a vehicle as a *class 1 heavy vehicle* if the vehicle, together with its load, does not comply with a mass requirement or dimension requirement applying to it and it is either:

- a special purpose vehicle. A *special purpose vehicle* is defined in subclause 97 (3) and includes concrete pumps, fire engines and motor vehicles built for a purpose other than carrying goods (such as a mobile crane); or
- an agricultural vehicle. An *agricultural vehicle* is defined in clause 5; or
- a heavy vehicle carrying or designed for the purpose of carrying, a large indivisible item, including, for example, a combination including a low loader; but is not a road train or B-double, or carrying a freight container designed for multi-modal transport. Subclause 97 (3) defines the term *large indivisible item* for this clause. A large invisible item is an item that cannot be divided into smaller items without extreme effort, expense or risk of damage and it cannot be carried without contravening a mass or dimension requirement.

Subclause 97(2) defines a *class 3 heavy vehicle* as any other heavy vehicle not classified as a class 1 heavy vehicle that, together with its load, does not comply with a mass requirement or dimension requirement applying to it.

Division 2 Exemptions by Commonwealth Gazette notice

Clause 98 empowers the Regulator, by Commonwealth gazette notice complying with clause 102, to exempt a category of class 1 or 3 heavy vehicles from a mass or dimension requirement for a period not more than 5 years. These exemptions are referred to as *mass or dimension exemption (notice)*.

Limitations to the power of the Regulator to issue a mass or dimension exemption (notice) in this clause are:

- a mass or dimension exemption (notice) must not be issued by the Regulator for a period more than 5 years; and

- a mass or dimension exemption (notice) must not be issued by the Regulator exempting a vehicle from a mass requirement relating to a heavy vehicle's GVM (Gross Vehicle Mass) or GCM (Gross Combination Mass); and
- a mass or dimension exemption (notice) must not be issued by the Regulator exempting a vehicle from a mass requirement relating to a maximum mass limit for a heavy vehicle, or a component of a heavy vehicle, set by the manufacturer of the vehicle or component.

A legislative note to clause 98 indicates that Division 3, Part 4.7 should be read when considering the amendment, suspension or cancellation of a mass or dimension exemption (notice).

Clause 99 further limits the power of the Regulator to grant a mass or dimension exemption (notice) by stating that a mass or dimension exemption (notice) must not be granted for a category of heavy vehicles unless the matters mentioned in subclauses 99 (1) and (2) are present.

The matters mentioned in subclauses 99 (1) and (2) that are all required to be present prior to a mass or dimension exemption (notice) being issued are:

- the Regulator is satisfied the use of heavy vehicles of that category on a road under the exemption will not pose a significant risk to public safety.
- each relevant road manager for the exemption has consented to the grant of the mass or dimension exemption (notice).
- the Regulator has had regard to the approved guidelines (defined in clause 5 as guidelines approved by responsible Ministers under clause 594) for granting mass or dimension exemptions in making the decision whether to grant the mass or dimension exemption (notice). The requirement in paragraph 99(1)(b) that each road manager consent to the grant of the issue of a grant or mass dimension exemption (notice) ensures that all road managers affected by the granting of the exemption have an opportunity to maintain control over the use of heavy vehicles on roads under their authority. This allows road managers to have regard to the impact of an exemption on its road assets.

Clause 100 specifies the conditions that must be included on a mass or dimension exemption (notice), authorises regulations to make conditions for the exemption and empowers the Regulator to subject the exemption to

any other conditions it considers appropriate. Under clause 100 a mass or dimension exemption (notice) is also subject to the road conditions required by a relevant road manager for the exemption under Clause 138.

A significant provision in clause 100 is paragraph 100(1)(a), which requires a compulsory condition regarding the areas or routes to which the exemption applies for all mass or dimension exemptions (notice). The requirement to include a condition about specifying areas ensures that the geographical extent of the exemption is always clearly stated. Subclause 100(2) provides that the route restrictions may be stated on map by the Regulator. Subclause 100(3) prescribes requirements for such a map that the Regulator must follow, including a requirement to make the map publicly available.

Paragraph 100(1)(b) authorises the regulations to prescribe conditions for the exemption. These regulations may prescribe conditions that are to apply only to particular areas or roads and may authorise the Regulator to decide the areas or roads to which the conditions are to apply.

Paragraph 100(1)(d) empowers the Regulator to subject a mass or dimension exemption (notice) to any conditions it considers appropriate including, but not limited to:

- conditions about 1 or more matters mentioned in Schedule 2. Schedule 2 concerns subject matter for conditions of mass or dimension authorities. A mass or dimension exemption (notice) is included in the definition of a mass or dimension authority in clause 5;
- intelligent access conditions; or
- a condition that the driver of a class 1 heavy vehicle or class 3 heavy vehicle who is driving the vehicle under the exemption must keep in the driver's possession a copy of the Commonwealth Gazette notice for the exemption; or an information sheet about the exemption published by the Regulator on the Regulator's website.

Clause 101 states when a mass or dimension exemption (notice) takes effect when the Commonwealth Gazette notice for the exemption is published or if a later time is stated in the notice, at the later time.

Paragraph 101(b) states that the mass or dimension exemption (notice) applies for the period stated on the Commonwealth Gazette notice. However, this is limited by the requirement in clause 98 that a mass or dimension exemption (notice) cannot be granted for a period of more than 5 years.

Clause 102 states the requirements for the Commonwealth Gazette notice required for a mass or dimension exemption (notice). These include stating the category of heavy vehicle to which the exemption applies, the mass and dimension requirements to which the exemption applies, the areas or routes to which the exemption applies, the conditions imposed by regulations for the exemption, the road conditions required by a relevant road manager, and the period for which the exemption applies, The Regulator is also required to publish a copy of the Commonwealth Gazette notice on its website.

Division 3 Exemptions by permit

Clause 103 empowers the Regulator to exempt, by permit as mentioned in clause 108, a class 1 or 3 heavy vehicle from compliance with a mass or vehicle requirement for a period not more than 3 years. Such an exemption is referred to as a *mass or dimension exemption (permit)*.

Limitations to the Regulator's power under clause 103 are:

- a mass or dimension exemption (permit) must not be granted for a period more than 3 years;
- a mass or dimension exemption (permit) must not be issued by the Regulator exempting a vehicle from a mass requirement relating to a heavy vehicle's GVM (gross vehicle mass) or GCM (gross combination mass). (An exception to the GCM limitation is provided in subclause 103 (2) where there are multiple hauling units as GCMs are specified for operation of a heavy vehicle when used alone to tow other vehicles).
- a mass or dimension exemption (permit) must not be issued by the Regulator exempting a vehicle from a mass requirement relating to a maximum mass limit for a heavy vehicle, or a component of a heavy vehicle, set by the manufacturer of the vehicle or component.

A legislative note to clause 103 indicates that Division 4, Part 4.7 should be read when considering the amendment, suspension or cancellation of a mass or dimension exemption (notice).

Clause 104 states how a person may apply to the Regulator for mass or exemption (permit). This application must be in the approved form and be accompanied by the relevant prescribed fee. The Regulator is empowered

by subclause 104(3) to require the applicant to give the Regulator any additional information reasonably required to decide the application.

Clause 105 further limits the power of the Regulator to grant a mass or dimension exemption (permit) by stating that a mass or dimension exemption (permit) must not be granted for a category of class of heavy vehicles unless all of the factors mentioned in subclauses 105 (1) and (2) are present.

The factors in subclauses 105 (1) and (2) are:

- the Regulator is satisfied the use of heavy vehicles of that category on a road under the exemption will not pose a significant risk to public safety (paragraph 105(1)(a));
- each relevant road manager for the exemption has consented to the grant of the mass or dimension exemption (permit) (paragraph 105 (1) (b)); and
- the Regulator has had regard to the approved guidelines (defined in clause 5 as guidelines approved by responsible Ministers under clause 594) for granting mass or dimension exemptions in making the decision whether to grant the mass or dimension exemption (permit) (subclause 105 (2)).

The requirement in paragraph 105(1)(b) that each road manager consent to the grant of the issue of a grant or mass dimension exemption (notice) is intended to ensure that all road managers affected by the granting of the exemption have an opportunity to maintain control over the use of heavy vehicles on roads under their authority. This allows road managers to have regard to the impact of an exemption on its road assets.

Clause 106 specifies the conditions that must be included on a mass or dimension exemption (permit), authorises the national regulations to make conditions for the exemption and empowers the Regulator to subject the exemption to other conditions it considers appropriate.

A significant provision in clause 106 is paragraph 106(1)(a) which requires a compulsory condition regarding the areas or routes to which the exemption applies for all mass or dimension exemptions (permit). This clause ensures that the geographical extent of an exemption is always clearly stated.

It is to be noted that there is no provision for the indicating of the areas and roads the exemption applies to by virtue of a map in clause 106. This is a point of difference between the condition requirements for a mass or

dimension exemption (permit) and the condition requirements for a mass or dimension exemption (notice). The reason for this difference is that notices apply to any operator whose heavy vehicle meets the specified requirements of the notice and it is necessary for the Regulator to make available to these operators information about the areas and roads on which the relevant vehicle may be used.

Clause 107 states when a mass or dimension exemption (permit) commences and the time period it applies for. A mass or dimension exemption (permit) may apply for a period less than the period sought by the applicant.

Under clause 107 a mass or dimension exemption (permit) applies for the period stated in the permit for the exemption. This period may be less than the period sought by the applicant.

The scope for the permit to state its applicable time period is limited by the requirement in Clause 103 that a mass or dimension exemption (permit) cannot be granted for a period of more than 3 years.

Clause 108 requires the Regulator to give the applicant a permit stating certain information if the Regulator grants a mass or dimension exemption (permit). Subclause 108(1)(b) specifies that if the Regulator has imposed conditions on the permit (including the compulsory conditions in clause 106) or granted the exemption for a period less than 3 years) an information notice for these decisions must also be provided to the applicant. The clause also specifies other information to be included such as the name of the permit holder, the heavy vehicles to which the exemption applies, the mass or dimension requirements to which the exemption applies, the areas and routes to which the exemption applies, the conditions to which the exemption applies, and the period for which the exemption applies.

Clause 109 states that if the Regulator refuses an application for a mass or dimension exemption (permit), it must give an information notice for the decision to the applicant.

A legislative note indicates that section 142 sets out the requirements for an information notice when a relevant road manager decides not to give consent to the grant of a mass or dimension exemption (permit).

Division 4 Operating under mass or dimension exemption

Clause 110 makes it an offence to drive a heavy vehicle under a mass or dimension exemption that does not comply with a condition of exemption and prescribes a maximum penalty of $6,000 where either:

- a person contravenes a condition of an exemption, whether it has been given by notice or permit, (apart from one referred to in sub-clause (7), relating to an obligation to carry a copy of a notice, or information about it, that has been published in the Commonwealth Gazette); or
- a vehicle contravenes a condition (in which case the person using or permitting the use of the vehicle on a road is liable); or
- the way in which the vehicle is used contravenes a condition (in which case the person who used or permitted it to be used in that way is liable).

Subclause 110(4) states that if a heavy vehicle is exempt from a mass or dimension requirement and is being used in compliance with the conditions of that exemption a person does not commit an offence against this Bill in relation to the standard it from which it is exempt from.

Subclause 110(5) states that if a condition offence (defined in subclause 110 (8) as an offence against subclause 110 (1), (2) or (3)) is committed in relation to an exemption, that exemption does not operate in the person's favour while the contravention constituting the condition offence continues. This means that risk category for the offence of breaching a mass or dimension requirement will be based on the mass or dimension requirement that would have apply to the heavy vehicle but for the exemption.

Further, the relevant exemption must be disregarded in deciding whether the person has committed an offence in relation to a contravention of a heavy vehicle standard applying to a heavy vehicle. Subclause 110(7) excludes from subclause (1) a condition that the driver keep a relevant document (such as the notice) in their possession while driving. This is done to ensure that an offence for not carrying a document is subject to a lower penalty, being $2000.

Subclause 110(6) ensures that a person denied the benefit of an exemption because of the operation of subclause 110 (5), cannot be charged with both

the offence of contravening the exemption and the offence which may have been committed in contravening the mass or dimension requirement from which the exemption has ceased to be available.

Clause 111 requires a driver of a pilot or escort vehicle to comply with the conditions of the mass or dimension exemption applying to the heavy vehicle it is accompanying about the use of the pilot or escort vehicle when there is a condition of a mass or dimension exemptions requiring a heavy vehicle to be accompanied by a pilot vehicle or escort vehicle while the heavy vehicle is being used on a road. The terms *pilot vehicle* and *escort vehicle* are defined in clause 5.

If the driver of the pilot vehicle or escort vehicle does not comply with these conditions both that driver and the operator of the heavy vehicle are taken to have committed an offence with a maximum penalty of $4000. The inclusion of the operator of the heavy vehicle as a responsible party for this offence reflects the fact that the relevant condition applies to the heavy vehicle, for which the operator of the heavy vehicle is responsible for.

Subclause 111(4) deals with a prosecution of the operator of a heavy vehicle when the driver of the pilot vehicle or escort vehicle does not comply with conditions regarding its use. It provides:

- Whether or not the driver of the pilot or escort vehicle has been or will be proceeded against or convicted of the relevant offence is irrelevant. A decision not to proceed against or record a conviction against a driver under this clause does not preclude the operator of a heavy vehicle from being charged or convicted under this clause.
- Evidence a court has convicted the driver of the relevant offence or the driver has paid an infringement penalty in respect of it is evidence that the offence happened at the time and place, and in the circumstances, stated in the charge resulting in the conviction. This is intended to facilitate proof of the relevant facts.

Clause 112 requires the driver of a pilot vehicle to ensure that the pilot vehicle does not accompany a heavy vehicle which contravenes a mass or dimension exemption condition. If a pilot vehicle does accompany a heavy vehicle that contravenes a condition of its mass or dimension exemption the driver of the pilot vehicle commits an offence with a maximum penalty of $6000.

When the driver of the pilot vehicle, able to be prosecuted under this clause, and the operator of the heavy vehicle contravening the condition of

the mass or dimension exemption are the same person, subclause 112 (2) provides that the person may be prosecuted for either the general contravention of a condition of a mass or dimension exemption as the operator of the heavy vehicle or as the driver of the accompanying pilot vehicle but not both.

Clause 112 places an obligation upon the drivers of pilot vehicles to be aware of the conditions of mass or dimension exemptions applying to the heavy vehicles they are accompanying and ensure that the heavy vehicles continue to comply with these conditions.

Clause 113 requires a driver who is driving under a mass or dimension exemption (notice) must comply with any condition requiring him or her to keep a relevant document (the Commonwealth Gazette notice for the exemption or an information sheet about the exemption published by the Regulator on the Regulator's website) in their possession. If this is not done, an offence with a maximum penalty of $2000 is committed by the driver of the vehicle and the ***relevant party*** for the driver. For this clause, the relevant party for the driver is:

- If the driver is employed, the employer of the driver
- If the driver is a self-employed driver, a prime contractor of the driver
- If the driver is making a journey for the operator of a vehicle, an operator of the vehicle.

When a relevant party is charged with an offence under this clause, that person does not have the benefit of the mistake of fact defence for the offence, but that person does have the benefit of the reasonable steps defence. That defence is set out in Divisions 1 and 2 of Part 10.4. The reasonable steps defence requires that person charged must actively consider the appropriate steps to prevent an on-road breach from occurring and cannot rely on a honest and reasonable mistake alone.

Clause 113(6) deals with a prosecution of a *relevant party.* It provides that:

- Whether or not the driver has or will be proceeded against or convicted is irrelevant. A decision not to prosecute or convict a driver under this clause does not preclude the relevant party from being charged or convicted where the driver did not carry the relevant document.
- Evidence a court has convicted the driver of the relevant offence or the driver has paid an infringement penalty in respect of it is evidence that the offence happened at the time and place, and in the circumstances,

stated in the charge resulting in the conviction. This is intended to facilitate proof of the relevant facts.

Clause 114 creates a requirement for drivers of a class 1 or class 3 heavy vehicle under a mass or dimension requirement (permit) to keep a copy of the permit for the exemption in the driver's possession. If this is not done, an offence with a maximum penalty of $2000, is committed by the driver of the vehicle and the ***relevant party*** for the driver. For this clause, the relevant party for the driver is:

- if the driver is employed, the employer of the driver;
- if the driver is a self-employed driver, a prime contractor of the driver; and
- if the driver is making a journey for the operator of a vehicle, an operator of the vehicle.

It is anticipated that to comply with the requirements of this clause the relevant party will give a driver of a heavy vehicle driving under a mass or dimension exemption (permit) a copy of the permit that has been issued by the Regulator for a particular vehicle. In such a situation, when the driver stops working for the relevant party they must return a copy of the permit to the relevant party as soon as reasonably practicable (subclause 114 (2)). The maximum penalty for not complying with this requirement is $2000.

Clauses 114(4) to (5) state that when the relevant party is charged with an offence under this clause that person does not have the benefit of the mistake of fact defence for the offence but that person does have the benefit of the reasonable steps defence. That defence is set out in Divisions 1 and 2 of Part 10.4. The reasonable steps defence requires that person charged must actively consider the appropriate steps to prevent an on-road breach from occurring and cannot rely on a honest and reasonable mistake alone.

Subclause 114(6) deals with a prosecution of a *relevant party.* It provides that:

- Whether or not the driver has or will be proceeded against or convicted of the relevant offence is irrelevant. A decision not to prosecute or convict a driver under this clause does not preclude the relevant party from being charged or convicted where the driver did not carry the relevant document.
- Evidence a court has convicted the driver of the relevant offence or the driver has paid an infringement penalty in respect of it is evidence that the offence happened at the time and place, and in the circumstances,

stated in the charge resulting in the conviction. This is intended to facilitate proof of the relevant facts.

Division 5 Other provision

Clause 115 states that a heavy vehicle warning sign must not be displayed on a heavy vehicle unless the heavy vehicle is being used under a dimension exemption (an exemption under this Part from compliance with a dimension requirement).

Subclause 115(2) states that a pilot vehicle warning sign must not be displayed on a vehicle unless a vehicle is being used as a pilot vehicle for a heavy vehicle being used under a dimension exemption.

The maximum penalty for non-compliance in both circumstances is $4000. Clause 115 has the effect of ensuring that warning signs are only used for heavy vehicles or pilot vehicles that, under national regulations, are required to use them.

The terms *heavy vehicle warning sign* and *pilot vehicle warning sign* are defined in subclause 115(3) for the purposes of this clause.

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

Division 1 Preliminary

Clause 116 states that the main purpose of Part 4.6 is to restrict access to roads by heavy vehicles that, while complying with mass requirements and dimension requirements applying to them, may, because of their size endanger public safety, damage road infrastructure or adversely affect public amenity. This draws attention of the main purpose of this Part being to restrict access to roads, despite the number of provisions that deal with authorising use.

Clause 117 defines the term *class 2 heavy vehicles*. The common characteristic of class 2 heavy vehicles is that even though they comply with mass and dimension requirements they are particularly large vehicles that, by virtue of their size, warrant restriction from a general right of access to roads under this Part.

Class 2 heavy vehicles are defined as vehicles that comply with the mass requirements and dimension requirements applying to it and are either:

- a B-double;
- a road train (which includes B-triples);
- a bus other than an articulated bus that is longer than 12.5m (often known as a controlled access bus);
- a combination carrying vehicles on more than 1 deck that, together with its load is longer than 19m or higher than 4.3m; or
- a single motor vehicle, or a combination, that is higher than 4.3 m and is built to carry cattle, sheep, pigs or horses.

Division 2 Restriction

Clause 118 states that a person must not use a class 2 heavy vehicle, or permit a class 2 heavy vehicle to be used, on a road other than in accordance with a class 2 heavy vehicle authorisation. The maximum penalty for non-compliance with this is $6000.

This is the key restriction of Part 4.6. If a class 2 heavy vehicle does not have a class 2 heavy vehicle authorisation to use a particular road, it is not permitted to use that road. As stated in clause 116, this is intended to protect public safety, road infrastructure and public amenity from adverse interference by particularly large heavy vehicles.

Division 3 Authorisation by Commonwealth Gazette notice

Clause 119 empowers the Regulator, by Commonwealth Gazette notice complying with clause 123,to authorise the use of all or stated categories of class 2 heavy vehicles in stated areas or on stated routes and during stated

hours of stated days. These authorisations are referred to as *class 2 heavy vehicle authorisation (notice)*. A class 2 heavy vehicle authorisation (notice) cannot be issued for a period of more than 5 years.

Clause 120 limits the power of the Regulator to grant a class 2 heavy vehicle authorisation (notice) by stating that such an authorisation must not be granted for a category of class 2 heavy vehicles unless all of the requirements mentioned in clause 120 are met.

The requirements in subclause 120 are:

- the Regulator is satisfied the use of class 2 heavy vehicles of that category of class 2 heavy vehicles on a road under the authorisation will not pose a significant risk to public safety; and
- each relevant road manager for the exemption has consented to the grant of the class 2 heavy vehicle authorisation (notice); and
- the Regulator has had regard to the approved guidelines (defined in clause 5 as guidelines approved by responsible Ministers under clause 594) for granting class 2 heavy vehicle authorisations in making the decision whether to grant the class 2 heavy vehicle authorisation (notice).

The requirement in subclause 120(1)(b) that each road manager consent to the grant or the issue of a mass dimension exemption (notice) ensures that all road managers affected by the granting of the authorisation have an opportunity to maintain control over the use of heavy vehicles on roads under their authority. This allows road managers to have regard to the impact of an authority on its road infrastructure and on public amenity.

Clause 121 specifies that a class 2 heavy vehicle authorisation (notice) may be subject to the condition that the driver of a class 2 heavy vehicle who is driving the vehicle under the authorisation must keep in their possession a copy of the Commonwealth Gazette notice for the authorisation or an information sheet about the authorisation published by the Regulator on the Regulator's website. There is no broad authorisation for the Regulator to prescribe conditions applying to a class 2 heavy vehicle authorisation (notice) in clause 121.

Clause 122 specifies when a class 2 heavy vehicle authorisation (notice) takes effect and for how long it applies for. It states that a class 2 heavy vehicle authorisation (notice) takes effect when the Commonwealth Gazette notice for the authorisation is published or, if a later time is stated in the notice, at the later time. Paragraph 122(b) confirms that the class 2

heavy vehicle authorisation (notice) applies for the period stated on the Commonwealth Gazette notice. However, this is limited by the requirement in Clause 119 that a class 2 heavy vehicle authorisation (notice) cannot be granted for a period of more than 5 years.

Clause 123 states the content requirements for the Commonwealth Gazette Notice required for a class 2 heavy vehicle authorisation (notice). A class 2 heavy vehicle authorisation (notice) is to be made by Commonwealth Gazette Notice as per Clause 123 in order to be a valid exemption. In addition, subclause 123 (4) requires the regulator to publish a copy of the Commonwealth Gazette notice on the Regulator's website.

The requirements for a valid Commonwealth Gazette notice in relation to a mass or dimension exemption (notice)) are that the notice must state all of the following:

- the categories of class 2 heavy vehicles the authorisation applies to. If it is to apply to all class 2 heavy vehicles it must state this and if it is to apply to particular category of class 2 heavy vehicles it must state the categories it applies to; and
- the areas or routes to which the authorisation applies; and
- the days and hours to which the authorisation applies; and
- any conditions applying to class 2 heavy vehicles being used on a road under an authorisation; and
- the period for which the exemption applies.

Subclause 123 (2) authorises the Commonwealth Gazette notice to state the areas or routes to which the authorisation applies by showing them on a stated map prepared by the Regulator. If the Regulator chooses to do this, the Regulator:

- must ensure a copy of the map as in force from time to time is made available for inspection, without charge, during normal business hours at each office of the Regulator;
- must ensure a copy of the map as in force from time to time is published on the Regulator's website; and
- may amend this map provided that the amendment extends the areas or routes to which the authorisation applies. The Regulator cannot amend the map by reducing the area to which the authorisation applies.

Division 4 Authorisation by permit

Clause 124 empowers the Regulator to authorise, by giving a permit as mentioned in clause 129, a class 2 heavy vehicle for use in stated areas or on stated routes and during stated hours of stated days. Such an exemption is referred to as a *class 2 heavy vehicle authorisation (permit)* and this authorisation may apply to 1 or more heavy vehicles. A class 2 heavy vehicle authorisation (permit) must not be granted for a period of more than 3 years.

A legislative note to clause 124 indicates that Division 4, Part 4.7 should be read when considering the amendment, suspension or cancellation of a mass or dimension exemption (notice).

Clause 125 states that a person may apply to the Regulator for a class 2 heavy vehicle authorisation (permit). This application must be in the approved form and be accompanied by the relevant prescribed fee.

The Regulator is empowered by subclause 125(3), by notice given to the applicant; to require the applicant to give the Regulator any additional information reasonably required to decide the application.

Clause 126 further limits the power of the Regulator to grant a class 2 heavy vehicle authorisation (permit) by stating that a class 2 heavy vehicle authorisation (permit) must not be granted for a category of class of heavy vehicles unless all of the requirements mentioned in subclauses 126 (1) and (2) are met.

The requirements in subclauses 126 (1) and (2) are:

- the Regulator is satisfied the use of heavy vehicles of that category on a road under the authorisation will not pose a significant risk to public safety;
- each relevant road manager for the exemption has consented to the grant of the class 2 heavy vehicle authorisation (permit); and
- the Regulator has had regard to the approved guidelines (defined in clause 5 as guidelines approved by responsible Ministers under clause 594) for class 2 heavy vehicle authorisations in making the decision whether to grant the class 2 heavy vehicle authorisation (permit) (subclause 126 (2)).

The requirement in paragraph 126(1) (b) that each road manager consent to the grant of the issue of a class 2 heavy vehicle authorisation (permit)

ensures that all road managers affected by the granting of the authorisation have an opportunity to maintain control over the use of heavy vehicles on roads under their authority. This allows road managers to have regard to the impact of an authorisation on its road infrastructure and the public amenity.

Clause 127 requires that a class 2 heavy vehicle authorisation (permit) must be subject to the road conditions required by a relevant road manager for the authorisation under clause 138; and empowers the Regulator to subject the authorisation to any other conditions the Regulator considers appropriate.

Clause 128 states that a class 2 heavy vehicle authorisation (permit) applies for the period stated in the permit for the authorisation. This period may be less than the period sought by the applicant. However, clause 124 continues to have the effect of ensuring that a class 2 heavy vehicle authorisation (permit) cannot be granted for a period of more than 3 years.

Clause 129 requires the Regulator to give the applicant a permit stating particular information if the Regulator grants a class 2 heavy vehicle authorisation(permit). Paragraph 129 (1) (b) specifies that if the Regulator has imposed conditions on the permit or granted the authorisation for a period less than 3 years an information notice for these decisions must also be provided to the applicant.

The information required to be included in a class 2 heavy vehicle authorisation (permit) is set out in subclause 129 (2). This includes information about the name and address of the person to whom the permit is given, each class 2 heavy vehicle to which the authorisation applies, the areas and routes and days and hours to which the authorisation applies, the conditions that apply to the authorisation, and the period for which the authorisation applies.

Clause 130 requires the Regulator to give an information notice for the decision if the Regulator refuses an application for a class 2 heavy vehicle authorisation (permit).

Division 5 Operating under class 2 heavy vehicle authorisation

Clause 131 creates an offence for a driver or operator of a heavy with a maximum penalty of $3,000 where a vehicle being used on a road under a

class 2 heavy vehicle authorisation contravenes a condition of the authorisation (apart from one referred to in subclause 132(1), relating to an obligation to carry a copy of a notice, or information about it, that has been published in the *Commonwealth Gazette*).

Clause 132 creates an offence for when a driver contravenes a condition of a class 2 heavy vehicle authorisation (notice) to keep a *relevant document* (the Commonwealth Gazette notice for the authorisation or an information sheet about the authorisation published by the Regulator on the Regulator's website) whilst driving under the authorisation. Non-compliance has a maximum penalty of $2000 and the offence is committed by the driver of the vehicle and the *relevant party* for the driver.

For clause 132, the relevant party for the driver is:

- if the driver is employed, the employer of the driver;
- if the driver is a self-employed driver, a prime contractor of the driver; and
- if the driver is making a journey for the operator of a vehicle, an operator of the vehicle.

Subclause 132 (6) deals with a prosecution of a *relevant party.* It provides that:

- Whether or not the driver has or will be proceeded against or convicted of the relevant offence is irrelevant. A decision not to prosecute or convict a driver under this clause does not preclude the relevant party from being charged or convicted where the driver did not carry the relevant document.
- Evidence a court has convicted the driver of the relevant offence or the driver has paid an infringement penalty in respect of it is evidence that the offence happened at the time and place, and in the circumstances, stated in the charge resulting in the conviction. This is intended to facilitate proof of the relevant facts.

Subclauses 132(4) and 132(5) state that when the relevant party is charged with an offence under this clause that person does not have the benefit of the mistake of fact defence for the offence but that person does have the benefit of the reasonable steps defence. That defence is set out in Divisions 1 and 2 of Part 10.4. The reasonable steps defence requires that person charged must actively consider the appropriate steps to prevent an on-road breach from occurring and cannot rely on a honest and reasonable mistake alone.

Clause 133 creates a requirement for the driver of a class 2 heavy vehicle driving under a class 2 heavy vehicle authorisation (permit) to keep a copy of the permit for the authorisation in the driver's possession whilst driving under the authorisation. If this requirement is not complied with, an offence, with a maximum penalty of $2000, is committed by the driver of the vehicle and the ***relevant party*** for the driver.

For clause 133, the relevant party for the driver is:

- if the driver is employed, the employer of the driver;
- if the driver is a self-employed driver, a prime contractor of the driver; and
- if the driver is making a journey for the operator of a vehicle, an operator of the vehicle.

It is anticipated that to comply with the requirements of this clause the relevant party will give a driver a copy of the permit that they have been issued by the Regulator. In such a situation, subclause 133 (2) requires that when the driver stops working for the relevant party they must return a copy of the permit to the relevant party as soon as reasonably practicable. The maximum penalty for not complying with this requirement is $2000.

Subclause 133 (6) deals with a prosecution of a *relevant party.* It provides that:

- Whether or not the driver has or will be proceeded against or convicted of the relevant offence is irrelevant. A decision not to prosecute or record a conviction against a driver under this clause does not preclude the relevant party from being charged or convicted where the driver did not carry the relevant document.
- Evidence a court has convicted the driver of the relevant offence or the driver has paid an infringement penalty in respect of it is evidence that the offence happened at the time and place, and in the circumstances, stated in the charge resulting in the conviction. This is intended to facilitate proof of the relevant facts.

Subclauses 133 (4) – (5) states that when the relevant party is charged with an offence under this clause that person does not have the benefit of the mistake of fact defence for the offence but that person does have the benefit of the reasonable steps defence. That defence is set out in Divisions 1 and 2 of Part 10.4. The reasonable steps defence requires that person charged must actively consider the appropriate steps to prevent an on-road breach from occurring and cannot rely on a honest and reasonable mistake alone.

Part 4.7 Particular provisions about mass or dimension authorities

Division 1 Preliminary

Clause 134 provides definitions, for Part 4.7, of the terms *road condition, route assessment* and *vehicle condition*.

In this part, *road condition* means a condition directed at protecting road infrastructure; or preventing or minimising an adverse effect on public amenity, including, for example, preventing or minimising an adverse effect caused by noise, emissions and traffic congestion resulting from vehicle use of roads.

However, the definition of *road condition* does not include a condition requiring the installation of equipment or another thing in a vehicle unless the equipment or thing is required to be installed in the vehicle for an intelligent access condition imposed in connection with a condition directed at these matters mentioned.

A road condition is otherwise not intended to include conditions that require the installation of equipment or another thing to the heavy vehicle as it is the responsibility of the Regulator to impose conditions that relate to condition of the vehicle and its equipment. Road conditions are intended to allow road managers to specify conditions about the use of the heavy vehicles on their particular roads.

In this part, *route assessment*, in relation to a mass or dimension authority, means an assessment of the road infrastructure in the areas or on the routes to which the authority is to apply to decide the impact the grant of the authority will have, or is likely to have, on the road infrastructure.

In this part, *vehicle condition* means a condition directed at ensuring a vehicle can operate safely on roads.

Division 2 Obtaining consent of relevant road managers

Clause 135 states that this Division applies in relation to the Regulator obtaining the consent of the road manager for a road for the purpose of granting a mass or dimension authority. The relevant paragraphs in this Chapter that specifically require the Regulator to gain the consent of road managers prior to granting a mass or dimension authority are paragraphs 99(1)(b), 105(1)(b), 120(1)(b) and 126(1)(b).

The terms *road manager* and *mass or dimension authority* are defined in Clause 5.

Road manager is defined in clause 5 as meaning, for a road in a participating jurisdiction, an entity that is declared by a law of that jurisdiction to be the road manager for the road for the purposes of this Law.

Mass or dimension authority is defined in clause 5 as meaning a mass or dimension exemption or a class 2 heavy vehicle authorisation.

Clause 136 states how long a road manager is permitted to make a decision to give consent to the grant of a mass or dimension authority; the circumstances in which the road manager may decide not to give consent and the obligation on a road manager to provide written reasons to the Regulator for a decision not to issue consent.

Subclause 136(1) requires a road manager to make a decision regarding whether or not to give consent to the grant of a mass or dimension authority within 28 days of a request for consent being made by the Regulator unless a longer period is agreed to by the Regulator. A longer period (not extending more than 6 months after the request is made) may be agreed to in limited circumstances specified in subclause 136(2).

Subclause 136(2) states that the limited circumstances where a longer period for consent to be given as arising when either:

- the road manager is required under a law to consult with another entity (such as police, electricity utilities, rail operators or other public agencies) before deciding whether to give or not to give the consent; or
- the road manager considers a route assessment is necessary for deciding whether to give or not to give the consent.

Subclause 136(3) empowers the road manager to decide not to give consent if the road manager reasonably believes:

- the mass or dimension authority will, or is likely to cause damage to road infrastructure; or adversely affect public amenity; and
- it is not possible to grant the authority subject to road conditions that will avoid or minimise these consequences. This requirement ensures that prior to consent of the road manager for a mass or dimension authority being denied, road managers consider the suitability of attaching conditions to the authority as an alternative to denying consent.

Subclause 136(4) requires the road manager, when deciding whether or not to give consent, to have regard to the approved guidelines (defined in clause 5 as guidelines approved by responsible Ministers under clause 594) for either a mass or dimension exemption or a class 2 heavy vehicle authorisation, whichever is relevant to the decision they are required to make.

If consent is not given by a road manager, Subclause 136(5) requires a road manager to give the Regulator written reasons for the decision.

Clause 137 deals with the process undertaken when a road manager considers a route assessment is necessary for deciding whether to give or not to give the consent to a mass or dimension authority. Under this clause the road manager is to notify the Regulator of certain matters listed in subclause 137(2) and requires the Regulator to notify the applicant of further matters listed in subclause 137(3). Subclause 137(4) prescribes the effect on the application for the period in which a fee required for a route assessment has not yet been paid by the applicant. Under subclause 137(5), the application lapses if the applicant does not pay a required fee for the route assessment within 28 days after the notification of requirement of the route assessment by the Regulator. This encourages prompt payment from applicants in such circumstances and allows the consent process to be conducted as efficiently as possible.

Subclause 137(2) empowers the road manager to notify the Regulator of the requirement for the route assessment and the fee payable for the route assessment.

Subclause 137(3) requires the Regulator to notify the applicant for the mass or dimension exemption (permit) or a class 2 heavy vehicle authorisation (permit) of the following:

- that a route assessment is required for the road manager deciding whether to give or not to give the consent;
- the fee payable (if any) for the route assessment under a law of the jurisdiction in which the road is situated;
- if a fee is payable for the route assessment under a law of the jurisdiction in which the road is situated, that the road manager may stop considering whether to give or not to give the consent until the fee is paid;
- if, under paragraph 136(1)(b), the Regulator agrees to a longer period for the road manager deciding whether to give or not to give the consent, the longer period agreed by the Regulator.

Subclause 137(4) empowers the road manager to stop considering whether to give consent for a time period if a fee for a route assessment is required under a law of the jurisdiction where the road is situated and that fee has not been paid. The period between the day the applicant is given the notification of the requirement for route assessment by the Regulator and the day the fee is paid must not be counted in working out the period taken by the road manager to decide whether to give or not to give the consent. Subclause 137(5) states that an application for a mass or dimension exemption (permit) or a class 2 heavy vehicle authorisation (permit) will lapse if the fee is not paid within the 28 days or longer period agreed by the Regulator.

Clause 138 empowers a relevant road manager for a mass or dimension authority to consent to the grant of the authority subject to the condition that a stated road condition is imposed on the authority. When granting consent subject to a road condition the road manager must give the Regulator written reasons for their decision to do so. Unless the condition is in regard to a class 2 heavy vehicle authorisation (notice) the Regulator must impose the stated road condition on the mass or dimension authority.

It should be noted that when the mass or dimension authority is granted by the Regulator subject to these conditions an information notice containing all of the information required under clause 141 must be issued to the applicant.

The term *relevant road manager* is defined in clause 5 as meaning for a mass or dimension authority, a road manager for a road in the area, or on the route, to which the authority applies.

Clause 139 empowers a relevant road manager for a mass or dimension authority who gives consent to the grant of the authority to ask the Regulator to impose a stated vehicle condition on the authority. The Regulator must consider this request and must decide either to impose the stated vehicle condition on the authority (with or without modification) or not to impose the stated vehicle condition on the authority. Once a decision has been made, the Regulator must notify the relevant road manager of the decision.

The term *relevant road manager* is defined in clause 5 of this Bill as meaning for a mass or dimension authority, a road manager for a road in the area, or on the route, to which the authority applies.

Clause 140 empowers the Regulator to ask a relevant road authority to consent to the grant of the mass or dimension authority when a road manager who is not the relevant road authority does not give consent to the grant of a mass or dimension authority or does give consent subject to what the Regulator believes are unnecessary conditions. The road authority must decide whether to give consent within 3 months of the request, or within a longer period of not more than 6 months if agreed by the Regulator.

If the road authority responds to this request by granting the authority, the decision of the road authority is effectively treated as the decision of the road manager throughout this Bill.

This makes it difficult for road managers who are not road authorities to frustrate the issuing of authorisation by means of unreasonably withholding appropriate consent.

For this clause, *relevant road authority* is defined by subclause 140(5) as the road authority for the participating jurisdiction in which the road for which the relevant road manager is a road manager is situated. Clause 5 defines the term *road authority* so as to make it clear that there is to be only 1 such authority for each participating jurisdiction.

Clause 141 requires certain information (listed in subclause 141(2)) to be included in the information notice provided to the applicant regarding the decision to grant a mass or dimension authority when a road manager has granted consent with the imposition of a road condition.

The information required to be included in the information notice in subclause 141(2) is:

- all information required for the information notice by other clauses in this Bill; and

- that the road manager consented to the mass or dimension authority on the condition that the road condition is imposed on the authority; and
- the reasons for the road manager's decision to give the consent on the condition that the road condition be imposed on the authority; and
- the review and appeal information for the road manager's decision to give the consent on the condition that the road condition be imposed on the authority.

Clause 142 states that when an application for a mass or dimension authority is refused, wholly or partly, because a relevant road manager for the authority has refused to consent to the authority, the information notice for the decision to refuse the application given to the applicant by the Regulator must state the information in subclause 142(2) regarding the refusal of consent.

The required information that the information notice provided by the Regulator must state under clause 142 is:

- all information required for the information notice by other clauses in this Bill; and
- that the road manager has refused to consent to the mass or dimension authority; and
- the reasons for the road manager's decision to refuse to give the consent; and
- the review and appeal information for the road manager's decision to refuse to give the consent. The definition of *review and appeal information* for a road manager's decision is provided in clause 5.

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

Clause 143 empowers the Regulator to amend or cancel a mass or dimension authority granted by Commonwealth Gazette notice at the Regulator's initiative when the Regulator is satisfied that the use of heavy vehicles on a road under the mass or dimension authority has caused, or is

likely to cause, a significant risk to public safety; and the requirements outlined in subclauses 143(3) to 143(5) are complied with.

The intent of the requirements of this clause is to ensure transparency in the amending and cancelling of mass and dimension authorities. This is achieved by requiring adequate notice to be given to those affected by an amendment or cancellation and by ensuring possible adverse consequences of such action are able to be presented to the Regulator throughout the decision making process for consideration. An additional benefit of this clause is in allowing to those who may be adversely affected by a decision time in which to adjust their business practices.

The requirements in subclauses 143(3) to 143(5) are:

- The Regulator must publish a notice in the Commonwealth Gazette, a newspaper circulating generally throughout each participating jurisdiction and on the Regulator's website stating the intent, grounds and reasons for the action to be taken. This notice must also invite persons who will be affected by the proposed action to make, within a stated time of at least 14 days after the Commonwealth Gazette notice is published, written representations about why the proposed action should not be taken (subclause 143(3)).
- The Regulator must consider all representations made in response to the invitation issued in the Commonwealth Gazette Notice prior to making the final decision to amend or cancel the mass or dimension authority (subclause 143(3)).
- If the action proposed in the Commonwealth Gazette notice made under subclause 143(3) was to amend the exemption, the Regulator may only amend the exemption in a way that it is not substantially different from the proposed action, this may include amending areas, routes, days or hours to which the authority applies or by imposing additional conditions to the exemption.
- If the action proposed in the Commonwealth Gazette notice made under subclause 143(3) was to cancel the exemption the Regulator may cancel the exemption or amend the exemption.
- The Regulator must publish notice of the amendment or cancellation in the Commonwealth Gazette, a newspaper circulating generally throughout each relevant participating jurisdiction, on the Regulator's website and in any other newspaper the Regulator considers appropriate. Subclause 143(7) states that in this clause *relevant*

participating jurisdiction, for a mass or dimension authority, means a participating jurisdiction in which the whole or part of an area or route to which the authority applies is situated.

Under this clause the amendment or cancellation to a vehicle standards exemption (notice) takes effect either 28 days after the publishing of the Commonwealth Gazette notice notifying of the amendment or cancellation or the time stated in that Commonwealth Gazette notice; whichever is the later.

Clause 144 empowers a relevant road manager for a mass or dimension authority granted by Commonwealth gazette notice to ask the Regulator to amend the mass or dimension authority or cancel the authority if the road manager is satisfied the use of heavy vehicle on a road under the authority has caused, or is likely to cause, damage to road infrastructure; or has had, or is likely to have, an adverse effect on public amenity. If a road manager makes a request under this clause to amend or cancel the mass or dimension authority the Regulator must comply with the request unless consent to the grant of the mass or dimension authority was given by a road authority under clause 140.

If the Regulator does amend or cancel a mass or dimension authority under clause 144, notice of an amendment must be published in the Commonwealth Gazette, a newspaper circulating generally throughout each relevant participating jurisdiction, on the Regulator's website and in any other newspaper the Regulator considers appropriate.

The intent of this clause is to provide for the revocation or amendment of consent given by the road manager after the mass or dimension authority has been granted. Clause 144(4) outlines the responsibilities upon the Regulator if a road manager makes a request to amend or cancel the mass or dimension authority in the situation where consent was obtained from a road authority under clause 140. In such a situation:

- the Regulator may refer the request to the road authority; and
- if the road authority gives the Regulator its written approval of the request, the Regulator must comply with the request; and
- if the road authority does not give written approval of the road manager's request within 28 days after the referral is made, the Regulator must not comply with the request; and must notify the road manager that the road authority has not given its written approval of the request and, as a result, the Regulator must not comply with it.

Subclause 144(7) states that in this clause *relevant participating jurisdiction*, for a mass or dimension authority, means a participating jurisdiction in which the whole or part of an area or route to which the authority applies is situated.

Clause 145 provides the Regulator power to immediately respond to any actual or potential serious harm to public safety or significant damage to road infrastructure that may arise by suspending any mass or dimension authority it believes necessary to prevent or minimise it. Clause 145 empowers the Regulator to immediately suspend a mass or dimension authority granted by Commonwealth Gazette notice if the Regulator reasonably believes it necessary to prevent or minimise serious harm to public safety or significant damage to road infrastructure. Clause 145 requires a notice for immediate suspension and specifies the time period for which the suspension is in force.

Immediate suspension must be done by way of an *immediate suspension notice* being published in the Commonwealth Gazette, a newspaper circulating generally throughout each relevant participating jurisdiction, on the Regulator's website and in any other newspaper the Regulator considers appropriate.

An immediate suspension issued by the Regulator is in force from when the immediate suspension notice is published in the Commonwealth Gazette and remains in force until the earlier of either:

- the Regulator publishes a notice of an amendment or cancellation of a mass or dimension authority under subclause 143(5) or subclause 144(5). These subclauses require the Regulator to publish a notice in the Commonwealth Gazette; a newspaper circulating generally throughout each relevant participating jurisdiction; on the Regulator's website and in any other newspaper the Regulator considers appropriate; or
- the end of 56 days after the day the immediate suspension notice is published.

Subclause 145(5) states that this section applies despite clauses 143 and 144. This ensures that the Regulator always maintains the power to affect the immediate suspension of a mass or dimension authority in situations where a risk of serious harm to public safety arises despite the usual procedural requirements concerning the amendment or the cancellation of the authority.

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

Clause 146 empowers the holder of a permit for a mass or dimension authority to apply to the Regulator for an amendment or cancellation of the exemption. This application must be in the approved form, be accompanied by the permit and, if for an amendment, state clearly the amendment sought and the reasons for it. The Regulator must decide this application as soon as practicable after receiving it.

The Regulator is empowered by subclause 146(3) to require, by notice, any additional information from the applicant that is reasonably required to decide the application.

The Regulator must give notice to the applicant of all decisions made in respect to this application. If granted, the amendment or cancellation takes effect when notice of the decision is given to the applicant or, if a later time is stated in the notice, at that time. If the authority has been amended, the Regulator must give the applicant a replacement permit for the authority as amended.

If the Regulator decides not to amend or cancel the authority sought by the applicant, subclause 146(6) requires the Regulator to give the applicant an information notice for the decision and return the permit for the authority to the applicant.

Clause 147 empowers the Regulator to amend or cancel a permit for a mass or dimension authority at the Regulator's initiative if the Regulator considers one or more of the grounds mentioned in subclause 147(1) exists and the requirements of subclause 147(2) to 147(4) are met.

The grounds for amending or cancelling a mass or dimension authority granted by permit are the authority was obtained by false or misleading documents or representations, the authority was obtained or made in an improper way, the holder of the permit has contravened a condition of the authority, or the use of the heavy vehicles on a road under the authority has caused, or is likely to cause, a significant risk to public safety.

The requirements in subclauses 147(2) to 147(4) are:

- The Regulator must give to the holder of the permit a notice stating the intent, grounds and reasons for the action to be taken. This notice

must also invite the holder of the permit to make, within a stated time of at least 14 days after notice is given, written representations about why the proposed action should not be taken.

- The Regulator must consider all representations made in response to the invitation prior to making the final decision to amend or cancel the permit.
- If the action proposed in the notice was to amend the exemption, the Regulator may only amend the permit in a way that it is not substantially different from the proposed action, this may include amending areas, routes, days or hours to which the authority applies or by imposing additional vehicle conditions to the exemption.
- If the action proposed in the notice was to cancel the permit the Regulator may cancel the exemption or amend the exemption.
- The Regulator provide an information notice to the holder of the permit for the decision.

Under this clause the amendment or cancellation to permit takes effect when the information notice is provided to the holder or if a later time is stated in the information notice, at the later time.

The intent of the requirements of this clause is to ensure transparency in the amending and cancelling of mass and dimension authorities. This is achieved by requiring adequate notice to be given to those affected by an amendment or cancellation and that possible adverse consequences of such action are able to be presented to the Regulator throughout the decision making process for consideration. An additional benefit of this clause is in allowing to those who may be adversely affected by a decision time in which to adjust their business practices.

Clause 148 provides for the revocation or amendment of consent given by the road manager after the mass or dimension authority has been granted. Clause 148 empowers a relevant road manager for a mass or dimension authority granted by permit to ask the Regulator to amend the mass or dimension authority or cancel the authority if the road manager is satisfied the use of heavy vehicle on a road under the authority: has caused, or is likely to cause, damage to road infrastructure; or has had, or is likely to have, an adverse effect on public amenity. If a road manager makes such a request to amend or cancel the authority the Regulator must comply with the request unless consent to the grant of the mass or dimension authority was given by a road authority under clause 140.

If the Regulator does amend or cancel a mass or dimension authority under this clause, the Regulator must give the holder of the permit for the authority notice of the amendment at least 28 days prior to the amendment or cancellation taking effect. This notice must state the day the amendment or cancellation is to take effect; the reasons given by the road manager for the amendment or cancellation; and the review and appeal information for the road manager's decision.

Subclause 148(4) outlines the responsibilities upon the Regulator if a road manager makes a request to amend or cancel the mass or dimension authority in the situation where consent was obtained from a road authority under clause 140. In such a situation:

- the Regulator may refer the request to the road authority; and
- if the road authority gives the Regulator its written approval of the request, the Regulator must comply with the request; and
- if the road authority does not give written approval of the road manager's request within 28 days after the referral is made, the Regulator must not comply with the request; and must notify the road manager that the road authority has not given its written approval of the request and, as a result, the Regulator must not comply with it.

Clause 149 empowers the Regulator to immediately suspend a mass or dimension authority granted by permit if the Regulator reasonably believes it necessary to prevent or minimise serious harm to public safety or significant damage to road infrastructure. Clause 149 intends to provide the Regulator power to immediately respond to any actual or potential serious harm to public safety or significant damage to road infrastructure that may arise by suspending any mass or dimension authority it believes necessary to prevent or minimise it. Clause 149 requires a notice for immediate suspension and specifies the time period for which the suspension is in force.

Immediate suspension must be done by way of issuing a notice (termed an *immediate suspension notice)* to the person to whom the permit was given.

An immediate suspension issued by the Regulator is in force from when the immediate suspension notice is given to the person to whom the permit was given and remains in force until the earlier of the following:

- the Regulator gives the person a notice under subclause 147(4) or subclause 148(5). These subclauses detail the handing of the final

notice required to be given to the person to whom the permit was given when the Regulator amends or cancels the authorisation.

- the end of 56 days after the day the immediate suspension notice is given to the person to whom the permit was given

Subclause 149(5) states that this clause applies despite clauses 146 and 147. This ensures that the Regulator always maintains the power to effect the immediate suspension of a mass or dimension authority in situations where a risk of serious harm to public safety arises despite any proceedings that may be ongoing concerning the amendment or the cancellation of the authority.

Clause 150 empowers the Regulator to, by notice given to the holder of a permit for a mass or dimension authority, make minor amendments to the authority. Under this clause, an amendment is considered minor if it is for a formal or clerical reason or in another way that does not adversely affect the holder's interest.

Division 5 Provisions about permits for mass or dimension authorities

Clause 151 empowers the Regulator to require, by notice, a person to return a permit for a mass or dimension authority granted by giving a permit to the person if it has been amended or cancelled.

However, regardless of whether the Regulator requires the return of an amended or cancelled permit, subclause 151(4) states that the Regulator must give the person a replacement permit for the authority when amended. Subclause 151(3) requires a person issued with a notice under this clause to return a permit to comply with that notice to within 7 days or with a longer period if that longer period is stated on the notice. The maximum penalty for non-compliance with this notice is $2000.

Clause 152 requires a person to apply for a replacement mass or dimension authority permit as soon as practicable after becoming aware that their mass or dimension authority permit is defaced, destroyed lost or stolen. The maximum penalty for a person not doing so is $2000. If the Regulator is satisfied the permit has been defaced, destroyed, lost or stolen the Regulator must give the person a replacement permit as soon as practicable. The only valid reason why the Regulator could refuse the

application for a replacement permit is if the Regulator is not satisfied that the permit has been defaced, destroyed, lost or stolen. If the Regulator does refuse the application for a replacement permit the Regulator must give the person an information notice for the decision.

Part 4.8 Extended liability

Clause 153 extends chain of responsibility for offences against clause 78 (contravention of a mass requirement applying to a heavy vehicle); clause 84 (contravention of a dimension requirement applying to a heavy vehicle) and clause 92 (contravention of a loading requirement applying to a heavy vehicle). For all of these offences if a driver commits an offence each of the following persons is also taken to have committed the offence:

- an employer of the driver if the driver is an employed driver;
- a prime contractor of the driver if the driver is a self-employed driver;
- an operator of the vehicle or, if it is a combination, an operator of a vehicle in the combination;
- a consignor of any goods for road transport using the vehicle that are in the vehicle;
- a packer of any goods in the vehicle;
- a loading manager of any goods in the vehicle; and
- a loader of any goods in the vehicle.

The maximum penalty for anyone in the chain of responsibility identified in this clause is the penalty for the contravention of the provision by the driver of the heavy vehicle. Subclause 153(4) states that in a proceeding for an offence under this clause:

- Whether or not the driver has or will be proceeded against for or convicted of an offence against clause 78, 84 or 92 is irrelevant. A decision not to prosecute or convict a driver under this clause does not preclude the relevant party from being proceeded against or convicted.
- Evidence a court has convicted the driver of the relevant offence against clause 78, 84 or 92 or the driver has paid an infringement penalty in respect of it is evidence that the offence happened at the

time and place, and in the circumstances, stated in the charge resulting in the conviction. This is intended to facilitate proof of the relevant facts

A person charged with an offence under this clause does not have the benefit of the mistake of fact defence for the offence. However, in a proceeding for an offence under this clause the person does have the benefit of the reasonable steps defence for the offence. That defence is set out in Divisions 1 and 2 of Part 10.4. The reasonable steps defence requires that the person charged must actively consider the appropriate steps to prevent an on-road breach from occurring and cannot rely on a honest and reasonable mistake alone.

Clause 154 extends the chain of responsibility for *mass limit traffic offences* committed by the driver. In this clause, a *mass limit traffic offence* is defined as an offence committed by the driver of a heavy vehicle because the driver drove the heavy vehicle on a road in contravention of a mass limit indicated by an official traffic sign.

Under clause 154, if a driver commits a mass limit traffic offence each of the following persons is also taken to have committed the offence (maximum penalty $2000):

- an employer of the driver if the driver is an employed driver;
- a prime contractor of the driver if the driver is a self-employed driver;
- an operator of the vehicle or, if it is a combination, an operator of a vehicle in the combination;
- a consignor of any goods for road transport using the vehicle that are in the vehicle;
- a packer of any goods in the vehicle;
- a loading manager of any goods in the vehicle;
- a loader of any goods in the vehicle.

A person charged with an offence under this clause does not have the benefit of the mistake of fact defence for the offence. However, in a proceeding for an offence under this clause the person does have the benefit of the reasonable steps defence for the offence. That defence is set out in Divisions 1 and 2 of Part 10.4. The reasonable steps defence requires that the person charged must actively consider the appropriate steps to prevent an on-road breach from occurring and cannot rely on a honest and reasonable mistake alone.

Part 4.9 Other offences

Division 1 Towing restriction

Clause 155 creates an offence where a person drives a heavy motor vehicle towing more than 1 other vehicle. The maximum penalty for this offence is $2000. This clause does not apply to a person driving a heavy vehicle under a mass or dimension authority, which includes vehicles such as B-doubles and road trains.

Division 2 Coupling requirements

Clause 156 creates offences, both with a maximum penalty of $2000, where:

- A person uses, or permits to be used, on a road a heavy combination and a trailer in the combination is not securely coupled to the vehicle in front of it; and
- A person uses, or permits to be used, on a road a heavy combination and the components of a coupling used between vehicles in the heavy combination are not compatible with, or properly connected to, each other.

In this clause, *coupling* means a device used to couple a vehicle in a combination to the vehicle in front of it.

Division 3 Transport documentation

Clause 157 states that, if goods are consigned for road transport using a heavy vehicle, or for transport partly by road using a heavy vehicle and partly by some other means, an offence is committed if the transport documentation (defined in clause 5) in so far as it relates to the mass, dimension or loading of any or all of the goods is false or misleading in a material particular. The maximum penalty for the offence committed is $10000. The persons who commit an offence under this clause are:

- Each consignor of the goods (*consign* and *consignor* are defined in clause 5); and
- If the goods are packed in Australia in a freight container or other container, or in a package or on a pallet, for road transport, each packer of the goods (*pack* and *packer* are defined in clause 5); and
- If the goods are loaded onto a heavy vehicle for road transport, each loading manager or loader of the goods (*load* and *loading manager* are defined in clause 5); and
- If the goods are packed outside Australia in a freight container, or in a package or on a pallet, for road transport, each receiver of the goods in Australia (Subclause 157(9) defines *receiver* of goods in Australia for this clause).

Subclause 15(7) states that in a proceeding for an offence under this clause, it is enough for a charge to state that the transport documentation was 'false or misleading', without specifying whether it was false or whether it was misleading.

A person charged with an offence under this clause does not have the benefit of the mistake of fact defence for the offence. However, in a proceeding for an offence under this clause the person does have the benefit of the reasonable steps defence for the offence. That defence is set out in Divisions 1 and 2 of Part 10.4. The reasonable steps defence requires that the person charged must actively consider the appropriate steps to prevent an on-road breach from occurring and cannot rely on a honest and reasonable mistake alone.

Clause 158 states that, if a freight container is to be transported by road using a heavy vehicle, the *responsible entity for the freight container* commits an offence if the *container weight declaration* for the container contains information that is false or misleading in a material particular. The maximum penalty for an offence under this clause is $10000. Subclause 158 (4) states that, for the purposes of this clause, information in a container weight declaration is not false or misleading merely because it overstates the actual weight of the freight container and its contents. Clause 5 defines *container weight declaration* and *freight container* and *responsible entity for a freight container.*

A person charged with an offence under this clause does not have the benefit of the mistake of fact defence for the offence. However, in a proceeding for an offence under this clause the person does have the benefit

of the reasonable steps defence for the offence. That defence is set out in Divisions 1 and 2 of Part 10.4. The reasonable steps defence requires that the person charged must actively consider the appropriate steps to prevent an on-road breach from occurring and cannot rely on a honest and reasonable mistake alone.

Division 4 Other offences about container weight declarations

Clause 159 states that this Division applies to a freight container consigned for road transport using a heavy vehicle or for transport partly by road using a heavy vehicle and partly by some other means. The term *freight container* is defined in clause 5 as a re-usable container of a kind mentioned in Australian Standard AS 3711.1 that is designed for repeated use for transporting goods; or a re-usable container of the same or a similar design and construction to such a container though of different dimensions.

Clause 160 defines the term *complying container weight declaration*. This term is an important term throughout the provisions of this Division. This clause recognises that not all container weight declarations will be complying container weight declarations. The requirements for a complying container weight declaration ensures that container weight declarations contain important identification information for the container that is easily interpreted and readily accessible should it be required by an authorised officer.

This clause states that a container weight declaration for a freight container is a complying container weight declaration if:

- it contains the following additional information—
  - (i) the number and other particulars of the freight container necessary to identify the container; and
  - (ii) the name and residential address or business address in Australia of the responsible entity for the freight container; and
  - (iii) the date the container weight declaration is made; and
- it is written and easily legible; and

- the information in the container weight declaration is in a form readily available to an authorised officer who seeks to ascertain it while in the presence of the freight container, including, for example, by

  (i) examining documents located in the heavy vehicle on which the freight container is loaded or to be loaded; or

  (ii) obtaining the information by radio or mobile telephone or by other means.

Clause 161 states that a responsible entity must not permit a driver or operator to transport a freight container without providing the driver or operator with a complying weight declaration. A maximum penalty of $6,000 applies. The term responsible entity is defined in clause 5 to mean the consignor of the container (if consigned in Australia) or (if not so consigned) the manager for the consignor of the road transport of the container. Subclauses 161(2) and 161(3) deal with defences to prosecutions, excluding the mistake of facts defence but providing the reasonable steps defence. The reasonable steps defence requires that the person charged must actively consider the appropriate steps to prevent an on-road breach from occurring and cannot rely on a honest and reasonable mistake alone.

Clause 5 defines a *responsible entity for a freight container* as a person who in Australia consigned the container for road transport using a heavy vehicle or if there is no such person, the person who in Australia arranged for the container's road transport using a heavy vehicle, or if there is still no such person, the person who in Australia physically offered the container for road transport using a heavy vehicle.

Clause 162 states that it is an offence for a heavy vehicle operator to permit the vehicle's driver to transport a freight container by road using the vehicle unless the driver has been provided with a complying container weight declaration for the freight container. Subclause 162(3) states that a heavy vehicle operator must not give a freight container to a carrier (who transports the container by a means other than by road) without a complying container weight declaration or the prescribed particulars contained in a complying container weight declaration for the freight container. Noncompliance for either offence in clause 162 has a maximum penalty of $6000.

Subclause 162(2) states that if the driver of the heavy vehicle does not have the complying container weight declaration when transporting the freight container by road using the vehicle, an operator of the vehicle is taken to

have committed the offence against subclause (1) unless the operator proves that the driver was provided with the declaration before the driver started transporting the freight container.

A person charged with either offence under this clause does not have the benefit of the mistake of fact defence for the offence. However, in a proceeding for an offence under this clause the person does have the benefit of the reasonable steps defence for the offence. That defence is set out in Divisions 1 and 2 of Part 10.4. The reasonable steps defence requires that the person charged must actively consider the appropriate steps to prevent an on-road breach from occurring and cannot rely on a honest and reasonable mistake alone.

Clause 163 states that an offence is committed by a driver of a heavy vehicle loaded with a freight container on a road where the driver does not have a complying container weight declaration for the container. The maximum penalty is $6000.

Subclause 163(2) states that an offence is committed by a driver of a heavy vehicle loaded with a freight container who does not keep the complying container weight declaration in or about the vehicle and in a way that enables the information in the declaration to be readily available to an authorised officer who seeks to ascertain it while in the presence of the freight container. The maximum penalty is $6000.

A person charged with either offence under this clause does not have the benefit of the mistake of fact defence for the offence. However, in a proceeding for an offence under this clause the person does have the benefit of the reasonable steps defence for the offence. That defence is set out in Divisions 1 and 2 of Part 10.4. The reasonable steps defence requires that the person charged must actively consider the appropriate steps to prevent an on-road breach from occurring and cannot rely on a honest and reasonable mistake alone.

Division 5 Other offences

Clause 164 states that when the weight of a freight container, containing goods consigned for road transport, exceeds the maximum gross weight marked on the container or the container's safety approval plate, the consignor or packer of the goods commits an offence with a maximum penalty of $10000.

Subclause 164(5) defines *safety approval plate* for a freight container as the safety approval plate required to be attached to the container under the International Convention for Safe Containers set out in Schedule 5 of the *Navigation Act 1912* of the Commonwealth.

A person charged with either offence under this clause does not have the benefit of the mistake of fact defence for the offence. However, in a proceeding for an offence under this clause the person does have the benefit of the reasonable steps defence for the offence. That defence is set out in Divisions 1 and 2 of Part 10.4. The reasonable steps defence requires that the person charged must actively consider the appropriate steps to prevent an on-road breach from occurring and cannot rely on a honest and reasonable mistake alone.

Clause 165 allows a consignee whose act or omission results, or is likely to result, in inducing or rewarding a contravention of a mass, dimension or loading requirement and they intend or are reckless or negligent as to whether or not that result happens) commits an offence for which a maximum penalty of $10000 applies.

Subclause (2) provides that the consignee is taken to have intended the result if the container weight declaration was not given or was false or misleading in a material particular in circumstances where the consignee knew or ought reasonably to have known that a container weight declaration for the container was not given as required by this Bill or that the container weight declaration given for the container contained information about the weight of the container and its contents that was false or misleading in a material particular.

Part 4.10 Other provisions

Clause 166 states that where a heavy vehicle is not exempt from one or more conflicting mass requirements, the lower or lowest of the applicable limits applies. This clause confirms that compliance with all mass and dimension requirements relevant to a heavy vehicle, including a combination, is required. For example, if the mass requirements for the individual axle groups making up a heavy vehicle exceed the mass requirement for the vehicle as a whole then the later mass requirement must be complied with.

Clause 167 empowers the Regulator to exempt a heavy vehicle, or the driver or operator of a heavy vehicle, from a *prescribed requirement* (a mass or dimension requirement or any requirement under mass or dimension authorities granted under Parts 4.5 or 4.6 of this Bill) to allow the heavy vehicle to be used in a particular way to assist in an emergency. The Regulator must be satisfied of certain matters, including that there will not be an unreasonable danger to other road users and that heavy vehicle is being used, or is intended to be used, in an emergency to protect life or property or to restore communications or the supply of services such as energy, water or similar services.

Subclause (3) requires that if the exemption is granted orally that the Regulator must as soon as practicable make a written record of the exemption and any conditions to which it is subject and give a copy of that record to the operator of the heavy vehicle to which it relates.

Clause 168 grants a right of recovery for a loss to a person occurring because a driver of a heavy vehicle transporting a freight container by road using the vehicle has not been provided with a container weight declaration for the freight container before starting to transport the freight container. A person who has incurred a loss as a result of the delay resulting from the failure to provide the container weight declaration and the need to obtain a container weight declaration before transporting the container is entitled to compensation. The person who incurs a loss may recover the loss from the responsible entity for the freight container in a court of competent jurisdiction. Clause 5 defines *responsible entity* for a freight container.

Losses that may be recovered under this clause include:

- loss incurred from delays in the delivery of the freight container, any of its contents, or any other goods;
- loss incurred from the damage to or spoliation of anything contained in the freight container;
- loss incurred from providing another heavy vehicle, and loss incurred from delays arising from providing another heavy vehicle; or
- costs or expenses incurred for weighing the freight container or any of its contents.

Unlike clause 169 there is no reference to losses incurred from fines or other penalties as the driver and operator of the vehicle should not be allowing the freight container to be transported by road until a complying container weight declaration is obtained.

Clause 169 grants a right of recovery for loss to a person who has incurred a loss because:

- an operator or driver of a heavy vehicle transporting a freight container by road using the vehicle has been provided with a container weight declaration for the freight container; and
- the declaration contains information that is false or misleading in a material particular because it either understates the weight of the container; or otherwise indicates the weight of the container is lower than its actual weight; and
- a contravention of a mass requirement applying to the heavy vehicle occurs as a result of the operator or driver relying on the false or misleading information; and
- at the relevant time, the operator or driver either had a reasonable belief the vehicle was not in contravention of the mass requirement; or did not know, and ought not reasonably to have known, that the minimum weight stated in the declaration was lower than the actual weight of the container.

If a loss of the kind mentioned above is incurred, clause 169 states that the person incurring this loss has a right to recover that loss from the responsible entity in a court of competent jurisdiction.

Losses that may be recovered under this clause include:

- the amount of a fine or other penalty imposed on the plaintiff for an offence against this Bill;
- the amount of a fine or other penalty imposed on an employee or agent of the plaintiff for an offence against this Bill and reimbursed by the plaintiff;
- loss incurred from delays in the delivery of the freight container, any of its contents, or any other goods;
- loss incurred from the damage to or spoliation of anything contained in the freight container;
- loss incurred from providing another heavy vehicle, and loss incurred from delays arising from providing another heavy vehicle; and
- costs or expenses incurred for weighing the freight container or any of its contents.

There is no limit on the amount of loss that is able to be recovered from the responsible entity for the freight container in this clause. However, clause 171 states that the court may assess the monetary value of a loss recoverable in the way it considers appropriate. Clause 171 also provides that the court may have regard to the matters it considers appropriate in making this assessment.

Clause 171 provides that the court may have regard to the matters it considers appropriate in making this assessment.

Clause 170 grants a right of recovery to responsible entities that have proceedings initiated against them under clause 169 in respect of the whole or part of the amount that they are required to pay against a person, called an information provider, who provided the responsible entity with all or part of the false or misleading information that led to the proceeding under clause 169.

Subclause 170(3) provides that the responsible entity may enforce their right to recover under subclause 170(2) by either joining the information provider to a recovery proceeding that has not been decided or by bringing a proceeding in a court of competent jurisdiction.

Clause 171 empowers the court to assess the monetary value recoverable under the recovery clauses of this division (clauses 168; 169 and 170). In making this assessment clause 171 empowers the court to have regard to matters it considers appropriate, including any evidence adduced in a proceeding for an offence against this law.

Chapter 5 Vehicle operations—speeding

Part 5.1 Preliminary

Clause 172 states that the main purpose of Chapter 5 is to improve public safety and compliance with Australian road laws by imposing responsibility for speeding by heavy vehicles on persons whose business activities influence the conduct of the drivers of heavy vehicles.

Clause 173 states that Chapter 5 requires:

- persons who are most directly responsible for the use of a heavy vehicle to take reasonable steps to ensure their activities do not cause the vehicle's driver to exceed speed limits; and
- anyone who schedules the activities of a heavy vehicle, or its driver, to take reasonable steps to ensure the schedule for the vehicle's driver does not cause the driver to exceed speed limits; and
- loading managers to take reasonable steps to ensure the arrangements for loading goods onto and unloading goods from a heavy vehicle do not cause the vehicle's driver to exceed speed limits; and
- particular persons who consign goods for transport by a heavy vehicle, or who receive the goods, to take reasonable steps to ensure the terms of consignment of the goods do not cause the vehicle's driver to exceed speed limits; and
- prohibits anyone from asking the driver of a heavy vehicle to exceed speed limits and from entering into an agreement that causes the driver of a heavy vehicle to exceed speed limits.

Moreover, this Chapter imposes liability on persons who are most directly responsible for the use of a heavy vehicle for offences committed by the vehicle's driver exceeding speed limits

Part 5.2 Particular duties and offences

Division 1 Employers, prime contractors and operators

Clause 174 requires that a 'relevant party' for the driver of a heavy vehicle must take all reasonable steps to ensure that the relevant party's business practices will not cause the driver to exceed a speed limit applying to the driver. The maximum penalty for not complying with this requirement is $8000.

It should be noted that, because of the operation of clause 188 for an offence against this provision it is not necessary to prove the driver of the heavy vehicle exceeded a speed limit applying to the driver. For this clause, the relevant party for the driver includes:

- if the driver is employed, the employer of the driver;
- if the driver is a self-employed driver, a prime contractor of the driver; and
- if the driver is making a journey for the operator of a vehicle, an operator of the vehicle.

For this clause, business practices of a relevant party means the practices of the relevant party in running the relevant party's business and includes the operating policies and procedures of the business; the human resource and contract management arrangements of the business; and arrangements for managing safety.

A second note to subclause 174(1) indicates that clauses 564 and 565 should be considered in deciding whether a person has taken all reasonable steps.

A person charged with an offence under this clause does not have the benefit of the mistake of fact defence for this offence.

Clause 175 imposes an obligation on an employer not to cause an employed driver to drive a heavy vehicle unless the employer has complied with clause 174 and is reasonably satisfied that each scheduler for the vehicle has complied with that scheduler's obligations. A maximum penalty of $4000 applies to the offence of contravening this provision.

It should be noted that, because of the operation of clause 188, for an offence against this provision it is not necessary to prove the driver of the heavy vehicle exceeded a speed limit applying to the driver.

This clause encourages employers to be vigilant as to factors within their control that may encourage a driver to not comply with a speed limit.

Clause 176 states where a driver is self-employed, this clause imposes on prime contractors and operators of vehicles obligations similar to those imposed on employers by clause 175. A maximum penalty of $4000 is prescribed for a person contravening this provision.

It should be noted that, because of the operation of clause 188, for an offence against this provision it is not necessary to prove the driver of the heavy vehicle exceeded a speed limit applying to the driver.

This clause encourages prime contractors and operators to be vigilant as to factors within their control that may encourage a driver to not comply with a speed limit.

Division 2 Schedulers

Clause 177 states that a scheduler must take all reasonable steps to ensure that the schedule for the driver of a heavy vehicle will not cause the driver to exceed a speed limit applying to the driver. A maximum penalty of $8000 applies to the offence of contravening this provision. Clause 5 defines a schedule for the driver of a heavy vehicle and a scheduler for a heavy vehicle.

It should be noted that, because of the operation of clause 188, for an offence against this provision it is not necessary to prove the driver of the heavy vehicle exceeded a speed limit applying to the driver.

A person charged with an offence under this clause does not have the benefit of the mistake of fact defence for the offence.

Examples of what may be regarded as reasonable steps are provided in a note under this clause. These examples are:

- Consulting drivers about their schedules and work requirements;
- Taking account of the average speed that can be travelled lawfully on scheduled routes;

- Allowing for traffic conditions or other delays in schedules; and
- Contingency planning concerning schedules.

A second note to subclause 177(1) indicates that clauses 564 and 565 should be considered in deciding whether a person has taken all reasonable steps.

Clause 178 imposes further obligations on schedulers to not cause a vehicle's driver to drive unless the driver's schedule allows for:

- the driver to take all required rest breaks in compliance with all laws regulating the driver's work times and rest times; and
- traffic conditions and other delays that could reasonably be expected; and
- compliance with all speed limits.

A maximum penalty of $4000 applies to the offence of contravening this provision.

It should be noted that, because of the operation of clause 188, for an offence against this provision it is not necessary to prove the driver of the heavy vehicle exceeded a speed limit applying to the driver.

Examples provided of considerations that may be taken into account in providing a schedule that allows for traffic conditions and other delays that could be reasonably expected are:

- the actual average speed able to be travelled lawfully and safely by the driver on the route to be travelled by the heavy vehicle;
- known traffic conditions, for example, road works or traffic congestion on the route; and
- delays caused by loading, unloading or queuing.

Division 3 Loading managers

Clause 179 states that a loading manager must take all reasonable steps to ensure that loading and unloading arrangements will not cause the driver of a heavy vehicle to exceed a speed limit applying to the driver. A maximum penalty of $8000 applies to the offence of contravening this provision.

For this clause, a *loading manager* means a person who manages, or is responsible for the operation of, regular loading or unloading premises for heavy vehicles; or has been assigned by that person as responsible for supervising, managing or controlling, directly or indirectly, activities carried out by a loader or unloader of goods at the premises.

It should be noted that, because of the operation of clause 188, for an offence against this provision it is not necessary to prove the driver of the heavy vehicle exceeded a speed limit applying to the driver.

Examples of what may be regarded as *reasonable steps* are provided in a note under this clause. These examples are:

- reviewing loading and unloading times and delays at loading and unloading places;
- identifying potential loading and unloading congestion in consultation with drivers and other parties in the chain of responsibility;
- having a system of setting and allocating loading and unloading times the driver can reasonably rely on; and
- allowing loading and unloading to happen at an agreed time.

A second note to subclause 179(1) indicates that clauses 564 and 565 should be considered in deciding whether a person has taken all reasonable steps. A person charged with this an offence under this clause does not have the benefit of the mistake of fact defence for this offence.

Division 4 Particular consignors and consignees

Clause 180 states that this Division applies to a person who is a 'commercial consignor' who engages a particular operator of a heavy vehicle, either directly or through an agent or other intermediary, to transport goods for the person by road for commercial purposes.

Clause 5 defines a 'consignee' of goods as a person who has consented to being, and is, named or otherwise identified, as the intended consignee of the goods in the transport documentation relating to the road transport of the goods; or actually receives the goods after completion of their road transport. This definition does not include a person who merely unloads the goods.

Clause 181 states that this Division applies only to a consignee of goods who:

- has consented to being, and is named or otherwise identified as, the intended consignee of goods in the transport documentation relating to the transport of the goods by road by a particular operator of a heavy vehicle; and
- knows, or ought reasonably to know, that the goods are to be transported by road.

A note to clause 181 refers to clause 572 for the matters a court must consider deciding whether a person ought reasonably to have known something.

Clause 182 states that a commercial consignor or a consignee of goods must take all reasonable steps to ensure that the terms of consignment of goods for transport by a heavy vehicle will not either (a) cause the relevant driver or (b) cause a relevant party for the relevant driver to exceed a speed limit applying to the driver. A maximum penalty of $8000 applies to both offences in this clause.

It should be noted that, because of the operation of clause 188, for an offence against this provision it is not necessary to prove the driver of the heavy vehicle exceeded a speed limit applying to the driver.

For this clause, the ***relevant driver*** for consigned goods, means the driver of the heavy vehicle by which the goods are to be or are being transported. For this clause, the ***relevant party*** for the driver includes:

- if the driver is employed, the employer of the driver;
- if the driver is a self-employed driver, a prime contractor of the driver; and
- if the driver is to make, or is making, a journey for the operator of a vehicle, an operator of the vehicle.

Examples of what may be regarded as reasonable steps are provided in a note under this clause. These examples are:

- ensuring contractual arrangements and documentation for the consignment and delivery of goods enable speed limit compliance;
- contingency planning concerning consignments and delivery times; and

- regular consultation with other parties in the chain of responsibility, unions and industry associations to address compliance issues.

A second note to subclause 182 (1) indicates that clauses 564 and 565 should be considered in deciding whether a person has taken all reasonable steps.

A person charged with an offence under this clause does not have the benefit of the mistake of fact defence for this offence.

Clause 183 states that a commercial consignor or a consignee of goods must not make a demand that affects, or may affect, a time in a schedule for the transport of the consigned goods unless the consignor or consignee has complied with clause 181 and the consignor or consignee is reasonably satisfied that the making of the demand will not cause a scheduler for the vehicle to not comply with that scheduler's obligations. A maximum penalty of $6000 applies to the offence of contravening this provision.

It should be noted that, because of the operation of clause 188, for an offence against this provision it is not necessary to prove the driver of the heavy vehicle exceeded a speed limit applying to the driver.

Division 5 Particular requests etc. and contracts etc. prohibited

Clause 184 sets out the person included in the meaning of the term 'party in the chain of responsibility' for a heavy vehicle in this Division. This definition is important as persons commit an offence under this Division when they make a request to, or enter a contract or agreement with, a party in the chain of responsibility.

The persons who are a party in the chain of responsibility for this Division are:

- an employer of the vehicle's driver if the driver is an employed driver;
- a prime contractor for the vehicle's driver if the driver is a self-employed driver;
- an operator of the vehicle;
- a scheduler for the vehicle;
- a loading manager of any goods in the vehicle;

- a commercial consignor of any goods for transport by the vehicle that are in the vehicle;
- a consignee of any goods in the vehicle, if Division 4 applies to the consignee.

A note to subclause 184 (1) indicates that the exercise of any of these functions, whether exclusively or occasionally, decides whether a person falls within these definitions rather than a person's job title or contractual description.

Subclause 184(2) provides that a person may be a party in the chain or responsibility for the heavy vehicle in more than one capacity.

Clause 185 prohibits a person from asking, directing or requiring, directly or indirectly, the driver of a heavy vehicle or a party in the chain of responsibility to do or not to do something which the person knows or ought reasonably to know would have the effect of causing the driver to exceed a speed limit applying to the driver. A maximum penalty of $8000 applies to the offence of contravening this provision.

It should be noted that, because of the operation of clause 188, for an offence against this provision it is not necessary to prove the driver of the heavy vehicle exceeded a speed limit applying to the driver.

A note to subclause 185(1) indicates that clause 572 states the matters a court must consider when deciding whether a person ought reasonably to have known something.

Clause 186 states a person must not enter into a contract or agreement with the driver or a party in the chain of responsibility of or for a heavy vehicle if the person knows or ought reasonably to know that the effect would be to cause the driver to exceed a speed limit applying to the driver.

Subclause 186(2) makes similar provision for contracts or agreements that encourage or provide incentives for a driver to exceed a speed limit applying to the driver.

In both cases a maximum penalty of $8000 applies to the offence of contravening this provision.

It should be noted that, because of the operation of clause 188, for an offence against this provision it is not necessary to prove the driver of the heavy vehicle exceeded a speed limit applying to the driver.

A note to clause 186 indicates that clause 572 states the matters a court must consider when deciding whether a person ought reasonably to have

known something. The note also indicates that clause 677 provides that particular contracts or other agreements are void.

Division 6 Provisions about offences against this Part

Clause 187 deals with circumstances included within the concept of failing to take all reasonable steps in relation to this Division. Under clause 187, a person failing to take reasonable steps to ensure someone else does not drive a heavy vehicle in excess of a speed limit applying to the vehicle's driver (referred to in this clause as the ***prohibited act***) includes:

- the person failing to take reasonable steps to ensure the other person does not do the prohibited act; and
- the person failing to take reasonable steps to ensure the person's activities or anything arising out of them do not cause, result in or provide an incentive for the other person to do the prohibited act.

Subclause 187(4) states that a court may find that a person caused another person to do something prohibited if the court is satisfied that a reasonable person would have foreseen that the person's conduct would be reasonably likely to cause the other person to do the prohibited act.

Clause 188 states that in a prosecution for an offence against Part 5.2, it is not necessary to prove the driver of the heavy vehicle exceeded a speed limit applying to the driver.

Part 5.3 Extended liability

Clause 189 creates offences for employers, prime contractors and operators of heavy vehicles when a driver of a heavy vehicle is convicted of a speeding offence. A driver must be convicted of a speeding offence for the operation of this clause to become relevant.

In this clause a 'speeding offence' means an offence committed by the driver of a heavy vehicle because the driver exceeded a speed limit applying to the driver.

Subclause 189(1) states that when a driver of a heavy vehicle commits a speeding offence, each of the following persons are also taken to have committed the offence:

- if the driver is employed, the employer of the driver;
- if the driver is a self-employed driver, a prime contractor of the driver; and
- if the driver is making a journey for the operator of a vehicle, an operator of the vehicle.

The maximum penalty for a person committing an offence under this provision is set out in Paragraphs 189(1)(a) to 189(1)(e) and is dependent on both the speed limit exceeded by the driver and how much the driver exceeded the limit by.

A person charged with an offence under this clause does not have the benefit of the mistake of fact defence for the offence. However, in a proceeding for an offence under this clause the person does have the benefit of the reasonable steps defence for the offence. That defence is set out in Divisions 1 and 2 of Part 10.4. The reasonable steps defence requires that the person charged must actively consider the appropriate steps to prevent an on-road breach from occurring and cannot rely on a honest and reasonable mistake alone.

Chapter 6 Vehicle operations—driver fatigue

Part 6.1 Preliminary

Clause 190 states the main purpose of Chapter 6 is to provide for the safe management of the fatigue of drivers of fatigue-regulated heavy vehicles while they are driving on the road.

The term 'fatigue-regulated heavy vehicles' is defined in clause 7. Normally, a vehicle designed to carry more than 12 adults (including the

driver) or having a gross vehicle or combination mass of 12 tonnes or more will be a fatigue-regulated heavy vehicle, although clause 7 provides exceptions, including some machinery and motor homes.

Subclause 190(2) indicates that this purpose is achieved by imposing duties, providing maximum work requirements and minimum rest requirements and, amongst other things, providing for recording the work times and rest times of drivers.

Clause 191 provides definitions of terms used in Chapter 6 or refers the reader to other provisions where those terms are defined. Examples are given in some cases.

Clause 192 states that breaches of maximum work requirements or minimum rest requirements are categorised as minor, substantial, severe or critical in accordance with provisions of regulations.

Part 6.2 Duties relating to fatigue

Division 1 Preliminary

Clause 193 states that 'fatigue' includes, but is not limited to, feeling sleepy, feeling physically or mentally tired, weary or drowsy, feeling exhausted or lacking energy or behaving in a way that's consistent with the examples referred to in paragraphs 193(a), 193(b), or 193(c).

Clause 194 sets out some matters which a court may consider in determining whether a driver is fatigued but Subclause 194(2) states that the court is not limited by those matters.

Clause 195 states that a person is *impaired by fatigue* if he or she is fatigued to the extent that he or she is incapable of driving a fatigue-regulated heavy vehicle safely.

Clause 196 sets out matters that a court may consider in determining whether a person is impaired by fatigue. Subclause 196(2) provides that the court is not limited to a consideration of those things and Subclause 196(3) provides that a court may consider a driver to be impaired by fatigue even though he or she has complied with legal requirements.

Clause 197 refers to a number of parties in the chain of responsibility who are deemed to have committed the same offences as the driver under this Law. These persons include:

- an employer of the vehicle's driver;
- a prime contractor for the vehicle's driver;
- an operator of the vehicle;
- a scheduler for the vehicle;
- a consignor of any goods for transport by the vehicle that are in the vehicle;
- a consignee of any goods in the vehicle;
- a loading manager of any goods in the vehicle;
- a loader of any goods in the vehicle; and
- an unloader of any goods in the vehicle.

Subclause 197(2) provides that it is possible for a person to be a party in the chain of responsibility for a fatigue-regulated heavy vehicle in more than 1 capacity.

Division 2 Duty to avoid and prevent fatigue

Clause 198 provides that a person must not drive a fatigue-regulated heavy vehicle on a road while the person is impaired by fatigue. A maximum penalty of $4500 applies to the offence of contravening this provision.

Clause 199 provides that a party in the chain of responsibility for a fatigue-regulated heavy vehicle must take all reasonable steps to ensure that a person does not drive the vehicle on a road while that person is impaired by fatigue. A maximum penalty of $6000 applies to the offence of contravening this provision. Subclause 199(2) deals with evidence that a party took all reasonable steps and Subclause 199(3) provides that it is not necessary for the prosecution to prove that a person drove or would or may have driven on a road while impaired by fatigue. Subclause 199 (4) defines one of the terms used in Subclause 199(1).

Division 3 Additional duties of employers, prime contractors and operators

Clause 200 imposes on certain employers, contractors and operators (as specified by Subclause 200(2)) to take all reasonable steps to ensure that their business practices will not cause the driver to drive while impaired by fatigue or to drive in breach of work and rest hours options. A maximum penalty of $4500 applies to the offence of contravening this provision.

Clause 201 imposes an obligation on an employer not to cause an employed driver to drive a fatigue-regulated heavy vehicle unless the employer has complied with clause 201 and is satisfied that each scheduler for the vehicle has complied with that scheduler's obligations. A maximum penalty of $3000 applies to the offence of contravening this provision.

Clause 202 provides that where a driver is self-employed, clause 202 imposes on prime contractors and operators of vehicles obligations similar to those imposed on employers by clause 201. A maximum penalty of $3000 applies to the offence of contravening this provision.

Division 4 Additional duties of schedulers

Clause 203 provides that a scheduler must take all reasonable steps to ensure that the schedule for the driver of a fatigue-regulated heavy vehicle will not cause the driver to drive while impaired by fatigue or in breach of the driver's work and rest hours options. A maximum penalty of $4500 applies to the offence of contravening this provision.

Clause 204 imposes further obligations on schedulers, including a consideration of traffic conditions and other delays that could reasonably be expected; such matters must be allowed for in the driver's schedule. A maximum penalty of $3000 applies to the offence of contravening this provision.

Division 5 Additional duties of consignors and consignees

Clause 205 states that consignors and consignees must take all reasonable steps to ensure that the terms of consignment of goods for transport by a fatigue-regulated heavy vehicle will not result in, encourage or provide an incentive to the driver to drive while impaired by fatigue or in breach of the driver's work and rest hours options. A maximum penalty of $4500 applies to the offence of contravening this provision.

Subclauses 205(2) and 205(3) impose on consignors and consignees similar obligations in relation to employers, prime contractors and operators who may, in turn, cause a driver to drive while impaired by fatigue or in breach of the driver's work and rest hours options.

Clause 206 states that consignors and consignees must not cause the driver to drive or enter into a contract or other agreement to that effect unless the consignor or consignee has complied with clause 205 and is satisfied that others upon whom obligations are imposed by Divisions 3 and 4 have complied with those Divisions.

Clause 207 states that a consignor of goods for transport by road in a fatigue-regulated heavy vehicle must not make a demand that affects or may affect a time in a schedule that may cause the vehicle's driver to drive while impaired by fatigue or in breach of the driver's work and rest hours options. A maximum penalty of $3000 applies to the offence of contravening this provision but Subclause 207(2) protects the consignor if certain precautions are taken before the demand is made.

Division 6 Additional duties of loading managers

Clause 208 states that a loading manager must take all reasonable steps to ensure that loading and unloading arrangements will not cause the driver of a fatigue-regulated heavy vehicle to drive while impaired by fatigue or in breach of the driver's work and rest hour options. A maximum penalty of $4500 applies to the offence of contravening this provision.

Clause 209 imposes an obligation to ensure drivers can rest in particular circumstances. In circumstances specified by subclause 209(1), a loading

manager must take all reasonable steps to ensure that the driver is able to rest while waiting for the goods to be loaded or unloaded onto or from the vehicle. The circumstances include delays in the starting or finishing times advised to the driver for the loading or unloading. A maximum penalty of $3000 applies to the offence of contravening this provision.

Division 7 Particular requests etc. and contracts etc. prohibited

Clause 210 prohibits a person from asking, directing or requiring, directly or indirectly, the driver of a fatigue-regulated heavy vehicle or a party in the chain of responsibility to do or not to do something which the person knows or ought reasonably to know would have the effect of causing the driver to drive while impaired by fatigue or in breach of the driver's work and rest hours options. A maximum penalty of $6000 applies to the offence of contravening this provision.

Clause 211 provides that a person must not enter into a contract or agreement with the driver or a party in the chain of responsibility of or for a fatigue-regulated heavy vehicle if the person knows or ought reasonably to know that the effect would be to cause the driver to drive while impaired by fatigue or in breach of the driver's work and rest hours options.

Subclause 211(2) makes similar provision for contracts or agreements which encourage or provide incentives for driving while impaired by fatigue or in breach of the driver's work and rest hours options. In both cases, a maximum penalty of $6000 applies to the offence of contravening this provision.

Division 8 Provisions about offences against this Part

Clause 212 deals with circumstances included within the concept of failing to take all reasonable steps. Subclause 212(4) makes further provision as to when a court may find that a person caused another person to do something prohibited; this will be possible if the court is satisfied that a reasonable person would have foreseen that the person's conduct would be reasonably likely to cause the other person to do the prohibited act.

Part 6.3 Requirements relating to work time and rest time

Division 1 Preliminary

Clause 213 defines the terms 'work and rest hours option'. The term is important in relation to various offences created by Part 6.3 involving conduct causing a driver to drive in breach of the option.

Clause 214 deals with counting time. As the driving task may extend across State or Territory borders, clause 214 states how time (for work and rest) is to be counted where more than one participating jurisdiction is involved.

Clause 215 provides for the possibility that the driving task may extend across State or Territory borders, clause 215 indicates how time (for work and rest) is to be counted where both participating and non-participating jurisdictions are involved.

Clause 216 provides for the computation of short periods of less than 15 minutes of both work and rest times.

Clause 217 deals with the point from which a period of time is to be counted where a rest break or period is involved and provides an example of how the computation is to be made.

Clause 218 deals with the situation where the driving extends across two or more time zones.

Division 2 Standard work and rest arrangements

Clause 219 authorises the making of regulations to prescribe maximum work times and minimum rest times applying to drivers of a fatigue-regulated heavy vehicle working under what are called *standard hours*. Later clauses deal with hours that are not standard, called *BFM* and *AFM*.

Clause 220 states that a solo driver working under standard hours commits an offence where he or she works more than the maximum work time or rests for less than the minimum rest time required by the standard hours.

Subclause 220(1) applies different monetary penalties by reference to whether the breach of the provision is categorised as minor, substantial, severe or critical. Subclauses 220(2) and 220(3) deal with defences to a prosecution for contravening Subclause 220(1).

Clause 221 makes provision, similar to clause 220, where drivers under standard hours are party to a two-up driving arrangement.

Clause 222 provides a defence where a rest break of less than 1 hour is required and has not been taken because there was no suitable place available in which to take it but it was taken, no later than 45 minutes late, at the first available suitable location.

Division 3 BFM work and rest arrangements

Clause 223 authorises the making of regulations to prescribe maximum work times and minimum rest times applying to drivers of a fatigue-regulated heavy vehicle working under *BFM hours*. Such a driver drives under BFM accreditation, for which clause 410 provides.

Clause 224 states that a solo driver working under BFM hours commits an offence where he or she works more than the maximum work time or rests for less than the minimum rest time required by the BFM hours. Subclause 224(1) applies different monetary penalties by reference to whether the breach of the provision is categorised as minor, substantial, severe or critical.

Subclauses 224(2) and 224(3) deal with defences to a prosecution for contravening subclause 224(1).

Clause 225 provides a defence for a solo driver in a prosecution for not taking 7 hours of stationary rest when required by BFM hours in circumstances where the driver has had a split rest break.

Clause 226 provides a provision, similar to clause 224, where drivers under BFM hours are party to a two-up driving arrangement.

Division 4 AFM work and rest arrangements

Clause 227 provides a definition of the term *AFM hours*, being the maximum work times and minimum rest times for a driver of a fatigue-regulated heavy vehicle under an *AFM accreditatio*n for which clause 410 provides.

Clause 228 states that a driver working under AFM hours commits an offence where he or she works more than the maximum work time or rests for less than the minimum rest time required by the AFM hours. Subclause 228 (1) applies different monetary penalties by reference to whether the breach of the provision is categorised as minor, substantial, severe or critical.

Subclauses 228(2) and 228(3) deal with defences to a prosecution for contravening subclause 228(1).

Division 5 Arrangements under work and rest hours exemption

Clause 229 defines the term *exemption hours* to be the maximum work time and minimum rest time for a driver of a fatigue-regulated heavy vehicle driving under an exemption. These times are to be specified in the notice or permit granting the exemption.

Clause 230 states that a driver working under a work and rest hours exemption commits an offence where he or she works more than the maximum work time or rests for less than the minimum rest time required by the exemption. Subclause 230(1) applies different monetary penalties by reference to whether the breach of the provision is categorised as minor, substantial, severe or critical. Subclauses 230(2) and 230(3) deal with defences to a prosecution for contravening subclause 230(1).

Division 6 Extended liability

Clause 231 extends liability to employers, prime contractors, operators, schedulers, consignors, consignees, loading managers, loaders and

unloaders if a driver of a fatigue-regulated heavy vehicle commits an offence by exceeding the maximum work hours or taking less than the minimum rest times required for the driver. It prescribes different penalties depending on whether the offence is characterised as minor, substantial, severe or critical with penalties ranging from $1500 to $6000. Subclauses 231(2) and 231(3) deal with defences to a prosecution for contravening subclause 231(1).

Division 7 Changing work and rest hours option

Clause 232 states the limits of a driver to 1 work and rest hours option but allows him or her to change the option available

Clause 233 deals with the circumstances in which a work and rest hours option can be changed and obligations arising from a change. Clause 213 of the Bill defines the options in terms of standard hours, BFM hours or AFM hours.

Clause 234 imposes duties on employers, prime contractors, operators and schedulers where a driver changes a work and rest hours option. A maximum penalty of $3000 applies where the duties are breached. Subclauses 234(3) and 234(4) deal with defences available in a prosecution for such a breach.

Division 8 Exemptions relating to work times and rest times

Subdivision 1 Exemption for emergency services

Clause 235 provides an exemption from requirements as to work and rest times a person who is acting for an emergency service in circumstances specified in the clause on the way to, during and returning from an *emergency*, as defined in subclause 235(3).

Subdivision 2 Exemptions by Commonwealth Gazette notice

Clause 236 authorises the Regulator to grant an exemption to classes of drivers for 3 years to operate under maximum work times and minimum rest times prescribed in the notice that is to be published in the *Commonwealth Gazette* to exempt.

Clause 237 states that the Regulator may grant a work and rest hours exemption only if the Regulator is satisfied that requiring the class of drivers to whom the exemption is to apply to comply with the standard hours would be an unreasonable restriction on the applicants. Subclause 237(2) requires the Regulator to have regard to guidelines approved by the responsible Ministers.

Clause 238 provides that a notice granting an exemption from work and rest hours may be subject to conditions including driver fatigue management practices that are to apply to the drivers under the exemption, record keeping requirements, as well as a condition that the driver must keep in his or her possession a copy of the notice.

Clause 239 deals with the period during which a notice granting an exemption from work and rest hours is in force. It provides that an exemption takes effect when it is published on the Commonwealth Gazette website or a later time stated in the notice.

Clause 240 provides that a notice granting an exemption from work and rest hours must refer to the classes of drivers to which the exemption applies, the maximum work times and minimum rest times, the period for which the exemption applies as well as any other conditions.

Clause 241 sets out the grounds that warrant amendment or cancellation of a notice granting an exemption from work and rest hours. In particular, clause 241(1) states that a notice may be amended or cancelled if the circumstances that warranted the granting of an exemption no longer exist or where the use of a fatigue-regulated heavy vehicle has caused, or is likely to cause, a significant risk to public safety.

Subdivision 3 Exemptions by permit

Clause 242 states that the Regulator may grant, by a permit, an exemption from the work and rest hours that would otherwise apply to the driver of a fatigue-regulated heavy vehicle.

Clause 243 allows an employer, operator, prime contractor or a self-employed driver of a fatigue-regulated heavy vehicle to apply for an exemption permit. It specifies the requirements for an application which include the requirement that the applicant must be in the approved form and specify the period for which the exemption is sought, any conditions to which the exemption is sought to be subject as well as the name of the driver.

Clause 244 states the restrictions on the Regulator in relation to the grant of a permit under clause 241. The Regulator must be satisfied of certain matters specified in the clause, including the unreasonableness of requiring compliance with the hours which would otherwise apply, and must have regard to guidelines approved by the responsible Ministers under clause 594.

Clause 245 states that a permit granting an exemption from work and rest hours may be subject to conditions. Where the exemption is granted to an operator in connection with the operator's BFM or AFM accreditation, it is a condition that the operator complies with all of the conditions of that accreditation.

Clause 246 deals with the period during which a permit granting an exemption from work and rest hours is in force.

Clause 247 deals with the contents of and, in some cases, information which must accompany a work and rest hours exemption permit.

Clause 248 provides that if the Regulator refuses a permit, an information notice is to be provided to the applicant.

Clause 249 deals with an application for the amendment or cancellation of a work and rest hours exemption (permit).

Clause 250 states the grounds for amending or cancelling a work and rest hours exemption (permit) on the Regulator's initiative and the procedures to be followed, including opportunity for and consideration of written representations.

Clause 251 provides for the circumstances in which the Regulator may immediately suspend a work and rest hours exemption (permit).

Clause 252 provides the Regulator with the power to make amendments of a minor nature to a work and rest hours exemption (permit), so as to deal with formal or clerical matters or amendments which do not adversely affect the holder's interests.

Clause 253 provides that where a work and rest hours exemption (permit) is amended or cancelled, the Regulator may require its return. It is an offence not to comply with such a requirement and a maximum penalty of $2000 applies. The Regulator may issue a replacement permit where a permit has been amended.

Clause 254 provides that where a permit is defaced, destroyed, lost or stolen, the holder must apply to the Regulator for a replacement. A maximum penalty of $2000 applies for a contravention of this requirement. The clause also deals with the circumstances when the Regulator is to issue such a replacement and the procedure to be followed if a replacement is not issued.

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

Clause 255 states that it is an offence not to comply with a condition of an exemption from work and rest hours. A maximum penalty of $3000 applies.

Clause 256 makes it an offence for a driver to not keep in his or her possession a copy of the notice granting the exemption and prescribes a penalty of $2000. Subclause 256(3) extends the liability (with a similar penalty) to employers, prime contractors and operators where a driver contravenes Subclause 256(1), thereby committing an offence against Subclause 256(2).

Clause 257 makes it an offence for a driver to not keep in his or her possession a copy of the notice granting work and rest hours exemption, and prescribes a maximum penalty of $2000 Subclause 257(3) extends liability to employers, prime contractors and operators if the driver is found to have contravened 257(1).

Subclause 257(2) imposes obligations to return permits when they are no longer needed. A maximum penalty of $2000 applies.

Subclauses 257(4), 256(5) and 257(6) deal with defences and things relevant or irrelevant to the court's consideration in a prosecution for offences created by this clause.

Part 6.4 Requirements about record keeping

Division 1 Preliminary

Clause 258 defines the terms '*100km work'* and '*100+km work'* by reference to the radius, measured from the driver's base, of the area in which the driver drives. Clause 258 defines what the driver's base is.

Clause 259 defines a driver's 'base' in various circumstances. It states that the base of the driver of a fatigue-regulated heavy vehicle is normally the place from which the driver works or receives instructions but can be the garage address of the vehicle or other place where it is normally kept.

Clause 260 defines a 'driver's *record location'*. It states that the record location of the driver of a fatigue-regulated heavy vehicle is the place advised to the driver by his or her record-keeper or, if there is no such advice, the driver's base.

Division 2 Work diary requirements

Subdivision 1 Requirements to carry work diary

Clause 261 provides that Subdivision 1 applies where a driver is or was in the last 28 days engaged in 100+km work under standard hours, or was working under BFM or AFM hours.

Clause 262 states that, for the purposes of Subdivision 1, a *work diary* is defined so as to include relevant written or electronic diaries, printouts of information in electronic diaries and supplementary records.

Clause 263 states that the driver of a fatigue-regulated heavy vehicle must keep a work diary, ensure its accuracy and have it in his or her possession while driving a fatigue-regulated heavy vehicle. A maximum penalty of $6000 applies.

Subclause 263(2) and 263(3) deal with situations irrelevant to the offence created by Subclause 262(1) and with defences to a prosecution for tis contravention.

Subdivision 2 Information required to be included in work diary

Clause 264 states that the purpose of Subdivision 2 is to state what must be recorded in the work diary for each day when a driver is engaged in 100+km work under standard hours or works under BFM hours, standard hours or exemption hours.

Clause 265 states that although all work and rest time falling within a day must be recorded on that day, a driver may stop recording information for that day if and when he or she commences a major rest break that extends from one day to the next.

Clause 266 states that the driver must record certain information in the diary immediately after starting work. A maximum penalty of $6000 applies. Subclause 266(2) makes it a defence to a charge if the driver was unaware that he or she would be engaged in 100+km work under standard hours and records the information as soon as practicable after becoming aware.

Clause 267 requires certain information to be recorded where there is a work and rest change. A maximum penalty of $6000 applies. A defence is provided by Subclause 267(3). Subclause 267(2) deals with the information which a driver who is party to a two-up driving arrangement must provide to the other party to the arrangement. A maximum penalty of $2000 applies.

Clause 268 requires the driver to record the address of the new base and the time zone of the new base immediately after any change in the driver's base or record location. A maximum penalty of $6000 applies.

Clause 269 states that the driver, immediately before finishing work on a day, ensure that all periods of work time and rest time have been recorded.

Subdivision 3 How information must be recorded in work diary.

Clause 270 states that the purpose of Subdivision 3 is to state how information required by Subdivision 2 is to be recorded.

Clause 271 explains how information is to be recorded in the driver's written work diary. A maximum penalty of $2000 applies.

Clause 272 explains how information is to be recorded in the driver's electronic work diary. A maximum penalty of $2000 applies.

Clause 273 states that the driver must record time according to the time zone of the driver's base. A penalty of $2000 applies.

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

Clause 274 states that subdivision 4 applies where a diary, if in written form, is full, destroyed, lost, stolen or, if electronic, cannot be used because it is full, destroyed, lost, stolen, out of order or malfunctioning.

Clause 275 states that information must be recorded in a supplementary record during a period when the circumstances described in clause 274 apply. A maximum penalty of $2000 applies. The driver must record time in the supplementary record according to the time zone of the driver's base. A maximum penalty of $6000 applies.

Subclause 275(4) details circumstances where these obligations do not apply.

Clause 276 states that a driver must notify the Regulator within 2 business days of his or her written diary being filled up, destroyed, lost or stolen. The maximum penalty prescribed for contravention of this clause is $4000.

Clause 277 contains an obligation similar to that imposed by clause 275 upon a driver of fatigue-regulated heavy vehicle whose electronic diary is full, destroyed, lost, stolen or out of order or the driver has reason to suspect that it is or has been malfunctioning. A maximum penalty of $4000 applies. Subclause 277(2) requires the driver to give the Regulator notice of the matter within 2 business days. The maximum penalty prescribed for contravention of this clause is $4000.

Clause 278 prescribes the steps a driver must take if a written diary that has been lost or stolen is found. A maximum penalty of $4000 applies.

Clause 279 provides an obligation to notify the Regulator in the circumstances similar to those described in clause 276. This clause provides that the driver must notify the driver's record keeper. A maximum penalty of $4000 applies.

Clause 280 states the obligation on an intelligent access reporting entity to notify the driver's record keeper if the entity becomes aware or has reason to suspect that an approved electronic reporting system is malfunctioning or has malfunctioned. A maximum penalty of $4000 applies.

Clause 281 states what a record keeper must do if an electronic work diary has been filled up to render it incapable of receiving further information. Subclause 281(2) requires the record keeper to either make the electronic work diary capable of recording new information; or give the driver a new one that is in working order. Maximum penalties of $4000 apply. The record keeper remains liable even if another person has been engaged for the task of complying with the provision but that person will also be liable to the same penalty as the record keeper.

Subclause 281(4) and 281(5) deal with defences to prosecutions for the offences created by the clause.

Clause 282 provides that where an electronic diary has been destroyed, lost or stolen, a record keeper must replace it and give the driver any relevant information which the record keeper has which was in the replaced diary unless that information is stored in the replacement diary. A maximum penalty of $4000 applies. The record keeper remains liable even if another person has been engaged for the task of complying with the provision but that person will also be liable to the same penalty as the record keeper.

Subclause 282(4) and 282(5) deal with defences to prosecutions for the offences created by the clause.

Clause 283 states what a record keeper must do if an electronic diary is reported out of order or malfunctioning. In these circumstances, the record keeper must rectify the problem, replace the electronic diary or direct the driver to use a written diary and may need to provide the driver with a printout of relevant information. A maximum penalty of $4000 applies.

Under Subclause 283(3), the record keeper remains liable even if another person has been engaged for the task of complying with the provision but that person will also be liable to the same penalty as the record keeper. Subclause 283(4) provides that subclause 283(3) does not apply, however, where the other person has been engaged only to repair the electronic diary or bring it into working order.

Subclause 283(5) and 283(6) deal with defences to prosecutions for the offences created by the clause.

Subdivision 5 Use of electronic work diaries

Clause 284 provides that a driver using an electronic work diary must comply with legal conditions and manufacturer's specifications relating to the diary. A maximum penalty of $2000 applies. A record keeper must ensure that the driver using such a diary complies with those conditions or specifications. A maximum penalty of $2000 applies.

Subclause 284(4) provides a defence to a prosecution for breach of the duties imposed by the clause on drivers and record keepers.

Subdivision 6 Extended liability

Clause 285 states that liability is imposed on employers, prime contractors, operators and schedulers where drivers contravene obligations imposed on them by Divisions 1, 2, 3 or 4. The same penalties apply to them as apply to the drivers. Subclause 285(3) provides that a mistake of fact defence does not apply. However, a person charged has the benefit of the reasonable steps defence.

Division 3 Records relating to drivers

Subdivision 1 Preliminary

Clause 286 states that this Division 3 applies to each record keeper for the driver of a fatigue-regulated heavy vehicle.

Clause 287 specifies who a driver's record keeper is. The record keeper is the operator where the driver operates under a BFM or AFM accreditation or a work and rest hours exemption (permit) granted in combination with such an accreditation and, in other cases, is the employer of the self-employed driver.

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

Clause 288 states that Subdivision 2 applies where a driver of a fatigue-regulated heavy vehicle engages only in 100km work under standard hours.

Clause 289 states that the record keeper must record the information specified in subclause 289(1) within the 'prescribed period' referred in subclause 289(5). A maximum penalty of $6000 applies.

The record keeper remains liable even if another person has been engaged for the task of complying with the provision but that person will also be liable to the same penalty as the record keeper.

Subclauses 289(3) and 289(4) deal with defences available in a prosecution.

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 290 states that Subdivision 3 applies to drivers engaging in 100+km work or operating under BFM or AFM hours or exemption hours.

Clause 291 states the record keeper's obligations to record information and to keep documents. A maximum penalty of $6000 applies. The record keeper must record additional information where the driver is operating under BFM hours or AFM hours. A maximum penalty of $6000 applies.

The record keeper remains liable even if another person has been engaged for the task of complying with the provision but that person will also be liable to the same penalty as the record keeper.

Subclauses 291(4) and 291(5) deal with defences available in a prosecution.

Subclause 291(6) provides that the clause does not apply where certain exemptions are in place.

Clause 292 prescribes general requirements about a driver giving information to a record keeper. It states that where a driver is required to record information in a work diary and the driver must provide information to the record keeper within 21 days after the driving. A maximum penalty of $2000 applies. The record keeper must ensure that the driver complies with this obligation. A maximum penalty of $2000 applies.

The record keeper remains liable even if another person has been engaged for the task of complying with the provision but that person will also be liable to the same penalty as the record keeper.

Subclauses 292(6) and 292(7) deal with defences available in a prosecution.

Clause 293 deals with the situation where a driver changes record keepers and provides obligations on the driver and the new record keeper, together with penalties and defences, similar to those provided by clause 291 for drivers, record keepers and those engaged by them.

Clause 294 deals with the situation where a driver stops using an electronic diary. In such a case, the driver's record keeper must immediately provide a printout of the information in the electronic diary. A maximum penalty of $2000 applies.

The record keeper remains liable even if another person has been engaged for the task of complying with the provision but that person will also be liable to the same penalty as the record keeper.

Subclauses 294(4) and 294(5) deal with defences available in a prosecution.

Subdivision 4 Requirements about records record keeper must make or keep

Clause 295 provides that record keepers must retain records for a period of 3 years. A maximum penalty of $6000 applies.

Subclauses 295(2) and 295(3) are concerned with the way in which the records are to be kept. They must be readily available, readable, reasonably capable of being understood and capable of being used in evidence. Maximum penalties of $2000 apply.

The record keeper remains liable even if another person has been engaged for the task of complying with the provision but that person will also be liable to the same penalty as the record keeper. Subclauses 295(5) and 295(6) deal with defences available in a prosecution.

Division 4 Provisions about false representations relating to work records

Clause 296 deals with false or misleading entries in a work record. A maximum penalty of $6000 applies for making such an entry where the person making it knows or reasonably ought to know that it was false or misleading.

Clause 297 imposes a prohibition against a driver keeping 2 work diaries simultaneously. Maximum penalties of $6000 apply.

Clause 298 prohibits drivers and record keepers from possessing things purporting to be work records which the driver or record keeper, as the case may be, knows not to be work records. A maximum penalty of $6000 applies.

Clause 299 states that a person must not falsely represent that a work record was made by the person. A maximum penalty of $6000 applies.

Division 5 Interfering with work records

Subdivision 1 Work records generally

Clause 300 states that a person must not deface or alter a work record which he or she knows, or reasonably ought to know, to be correct. A maximum penalty of $6000 applies for noncompliance.

Clause 301 prohibits the making of entries in a work record by persons unless the person is nominated by the other person to make the entry to do so or the person is an authorised officer. A maximum penalty of $6000 applies for noncompliance.

Clause 302 prohibits the destruction of work records required to be kept under this Part within the period during which they are required to be kept. A maximum penalty of $6000 applies for noncompliance.

Clause 303 states that it is an offence to remove pages from a written work diary unless legally required to do so. A maximum penalty of $6000 applies for noncompliance.

Subdivision 2 Approved electronic recording systems

Clause 304 states that Subdivision 2 applies to an approved electronic recording system comprising the whole or part of an electronic work diary.

Clause 305 defines '*tampering'* with an approved electronic recording system. It includes conduct that may interfere with the functioning of the system and is not limited to physical contact with a system's hardware.

Clause 306 makes it an offence for a person to tamper with an approved electronic recording system. Subclause 306(2) states that a person does not tamper with an approved electronic recording system merely by repairing a system that is malfunctioning or has malfunctioned. A maximum penalty of $6000 applies for noncompliance.

Subclauses 306(3), 306(4) and 306(5) deal with defences that are available to the person charged.

Clause 307 states that a person using an approved electronic recording system must not permit another person to tamper with it. A maximum penalty of $6000 applies for noncompliance.

Subclauses 307(2) and 307(3) deal with defences that are available to the person charged.

Clause 308 provides that where an electronic recording system comprises, in whole or in part, an approved intelligent transport system, an intelligent transport reporting entity must not permit another person to tamper with the system. A maximum penalty of $6000 applies for noncompliance.

Subclauses 308(3) and 308(4) deal with defences available to a person charged.

Division 6 Obtaining written work diary

Clause 309 prescribes the requirements for a written work diary issued by the Regulator.

Clause 310 states that a driver of a fatigue-regulated heavy vehicle must apply to the Regulator for a written work diary and specifies the procedures to be followed, including those applicable to situations where the request for a diary is to replace one previously issued.

Clause 311 states that the Regulator must issue a written work diary where the driver follows the procedures specified in this and the preceding clause and pays the prescribed fee.

Subclause 311(2) and 311(3) deal with information required or permitted to be noted by the Regulator at the time of issue.

Division 7 Approval of electronic recording systems

Subdivision 1 Approval of electronic recording systems

Clause 312 states that a person must apply, in the approved form, to the Regulator for approval of an electronic recording system.

Clause 313 states that, as soon as is practicable after receiving an application, the Regulator must grant, either conditionally or unconditionally, approval or refuse it.

Subclause 313(2) limits the authority of the Regulator to approve a system by reference to such considerations as suitability, availability of a mechanism to alert drivers to malfunctions, accuracy, resistance to alteration of the information recorded and capability to reproduce that information.

Subclause 313(3) requires the Regulator to have regard to approved guidelines (defined in clause 5 as guidelines approved by responsible Ministers under clause 594) for granting approvals.

Clause 314 deals with the procedures to be followed by the Regulator after granting an approval, including the provision of evidence of the approval.

Clause 315 states that if the Regulator refuses an application for approval, clause 315 requires an information notice to be given to the applicant.

Clause 316 provides that an approval extends to any system identical with the one approved.

Subdivision 2 Provisions about electronic work diary labels

Clause 317 states that a label evidencing the approval (an *electronic work diary label*) may be placed on an approved electronic recording system but it is an offence to place such a label or any other label on a system that is not approved. Maximum penalties of $6000 apply for noncompliance.

Clause 318 provides that the label is evidence of the approval of the electronic recording system.

Clause 319 states that a person is entitled to rely on the label as indicating that the device to which it is attached has been approved unless the person knows or reasonably ought to know that the contrary is the case.

Clause 320 states that a person must not use as an electronic work diary a device that has attached to it, an electronic work diary label if the person knows or reasonably ought to know that the device is not approved.

Subdivision 3 Amendment or cancellation of approval

Clause 321 provides that the holder of an approval for an electronic recording system may apply to the Regulator for its amendment or cancellation. The Regulator may require further information under Subclause 321(3) but Subclause 321(4) requires the Regulator to decide the application as soon as practicable after receiving it.

Subclauses 321(5) and 321(6) require the Regulator to provide information to the applicant as to how the application has been determined.

Clause 322 states the grounds for amending or cancelling an electronic recording system approval. If the Regulator decides that there is ground for an amendment or cancellation, subclauses 322(2) and 322(3) require that information be provided to the holder of the approval with opportunity to make representations, which the Regulator is bound to consider before making a decision.

Once a decision has been made, the Regulator must provide the holder with information about it. Subclause 322(5) provides that the amendment or cancellation takes effect when that information is given or at a later time stated in the information notice.

Clause 323 provides the Regulator to make amendments of a minor nature to an electronic recording system approval so as to deal with formal or clerical matters or amendments which do not adversely affect the holder's interests.

Clause 324 states that if the Regulator notifies the holder of an approval that the approval of the electronic recording system has been cancelled, the

holder must remove any electronic work diary label relating to the approval. A maximum penalty of $6000 applies to a contravention.

Where the Regulator cancels an approval of an electronic recording system, the Regulator may give the holder a written direction to notify the cancellation to each person to whom the holder has supplied the electronic recording system and to require the removal of any electronic work diary label still in the person's possession. It is an offence not to comply with such a direction. A maximum penalty of $6000 applies.

If the person receiving the direction has supplied the electronic recording system to others, that person must, in turn, notify those others, imposing on them a similar requirement to remove any electronic work diary label still in their possession. A maximum penalty of $6000 applies for noncompliance.

Subclause 324(7) provides that nothing in the clause prevents the Regulator from publishing details of the amendment more widely.

Subclause 324(8) requires any person who is aware that an electronic recording system approval has been cancelled to remove from any device in the person's possession any electronic work diary label. A maximum penalty of $6000 applies.

Clause 325 provides that where the Regulator considers that an amendment that has been made to the conditions of an approval will or is likely to significantly affect the way in which the electronic recording system is to be used, the Regulator may give the holder a written direction to notify the amendment to each person to whom the holder has supplied the electronic recording system. It is an offence not to comply with such a direction. A maximum penalty of $6000 applies. If the person receiving the direction has supplied the electronic recording system to others, that person must, in turn, notify those others. A maximum penalty of $6000 applies. Subclause 325(6) provides that nothing in the clause prevents the Regulator from publishing details of the amendment more widely.

Division 8 Exemptions from work diary requirements

Subdivision 1 Exemptions for emergency services

Clause 326 contains an exemption from Division 2 (which relates to work diary requirements) for a person who is acting for an emergency service in circumstances specified in the clause on the way to, during and returning from an *emergency*, as defined in Subclause 326(3).

Subdivision 2 Exemptions by Commonwealth Gazette notice

Clause 327 empowers the Regulator to publish a notice in the *Commonwealth Gazette* to exempt, for a period up to 3 years, drivers carrying out a class of work from certain electronic work diary requirements which would otherwise apply.

Clause 328 states the restrictions on the Regulator in relation to the publication of a notice under clause 325. The Regulator must be satisfied of certain matters specified in the clause, including safety and the unreasonableness of requiring compliance with the requirements which would otherwise apply, and must have regard to guidelines approved by the responsible Ministers under clause 594.

Clause 329 states that a notice granting an exemption from work diary requirements may be subject to conditions.

Clause 330 states that a notice granting an exemption from work and rest hours is in force when the notice is published or a later date specified in the notice.

Clause 331 contains requirements for a notice granting an exemption from work diary requirements.

Clause 332 provides for the amendment of cancellation of a notice granting an exemption from work diary requirements.

Subdivision 3 Exemptions by permit

Clause 333 empowers the Regulator to exempt a driver of fatigue-regulated heavy vehicles from work diary requirements that would otherwise apply to the driver.

Clause 334 provides that a driver or employer may apply for an exemption permit in the approved form. It specifies other requirements for an application.

Clause 335 imposes restrictions on the Regulator to the grant of a permit under clause 332. The Regulator must be satisfied that the driver's English literacy would impede his making the necessary entries and that a nominee can do so. The Regulator must also have regard to guidelines approved by the responsible Ministers under clause 594.

Clause 336 provides that a permit granting an exemption from work diary requirements may be subject to conditions.

Clause 337 states the period during which a permit granting an exemption from work diary requirements is in force.

Clause 338 states the contents of and, in some cases, information which must accompany a work diary exemption permit.

Clause 339 states that if the Regulator refuses a permit, clause 339 requires an information notice to be provided to the applicant.

Clause 340 deals with the amendment or cancellation of a work diary exemption (permit).

Clause 341 deals with the grounds for amending or cancelling a work diary exemption (permit) and the procedure to be followed, including opportunity for and consideration of written representations.

Clause 342 contains a provision for the Regulator to make amendments of a minor nature to a work diary exemption (permit), so as to deal with formal or clerical matters or amendments which do not adversely affect the holder's interests.

Clause 343 states that where a work diary exemption (permit) is amended or cancelled, the Regulator may require its return. It is an offence not to comply with the request and a maximum penalty of $2000 applies. The Regulator may issue a replacement permit where a permit has been amended.

Clause 344 states that where a permit is defaced, destroyed, lost or stolen, the holder must apply to the Regulator for a replacement. A maximum penalty of $2000 applies for a contravention of this requirement. Clause 344 also deals with the circumstances when the Regulator is to issue such a replacement and the procedure to be followed if a replacement is not issued.

Subdivision 4 Operating under work diary exemption

Clause 345 states that it is an offence not to comply with a condition of an exemption from work diary requirements. A maximum penalty of $6000 applies.

Clause 346 provides that where a work diary exemption (notice) requires a driver to keep a document, it is an offence not to do so. A maximum penalty of $2000 applies.

Clause 347 states that a driver of a fatigue-regulated heavy vehicle operating under a work diary exemption (permit) must keep a copy of the permit in the driver's possession. A maximum penalty of $2000 applies.

Division 9 Requirements about odometers

Clause 348 states that an owner of a fatigue-regulated heavy vehicle must maintain its odometer in accordance with specified Standards. A maximum penalty of $4000 applies. Subclauses 348(2) and 348(3) deal with defences to a prosecution.

Clause 349 states that a driver who suspects an odometer to have malfunctioned must within 2 business days inform each owner of the fatigue-regulated heavy vehicle, his or her employer and the operator. A maximum penalty of $4000 applies.

Subclause 349(3) provides that the driver does not commit an offence if another driver has provided the necessary information.

Subclause 349(4) extends liability, where a driver is convicted, to the driver's employer or prime contractor, an operator and a scheduler. A similar penalty applies to these as applies to the driver. Subclauses 349(5)

and 349(6) deal with defences that are available to a person charged with an offence under this clause.

Clause 350 provides that an owner must have the odometer examined and brought into working order as soon as practicable after being informed of its malfunction. A maximum penalty of $4000 applies. Subclauses 350(3) and 350(4) deal with defences that are available to a person charged with an offence under this clause.

Clause 351 states that an employer or operator who has been informed of a malfunctioning odometer must neither drive nor permit to be driven the fatigue-related heavy vehicle until the owner has complied with clause 350. A maximum penalty of $4000 applies. Subclauses 351(3) and 351(4) deal with defences that are available to a person charged with an offence under this clause.

Chapter 7 Intelligent access

Part 7.1 Preliminary

Clause 352 describes the main purposes of Chapter 7 as being to ensure the integrity of systems used for compliance with intelligent access conditions and to provide for appropriate collecting, keeping and handling of intelligent access information. Clauses 353 and 354 respectively define the terms ‘intelligence access conditions’ and ‘intelligent access information.’ Subclause 352(2) indicates how these purposes are achieved in the Law.

Intelligent access describes a concept by which electronic or technological means are used to monitor whether vehicles or drivers are complying with conditions affecting their use of roads. The concept offers advantages to both participating road users and enforcement personnel because of the streamlined alternative it presents to conventional enforcement. This Chapter provides for the monitoring of intelligent access vehicles (as defined in clause 354) and the means of ensuring that the systems needed to effect the monitoring are accurate and secure.

Clause 353 provides that Chapter 7 applies if the Regulator has imposed specified conditions, called 'intelligent access conditions' on a mass or dimension exemption or if the use of a heavy vehicle under an HML authority is subject to specified conditions. The term 'mass or dimension exemption' is defined in clause 5 and refers to an exemption from a mass or dimension requirement granted by the Regulator under a mass or dimension exemption (notice) under clause 98 or a mass or dimension exemption (permit) under clause 103. An HML authority relates to an authorisation to operate at higher mass limits than would otherwise apply to the vehicle.

Intelligent access conditions require monitoring of such matters as the areas or roads on which a vehicle travels, the mass of the vehicle when so travelling, the time of travel or the speed at which the vehicle is travelling. The monitoring is undertaken by an intelligent access service provider (as defined in clause 354) by means of an intelligent transport system.

The term 'intelligent transport system' is defined in clause 5. It relates to a system using electronic or other technology, which may be installed on a vehicle, road or other place to monitor, generate, record, store, display, analyse, transmit or report information about heavy vehicles, drivers, operators or others involved in road transport using a heavy vehicle.

Clause 354 defines terms used in Chapter 7.

Part 7.2 Duties and obligations of operators of intelligent access vehicles

Clause 355 deals with offences in relation to false or misleading information given to an intelligent access service provider by an operator. An intelligent access vehicle, as defined in clause 354, is essentially one subject to intelligent access conditions. The vehicle's operator enters into an intelligent access agreement (as defined in clause 354) with an intelligent access service provider to monitor compliance with those conditions. The provider is certified for the purpose by Transport Certification Australia Ltd (called TCA in the Law), which is a public company established for the purpose and with a membership comprising relevant Commonwealth, State and Territory agencies.

Subclause 355(1) makes it an offence for the operator of an intelligent access vehicle to give to an intelligent access service provider with whom the operator has entered into an intelligent access agreement (as defined in clause 354) for the vehicle information relevant to the operation of that vehicle which the operator knows or ought reasonably to know is false or misleading. A maximum penalty of $6000 applies. However, no offence is committed if the operator gives the information in writing and, when giving the information, informs the service provider as best able how the information is false or misleading and, if reasonably possible, gives the correct information in writing.

Subclause 355(4) deals with the situation where the operator of a heavy vehicle intends to enter into an intelligent access agreement with a service provider. It is an offence for the operator to give to the provider information that the operator knows or ought reasonably to know is false or misleading and intends that the service provider will enter into the agreement in reliance on that information. A maximum penalty of $6000 applies. However, no offence is committed if the operator gives the information in writing and, when giving the information, informs the service provider as best able how the information is false or misleading and, if reasonably possible, gives the correct information in writing.

Subclause 355(6) deals with what may be stated in a charge for an offence against either subclause 355(1) or 355(4).

Clause 356 requires the operator of an intelligent access vehicle to take all reasonable steps to give the driver of the vehicle specified information about the collection of information by an intelligent access service provider before the vehicle begins a journey. A maximum penalty of $6000 applies for noncompliance.

Subclauses 356(2) and 356(3) deal with how the operator can comply with the requirement.

Clause 357 states that an operator must immediately report to the Regulator a malfunction of a part of an approved intelligent access system fitted to the intelligent access vehicle. A maximum penalty of $3750 applies for noncompliance.

The operator is required to keep for a period of at least 4 years written records of such reports, containing specified particulars. A maximum penalty of $3750 applies for noncompliance.

Clause 358 requires the operator of an intelligent access vehicle to take all reasonable steps to advise the driver, before the vehicle begins a journey, of the driver's obligation under clause 359 (relating to reporting malfunctioning of the intelligent access system to the operator) and how the driver can discharge that obligation. Subclauses 358(2) and 358(3) deal with how the operator can comply with the requirement.

Part 7.3 Obligations of drivers of intelligent access vehicles

Clause 359 states that the driver of an intelligent access vehicle must immediately report to the operator a malfunction of a part of an approved intelligent access system fitted to the vehicle. A maximum penalty of $3750 applies for noncompliance.

The driver is required to keep for a period of at least 4 years written records of such reports, containing specified particulars. A maximum penalty of $3750 applies for non-compliance.

However, subclause 359(3) provides that it is not an offence for the driver to fail to report if another driver has reported the malfunction.

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

Clause 360 authorises an intelligent access service provider to collect and hold information for the purposes of relevant monitoring of an intelligent access vehicle.

Clause 361 imposes on the intelligent access service provider an obligation to take all reasonable steps to ensure that information collected is appropriate, is not excessive, and is accurate, complete and up to date. A maximum penalty of $3750 applies for noncompliance.

A further obligation is imposed under subclause 361(2) to take all reasonable steps to ensure that the collection of information does not intrude to an unreasonable extent on the personal privacy of an individual to whom it relates. A maximum penalty of $3750 applies for noncompliance.

Clause 362 requires the intelligent access service provider to keep records of the intelligent access information collected in such a way as to allow the records to be conveniently and properly audited by an intelligent access auditor. A maximum penalty of $6000 applies for non-compliance.

An intelligent access auditor is defined in clause 5 as a person engaged by TCA for auditing activities conducted by intelligent access service providers.

Clause 363 imposes obligations on an intelligent access service provider to protect intelligent access information. It states that a provider must take all reasonable steps to protect the information collected from unauthorised access, unauthorised use, misuse, loss, modification or unauthorised disclosure. A maximum penalty of $6000 applies for noncompliance.

Clause 364 states that an intelligent access service provider must make a document setting out its policies as to how it manages personal information publicly available. A maximum penalty of $6000 applies for noncompliance.

Under subclause 364(2), the provider must also, if requested by an individual about whom the provider holds personal information, provide specified information to the individual within 28 days after receiving the request if the provider can reasonably do so. A maximum penalty of $6000 applies for noncompliance.

However, subclause 364(3) clarifies that the provider is not required to inform the individual of any reports made by the provider to the Regulator under clauses 373 or 374 of relevant contraventions or of tampering or suspected tampering with an approved intelligent transport system.

Clause 365 imposes an obligation on an intelligent access service provider who holds personal information about an individual to give the individual access to that information upon request, without cost or undue delay. A maximum penalty of $6000 applies for noncompliance.

Note that personal information is defined in clause 5 to mean information or an opinion, including such information forming part of a database (whether true or not and whether recorded in a material form or not) about

an individual whose identity is apparent or can reasonably be found out from the information or opinion. However, for it to be personal information under Chapter 7 it must be such personal information that is intelligent access information or otherwise collected for the purposes of Chapter 7, as set out in the definition in clause 354.

Subclause 365(2) clarifies that the intelligent access service provider is not required to give the individual access to any reports made by the provider to the Regulator under clauses 373 or 374 of relevant contraventions or of tampering or suspected tampering with an approved intelligent transport system.

Clause 366 deals with the making of changes to personal information held about an individual upon request by that individual.

Subclause 366(2) imposes an obligation on the intelligent access service provider to make the requested change if the provider is satisfied that it is appropriate to do so to ensure the accuracy, completeness and currency of the information. A maximum penalty of $3,750 applies for noncompliance.

If the provider is not satisfied as to the appropriateness of the requested change, it may refuse the request. In that case, it must notify the individual of its reasons for refusing and of the individual's right to request the provider to attach to or include with the information the individual's request for a change to the information or a record of it. If the individual makes that request, the provider must do so. A maximum penalty of $3750 applies for not notifying the individual or not complying with the individual's request to attach the individual's request for a change to the information or a record of it.

Clause 367 creates an offence for an intelligent access service provider to use or disclose intelligent access information other than as required or authorised under this Law or another law. A maximum penalty of $6000 applies.

As well as protection of an individual's personal information, this clause also seeks to protect information generated, recorded, stored, displayed, analysed, transmitted or reported by an approved intelligent transport system which is commercially sensitive or which relates to an individual's or an operator's business affairs from improper disclosure.

Clause 368 requires an intelligent access service provider to give an intelligent access auditor access to the records kept for the purposes of this Chapter. A maximum penalty of $6000 applies for noncompliance.

Clause 369 specifies how an intelligent access service provider may use and disclose intelligent access information.

Subclause 369(1) authorises the service provider to use the information collected for monitoring the relevant monitoring matters for an intelligent access vehicle. The term 'relevant monitoring matters' is defined in clause 354 and relates to monitoring of a relevant vehicle's compliance with intelligent access conditions (as defined in clause 353).

Subclause 369(2) authorises the service provider to disclose the information to the Regulator or an authorised officer for compliance purposes. The term 'compliance purposes' is defined in clause 5 to mean monitoring purposes or investigation purposes (both of which are also defined in clause 5).

Subject to subclause 369(4), subclause 369(3) authorises the service provider to disclose the information to an operator, where that information is about the operator.

Subclause 369(4) provides that the provider is not required to disclose to operators information relating to noncompliance reports. A 'noncompliance report' is defined in clause 354 as a report made by an approved intelligent transport system that reports a relevant contravention for an intelligent access vehicle and/or apparent tampering with or malfunctioning of the system.

Subclause 369(5) authorises disclosure to other parties of information about an operator if the operator gives written consent and the information does not identify or enable the identification of an individual other than the operator.

Subclause 369(6) authorises the use and disclosure of personal information about an individual if the individual gives written consent.

The whole of clause 369 is, by reason of subclause 369(7), subject to clause 375. That clause expressly restricts the disclosure of information about tampering or suspected tampering with an approved intelligent transport system to any entity, other than disclosure to the Regulator.

Clause 370 imposes obligations on an intelligent access service provider who uses or discloses intelligent access information to make a record of the use or disclosure within 7 days. The record must contain the information specified in subclause 370(2) and must be in a form to enable it to be readily accessible by an intelligent access auditor at the place where it is kept. A maximum penalty of $6000 applies for noncompliance. Under

subclause 370(3) the record must be retained for at least 2 years, and a maximum penalty of $6,000 applies for noncompliance.

Clause 371 states that where an intelligent access system generates a noncompliance report (as defined in clause 354), the intelligent access service provider is required to retain a copy of the report and the information relied on to make the report for at least 4 years. A maximum penalty of $4000 applies for noncompliance.

Clause 372 imposes obligations on the intelligent access service provider to destroy specified information, except in the case of a noncompliance report and supporting information that the provider is required to keep under clause 371. The provider must take all reasonable steps to destroy intelligent access information within 1 year of its collection. In addition, the provider must take all reasonable steps to destroy a record of the provider's use or disclosure of intelligent access information made under clause 370 within 1 year after the expiry of the time that the record is required be kept under clause 379. A maximum penalty of $6000 applies for noncompliance.

Clause 373 provides that an intelligent access service provider must give the Regulator a report in the approved form within 7 days of knowing of a relevant contravention for an intelligent access vehicle. The term 'approved form' is defined in clause 5 to mean a form approved by the Regulator under clause 671. The term 'relevant contravention' is defined in clause 354. A maximum penalty of $6000 applies for non-compliance. Subclause 373(3) deems the access service provider to know of a relevant contravention if it has been detected by the provider's monitoring equipment.

Clause 374 imposes obligations on an intelligent access service provider who knows or has reasonable grounds to suspect tampering with an intelligent transport system to report the matter to the Regulator within 7 days and in the approved form (defined in clause 5 to mean a form approved by the Regulator under clause 671). A maximum penalty of $6000 applies for noncompliance.

Subclause 374(2) clarifies that a provider is not taken to know or have reasonable grounds to suspect tampering merely because the provider has accessed a report made by the system indicating that apparent tampering has been detected electronically or has analysed information generated by the system. This provision recognises that the provider will usually need to check and analyse such reports because there could be malfunctions or

other innocent causes to account for what the system has detected or generated.

Clause 375 restricts an intelligent access service provider who knows of or has reasonable grounds to suspect tampering with an approved intelligent transport system disclosing that knowledge or suspicion or information from which that knowledge or suspicion could be reasonably inferred. Disclosure of such matters can only be made to the Regulator, unless such disclosure is authorised under another law. A maximum penalty of $6000 applies for noncompliance.

As with subclause 374(2), subclause 375(2) clarifies that a provider is not taken to know or have reasonable grounds to suspect tampering merely because the provider has accessed a report made by the system indicating that apparent tampering has been detected electronically or has analysed information generated by the system.

Subclause 375(3) prohibits a provider who has reported to the Regulator under clause 374 of apparent or suspected tampering from disclosing that the report has been made or information from it could be reasonably inferred that the report has been made. Disclosure of such matters can only be made to the Regulator, unless such disclosure is authorised under another law. A maximum penalty of $6000 applies for noncompliance.

Part 7.5 Functions, powers, duties and obligations of TCA

Clause 376 protects TCA from criminal liability by reason only of its contravention of the following provisions:

- subclause 379(1) or 379(2) – relating to collecting intelligent access information;
- clause 380 – relating to protecting intelligent access information collected;
- subclauses 381(1) or 381(2) – relating to making individuals aware of personal information held;
- subclause 382(1) – relating to giving individuals access to their personal information;

- subclauses 383(2) or 383(4) – relating to correcting or making changes to personal information requested by an individual;
- clause 386 – restricting use or disclosure of intelligent access information;
- subclauses 387(1) or 387(3) – keeping records of the use or disclosure of intelligent access information;
- clause 388 – relating to keeping noncompliance reports;
- subclause 389(1) – relating to destroying intelligent access information or removing personal information from it;
- subclause 390(1) – relating to reporting tampering or suspected tampering with, or malfunction or suspected malfunction of, an approved intelligent transport system to the Regulator; and
- subclauses 391(1) or 391(3) - restricting the disclosure of information about tampering or suspected tampering with an approved intelligent transport system.

Clause 377 sets out the functions of TCA as approving intelligent transport systems, certifying service providers, and auditing the activities of those certified.

Clause 378 authorises TCA to collect and hold intelligent access information for discharging its functions and for law enforcement purposes.

Clause 379 requires TCA to take all reasonable steps to ensure that the information it collects is necessary, is not excessive, and is accurate, complete and up to date.

It must also take all reasonable steps to ensure that the collection of information does not intrude to an unreasonable extent on the personal privacy of an individual to whom the information relates.

Clause 380 requires TCA to take all reasonable steps to protect the information collected from unauthorised access, unauthorised use, misuse, loss, modification or unauthorised disclosure.

Clause 381 states that TCA must make a document setting out its policies as to how it manages personal information publicly available.

Under subclause 381(2), TCA must also, if requested by an individual about whom it holds personal information, provide specified information to

the individual within 28 days after receiving the request if it can reasonably do so.

However, subclause 381(3) clarifies that TCA is not required to inform the individual of any reports made under the following clauses:

- 373 – being a report by an intelligent access service provider to the Regulator relating to relevant contraventions for an intelligent access vehicle;
- 374 – being a report by an intelligent access service provider to the Regulator relating to tampering or suspected tampering with an approved intelligent transport system;
- 390 – being a report by TCA to the Regulator relating to tampering or suspected tampering with, or malfunction or suspected malfunction of, an approved intelligent transport system;
- 403 – being a report by an intelligent access auditor to TCA relating to contraventions by an intelligent access service provider; and
- 404 – being a report by an intelligent access auditor to the Regulator or TCA relating to tampering or suspected tampering with an approved intelligent transport system.

Clause 382 states that upon request by an individual in relation to whom TCA holds personal information, TCA must give the individual access to the information without cost or undue delay.

Note that personal information is defined in clause 5 to mean information or an opinion, including such information forming part of a database (whether true or not and whether recorded in a material form or not) about an individual whose identity is apparent or can reasonably be found out from the information or opinion. However, for it to be personal information under Chapter 7 it must be such personal information that is intelligent access information or otherwise collected for the purposes of Chapter 7, as set out in the definition in clause 354.

However, subclause 381(3) clarifies that TCA is not required to inform the individual of any reports made under the following clauses:

- 373 – being a report by an intelligent access service provider to the Regulator relating to relevant contraventions for an intelligent access vehicle;

- 374 – being a report by an intelligent access service provider to the Regulator relating to tampering or suspected tampering with an approved intelligent transport system;
- 390 – being a report by TCA to the Regulator relating to tampering or suspected tampering with, or malfunction or suspected malfunction of, an approved intelligent transport system;
- 403 – being a report by an intelligent access auditor to TCA relating to contraventions by an intelligent access service provider; and
- 404 – being a report by an intelligent access auditor to the Regulator or TCA relating to tampering or suspected tampering with an approved intelligent transport system.

Clause 383 deals with the making of changes to personal information held about an individual upon request by that individual.

Subclause 383(2) imposes an obligation on TCA to make the requested change if satisfied that it is appropriate to do so to ensure the accuracy, completeness or currency of the information.

Subclauses 383(3) and 383(4) state that, if TCA is not satisfied as to the appropriateness of the requested change, it may refuse the request. In that case, it must notify the individual of its reasons for refusing and of the individual's right to request TCA to attach to or include with the information the individual's request for a change to the information or a record of it. If the individual makes that request, TCA must do so.

Clause 384 creates an offence for TCA to use or disclose intelligent access information other than as required or authorised under this Law or another law. A maximum penalty of $6000 applies.

As well as protection of an individual's personal information, this clause also seeks to protect information generated, recorded, stored, displayed, analysed, transmitted or reported by an approved intelligent transport system which is commercially sensitive or which relates to an individual's or an operator's business affairs from improper disclosure.

Clause 385 specifies how TCA may use and disclose intelligent access information.

Subclause 385(1) authorises TCA to use or disclose the information for the discharge of its functions (set out in clause 377) or for law enforcement purposes. The term 'law enforcement purposes' is defined in clause 354 and refers to the investigation or prosecution of an offence against an

Australian road law (defined in clause 5 to mean this Law or another law of a State or Territory that regulates the use of vehicles on roads).

Subclause 385(2) authorises TCA to disclose the information to the Regulator, if satisfied the information is relevant to the Regulator's functions under this Law. The Regulator's functions are set out in clause 600.

Subclause 385(3) authorises TCA to disclose the information to an intelligent access auditor, if satisfied the information is relevant to an intelligent access audit being conducted.

Subclause 385(4) authorises TCA to disclose the information to the operator of an intelligent access vehicle, where that information is about the operator.

Subclause 385(5) authorises disclosure to other parties of information about an operator if the operator gives written consent and the information does not identify or enable the identification of an individual other than the operator.

Under subclause 385(6), TCA may use or disclose information for research purposes if no personal information is involved.

Subclause 385(7) authorises the use and disclosure of personal information about an individual if the individual gives written consent.

The whole of clause 385 is, by reason of subclause 385(8), subject to clause 391. That clause expressly restricts the disclosure of information about tampering or suspected tampering with an approved intelligent transport system to any entity, other than disclosure to the Regulator.

Clause 386 states that TCA may use or disclose information only if it is reasonably satisfied that the information is accurate, complete and up to date.

Clause 387 imposes obligations on TCA, if it uses or discloses intelligent access information, to make a record of the use or disclosure within 7 days. The record must contain the information specified in subclause 387(2) and must be in a form to enable it to be readily accessible by an authorised officer at the place where it is kept. Under subclause 387(3) the record must be retained for at least 2 years.

Clause 388 provides that where TCA receives a noncompliance report, it is required to retain the report for at least 4 years. The term 'noncompliance report' is defined in clause 354 to mean a report made by an approved

intelligent transport system of a relevant contravention for an intelligent access vehicle and/or apparent tampering with, or malfunctioning of, the system.

Clause 389 imposes obligations on TCA to destroy intelligent access information collected by it or to remove personal information from it, except in the case of a noncompliance report that TCA is required to keep under clause 388.

Subclause 389(1) requires TCA to take all reasonable steps to destroy information collected 1 year after collection unless the information is required for law enforcement purposes. If it is required for law enforcement purposes, the obligation to take all reasonable steps to destroy the information applies when it is no longer required for those purposes.

Under subclause 389(2), TCA will be taken to have complied with subclause 389(1) if it permanently removes from that information anything by which an individual can be identified.

Clause 390 states that if TCA knows of or has reasonable grounds to suspect tampering with or malfunctioning of an intelligent transport system fitted to a vehicle, it must report the matter to the Regulator within 7 days. Subclause 390(2) clarifies that TCA is not taken to know or have reasonable grounds to suspect tampering or malfunctioning merely because it has accessed a report made by the system indicating that apparent tampering or malfunctioning has been detected electronically or because it has analysed information generated by the system. This provision recognises that TCA will usually need to check and analyse such reports because there could be innocent causes to account for what the system has detected or generated.

Clause 391 restricts TCA, if it knows of or has reasonable grounds to suspect tampering with an approved intelligent transport system, from disclosing that knowledge or suspicion or information from which that knowledge or suspicion could be reasonably inferred. Disclosure of such matters can only be made to the Regulator, unless such disclosure is authorised under another law.

As with subclause 390(2), subclause 391(2) clarifies that TCA is not taken to know or have reasonable grounds to suspect tampering merely because it has accessed a report made by the system indicating that apparent tampering has been detected electronically or has analysed information generated by the system.

Subclause 391(3) prohibits TCA, if it has reported to the Regulator under clause 390 of apparent or suspected tampering from disclosing that the report has been made or information from it could be reasonably inferred that the report has been made. Disclosure of such matters can only be made to the Regulator, unless such disclosure is authorised under another law.

Part 7.6 Powers, duties and obligations of intelligent access auditors

Clause 392 sets out that an intelligent access auditor is authorised to collect and hold intelligent access information for conducting an intelligent access audit. An intelligent access auditor is defined in clause 5 as a person engaged by TCA for auditing activities conducted by intelligent access service providers. An intelligent access audit is defined in clause 354.

Clause 393 imposes on an intelligent access auditor an obligation to take all reasonable steps to ensure that the information it collects is necessary, is not excessive, and is accurate, complete and up to date . A maximum penalty of $3750 applies for noncompliance.

A further obligation is imposed under subclause 393(2) to take all reasonable steps to ensure that the collection of information does not intrude to any unreasonable extent on the personal privacy of an individual to whom it relates. A maximum penalty of $3750 applies for noncompliance.

Clause 394 states that an intelligent access auditor must also take all reasonable steps to protect the information collected from unauthorised access, unauthorised use, misuse, loss, modification or unauthorised disclosure. A maximum penalty of $6000 applies for noncompliance.

Clause 395 provides, in subclause 395(1) that an intelligent access auditor must, if it is reasonably practicable to do so, within 28 days of a request by an individual about whom the auditor holds personal information, give specified information to that individual. A maximum penalty of $6,000 applies for noncompliance.

Subclause 395(2) clarifies that nothing in subclause 395(1) requires the auditor to inform the individual of any reports made under the following clauses:

- 373 – being a report by an intelligent access service provider to the Regulator relating to relevant contraventions for an intelligent access vehicle;
- 374 – being a report by an intelligent access service provider to the Regulator relating to tampering or suspected tampering with an approved intelligent transport system;
- 390 – being a report by TCA to the Regulator relating to tampering or suspected tampering with, or malfunction or suspected malfunction of, an approved intelligent transport system;
- 403 – being a report by an intelligent access auditor to TCA relating to contraventions by an intelligent access service provider; and
- 404 – being a report by an intelligent access auditor to the Regulator or TCA relating to tampering or suspected tampering with an approved intelligent transport system.

Clause 396 imposes an obligation on an intelligent access auditor who holds personal information about an individual to give the individual access to that information upon request, without cost or undue delay. A maximum penalty of $6000 applies for noncompliance.

Subclause 396(2) clarifies that nothing in subclause 396(1) requires the auditor to give the individual access to any reports made under the following clauses:

- 373 – being a report by an intelligent access service provider to the Regulator relating to relevant contraventions for an intelligent access vehicle;
- 374 – being a report by an intelligent access service provider to the Regulator relating to tampering or suspected tampering with an approved intelligent transport system;
- 390 – being a report by TCA to the Regulator relating to tampering or suspected tampering with, or malfunction or suspected malfunction of, an approved intelligent transport system;
- 403 – being a report by an intelligent access auditor to TCA relating to contraventions by an intelligent access service provider; and

- 404 – being a report by an intelligent access auditor to the Regulator or TCA relating to tampering or suspected tampering with an approved intelligent transport system.

Clause 397 deals with the making of changes to personal information held about an individual upon request by that individual.

Subclause 397(2) imposes an obligation on the intelligent access auditor to make the requested change if the auditor is satisfied that it is appropriate to do so to ensure the accuracy, completeness and currency of the information. A maximum penalty of $3,750 applies for noncompliance.

If the auditor is not satisfied as to the appropriateness of the requested change, it may refuse the request. In that case, it must notify the individual of its reasons for refusing and of the individual's right to request the auditor to attach to or include with the information the individual's request for a change to the information or a record of it. If the individual makes that request, the auditor must do so. A maximum penalty of $3750 applies for not notifying the individual or not complying with the individual's request to attach the individual's request for a change to the information or a record of it.

Clause 398 creates an offence for an intelligent access auditor to use or disclose intelligent access information other than as required or authorised under this Law or another law. A maximum penalty of $6000 applies.

As well as protection of an individual's personal information, this clause also seeks to protect information generated, recorded, stored, displayed, analysed, transmitted or reported by an approved intelligent transport system which is commercially sensitive or which relates to an individual's or an operator's business affairs from improper disclosure.

Clause 399 specifies how an intelligent access auditor may use and disclose intelligent access information.

Subclause 399(1) states that an auditor may use and disclose the information collected for the following purposes:

- conducting an intelligent access audit (as defined in clause 354);
- reporting to TCA relevant contraventions by an intelligent access vehicle, tampering or suspected tampering with an approved transport system by an operator or by an intelligent access service provider, and a failure by an intelligent access service provider to comply with the provider's obligations under this Chapter.

Subclause 399(2) authorises the auditor to disclose the information to the Regulator, if satisfied the information is relevant to the Regulator's functions under this Law. The Regulator's functions are set out in clause 600.

Subclause 399(3) authorises the auditor to disclose the information to TCA, if satisfied the information is relevant to TCA's functions under this Chapter. TCA's functions are set out in clause 377.

Subclause 399(4) authorises the auditor to disclose the information to the operator of an intelligent access vehicle, where that information is about the operator.

Subclause 399(5) authorises the use and disclosure of personal information about an individual if the individual gives written consent.

The whole of clause 399 is, by reason of subclause 399(6), subject to clause 405. That clause expressly restricts the disclosure of information about tampering or suspected tampering with an approved intelligent transport system to any entity, other than disclosure to the Regulator.

Clause 400 provides that an auditor must not use or disclose information unless it is reasonably satisfied that the information is accurate, complete and up to date. A maximum penalty of $6000 applies for noncompliance.

Clause 401 imposes obligations on an intelligent access auditor who uses or discloses intelligent access information to make a record of the use or disclosure within 7 days. The record must contain the information specified in subclause 401(2) and must be in a form to enable it to be readily accessible by an authorised officer at the place where it is kept. A maximum penalty of $6000 applies for noncompliance. Under subclause 401(3) the record must be retained for at least 2 years, and a maximum penalty of $6000 applies for noncompliance.

Clause 402 states that an intelligent access auditor is required to take all reasonable steps to destroy information held by the auditor if it is no longer required for an intelligent access audit. A maximum penalty of $6000 applies for noncompliance.

Under subclause 402(2), an auditor will be taken to have complied with the requirement if the auditor permanently removes anything by which an individual can be identified from the information.

Clause 403 requires an auditor who knows or has reasonable grounds to suspect that an intelligent access service provider has contravened an

obligation under this Chapter to, as soon as practicable, report the matter to TCA. A maximum penalty of $6000 applies for noncompliance.

Clause 404 imposes an obligation on an auditor knows or has reasonable grounds to suspect tampering with an intelligent transport system to, as soon as practicable, report the matter to the Regulator (where an operator is known or suspected) or to TCA (where an intelligent access service provider is known or suspected). A maximum penalty of $6000 applies for noncompliance.

Clause 405 restricts an intelligent access auditor who knows of or has reasonable grounds to suspect tampering with an approved intelligent transport system disclosing that knowledge or suspicion or information from which that knowledge or suspicion could be reasonably inferred. Disclosure of such matters can only be made to the Regulator or TCA, unless such disclosure is authorised under another law. A maximum penalty of $6000 applies for noncompliance.

Subclause 405(2) prohibits an auditor who has reported to the Regulator or TCA under clause 404 of apparent or suspected tampering from disclosing that the report has been made or information from it could be reasonably inferred that the report has been made. Disclosure of such matters can only be made to the Regulator or TCA, unless such disclosure is authorised under another law. A maximum penalty of $6000 applies for noncompliance.

Part 7.7 Other provisions

Clause 406 creates an offence, in subclause 406(1) to tamper with an intelligent transport system with the intention of causing it to fail to generate, record, store, display, analyse, transmit or report intelligent access information or to fail to do so correctly. A penalty of $6000 applies.

Subclause 406(2) creates an offence to engage in the same conduct when the person is negligent or reckless rather than intentional in that conduct. A maximum penalty of $3750 applies.

Subclause 406(3) provides an extended definition of *fail* for the purposes of this clause.

Clause 407 empowers the Regulator to issue a distinguishing number (which may consist of numbers or letters or a combination of both) for an intelligent access vehicle to identify it as such a vehicle. This is called an intelligent access identifier. An entity who knows the identifier and is able to associate it with a particular individual must treat it as personal information for the purposes of this Chapter or a law relating to privacy.

Chapter 8 Accreditation

Part 8.1 Preliminary

Clause 408 states that the purpose of accreditation under this Law is to allow operators of heavy vehicles who implement management systems that achieve the objectives of particular aspects of this Law to be subject to alternative requirements under this Law in relation to those aspects.

Clause 409 provides definitions for terms used in Chapter 8.

Part 8.2 Grant of heavy vehicle accreditation

Clause 410 empowers the Regulator to grant an operator of a heavy vehicle the following types of accreditation for a period of not more than 3 years:

- maintenance management accreditation, exempting the vehicle from the requirement to be inspected before the vehicle may be registered under this Law;
- mass management accreditation, allowing the vehicle to operate at concessional mass limits or higher mass limits;
- BFM accreditation, allowing drivers of the vehicle to operate under BFM hours (which are defined in clause 223); and

- AFM accreditation, allowing drivers of the vehicle to operate under AFM hours (which are defined in clause 227).

Clause 411 prescribes formal requirements for making an application for heavy vehicle accreditation.

Subclause 411(2) deals with the form of the application and what must accompany it. This includes a statement that the applicant has a relevant management system (defined in clause 409 to be one relevant to the type of accreditation sought) for ensuring compliance with the relevant standards and business rules (defined in clause 409 to be those relevant to the type of accreditation sought, which are approved by the responsible Ministers under clause 595) and a statement from an approved auditor (being a person defined in clause 409 to be an auditor of a class approved by the responsible Ministers under clause 595) that the applicant's management system will ensure compliance with those standards and business rules.

Subclause 411(3) requires the application to be accompanied by a declaration specifying various matters relevant to whether the applicant or an associate of the applicant has been convicted of specified offences and whether the applicant or an associate of the applicant has had their accreditation amended, suspended or cancelled. The term 'associate' is defined in clause 5 so as to include a number of individuals and corporations having a personal, employment or business relationship with the applicant.

Subclause 411(4) clarifies that the declaration does not need to include information about an amended, suspended or cancelled accreditation that occurred because of a conviction that the operator is not required to declare.

Subclause 411(5) empowers the Regulator to require additional information or verify information by statutory declaration.

Clause 412 provides for the obtaining of criminal history information about an application for heavy vehicle accreditation. The Regulator may, by notice, request an applicant for written consent to obtain the applicant's prescribed criminal history (defined in sub-clause 412(6) as information about any conviction of the applicant within the previous 5 years of an offence against this Law or a previous corresponding law, as defined in clause 5, or an offence involving fraud or dishonesty punishable by imprisonment of 6 months or more). If the consent is not forthcoming or is withdrawn, the application is taken to have been withdrawn. If the written consent is given, the Regulator may request a written report from a police

commissioner and such request may include specified particulars. The police commissioner must give the requested report to the Regulator.

Clause 413 limits the Regulator's power to grant a heavy vehicle accreditation.

Under subclause 49(1) the Regulator may only grant the accreditation if satisfied as to the applicant's systems for operating under the accreditation, ability to comply with the Law and suitability for accreditation. Where the application is for AFM accreditation, the Regulator must also be satisfied that the applicant's AFM fatigue management system and the maximum work times and minimum rest times that are to apply would safely manage the risk of driver fatigue if complied with, that the applicant and drivers operating under the accreditation are likely to consistently and effectively follow the driver fatigue management practices, and the drivers are likely to comply with the maximum work and minimum rest times.

Subclause 413(2) deals with further matters that the Regulator must be satisfied of or have regard to in setting the maximum work times and minimum rest times that are to apply to drivers operating under AFM accreditation.

Subclause 413(3) makes it clear that, for an AFM accreditation, the Regulator may set maximum work and minimum rest times different from those sought by the applicant.

Subclause 413(4)(a) specifies matters the Regulator may consider in deciding an application and subclause 413(4)(b) requires the Regulator to have regard to the approved guidelines (defined in clause 5 as guidelines approved by responsible Ministers under clause 594) for granting heavy vehicle accreditations under this Law.

Clause 414 states that a heavy vehicle accreditation is subject to the condition that the applicant must comply with the relevant standards and business rules (approved by the responsible Ministers) and may be subject to such other conditions as the Regulator may impose.

Clause 415 provides that the heavy vehicle accreditation may be for such period as is stated in the accreditation certificate (issued by the Regulator under clause 416), which may be less than the period the applicant sought.

Clause 416 states that if a heavy vehicle accreditation is granted, the Regulator must give the applicant an accreditation certificate containing the information set out in subclause 416(2). Where the accreditation is subject to conditions not sought by the applicant, granted for a period less than the

period the applicant sought, or for AFM accreditation sets maximum work and minimum rest times different from those sought by the applicant, the Regulator must also give the applicant an information notice. An information notice is defined in clause 5 as a notice stating the decision, the reasons for the decision and the review and appeal information (also defined in clause 5) for the decision.

Clause 417 states that if the Regulator refuses an application, an information notice must be given to the applicant. An information notice is defined in clause 5 as a notice stating the decision, the reasons for the decision and the review and appeal information (also defined in clause 5) for the decision.

Clause 418 deals with maintenance management accreditation and mass management accreditation. It states that the Regulator must issue an accreditation label for each vehicle currently operating under the relevant accreditation. The requirement of a label for a participating vehicle is an important aid to enforcement because it enables ready recognition of the vehicles that are covered by the relevant accreditation. It also offers significant advantage to operators and drivers in that those vehicles that have an accreditation label attached should not be subjected to the delays associated with maintenance and mass checks that might otherwise occur.

Part 8.3 Operating under heavy vehicle accreditation

Clause 419 requires the holder of a BFM accreditation or AFM accreditation to comply with the conditions of the accreditation. A maximum penalty of $6000 applies.

Clause 420 imposes obligations in relation to the driver carrying accreditation details.

Subclause 420(1) requires the driver of a vehicle operating under a heavy vehicle accreditation to keep in the driver's possession a copy of the accreditation certificate and a document signed by the operator stating that the driver is operating under the accreditation, has been inducted into the operator's relevant management system and meets the requirements applying to drivers under the accreditation (if any). In the case of a driver operating under AFM accreditation, this also includes a document stating

the AFM hours (defined in clause 227) applying under the accreditation. A maximum penalty of $2000 applies.

Subclause 420(3) provides that if the driver commits an offence against subclause 420(1), so does the operator, to whom a like penalty applies.

Extending liability for the driver's non-compliance to the operator is to encourage those who obtain accreditation benefits to ensure that the accreditation documentation is with the vehicle at all times. This will assist compliance, by ensuring drivers are aware of the accreditation conditions and enabling authorised officers to readily ascertain whether a driver or a vehicle are operating under a relevant accreditation and the conditions applying to the accreditation.

When an operator is charged with an offence under this clause that person does not have the benefit of the mistake of fact defence for the offence. However, the operator does have the benefit of the reasonable steps defence. That defence is set out in Divisions 1 and 2 of Part 10.4. The reasonable steps defence requires that person charged must actively consider the appropriate steps to prevent an on-road breach from occurring and cannot rely on a honest and reasonable mistake alone.

Subclauses 420(6) specifies certain matters that are irrelevant in a proceeding and matters that constitute evidence in a proceeding against the operator. It provides that:

- it is irrelevant whether or not the driver has been or will be proceeded against or convicted. Thus it is not necessary to take action against a driver or to obtain a conviction against a driver in order to proceed against the operator;
- evidence a court has convicted a driver is evidence that the offence happened at the time and place, and in the circumstances, stated in the charge resulting in the conviction or evidence that the driver has paid an infringement penalty is evidence that the offence happened at the time and place, and in the circumstances, stated in the infringement notice. These are intended to facilitate proof of the relevant facts.

Clause 421 states that where a driver stops operating under a heavy vehicle accreditation or ceases to meet its requirements, the driver must return to the operator, as soon as reasonably practicable, the documentation which the operator provided under subclause 420(1). A maximum penalty of $2000 applies.

Clause 422 imposes obligations on an operator who holds a heavy vehicle accreditation.

Subclause 422(1) requires the operator to ensure that each driver who operates under the accreditation has been inducted into the operator's relevant management system and meets at all times the requirements of the accreditation applying to drivers. A maximum penalty of $6000 applies.

Where the accreditation is an AFM accreditation, subclause 422(3) also requires the operator to ensure that each driver is informed of the AFM hours (defined in clause 227) applying under the accreditation. A maximum penalty of $6000 applies.

Subclause 422(4) requires the operator to keep the accreditation certificate, a current list of drivers operating under the accreditation and documentary evidence of compliance with these obligations. A maximum penalty of $6000 applies.

Subclause 422(5) requires the accreditation certificate to be kept while the accreditation is current and the other documents for at least 3 years after their creation. A maximum penalty of $6000 applies.

Subclause 422(6) requires that a document must be kept in a way that ensures it is readily accessible by an authorised officer at the place where it is kept, and reasonably capable of being understood by the authorised officer, and capable of being used as evidence. A maximum penalty of $2000 applies.

If required by the Regulator by notice to do so, subclause 422(8) an operator must (in the absence of a reasonable excuse) provide the Regulator with a copy of the list of drivers referred to in subclause 422(4)(b), together with details of any change to the list. A maximum penalty of $2000 applies.

Subclause 422(9) clarifies that the obligations under subclauses 422(4) to 422(6) do not apply to an accreditation certificate where it is already in the Regulator's possession (unless the Regulator has returned it or given the operator a replacement accreditation certificate) or where it has been defaced, destroyed, lost or stolen (unless the Regulator has given the operator a replacement accreditation certificate).

Clause 423 applies where a heavy vehicle accreditation is amended or suspended or is no longer held by an operator.

Subclause 423(2) requires the operator, as soon as practicable, to notify affected drivers and schedulers. A maximum penalty of $6000 applies.

A driver who is given such a notice must, as soon as is reasonably practicable, return to the operator any document relevant to the notice given to the driver for the purposes of subclause 420(1). A maximum penalty of $2000 applies. Subclause 420(1) relates to a copy of the accreditation certificate and a document signed by the operator stating that the driver is operating under the accreditation, has been inducted into the operator's relevant management system and meets the requirements applying to drivers under the accreditation (if any). In the case of a driver operating under AFM accreditation, this also includes a document stating the AFM hours (defined in clause 227) applying under the accreditation.

Part 8.4 Amendment or cancellation of heavy vehicle accreditation

Clause 424 authorises applications to the Regulator for amendment or cancellation of a heavy vehicle accreditation. It includes what must be in an application, when an application must be decided, provisions dealing with the replacement of an accreditation certificate affected by amendment to the accreditation and information to be provided to an applicant about the Regulator's decision.

Clause 425 deals with the amendment, suspension or cancellation of a heavy vehicle accreditation on the Regulator's initiative. Subclause 425(1) specifies the grounds for the Regulator to amend, suspend or cancel the accreditation. Subclauses 425(2) to 425(5) deal with the procedures to be followed, including notification requirements and giving the holder an opportunity to make written representations.

Clause 426 empowers the Regulator to immediately suspend a heavy vehicle accreditation where it considers that a ground exists to suspend or cancel an accreditation and believes that it is necessary to immediately suspend the accreditation to prevent or minimise serious harm to public safety (which is defined in clause 5).

Clause 427 allows minor amendments of a formal or clerical nature or that do not adversely affect the holder's interest. The Regulator must notify the holder of such amendments.

Part 8.5 Other provisions about heavy vehicle accreditations

Clause 428 states that where the Regulator, by notice, requires a holder of a heavy vehicle accreditation to return an accreditation certificate following amendment, suspension or cancellation of the accreditation, the holder must comply. A maximum penalty of $2000 applies.

If the accreditation is amended, subclause 427(3) requires the Regulator to issue a replacement accreditation certificate.

Subclause 428(4) allows the Regulator to retain an accreditation certificate for the duration of a suspension but requires that it, or a replacement certificate if the accreditation has also been amended, be issued as soon as practicable thereafter.

Clause 429 provides that where an accreditation certificate has been defaced, destroyed, lost or stolen, the holder must apply to the Regulator as soon as reasonably practicable after becoming aware of the matter, for a replacement accreditation certificate. A maximum penalty of $2000 applies. The Regulator must issue a replacement certificate as soon as practicable, unless the Regulator is not satisfied that the original has been defaced, destroyed, lost or stolen. In that case, the Regulator must give the holder an information notice. An information notice is defined in clause 5 as a notice stating the decision, the reasons for the decision and the review and appeal information (also defined in clause 5) for the decision.

Clause 430 creates various offences relating to approved auditors, each of which has a maximum penalty of $6000. An approved auditor is defined in clause 409 to be an auditor of a class approved by the responsible Ministers under clause 595.

Subclause 430(1) provides that a person must not falsely represent that the person is an approved auditor.

Subclause 430(2) provides that an approved auditor must not falsely represent that the person has audited an operator's relevant management system. Under subclause 411(2), an application for heavy vehicle accreditation must be accompanied by a statement from an approved auditor that the auditor considers the applicant's relevant management system (defined in clause 409 to be one relevant to the type of accreditation sought) will ensure compliance with the relevant standards and business rules

(defined in clause 409 to be those relevant to the type of accreditation sought, which are approved by the responsible Ministers under clause 595).

Subclause 430(3) provides that a person must not falsely represent the opinion of an approved auditor as to an operator's relevant management system.

Chapter 9 Enforcement

Part 9.1 General matters about authorised officers

Division 1 Functions

Clause 431 sets out the functions of authorised officers to monitor, investigate and enforce compliance with the Law, to monitor or investigate whether an occasion has arisen for the exercise of powers and to facilitate the exercise of powers under the Law.

Division 2 Appointment

Clause 432 clarifies that Division 2 does not apply to an authorised officer who is a police officer. The appointment, qualifications, conditions of appointment, term of office and resignation of police officers is covered by other laws.

Clause 433 authorises the Regulator to appoint authorised officers from specified classes of individuals, provided that the Regulator is satisfied that they have the necessary expertise or experience.

Clause 434 empowers an authorised officer's appointment to be subject to conditions (which may restrict the officer's powers) set out in the

instrument of appointment, a notice signed by the Regulator given to the officer or the regulations.

Clause 435 provides that an officer's appointment ends if the term for which the appointment was made expires, a condition imposed on the appointment has the effect of ending it or the officer's resignation takes effect under clause 436 (below).

Clause 436 specifies that an authorised officer may resign by giving a signed notice to the Regulator. However, subclause 436(2) clarifies that, where the holding of the office of authorised officer is a condition of the officer holding another office, the person cannot resign as an authorised officer without also resigning the other office. If, for example, a person was appointed as an authorised officer because of his or her duties as a specified class of employee of a statutory body, it would not be competent for the person to resign only as an authorised officer without also resigning as an employee of that specified class.

Division 3 Identity cards

Clause 437 clarifies that Division 3 does not apply to an authorised officer who is a police officer. Police officers are governed by other laws regulating the issue of, production or display of and return of identity cards .

Clause 438 requires the Regulator to issue an identity card to each authorised officer. Subclause 438(2) deals with the information to be shown on the card. The requirements include a recent photo of the officer and an identifying number. The officer's name does not have to be included, although this will sometimes be evident from the signature, which does need to be included. Subclause 438(3) allows for a single identity card to be issued for this Law and other purposes.

Clause 439 states that that an authorised officer must produce or display the authority card when exercising a power in a person's presence or, if that is not practicable, as soon as reasonably practicable thereafter.

However, subclause 439(3) makes it clear that the mere entry into specified places does not necessitate the production or display of the card. Those are:

- a place entered under subclause 444(1)(b) for monitoring purposes, being a place that is open for carrying on a business, otherwise open for entry or required to be open for inspection; or
- a place entered under subclause 446(1)(b) for investigation purposes, being a public place when it is open to the public; or
- a place entered under subclause 446(1)(d) for investigation purposes, being a place that is open for carrying on a business, otherwise open for entry or required to be open for inspection.

Clause 440 requires a person to return his or her identity card to the Regulator within 21 days of ceasing to hold office as an authorised officer, unless the person has a reasonable excuse. A maximum penalty of $2,000 applies.

Division 4 Miscellaneous provisions

Clause 441 states that where a provision in Chapter 9 refers to the exercise of a power by an authorised officer, and does not refer to a specific power, the reference extends to any power exercised under the Chapter or under a warrant, to the extent the powers are relevant.

Clause 442 specifies that a reference to documents in Chapter 9 includes an image or writing produced from and electronic document and not yet produced but capable of being produced from an electronic document.

Part 9.2 Powers in relation to places

Division 1 Preliminary

Clause 443 provides definitions of the terms ‘place of business’ and ‘relevant place’.

A place of business is the place of a responsible person for a heavy vehicle (as defined in clause 5) from which business is carried on, a place occupied in connection with the business or the registered office of the corporation if the person is a body corporate.

A relevant place is a place of business (as defined in this clause), the relevant garage address of a heavy vehicle, the driver's base (as defined in clause 5) or a place where records required to kept under this Law or a heavy vehicle accreditation (as defined in clause 5) are located or are required to be located under this Law or a heavy vehicle accreditation. However, it does not include a place where a responsible person lives.

Division 3 Entry of relevant places for monitoring purposes

Clause 444 enables an authorised officer to enter a relevant place (as defined in clause 443) for monitoring purposes. That term is defined in clause 5 to mean finding out whether the Law is being complied with.

The officer may enter with the occupier's consent given in accordance with Division 4 (which makes further provision for entry by consent), provided that the officer complies with clause 452, which outlines what an officer must tell a person when seeking consent. Subclause 444(2) provides that, if the power of entry was by consent, it is subject to any conditions attached to that consent. Further, the consent may be withdrawn, at which point the power ceases.

An officer may also enter a relevant place which is open for business, otherwise open for entry or required by the Law to be open for inspection. Subclause 444(3) specifies that, if such a place is unattended, the officer requires consent or a warrant to enter, unless the officer reasonably believes the place is attended.

An officer may not use force to gain entry, but may open unlocked doors, panels and things at a place to gain entry.

Clause 445 states that, having entered a relevant place under this Division, an authorised officer may, for monitoring purposes (as defined in clause 5), do the things set out in this clause. These include power to inspect the place, a vehicle at the place or a relevant document (as defined in this clause) at the place, to copy or take an extract from such a document or from a relevant device (as defined in this clause) at the place, including using a photocopier at the place free of charge, and exercising powers in relation to a heavy vehicle at the place which the officer by exercise under clause 469 (which makes further provision for the inspection of heavy vehicles for monitoring purposes).

The officer may take onto the place and use any persons, equipment, materials, vehicles or other things to assist the officer.

The officer may open unlocked doors, panels or things and move (but not take away) unlocked or unsealed things.

Subclause 445(1)(d) recognises that an officer may need to take away something containing a relevant electronic document (as defined in this clause) in order to produce an image or writing from that document where it is not practicable to do this at the place which has been entered. In that event, subclause 445(4) provides that the image or writing must then be produced and the thing returned as soon as practicable.

Where entry is under consent, the officer's powers are subject to the consent conditions.

The officer may not use force to exercise a power under this clause.

Division 3 Entry of places for investigation purposes

Clause 446 deals with entry into places for investigation purposes. The term 'investigation purposes' is defined in clause 5 to mean investigating a contravention or suspected contravention of the Law.

The places that may be entered are wider than those provided by clause 444, dealing with power to enter for monitoring purposes. In addition to those places, an authorised officer may enter a public place when it is open to the public, entry is under warrant and, where there is an occupier at the place, clause 458 (dealing with procedures for entry under warrant if there is an occupier at the place) has been complied with, and where entry is authorised under clause 447 or clause 448 (which deal respectively with entry if evidence is reasonably suspected to be at the place and entry where there has been death, injury or property damage).

As with subclause 444(2), subclause 446(2) provides that, if the power of entry was by consent, it is subject to any conditions attached to that consent. Further, the consent may be withdrawn, at which point the power ceases.

Subclause 446(3) provides that, where entry is by warrant, force may be used if reasonably necessary and the entry is subject to the terms of the

warrant. If there is no warrant, subclause 446(6) makes it clear that force cannot be used.

Subclause 446(4) specifies that an officer may not, without consent or a warrant, enter a relevant place which is open for business, otherwise open for entry or required by the Law to be open for inspection where such a place is unattended, unless the officer reasonably believes the place is attended. Also, an authorised officer may not enter such a place, or part of a place, where a person lives.

The officer may open unlocked doors, panels or things to gain entry.

Clause 447 enables an authorised officer to enter a specified place in the circumstances where the officer reasonably believes that either a heavy vehicle is or has been at a place or transport documentation or journey documentation is at the place and that there may be evidence there of an offence against the Law which may be concealed or destroyed unless the place is immediately entered and searched. The terms 'transport documentation' and 'journey documentation' are defined in clause 5 and cover a variety of documents directly or indirectly associated with the transport task .

Where those circumstances exist, subclause 447(2) provides that the authorised officer may enter the place if it is open for business, is otherwise open for entry or is required to be open for inspection under the Law.

However, subclause 447(3) denies the power of entry if the place is unattended (unless the officer reasonably believes the place is unattended) or if it is a place or part of a place where somebody lives.

The officer may open unlocked doors, panels or things to gain entry.

An officer may not use force, except if it is reasonably necessary to gain entry to a place that is required by the Law to be open for inspection. Force may not be used against a person.

Clause 448 sets out specified circumstances when an authorised officer may enter a place without the occupier's consent or a warrant.

Subclause 448(1) provides that the officer must reasonably believe that all of the following apply—

(a) an incident involving the death of, or injury to, a person or damage to property involves or may have involved a heavy vehicle;

(b) the incident may have involved an offence against this Law;

(c) there is a connection of a kind described in subclause 448(2) between the place and the heavy vehicle (dealing with the garage address of the vehicle or a vehicle in a combination, the vehicle being located or having been located at the place within the past 72 hours, or the place being otherwise directly or indirectly connected with the vehicle or any part of its equipment or load);

(d) there may be at the place evidence of the offence against this Law that may be concealed or destroyed if the place is not immediately entered and searched.

However, subclause 448(3) denies the power of entry if premises are unattended (unless the officer reasonably believes the place is unattended) or if it is a place or part of a place where somebody lives.

The officer may open unlocked doors, panels or things to gain entry.

The officer may not use force under this provision. If force is required, other powers or a warrant must be relied on.

Clause 449 sets out the powers that an authorised officer may exercise after having entered a place for investigation powers (as defined in clause 5). It applies in respect of all the places entered under subclause 446(1), except for a public place.

The powers are broader than the powers that may be exercised under clause 445 when a place is entered for monitoring purposes. They include the power to search the place or a vehicle at the place, to inspect, examine or film any part of the place or anything at the place, to take a thing or sample for examination, to place identifying marks, and to take extracts or make copies or access and download information from a device or other thing at the place. For a heavy vehicle at the place, they include all the powers an officer may exercise under Part 9.3 (which set out an extensive range of powers in relation to heavy vehicles).

The officer may take onto the place and use any persons, equipment, materials, vehicles or other things to assist the officer.

The officer may open unlocked doors, panels or things and move (but not take away) unlocked or unsealed things. Force may only be used if the officer has entered under a warrant but only to the extent that it is reasonably necessary.

Subclauses 449(3) and 449(4) deal with the situation where a thing or sample is taken for examination. They include requirements for a receipt to be given or to be left where it is not practicable to give a receipt.

Subclause 449(5) allows the use of photocopying equipment at the place free of charge in order to copy a document at the place.

Subclauses 449(6) and 449(7) deal with the situation where a document or thing containing an electronic document has been taken from the place for copying the document or for producing an image or writing from the electronic document. They require the return of those things as soon as practicable after they have been removed.

Subclause 449(8) specifies that where entry is under consent, the officer's powers are subject to the consent conditions and where entry is under warrant, the officer's powers are subject to the terms of the warrant.

Division 4 Procedure for entry by consent

Clause 450 states that Division 4 applies where an authorised officer seeks consent to enter a place under clause 444(1)(a) or clause 446(1)(a), dealing respectively with entry for monitoring purposes and entry for investigation purposes.

Clause 451 allows for incidental entry, without consent or a warrant, to enable the authorised officer to contact the occupier for the purpose of seeking consent.

Clause 452 requires that before asking for the consent, the authorised officer must explain why entry is desired, the powers intended to be exercised and the fact that consent may be refused or given subject to conditions and can be withdrawn at any time.

Clause 453 sets out requirements for a consent acknowledgment to be signed by an occupant. It includes what the acknowledgement must contain and giving a copy of the signed acknowledgment to the occupier immediately or as soon as practicable.

Subclause 453(5) provides that, if a question arises in a proceeding about whether the occupier consented and a consent acknowledgement is not produced, the party relying on the consent will need to prove the occupier consented.

Division 5 Entry under warrant

Clause 454 provides for an authorised officer to apply to an authorised warrant official (defined in clause 5 to mean an entity declared as such an official for the purposes of the Law) for a warrant for a place.

Clause 455 empowers an authorised warrant official to issue a warrant, but only if satisfied there are reasonable grounds for suspecting that there is (or will in the next 72 hours be) at the place something that may constitute evidence of an offence against the Law. Subclause 455(2) sets out what must appear in the warrant.

Clause 456 provides for applications for warrants and their issue by electronic communication, rather than the procedures under clause 454 and clause 455, where the matter is urgent or there are other special circumstances, such as the officer's remote location, that make it necessary and appropriate.

Clause 457 preserves a warrant from invalidity by reason of insubstantial defects in it or the procedures attending its application or issue.

Clause 458 sets out the procedures to be followed by an authorised officer when entering under a warrant. An officer must do or make a reasonable item to identify himself or herself, give a copy of the warrant to a person at the place, tell the person that the officer is permitted by the warrant to enter the place and give the person opportunity to allow immediate entry without the use of force.

However, subclause 458(3) provides that these things do not have to be done where the officer reasonably believes that entry to the place is required to ensure that the execution of the warrant is not frustrated.

Part 9.3 Powers in relation to heavy vehicles

Division 1 Preliminary

Clause 459 specifies that Part 9.3 applies to a heavy vehicle on a road, in or at a public place, in or at a place owned or occupied by a road authority or by another public authority or in or at a place to which entry is gained by an authorised officer under Part 9.2 (which deals with entry to specified places for monitoring or investigation purposes). Unless the contrary is stated in Part 9.3, it has no application to heavy vehicles in other places, such as private land which is not entered by consent or by a warrant under Part 9.2.

Clause 460 extends the definition of driver (defined in clause 5), for the purposes of Part 9.3, so as to include a person in the vicinity of the vehicle who appears to be the driver.

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

Clause 461 empowers an authorised officer to direct the driver of a heavy vehicle to stop the vehicle so that the officer may exercise a power under this Law, such as a power to enter and inspect under clause 469 or to enter and search under clause 470.

It sets out how a direction may be given (orally or in any other way, such as a sign or electronic or other signal) and that the direction can be to stop immediately or at a place indicated.

It is an offence to not comply with the direction without a reasonable excuse. A maximum penalty of $9,000 applies.

Clause 461 also sets out identification requirements for the officer to follow when directing the vehicle to stop and once the vehicle has stopped.

Clause 462 empowers an authorised officer to direct the driver of a heavy vehicle or any other person not to move the vehicle or to interfere with the vehicle or its equipment or load, so that the officer may exercise a power under this Law.

It sets out how a direction may be given (orally or in any other way, such as a sign or electronic or other signal).

It is an offence to not comply with the direction without a reasonable excuse. A maximum penalty of $6,000 applies.

Division 3 Moving heavy vehicle

Clause 463 defines the concept of a vehicle being unattended for the purposes of Division 3. It means that there is no-one in or near the vehicle who appears to be the driver. However, it is also extended to include cases where, although a person is in or near the vehicle who appears to be driver, that person is unwilling or not qualified (as defined in clause 5) or not fit (as defined in clause 5) or not authorised by the operator of the vehicle to drive it or has been directed to leave the vehicle by an authorised officer under clause 472.

Clause 464 imposes an obligation on an authorised officer, when giving a direction under Division 3, to also give an offence warning unless it is not practicable to do so because of the way the direction is given. The term 'offence warning' is defined in clause 5 as a warning that it is an offence not to comply with the direction or requirement, unless the person has a reasonable excuse.

Clause 465 empowers an authorised officer to direct the driver or operator of a heavy vehicle to move the vehicle or have it moved to a stated reasonable place not more than 30 km away or some other place on its forward journey, so that the officer may exercise a power under this Law.

It sets out how a direction may be given (orally or in any other way, such as a sign or electronic or other signal).

It is an offence to not comply with the direction without a reasonable excuse. A maximum penalty of $9000 applies.

Subclause 465(4) provides an example of a reasonable excuse for not complying with a direction. It would be a defence for the person to prove it was not possible to move the vehicle because it was broken down for a physical reason beyond the person's control and the breakdown could not readily be rectified to enable the direction to be complied within in a reasonable time. However, subclause 465(4) does not limit what might be a reasonable excuse for not complying with a direction.

Clause 466 deals with the situation where an authorised officer reasonably believes that a stationary heavy vehicle is causing or creating a risk of serious harm to public safety (defined in clause 5), the environment or road infrastructure (defined in clause 5) or is obstructing traffic. The officer may direct the driver or operator to move the vehicle or have it moved or to do or have something else done in order to avoid the harm or obstruction.

It sets out how a direction may be given (orally or in any other way, such as a sign or electronic or other signal for the driver and by electronic communication for the operator).

It is an offence to not comply with the direction without a reasonable excuse. A maximum penalty of $9000 applies.

Subclause 466(5) provides an example of a reasonable excuse for not complying with a direction. It would be a defence for the person to prove it was not possible to move the vehicle because it was broken down for a physical reason beyond the person's control and the breakdown could not readily be rectified to enable the direction to be complied within in a reasonable time. However, subclause 466(5) does not limit what might be a reasonable excuse for not complying with a direction.

Clause 467 provides that where an authorised officer reasonably believes that a vehicle is unattended (as defined in clause 463) and that it is reasonably necessary for a vehicle to be moved in order for the officer to exercise a power that he or she intends to exercise under the Law, the officer may move the vehicle or authorise somebody else to do so. However, neither the officer nor the other person may move the vehicle if not qualified (as defined in clause 5) or not fit (as defined in clause 5) to drive it.

The officer or assistant may open unlocked doors and panels and things in the vehicle and may use such force as is reasonably necessary but may not use force against a person.

Clause 468 deals with the situation where an authorised officer reasonably believes that an unattended heavy vehicle is causing or creating an imminent risk of serious harm to public safety (defined in clause 5), the environment or road infrastructure (defined in clause 5) or is obstructing traffic. The officer may move or authorise somebody else to move the vehicle in order to avoid the harm or obstruction. The officer may do this even if the officer or other person is not qualified (defined in clause 5) to drive it, if the officer reasonably believe that nobody else in the vicinity is more capable of driving it and fit and willing to drive it.

The officer or assistant may use such force as is reasonably necessary other than force against a person.

Division 4 Inspecting and searching heavy vehicles

Clause 469 empowers an authorised officer to enter and inspect a heavy vehicle for monitoring purposes. That term is defined in clause 5 to mean finding out whether the Law is being complied with. The types of things an officer may do include inspecting, examining or filming any part of the vehicle and its goods, inspecting a relevant document (as defined in this clause) in the vehicle, copying or taking an extract from such a document or from an electronic relevant document (as defined in this clause).

The officer may open unlocked doors, panels or things in or on the vehicle and may move (but not take away) unlocked or unsealed things.

The officer may not use force to exercise a power under this clause.

Subclause 469(2)(f) recognises that an officer may need to take an extract of relevant information (as defined in this clause) from a device or other thing in the vehicle in order to produce an image or writing from that document. In that event, subclause 469(5) provides that the image or writing must be produced and the thing returned to the vehicle as soon as practicable.

Clause 470 empowers an authorised officer to enter and search a heavy vehicle, using force or help, for investigation purposes. The term 'investigation purposes' is defined in clause 5 to mean investigating a contravention or suspected contravention of the Law.

The officer may use this power if he or she reasonably believes that a vehicle is being or has just been used to commit an offence against the Law or that the vehicle or something in it may provide evidence of such an offence or that the vehicle has been or may have been involved in an incident involving death, injury or property damage.

The powers that the officer may exercise are broader than the powers specified under clause 469 when a vehicle is entered for monitoring purposes. They include the power to search, inspect, examine or film any part of the vehicle and its goods, to search for a document, device or other

thing in the vehicle and to take a copy of an extract from a document, device or other thing in the vehicle.

The officer may take into or onto the vehicle any persons, equipment or materials to assist the officer.

Subclause 470(3) recognises that an officer may need to take a document in the vehicle somewhere else to copy it or to take a thing containing an electronic document from the vehicle to produce an image or writing from that document. In that event, subclauses 470(4) and 470(5) provide that document may be copied and returned and the image or writing must be produced and the thing returned to the vehicle as soon as practicable.

Subclause 470(6) provides that the powers do not extend to personal possessions or documents that are not issued or given or required to be kept under the Law or a heavy vehicle accreditation or that are not transport documentation or journey documentation (as defined in clause 5).

Division 5 Other powers in relation to all heavy vehicles

Clause 471 enables an authorised officer to enter a vehicle and start or stop a vehicle's engine or authorise somebody else to do so to enable the officer to exercise a power under this Law (but not to drive the vehicle). The officer may exercise this power if a power does not comply with a requirement under clause 521 to start or stop the engine, or if there is no responsible person for the vehicle (defined in clause 5) available or willing to start or stop the engine, or if the officer reasonably believes that there is no-one else in the vicinity who is more capable of starting or stopping the engine and who is fit and willing to do so.

The officer or assistant may use such force as is reasonably necessary other than force against a person.

Clause 472 empowers an authorised officer to direct the driver of a heavy vehicle to vacate the driver's seat, to leave the vehicle or not to occupy the driver's seat or enter the vehicle until permitted by the officer. The officer may also direct anybody accompanying the driver to leave the vehicle or not to enter the vehicle until permitted by the officer.

The officer may exercise this power if the driver fails to comply with a direction given under Chapter 9 or if the officer reasonably believes that the

driver is not qualified (as defined in clause 5), fit (as defined in clause 5) or authorised by the operator to drive the vehicle so as to comply with the direction,

A direction may be given orally or in any other way, such as a sign or electronic or other signal.

It is an offence to not comply with the direction without a reasonable excuse. A maximum penalty of $9,000 applies.

When giving the direction, the officer must also give an offence warning unless it is not practicable to do so because of the way the direction is given. The term 'offence warning' is defined in clause 5 as a warning that it is an offence not to comply with the direction or requirement, unless the person has a reasonable excuse.

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

Clause 473 defines certain terms used in Division 6.

Clause 474 states that if an authorised officer who has inspected a heavy vehicle reasonably believes it to be a defective vehicle and that its use on the road presents a safety risk (defined in clause 5), the officer may issue a vehicle defect notice. The term 'defective vehicle' is defined in clause 473 to mean a vehicle that contravenes the heavy vehicle standards (defined in clause 46) or has a part which is either not functioning or has so deteriorated that it cannot reasonably be relied on to function as intended.

The notice may be a major defect notice or a minor defect notice, the former applying where the safety risk is imminent and serious and the latter applying in the case of other safety risk.

Subclause 474(3) requires the defect notice to be handed to the driver but, if the driver is not present, it is to be attached to the vehicle.

Where the notice is given to the driver, subclause 474(4) requires the driver, as soon as practicable, to pass it on to the operator. A maximum penalty of $3,000 applies.

Clause 475 sets out the contents of a vehicle defect notice, including a statement that the vehicle is a defective heavy vehicle and the details of

how it is defective. A major defect notice must include a statement that the vehicle is not to be used on a road other than to move it to a location and in a way stated in the notice. A minor defect notice must include a statement that the vehicle is not to be used on a road after a time stated in the notice unless the defect is rectified.

Clause 476 states that if a major defect notice is issued, the authorised officer must attach a vehicle defect label to the vehicle. Subclause 476(2) creates an offence for a person to remove, deface or otherwise interfere with such a label. A maximum penalty of $3,000 applies.

The offence does not apply where the Regulator arranges for the label to be removed following clearance of the notice under subclause 478(2) or following withdrawal of the notice under subclause 479(4).

Clause 477 creates an offence for a person to use, or permit to be used, on a road a heavy vehicle in contravention of a vehicle defect notice. A maximum penalty of $3,000 applies.

The inclusion of the phrase 'permit to be used' in clause 477 extends the responsibility beyond the driver of the heavy vehicle and is intended to require persons responsible for a heavy vehicle to ensure the vehicle is not used in breach of a vehicle defect notice.

Clause 478 provides that a vehicle defect notice may be cleared where the Regulator is satisfied that the vehicle is no longer defective or receives from an authorised officer a notice to that effect. If a major defect notice is cleared, the Regulator must arrange for the defective vehicle label to be removed.

Clause 479 deals with the amendment or withdrawal of a vehicle defect notice. Where a notice is issued by an authorised officer who is a police officer, it may be amended or withdrawn by any authorised officer who is a police officer. Where a notice is issued by an authorised officer who is not a police officer, it may be amended or withdrawn by any authorised officer who is not a police officer. If a major defect notice is withdrawn, the Regulator must arrange for the defective vehicle label to be removed.

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

Clause 480 states that Division 7 applies to all heavy vehicles and not just those subject to directions or requirements given or made under another provision of Chapter 9. The powers in Division 7 assist in the enforcement of the matters regulated under Chapter 4.

Clause 481 provides that where an authorised officer reasonably believes that a heavy vehicle is subject to a minor risk breach of mass, dimension or loading requirements but not also the subject of a substantial risk breach or severe risk breach, the officer may direct the driver or operator to rectify the stated breaches or to move or cause the vehicle to be moved to a stated place and not thereafter to move it or cause it to be moved until the stated breaches are rectified.

Chapter 4 defines the terms 'dimension requirement', 'loading requirement', 'mass requirement', 'minor risk breach', 'substantial risk breach' and 'severe risk breach'.

Subclause 481(3) specifies that, if the officer directs the vehicle to be moved to a stated place, it must be a place the officer reasonably believes to be suitable and it must be within a 30 km radius from where the vehicle is located when the direction is given or within a 30 km radius from any point on the vehicle's forward journey.

Subclause 481(4) requires the direction to be in writing (and given with or without conditions) but subclause 481(5) provides for an oral direction if the moving of the vehicle is carried out in the presence or under the supervision of an authorised officer.

It is an offence to not comply with the direction without a reasonable excuse. A maximum penalty of $9,000 applies.

Clause 482 specifies that where an authorised officer reasonably believes that a heavy vehicle is subject to a substantial risk breach of mass, dimension or loading requirements but not also the subject of a severe risk breach, the officer must direct the driver or operator not to move the vehicle or cause it to be moved until the stated breaches have been rectified or to move or cause it to be moved to a stated reasonable place and not thereafter to move it or cause it to be moved until the stated breaches are rectified.

Subclause 482(3) requires the direction to be in writing (and given with or without conditions) but subclause 482(4) provides for an oral direction if the moving of the vehicle is carried out in the presence or under the supervision of an authorised officer.

It is an offence to not comply with the direction without a reasonable excuse. A maximum penalty of $9,000 applies.

An important distinction between clause 481 and clause 482 is that, in the former, the officer has a discretion whether or not to give the direction whereas, in the latter, the direction must be given. This is because of the greater seriousness attached to a substantial risk breach and the need to ensure that stated breaches are rectified.

Clause 483 states that where an authorised officer reasonably believes that a heavy vehicle is subject to a severe risk breach of mass, dimension or loading requirements, the officer must direct the driver or operator not to move the vehicle until the stated breaches are rectified or (if the vehicle poses a risk to public safety, as defined in clause 5, or an appreciable risk to the environment, road infrastructure or public amenity, as defined in clause 5) to move it or cause it to be moved to the nearest stated safe place (as defined in this clause) and not to move it thereafter until the stated breaches have been rectified.

Subclause 483(3) requires the direction to be in writing (and given with or without conditions) but subclause 483(4) provides for an oral direction if the moving of the vehicle is carried out in the presence or under the supervision of an authorised officer.

It is an offence to not comply with the direction without a reasonable excuse. A maximum penalty of $9,000 applies.

Clause 484 provides that where a direction is given under this Division, a component vehicle of a combination which does not itself contravene a mass, dimension or loading requirement may be separately driven or moved if it is otherwise lawful for it to be driven or moved and if a condition of the direction does not prevent it.

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

Clause 485 states that Division 8 applies to all fatigue-regulated heavy vehicles and not just those subject to directions or requirements given or made under another provision of Chapter 9. The term 'fatigue-regulated heavy vehicle' is defined in clause 7. The powers in Division 8 assist in the enforcement of the matters regulated under Chapter 6.

Clause 486 applies where an authorised officer reasonably believes that a driver of a fatigue-regulated heavy vehicle has contravened a maximum work requirement under Chapter 6 and is or may be impaired by fatigue.

Subclause 486(2) provides that, if the officer reasonably believes the contravention is a critical risk breach or a severe risk breach, the officer must by notice require the driver to immediately rest for a stated period and thereafter to work for a stated shorter time to compensate for the excess period worked.

Subclause 486(3) provides that, if the officer reasonably believes the contravention is a substantial risk breach or a minor risk breach, the officer may by notice impose the same requirement.

The distinction between subclause 486(2) and subclause 486(3) is that, in the former, the officer is under a duty to impose the requirement whereas, in the latter, the officer has a discretion whether or not to impose it. This is because of the greater seriousness attached to a critical risk breach or a severe risk breach and the need to ensure that the driver takes the steps necessary to compensate for the excess period worked.

The terms 'critical risk breach' 'severe risk breach', 'substantial risk breach' and 'minor risk breach' are defined in clause 192.

Clause 487 applies where an authorised officer reasonably believes that a driver of a fatigue-regulated heavy vehicle has contravened a minimum rest requirement under Chapter 6 and is or may be impaired by fatigue.

Subclause 487(2) provides that, if the officer reasonably believes the contravention is a critical risk breach or a severe risk breach, the officer must by notice require the driver to immediately rest for a stated period to compensate for the shortfall in rest and, if the driver has failed to have 1 or more night rest breaks required under a minimum rest requirement, the officer must also direct the driver to take 1 or more night breaks to

compensate for the shortfall. The term 'night rest break' is defined in clause 5.

Subclause 487(3) provides that, if the officer reasonably believes the contravention is a substantial risk breach or a minor risk breach, the officer may by notice impose the same requirement.

The distinction between subclause 487(2) and subclause 487(3) is that, in the former, the officer is under a duty to impose the requirement whereas, in the latter, the officer has a discretion whether or not to impose it. This is because of the greater seriousness attached to a critical risk breach or a severe risk breach and the need to ensure that the driver takes the steps necessary to compensate for the shortfall in rest.

Clause 488 applies if an authorised officer reasonably believes the driver of a fatigue-regulated heavy vehicle is impaired by fatigue.

The officer may by notice require the driver to immediately stop work and not work again for a stated period. Under subclause 488(3) this must be a reasonable period having regard to the factors set out in that provision.

Where the officer has observed the driver driving in a way the officer believes on reasonable grounds is dangerous, the officer may also by notice require the driver to immediately stop being in control of the vehicle. If such a notice is given, the officer may under subclause 488(4) authorise somebody else to move the vehicle to a suitable rest place for fatigue-regulated heavy vehicles (as defined in clause 5) if that person is qualified and fit to do so.

Subclause 488(5) authorises the making of regulations to prescribe matters which an officer or a court must or may have regard to in determining whether a driver was impaired by fatigue for the purposes of this clause.

Clause 489 empowers an authorised officer by notice to require the driver to immediately stop work and not to work again for a stated period up to 24 hours.

The officer may exercise this power if the officer has asked the driver to produce his or her work diary under clause 512 and either the driver has failed to produce the work diary without a reasonable excuse or the driver produces a document the officer reasonably believes is not the work diary the driver is required to keep or the officer reasonably believes that the diary cannot be relied on as an accurate record.

Clause 490 creates an offence for a person given a notice under this Division to not comply with the notice, unless the person has a reasonable excuse. A maximum penalty of $9,000 applies.

Subclause 490(2) empowers an authorised officer who has given a notice under clause 486, 487, 488 to allow deferral of compliance for up to 1 hour if the officer reasonably believes it is necessary to allow the driver to drive to the nearest suitable rest place for fatigue-regulated heavy vehicles (as defined in clause 5) and it is reasonably safe to do so or if the officer reasonably believes it is necessary to allow the driver time to attend to or secure the load.

Part 9.4 Other powers

Division 1 Powers relating to equipment

Clause 491 states that an authorised officer or a person helping the officer may operate equipment at a place or a vehicle entered under Chapter 9 so as to read information held on a storage device such as a disc or tape where it is reasonably believed to be necessary for checking compliance with the Law. However, this can only be done if the person reasonably believes the operation can be carried out without damaging the equipment.

Clause 492 provides that an authorised officer or a person helping the officer may operate equipment at a place or a vehicle entered under Chapter 9 to examine or process a thing so as to determine whether it should be seized.

In the case of a heavy vehicle entered under clause 470, dealing with the power to enter and search a heavy vehicle for investigation purposes (defined in clause 5), the person may operate equipment in the vehicle to examine or process the thing or move it to another place for examination and processing if not practicable to do it where it is found or if the driver gives written consent.

However, these things can only be done if the person reasonably believes the equipment is suitable and the operation can be carried out without damaging the equipment or thing.

Division 2 Seizure and embargo notices

Subdivision 1 Power to seize

Clause 493 states that an authorised officer who enters a place the officer may enter under Chapter 9 without the consent of its occupier and without a warrant may seize a thing at the place if the officer reasonably believes the thing is evidence of an offence against this Law.

Clause 494 deals with the seizure of things from a place that the authorised officer has entered with the consent of the occupier or under a warrant.

If the officer has entered with the occupier's consent, the officer may seize a thing which he or she reasonably believes is evidence of an offence against the Law and its seizure is consistent with the purpose of entry as explained to the occupier when obtaining consent.

If the officer has entered under a warrant, the officer may seize the evidence for which the warrant was issued.

In addition, the officer may seize anything else at a place entered with the consent of the occupier or under a warrant if the officer reasonably believes the thing:

- is evidence of an offence against the Law and the seizure is necessary to prevent its hiding, loss or destruction or its use to continue or repeat the offence; or
- has just been used in committing an offence against the Law.

Clause 495 authorises seizure from a heavy vehicle entered under clause 470 of a thing that the authorised officer reasonably believes is evidence of an offence against the Law. Clause 470 deals with the power to enter and search a heavy vehicle for investigation purposes (defined in clause 5).

Clause 496 provides that where an authorised officer or a person helping the officer finds at a place or in a heavy vehicle a storage device such as a disc or tape containing which the officer reasonably believes is relevant to deciding whether the Law has been contravened, this clause authorises putting the information in documentary form and seizing the document, copying the information to another storage device and seizing that device or seizing the original storage device and any equipment by which its contents can be read if it is not practicable to put it into documentary form

or copy it to another storage device and it is reasonably believed that the device and equipment can be seized without damage.

Clause 497 deals with the situation where a thing or sample has been taken for examination under subclause 449(1)(c). Clause 449 deals with the general powers exercisable by an authorised officer who enters a place (other than a public place) for investigation purposes (as defined in clause 5).

If the officer, having examined the thing or sample, reasonably believes it to be evidence of an offence against the Law, he or she may seize it if such seizure would have been authorised by clauses 492 to 496 at the time it was taken had the officer formed the reasonable belief at that earlier time.

Clause 498 allows an authorised officer to seize a thing and exercise powers relating to it, even if a third party holds a lien or other security over it. However, the seizure does not affect the security holder's claim against a person other than the officer or a person helping the officer.

Subdivision 2 Powers to support seizure

Clause 499 empowers an authorised officer, to enable a thing to be seized, to require a person in control of it to take the thing to a stated reasonable place by a stated reasonable time and, if necessary, to remain there with it for a stated reasonable period.

The requirement must be made (or confirmed) in writing or, if not practicable, may be given orally and later confirmed in writing.

A person so required must comply unless there is a reasonable excuse. A maximum penalty of $6,000 applies.

Subdivision 3 Safeguards for seized things or samples

Clause 500 sets out procedures to be followed where a thing or sample has been seized under Chapter 9 relating to the giving of a receipt for the item seized. However, this is not required where it is impracticable or unreasonable because of the condition, nature and value of the thing or sample or, in the case of a thing that has been seized other than under

clause 497, the officer reasonably believes there is nobody apparently in possession of the thing or the thing has been abandoned. Clause 497 deals with the subsequent seizure of a thing that was taken for examination by an authorised officer who entered a place (other than a public place) for investigation purposes (as defined in clause 5).

Clause 501 states that until a thing that has been seized has been forfeited or returned, its owner must be allowed access to it to inspect it and (for documentation) to copy it unless that is not practicable or reasonable.

Clause 502 provides that a thing or sample that has been seized must generally be returned after 2 years unless it has been forfeited, court proceedings for an offence or any appeal from such proceedings are pending or the authorised officer who seized it believes that its continued retention is no longer required and necessary and it is lawful for the person to possess it.

Subdivision 4 Embargo notices

Clause 503 states that where something that has been seized cannot readily be removed, an authorised officer may issue an embargo notice prohibiting any dealing with the thing or any part of it without the written consent of the Regulator or an authorised officer. The clause sets out procedures relating to the issue of an embargo notice and its contents.

Clause 504 creates an offence for a person who knows an embargo notice relates to a thing to do anything the notice prohibits or instruct somebody else to do so. A maximum penalty of $8,000 applies.

In a proceeding for an offence relating to a charge that the defendant moved an embargoed thing or a part of it, it is a defence if the person proves that the embargoed thing or thing was moved to protect or preserve it or that the authorised officer who issued the notice was informed of the move and new location within 48 hours.

Subclause 504(3) requires a person served with an embargo notice to take all reasonable steps to stop any other person from doing something prohibited by the notice. A maximum penalty of $8,000 applies.

Subclause 504(4) provides that, despite any other Act or law, a sale, lease, transfer or other dealing with an embargoed thing is void.

Clause 505 enables an authorised officer to take reasonable action to restrict access to an embargoed thing, including sealing it or the entrance to the place where it is or (for equipment) rendering it inoperable.

The officer may also require a person he or she reasonably believes to be in control of the embargoed thing to take such steps. It is an offence not to comply without a reasonable excuse. A maximum penalty of $8,000 applies.

If access to an embargoed thing is restricted, it is an offence against subclause 505(4) to tamper with the thing or anything used to restrict access to the thing without an authorised officer's approval or a reasonable excuse. A maximum penalty of $8,000 applies.

If access to a place is restricted, it is an offence to enter that place or to tamper with anything used to restrict access to the place without an authorised officer's approval or a reasonable excuse. A maximum penalty of $8,000 applies.

Clause 506 sets out the procedures for withdrawing an embargo notice, together with restrictions on when such a notice may be withdrawn.

Division 3 Forfeiture and transfers

Clause 507 states that where a thing or sample has been taken for examination or a thing has been seized under Chapter 9 the Regulator may declare it to be forfeited to the Regulator if its owner cannot reasonably be found or the thing cannot reasonably be returned.

Clause 508 sets out the requirements for giving an information notice if the Regulator decides to forfeit a thing or sample. An information notice is defined in clause 5 as a notice stating the decision, the reasons for the decision and the review and appeal information (also defined in clause 5) for the decision.

Clause 509 specifies that a thing or sample become the property of the Regulator if it is forfeited or the owner and Regulator agree in writing to the transfer of ownership.

Clause 510 states that where a thing or sample becomes the property of the Regulator under clause 509, the Regulator may deal with it in the Regulator's discretion, including by destroying it or giving it away.

However, the Regulator may not deal with it in such a way as to prejudice the outcome of a review of the forfeiture decision or an appeal against the decision on review. Chapter 11 deals with reviews and appeals and the decision of the Regulator that a thing or sample is forfeited is a reviewable decision for the purposes of that Chapter.

If the Regulator sells the item, the Regulator may return the proceeds of sale to the person who owned it immediately before the forfeiture, after deducting the costs of the sale.

Division 4 Information-gathering powers

Clause 511 deals with the circumstances in which an authorised officer may require a person to state his or her name and address (including the person's residential and business address and, for a person temporarily in the jurisdiction, the person's residence in the jurisdiction).

The officer may do so:

- if the person is committing, or is found in circumstances to reasonably suspect the person has just committed, or there is information to reasonably suspect that the person has just committed, an offence against the Law; or
- if the person is reasonably suspected to be the driver of a heavy vehicle involved in an incident involving death, injury or damage to property; or
- if the person is reasonably suspected to be a responsible person for a heavy vehicle (as defined in clause 5) and may be able to help in an investigation of an offence against the Law involving the vehicle.

The officer may require the person to provide verification of the name or address if it would be reasonable to expect the person to be in possession of evidence to verify the name or address or otherwise be able to provide the verification.

Subclause 511(4) requires that officer give an offence warning for when making a requirement to state the person's name and address or to provide verification of the stated name or address. The term 'offence warning' is defined in clause 5 as a warning that it is an offence not to comply.

Failure to comply with either requirement without a reasonable excuse is an offence. A maximum penalty of $6,000 applies. However, a person will not be convicted of the offence if the basis for requiring the name and address was that the person was committing, or was found in circumstances to reasonably suspect the person had just committed, or there was information to reasonably suspect that the person had just committed, an offence against the Law if the person is not subsequently found guilty of committing that offence against the Law.

In addition, if a person is charged with a failure to state a business address it is a defence to prove that the person did not have a business address or the person's business address was not directly or indirectly connected with road transport involving heavy vehicles.

Clause 512 empowers an authorised officer to require, for compliance purposes (as defined in clause 5), the driver of a heavy vehicle to produce his or her driver licence or a document, device or thing he or she is required by the Law to keep in the driver's possession while driving. This power arises if the vehicle is stationary on a road, or if it is in or at a place entered under Part 9 or if it has been stopped under clause 461 (dealing with a direction to stop the vehicle to enable the exercise of other powers).

The driver must comply with the requirement unless there is a reasonable excuse. A maximum penalty of $4,500 applies.

Subclause 512(4) clarifies that it is not a reasonable excuse merely not to have the item in the driver's possession or to refuse on the ground of self-incrimination.

In the case of a document, device or other thing required to be in the driver's possession, the officer may take a copy of or extract from a document, produce an image or writing from an electronic document or take an extract from a device or other thing. The officer must return the item as soon as practicable after inspection or, if a copy, extract or image or writing is produced from it, as soon as practicable thereafter.

Where the officer reasonably believes the document, device or other thing required to be in the driver's possession may provide evidence of an offence against the Law, he or she may seize it.

The officer may require the driver to certify that a copy, extract or image or writing from a document or an entry in a document is a true copy. The driver must comply with the requirement unless there is a reasonable excuse. A maximum penalty of $4,500 applies.

The officer does not have to return a document, where he or she has asked the driver to certify the copy, extract or image or writing of, until the driver complies with the requirement.

Clause 513 states that an authorised officer may require a responsible person for a heavy vehicle (as defined in clause 5) to produce for inspection a document issued under the Law or document, device or other thing required to be kept under the Law or a heavy vehicle accreditation (as defined in clause 5) or other specified documentation in the person's possession or control that relates to the vehicle or the transport task. The person must comply with the requirement unless there is a reasonable excuse. A maximum penalty of $4,500 applies.

Subclause 513(4) clarifies that a claim of privilege against self-incrimination is not a reasonable excuse. Note, however, that clause 531 limits the use of particular documents or information in civil or criminal proceedings. The effect of that clause is that, if a responsible person who is an individual produces for inspection a document under clause 513 (other than a document issued to the person under the Law or a document, device or other thing required to be kept by the person under the Law or a heavy vehicle accreditation), the document and any evidence directly or indirectly derived from it is not admissible against the individual, except in a proceeding about the false or misleading nature of the document or anything in the document.

The officer may take a copy of or extract from a document, produce an image or writing from an electronic document or take an extract from a device or other thing. The officer must return the item as soon as practicable after inspection or, if a copy, extract or image or writing is produced from it, as soon as practicable thereafter.

Where the officer reasonably believes the document, device or other thing may provide evidence of an offence against the Law, he or she may seize it.

The officer may require the person responsible for keeping the document to certify that a copy, extract or image or writing from a document or an entry in a document is a true copy. The person must comply with the requirement unless there is a reasonable excuse. A maximum penalty of $4,500 applies.

The officer does not have to return a document, where he or she has asked the person to certify the copy, extract or image or writing of, until the person complies with the requirement.

Clause 514 empowers an authorised officer to, for compliance purposes (as defined in clause 5), require a responsible person for a heavy vehicle (as defined in clause 5) to provide information about the vehicle, its equipment or load and personal details (as defined in this clause) known to the person about any other responsible person for the vehicle.

The officer must give an offence warning for the requirement. The term 'offence warning' is defined in clause 5 as a warning that it is an offence not to comply.

It is an offence not to comply without a requirement without reasonable excuse. A maximum penalty of $4,500 applies.

Subclause 514(5) provides that it is a defence for the person not to prove that he or she did not know and could not reasonably be expected to know or to ascertain the information.

Subclause 514(6) clarifies that it is not a reasonable excuse to claim the privilege against self-incrimination. Note, however, that clause 531 limits the use of particular documents or information in civil or criminal proceedings. The effect of that clause is that, if a responsible person who is an individual provides information under clause 514, the information and any evidence directly or indirectly derived from it is not admissible against the individual, except in a proceeding about the false or misleading nature of the information or anything in the information.

Division 5 Improvement notices

Clause 515 states that the Division applies only where the authorised officer is authorised to issue improvement notices (through written authority from the relevant police commissioner in the case of an authorised officer who is a police officer or if stated in the instrument of appointment in the case of an authorised officer who is not a police officer).

Clause 516 provides that where an authorised officer reasonably believes that a person has contravened, is contravening, or is likely to contravene the Law, the officer may issue an improvement notice requiring the person to remedy the situation or the matters or activities occasioning it within the period stated in the notice. The provision sets out restrictions on the time period that can be stated and specifies the contents of the notice.

Clause 517 states that the recipient of an improvement notice must comply unless there is a reasonable excuse. A maximum penalty of $8,000 applies.

Subclause 517(2) provides a defence where the alleged contravention, likely contravention or matters or activities occasioning them was remedied within the time stated in the notice, although in a way different from that stated in the notice.

Subclause 517(3) clarifies that if a person is given an improvement notice because of a contravention of the Law, the person cannot be proceeded against for that contravention unless the person fails to comply with the improvement notice, without a reasonable excuse, or the improvement notice is revoked under clause 519.

Clause 518 sets out the procedures for amending an improvement notice. It also specifies that if the notice was issued by an authorised officer who is a police officer, it can be amended by another such officer and if the notice was issued by an authorised officer who is not a police officer, it can be amended by any authorised officer who is not a police officer.

Clause 519 deals with the revocation of an improvement notice. It specifies that a notice given by an authorised officer who is a police officer may be revoked by the relevant police commissioner or by a more senior police officer who has the relevant commissioner's authority to issue improvement notices. A notice given by an authorised officer who is not a police officer may be revoked by the Regulator.

Clause 520 states that an approved authorised officer may issue a clearance certificate stating that the requirements of an improvement notice have been satisfied. Subclause 520(3) defines the term 'approved authorised officer'. In the case of an improvement notice issued by an authorised officer who is a police officer, it means another police officer who has the relevant commissioner's authority to issue improvement notices. In the case of an improvement notice issued by an authorised officer who is not a police officer, it means any authorised officer who is not a police officer.

Division 6 Powers to require reasonable help

Clause 521 empowers an authorised officer to require reasonable help from an occupier of or a person at a place entered under Chapter 9 or from a driver of a heavy vehicle on a road where a power under Chapter 9 is being exercised.

When making such a requirement, the officer must give an offence warning. The term 'offence warning' is defined in clause 5 as a warning that it is an offence not to comply.

It is an offence not to comply with the requirement without reasonable excuse. A maximum penalty of $9,000 applies.

Subclause 521(6) specifies that it is a reasonable excuse for an individual if the assistance required is outside the scope of a individual's business or other activities or if self-incrimination might occur.

However, subclause 521(7) clarifies that it is not a reasonable excuse to claim the privilege against self-incrimination in relation to a document or information required to be kept or held by the individual under the Law. Note, however, that clause 531 limits the use of particular documents or information in civil or criminal proceedings. The effect of that clause is that, if an individual gives an officer a document or information in response to a requirement under clause 521, the document or information and any evidence directly or indirectly derived from it is not admissible against the individual, except in a proceeding about the false or misleading nature of the document or information or anything in the document or information.

Part 9.5 Provisions about exercise of powers

Division 1 Damage in exercising powers

Clause 522 provides that, in exercising a power under the Law, it is the responsibility of an authorised officer to take all reasonable steps to cause as little inconvenience and damage as possible. However, this does not confer a statutory right to compensation, other than as provided under Division 2. That Division provides for compensation for costs, damage or loss incurred because of the exercise of a power under Chapter 9.

Clause 523 states that where an authorised officer, in the course of exercising a power under the Law, or a person assisting the officer damages something, the officer must take all reasonable steps to restore the thing to its condition immediately before the damage.

Clause 524 sets out the procedures for giving notice of the damage and the contents of the notice, including a statement that a person may have a right to compensation under clause 525.

However, the provision does not apply if the officer reasonably believes that the thing has been restored to its condition immediately before the damage, or the damage is trivial, or there is nobody apparently in possession of the thing or it appears to have been abandoned.

Division 2 Compensation

Clause 525 states that a person may claim compensation from the Regulator if the person incurs costs, damage or loss because of the exercise, or purported exercise, of a power by or for an authorised officer, under Chapter 9.

However, subclause 525(2) specifies that this does not apply to costs, damage or loss incurred because of a lawful seizure or forfeiture.

The provision details procedures for claiming compensation and the matters a court must consider in determining whether to make a compensation order.

Subclause 535(6) authorises the making of by regulations to prescribe other matters the court may or must take into account when considering whether it is just to order compensation.

Division 3 Provision about exercise of particular powers

Clause 526 deals with the situation where an authorised officer directs the driver of a fatigue-regulated heavy vehicle to stop the vehicle for compliance purposes (as defined in clause 5). If the driver is detained for more than 5 minutes, he or she may request the officer to make a notation in the driver's work diary setting out specified details, including the length of time spent talking to the officer, and the officer must comply.

Part 9.6 Miscellaneous provisions

Division 1 Powers of regulator

Clause 527 states that the Regulator may exercise powers conferred on an authorised officer under the Law which do not require the physical presence of an officer.

Division 2 Other offences relating to authorised officers

Clause 528 creates an offence for a person without reasonable excuse to obstruct an authorised officer or somebody helping an authorised officer or an assistant who is exercising a power under clause 467 (dealing with moving an unattended heavy vehicle on a road to enable the exercise of another power), clause 468 (dealing with moving an unattended heavy vehicle on a road if it is causing or creating an imminent risk of serious harm to public safety, the environment or road infrastructure), or clause 471 (dealing with entering a vehicle and starting or stopping its engine to enable the exercise of another power). A maximum penalty of $8,000 applies.

The term 'obstruct' is defined in subclause 528(4) so as to include assault, hindrance, resistance and attempts or threats to obstruct.

Subclause 528(2) provides that, where a person has obstructed an authorised officer or a person helping an authorised officer and the officer decides to proceed to exercise the power, the officer must warn the person that it is an offence to cause an obstruction without a reasonable excuse and the officer considers the person's conduct an obstruction.

Subclause 528(3) provides that, where a person has obstructed an assistant who is exercising a power under clauses 467, 468 or 471 and the assistant decides to proceed to exercise the power, the warning must be given by the assistant.

Clause 529 states that a person must not impersonate an authorised officer. A maximum penalty of $10000 applies.

Division 3 Other provisions

Clause 530 makes it clear that an authorised officer may give multiple directions or requirements and may give further directions or requirements, whether under the 1 provision or 1 or more other provisions of Chapter 9.

Clause 531 provides that where an individual gives an authorised officer a document or information as required under clauses 513, 514 or 521 (respectively relating to the power to require production of specified documents, the power to require specified information and the power to require reasonable help), evidence of or derived from the document or information is not admissible in court proceedings against the individual to the extent that it tends to incriminate the individual or expose the individual to a penalty unless the proceedings relate to the false or misleading nature of the document or information or anything in the document or information.

Chapter 10 Sanctions and provisions about liability for offences

Part 10.1 Formal warnings

Clause 532 states that where an authorised officer is reasonably satisfied of a contravention of the Law (other than a substantial or sever risk breach of a mass, dimension or loading requirement), the authorised officer may give the individual a written warning. When the warning is given to the individual under this section, the person can not be proceeded against for an offence against this Law constituted by the contravention.

The warning is, however, subject to revocation within 21 days by an approved authorised officer (being a police officer who is an authorised officer and whose Commissioner has authorised them or any other authorised officer, to withdraw warnings), thereby exposing the offender to

the possibility of proceedings for the contravention for which the warning was given.

Part 10.2 Infringement penalties

Clause 533 authorises the Regulator to keep a record of infringement notices issued and paid. The recorded information may be used for research purposes, for proceeding related to the offence or if the information is relevant in deciding whether the individual is a systematic or persistent offender for the purpose of issuing a supervisory intervention order or prohibition order.

A payment of the penalty under an infringement notice is not generally a conviction but may be relevant to the exercise of a power or to some proceeding other than one for the offence which was the subject of the infringement.

Supervisory intervention orders and prohibition orders are respectively dealt with by Divisions 5 and 6 of Part 10.3 of this Chapter.

Part 10.3 Court sanctions

Division 1 General provisions

Clause 534 states that a court which finds a person guilty of an offence may impose any one or more of the penalties available under this Part for that offence.

Clause 535 sets out that in deciding penalty for the contravention of a mass, dimension or loading requirement, a court is to have regard for the magnitude of the risk assigned by the Law (which categorises breaches of its requirements as minor, substantial or severe) to the offence.

The provision explains how the breaches have been determined in terms of the magnitude of risk in relation to such factors as accelerated road wear,

unfair commercial advantage, traffic congestion, diminished public amenity and public safety.

Clause 536 states that where a court is satisfied that there has been a contravention of a mass, dimension or loading requirement, but is not satisfied as to the seriousness of the contravention against the offence categories provided in the Law, the court may treat the breach as being of a lesser categorised risk breach.

Division 2 Provisions about imposing fines

Clause 537 sets out that the maximum penalties specified in the Law, are generally those available to be imposed on individual offenders. Where a body corporate is involved, this provision allows the imposition of a penalty of up to five times the amount for an individual.

Clause 538 provides examples where penalties are graded by the Law according to whether the offence is a first, second or subsequent offence.

Subclause 538 (2) makes it clear that it is the conduct giving rise to the offence which is in view. A single act might for example, involve the commission by the same individual of two offences, but the two offences could not be counted separately for the purpose of determining whether either offence was a second or subsequent offence.

Division 3 Commercial benefits penalty orders

Clause 539 provides that a court which finds a individual guilty of an offence may, on application of the prosecution, impose a gross commercial benefits penalty of up to three times the actual or anticipated gross commercial benefit (disregarding in the calculations any costs, expenses or liabilities in obtaining that benefit), which the court estimates was or would have been but for intervention by an authorised officer, derived from the conduct giving rise to the offence.

Division 4 Cancelling or suspending registration

Clause 540 states that a court convicting an individual of an offence may cancel or suspend the registration of a heavy vehicle to which the offence relates and to which the individual convicted is the registered operator. In addition, the court may disqualify the person or an associate of the person from applying for registration for a specified time.

The term *associate* is defined in terms of family, employment, corporate or business relationships in provision 5 of the Law.

Provision is made to protect the rights of individuals who may not be present in court, by granting them opportunity to show cause why the court should not order the suspension or cancellation.

Division 5 Supervisory intervention orders

Clause 541 (Division 5) applies in situations where a court that convicts an individual of an offence against the Law, considers that the individual is or is likely to become a systematic or persistent offender, having regard to the circumstances of present convictions and other convictions of the individual.

Clause 542 maintains that in a case to which Division 5 applies, the court, on application of the prosecution or the Regulator, may make a supervisory intervention order requiring the convicted individual to:

- do stated things to improve the individual's compliance with the Law (such as appointing or training staff, obtaining expert advice or installing equipment); or
- implement stated practices, systems or procedures for monitoring or ensuring compliance; or
- give compliance reports to the Regulator and/or the court; or
- appoint a person to assist in improving compliance.

A supervisory intervention order may be made for up to 1 year and the convicted person must bear the cost of complying with it.

Clause 543 provides that the court may make a supervisory intervention order only if satisfied the order is capable of improving the convicted

person's ability or willingness to comply with the Law, having regard to the person's record of offences.

Clause 544 states that a court may suspend any other order it makes until the supervisory intervention order ends, unless the court is satisfied that there has been substantial failure to comply with the supervisory intervention order.

Clause 545 specifies that on application by the Regulator or a person to whom a supervisory intervention order applies, the court that made the order may amend or revoke the order if satisfied there has been a change in circumstances warranting the amendment or revocation.

Clause 546 provides that a person to whom a supervisory intervention order applies must comply with the order unless the person has a reasonable excuse. A maximum penalty of $10,000 applies.

Clause 547 states that if both a supervisory intervention order and a prohibition order (made under Division 6 apply to an individual, the former is ineffective until the prohibition order has ceased to apply.

Division 6 Prohibition orders

Clause 548 applies Division 6 in situations where a court that convicts a person of an offence against the Law, considers that the individual is or is likely to become a systematic or persistent offender, having regard to the circumstances of the present conviction and other convictions of the individual.

Clause 549 states that in a case to which Division 5 applies, the court, on application of the prosecution or the Regulator, may make a prohibition order prohibiting the convicted person from having a stated role or responsibility in road transport for up to 1 year. Subclause 549(2) provides that such a role or responsibility does not extend to holding a driver licence or having a vehicle registered or licensed under an Australian road law.

The term *Australian road law* is defined in provision 5 to mean the Law or another law regulating the use of vehicles on roads.

Clause 550 provides that a court may only make a prohibition order if satisfied that the convicted person should not continue to have the role or responsibility prohibited by the order and that, in the light of the person's previous offences, a supervisory intervention order would be inappropriate

Clause 551 maintains that on application by the Regulator or the person to whom a prohibition order applies, the court that made the order may amend or revoke the order if satisfied there has been a change in circumstances warranting the amendment or revocation.

Clause 552 states that a person to whom a prohibition order applies must comply with the order unless the person has a reasonable excuse. A maximum penalty of $10000 applies.

Division 7 Compensation orders

Clause 553 provides that a court that convicts a person of an offence against the Law may make a compensation order requiring the convicted person to pay the road manager an amount awarded by the court in respect of damage to road infrastructure resulting from the offence.

Clause 5 defines *road manager* as a public authority declared by law to be the manager of a particular road for the purposes of the Law. Subclause 553 (3) allows the order to be made in respect of damage which the court is satisfied on the balance of probability was caused or partly caused by the offence. Subclause 553 (4) provides that the order may be made at the point of conviction or later.

Clause 554 states that a wide discretion is conferred on the court in assessing compensation. Subclause 554 (2) however, sets out some matters, including evidence and other relevant considerations, to which it may have regard.

The evidence which a court may consider in some circumstances includes certificate evidence given by a person on behalf of a public authority which is a road manager. In these circumstances subclause 554(3) provides that it is to be presumed, unless otherwise proved, that the person who signs the certificate had authority to do so.

Clause 555 sets out further procedures attending the use of and challenges to, certificate evidence for which clause 554 provides.

Clause 556 requires that the compensation not:

- exceed the proportion of the loss attributable to the offender or any monetary limit in the court's civil jurisdiction, and

- be attributable to death, personal injury, the road manager's loss of income (as might happen where a toll booth was demolished) or loss to property that is not road infrastructure.

Clause 557 states that the court has the same power to award costs in relation to proceedings for the making of a compensation order as it has in relation to civil proceedings.

Clause 558 provides that compensation orders and associated costs orders can be enforced in the same way as priers for costs in civil proceedings before the court.

Clause 559 recognises that civil proceedings are sometimes brought to recover damages for loss associated with damage to road infrastructure and provides safeguards both for the road manager and the offender by preventing unjust enrichment arising from multiple proceedings but also preserving the road manager's right to institute civil proceedings.

Part 10.4 Provisions about liability

Division 1 Reasonable steps defence

Clause 560 states that many of the offence provisions of the Law exclude the mistake of facts defence (under which a person's belief in a state of facts which, if true, would have avoided liability). The Law however, provides a reasonable steps defence and this provision further explains the reasonable steps defence.

The reasonable steps defence is a defence for a person to show that they did not know and could not reasonably be expected to have known of a contravention of the Law and that they took all reasonable steps to prevent the contravention or could do nothing to prevent the contravention.

Division 2 Matters relating to reasonable steps

Clause 561 specifies that some of the offences the Law provides involve a person having failed to take all reasonable steps to do or avoid an outcome,

while other offences provide a reasonable steps defence as outlined in clause 560 (above). This provision states that Division 2 applies in both such situations.

Clause 562 states that a court is given a wide discretion in determining whether reasonable steps have been taken in regards to mass, dimension or loading offences. In addition, the provision sets out several factors that may be relevant to a court when determining whether a person took all reasonable steps.

Clause 563 applies if the operator or owner of a heavy vehicle seeks to rely on the reasonable steps defence in relation to a charge of contravening a mass requirement. The provision excludes from the reasonable steps defence, reliance on a *container weight declaration* (as defined in clause 5) which is known or ought reasonably to have been known, to be inaccurate.

Clause 564 confers a wide discretion on a court in determining reasonable steps in relation to a speeding offence under Chapter 5 or a fatigue management offence under Chapter 6. In addition, the clause sets out certain matters which the court may have regard for.

Clause 565 states that some of the provisions in Chapter 5 regarding speeding and in Chapter 6 regarding fatigue, impose extended liability on a party within the chain of responsibility, who would normally have some measure of control over the road transport task. This clause explains how the reasonable steps defence may apply to a party within the chain of responsibility if charged.

Clause 566 authorises the making of regulations about matters dealt with in clause 565 (above).

Clause 567 provides that compliance with a registered industry code of practice may sometimes be relevant to a reasonable steps defence. This clause sets out procedures to be followed in such a case. Clause 646 deals with the registration of industry codes of practice.

Clause 568 provides that the exercise of reasonable diligence is included within the concept of reasonable steps.

Division 3 Other defences

Clause 569 defines the term deficiency in relation to a heavy vehicle for purposes of Division 3. The term includes for example a vehicle being

unsafe, the contravention by a vehicle of a vehicle standard and a deficiency constituted by the absence of a particular thing required to be in, or displayed on, the vehicle.

Clause 570 provides a defence to an owner or operator of a heavy vehicle where it is proved that the person using the vehicle did so without lawful entitlement.

Clause 571 provides a defence to a driver charged with an offence involving a deficiency of the kind described in clause 569. The defence applies where the driver can prove that they did not cause the deficiency, did not know and could not reasonably know or be expected to find out about the deficiency and had no control or responsibility in respect of the deficiency.

Division 4 Other provisions about liability

Clause 572 states that in determining whether a person ought reasonably to have known something for the purposes of the Bill, a court is required, by clause 572, to consider relevant factors including the person's abilities, experience, expertise and knowledge.

Clause 573 sets out that where the Bill imposes liability on more than 1 person, proceedings against any one of the persons can be taken regardless of whether proceedings against the other person or persons have commenced or concluded, and regardless of the outcome of any such proceedings.

Clause 574 protects a person from being punished more than once for the same contravention of this Law or for the same offence.

Clause 575 states that in some provisions of the Bill, an offence involves both an act or omission and a particular state of mind (such as knowledge or intent) on the part of the alleged offender. In such a case, clause 574 provides that where somebody else (such as an employee or agent) was acting on behalf of the alleged offender, it is sufficient to prove the state of mind of that person rather than that of the offender.

Clause 576 provides that where a corporation commits an offence (whether or not it has been prosecuted or convicted of the offence), each executive officer is liable for the same offence. In such a case, the executive officer is only liable for the penalty applying to an individual, and not the 5 times

greater penalty applying to a corporation under clause 536. Subclause 576 (3) provides defences for executives to prove the exercising of reasonable diligence or that they were not in a position to influence the conduct of the corporation. In addition, subclause 576 (5) protects unpaid executives from liability under this provision.

Clause 5 defines *executive officer* as someone who is concerned in or takes part in the corporation's management.

Clause 577 applies the Law to an unincorporated local government authority in the same way that it applies to a body corporate.

Clause 578 subjects each of the individual partners to the same penalty as an individual where their partnership would otherwise be liable. Subclause 578 (3) provides a defence for a partner who can prove the exercise of reasonable diligence or that they were not in a position to influence the conduct of the partnership.

Clause 579 makes provision for the liability of those involved in the management of unincorporated bodies and is similar to the provision relating to partners in clause 578.

Clause 580 explains that references within the Chapter to the operator of a heavy vehicle, generally means the registered operator. However, special provision is made for cases of vehicles in combinations (where different operators may have responsibility for different vehicles comprising the combination) and for situations where the registered operator is not, at the relevant time, the actual operator of the vehicle.

Chapter 11 Reviews and appeals

Part 11.1 Preliminary

Clause 581 provides definitions for terms used in Chapter 11 which include public safety ground, relevant appeal body, relevant jurisdiction, reviewable decision, review application, review decision and reviewer.

Part 11.2 Internal review

Clause 582 outlines the timeframes and other requirements that apply when a dissatisfied person applies for an internal review. The clause provides that the dissatisfied person is entitled to get a statement of reasons for the original decision they are seeking to have reviewed, even if the provision under which the decision was made does not specify that the person must be given at statement of reasons. The clause further ensures that if a person is not given an information notice they may ask the Regulator to provide the statement of reasons.

This clause also defines 'dissatisfied person' to ensure there is clear identification of persons entitled to seek a review of a reviewable decision.

Clause 583 allows a person who applied for review of a reviewable decision of the Regulator or an authorised officer to apply to the relevant appeal body for a stay of the decision being reviewed. Reviewable decisions made on the basis of a public safety ground are excluded as it is not appropriate for decisions to amend or cancel an exemption or a mass or dimension authority for public safety reasons to be stayed. The clause outlines the timeframes and processes that apply to the application for a stay and makes it clear that the appeal body may stay the reviewable decision to secure the effectiveness of the review and any later appeal.

Clause 584 *r*equires the Regulator to refer applications for the review of decisions of a road manager to the road manager within 2 business days of receipt.

Clause 585 explains who may decide an internal review of a reviewable decision and how the review is to be conducted.

Clause 586 requires the reviewer to, within the prescribed period as defined in the clause, make a review decision to either confirm or amend the reviewable decision or to substitute another decision for the reviewable decision. The clause outlines the effect of each type of review decision. The clause further requires a road manager that is a reviewer to give the Regulator notice of the review decision and reasons.

Clause 587 requires the Regulator to give the applicant a review notice of the review decision as soon as practicable, or for decisions where the reviewable decision was made by a road manager, within 7 days of the reviewer giving the Regulator the notice of the decision. If the review decision is not the decision sought by the applicant, the review notice must

include the reasons for the decision and whether or not an appeal is available and, if so, how to appeal. This clause also provides, for review decisions relating to mass and dimension permits, that the review notice provide information to assist in calculating the relevant jurisdiction for any appeal if available. This clause also explains that if a reviewer fails to make a review decision in the prescribed time, the reviewable decision is taken to be confirmed.

Part 11.3 Appeals

Clause 588 allows a person to appeal a review decision of a reviewable decision made by the Regulator or an authorised officer to the relevant appeal body and outlines the timeframes that apply. This clause also provides that the filing of an appeal does not affect the review decision unless the review decision is stayed.

Clause 589 allows a person who has lodged an appeal against a review decision of a reviewable decision of the Regulator or an authorised officer to apply to the relevant appeal body for a stay. Reviewable decisions made on the basis of a public safety ground are excluded as it is not appropriate for decisions to amend or cancel an exemption or a mass or dimension authority for public safety reasons to be stayed. The clause outlines some timeframes and processes that apply to the application for a stay. The clause provides that the appeal body may stay the operation of the review decision to secure the effectiveness of the appeal and may give the stay on conditions and it may be amended or revoked.

Clause 590 outlines the powers of the appeal body including that the appeal is to be by way of rehearing and made unaffected by the review decision and on the material before the appeal body and any other evidence it accepts. The clause requires the appeal body to either: confirm the review decision, set aside the review decision and substitute another decision or return the matter to the person who made the reviewable decision with directions.

Clause 591 indicates the effect where the relevant appeal body substitutes a decision for a review decision on appeal.

Chapter 12 Administration

Part 12.1 Responsible Ministers

Clause 592 provides for the responsible Ministers as a group to be able to give directions to the Regulator about the policies to be applied by the Regulator. While the Regulator must comply with a direction of the responsible Ministers, the responsible Ministers are not able to direct the Regulator regarding a particular person, heavy vehicle or application or proceeding. This clause aims to ensure the Regulator is provided with strategic policy guidance without erosion of the Regulator's independence as a statutory authority entitled to make its own decisions.

Clause 593 allows a responsible Minister for a participating jurisdiction to refer matters relevant to the responsible Minister's jurisdiction to the Regulator for action or information. These referrals must be consistent with the directions or guidelines issued by the responsible Ministers as a group and cannot interfere with the independent exercise of the Regulator's functions under the law. The Regulator may also charge a reasonable fee based on the cost of dealing with the referral.

Clause 594 provides the responsible Ministers may approve guidelines about the following matters:

- Granting registration exemptions
- Granting vehicles standards exemptions
- Granting mass or dimension exemptions
- Granting Class 2 heavy vehicle authorisation
- Granting electronic recording system approvals
- Granting work and rest hour exemptions
- Granting work diary exemptions
- Granting or issuing exemptions, authorisations, permits or authorities or making declarations under national regulations.

The clause provides that guidelines are to be published in the Commonwealth Gazette and made available for inspection without charge at the office of the Regulator and on the Regulator's website.

Clause 595 lists other matters the responsible Ministers may approve including:

- A standard for sleeper berths
- Standards and business rules relating to fatigue, maintenance and mass management schemes
- A class of auditors for accreditation schemes.

The clause provides the approvals are to be published in the Commonwealth Gazette and made available for inspection without charge at the office of the Regulator and on the Regulator's website.

Clause 596 provides that the responsible Ministers, as a group, decide their procedures including voting requirements for making decisions under the law unless the law otherwise specifies. An example of when the law otherwise specifies a procedure is clause 603 which indicates the responsible Ministers' recommendation for appointment of Board members is to be unanimous.

This clause also clarifies that changes to the membership of the responsible Ministers do not invalidate prior decisions and that the Commonwealth responsible Minister (as defined in section 5) is not compelled by the law to participate in the exercise of functions by the responsible Ministers. The provision also clarifies that if the Commonwealth responsible Minister does decide not to participate it will not stop the remaining members of the responsible Ministers performing the functions, including making unanimous decisions.

Part 12.2 National Heavy Vehicle Regulator

Division 1 Establishment, functions and powers

Clause 597 establishes the National Heavy Vehicle Regulator. The clause further explains that the application of this Law by one or more State or Territory Parliaments has the effect of creating a single national Regulator

that is able to exercise its functions in one or across all participating jurisdictions. 'This Law' and 'participating jurisdiction' are defined in clause 5 to ensure that jurisdictions, that do not enact an Act to apply the Heavy Vehicle National Law but instead enact a law that substantially corresponds with the Heavy Vehicle National Law, or enact a law that is prescribed by a national regulation, are still participating jurisdictions with the laws being administered and enforced by the same national Regulator.

Clause 598 provides that the Regulator:

- is a body corporate with perpetual succession,
- has a common seal, and
- can sue and be sued in its own corporate name.

This clause also states that the Regulator represents the State.

Clause 599 provides for the general powers of the Regulator including its ability to enter contracts, acquire, hold, dispose of and deal with real and personal property and other things necessary or convenient in the performance of its functions. This clause also provides that the Regulator may enter into service agreements with participating jurisdictions. Service agreements may be for the jurisdiction to undertake activities for the Regulator to assist the Regulator in performing its functions, with examples including, but not limited to:

- provision of customer service facilities by staff in jurisdictions.
- provision of enforcement or vehicle inspection services

Service agreements may also be about the Regulator providing services for a jurisdiction, with examples including, but not limited to:

- collection of compulsory third party insurance by arrangement with a jurisdiction or insurance provider,
- collection of vehicle registration duty
- collection of other monies
- provision of additional enforcement services.

Clause 600 provides that the main function of the Regulator is to achieve the object of this law as provided in clause 3. The clause further describes a range of functions in more detail, but this list of functions is not to be considered limiting.

Clause 601 indicates that the Regulator is able to exercise its functions in cooperation with, or with the assistance of, a participating jurisdiction and the Commonwealth including government agencies such as departments or other entities of a participating jurisdiction and the Commonwealth. In particular, jurisdictions and the Commonwealth can share information with the Regulator to use in the exercise of its functions.

Clause 602 provides for the Regulator to be able to delegate its functions to:

- The chief executive of an entity or department of a participating jurisdiction or the Commonwealth
- The Regulator's Chief Executive Officer or another member of the Regulator's staff
- A person engaged as a contractor of the Regulator,
- Any other person the Regulator considers is appropriately qualified to exercise the function.

'Appropriately qualified' is defined in clause 5 and can include qualifications, experience or standing. An example of appropriate standing would include a person's position within a public service department of a participating jurisdiction.

As required under clause 30 of schedule 1 'Miscellaneous provision relating to interpretation', the Regulator's delegations will be by written instrument and may be limited or issued subject to conditions as the Regulator sees fit. A delegate may be allowed to further sub-delegate the function if permitted to do so through the written instrument of delegation.

This approach to delegation accommodates likely operational arrangements for the Regulator including service agreements with jurisdictions, other arrangements with contractors to provide services for the Regulator, but is flexible enough to accommodate other arrangements for the provision of services to the Regulator into the future.

Division 2 Governing board of Regulator

Subdivision 1 Establishment and functions

Clause 603 establishes the governing board for the Regulator. The clause further explains that the application of this Law by one or more State or Territory Parliaments has the effect of creating a single national Board that is able to exercise its functions in one or across all participating jurisdictions. 'This Law' and 'participating jurisdiction' are defined in clause 5 to ensure that even jurisdictions that do not enact an Act to apply the Heavy Vehicle National Law but instead enact a law that substantially corresponds with the Heavy Vehicle National Law or enact a law that is prescribed by a national regulation are still participating jurisdictions with the same single national Board governing the national Regulator.

Clause 604 provides for the appointment of the board members by the Queensland Minister on the unanimous recommendation of the responsible Ministers. The Queensland Minister is defined in clause 5 to mean the responsible Minister for Queensland. The Board will consist of 5 members with at least one member having expertise in transportation policy, at least one member having expertise in economics, law, accounting, social policy, or education and training, at least one member will have experience in managing risks to public safety arising from the use of vehicles on roads and at least one other member having expertise in financial management skills, business skills, administrative expertise or another skill considered relevant by the responsible Ministers. This clause aims to ensure the responsible Ministers have sufficient guidance and the flexibility to appoint the Board it considers appropriate to govern the Regulator in the exercise of its functions.

The clause also provides that the Queensland Minister will, in accordance with the unanimous recommendation of the responsible Ministers, also appoint the Chair and Deputy Chair for the Board from amongst the board members.

Clause 605 provides that the affairs of the Regulator are to be controlled by the Board. The Board's functions include, subject to directions of the responsible Ministers, deciding the policies of the Regulator and ensuring the Regulator performs its functions in a proper, efficient and effective way.

Subdivision 2 Members

Clause 606 provides for the term of office for Board members being up to three years as determined in their instrument of appointment. The clause allows for members to be reappointed if otherwise qualified.

Clause 607 provides for the responsible Ministers to determine the remuneration for Board members.

Clause 608 provides when the office of a Board member becomes vacant including allowing for the Queensland Minister to remove a Board member from office if the responsible Ministers recommend the removal based on the member engaging in misconduct or where they have failed to or are unable to properly exercise their functions as a Board member. This will allow a Board member to be removed for matters of incapacity, incompetence of misbehaviour. Under clause 595 the responsible Ministers will decide their own procedures including voting requirements for decisions to remove a Board member.

Clause 609 requires a Board member to give notice to the responsible Ministers of certain events including if they are convicted of an offence or have become bankrupt.

Clause 610 provides for an extension in term of office for up to six months for a Board member if their term of office has been completed but the member has not yet been reappointed or the vacancy has not otherwise been filled.

Clause 611 requires Board members to exercise their functions impartially and in the public interest.

Clause 612 requires Board members to disclose as soon as possible after they become aware of any direct or indirect pecuniary interests or other interests that may conflict with the exercise of the member's function as a Board member. The nature of the conflict must be recorded in a register of interests kept by the Board. Generally, after disclosure of the conflict of interest, the member must not be present during deliberations or participate in any matter that may be affected by the conflict of interest. However, if the member with the conflict is the Chair of the Board, the responsible Ministers may decide to allow the Chair to continue to participate in matters related to the conflict. Similarly, the clause provides for another Board member, the Board may decide to allow a member to participate despite the conflict of interest. If a Board member contravenes this section,

any decision of the Board is not invalidated, but the Board must reconsider the prior decision.

Subdivision 3 Meetings

Clause 613 provides for the general procedure for calling and conduct of meetings of the Board to be determined by the Board.

Clause 614 provides a quorum for a meeting of the Board is the majority of its members.

Clause 615 allows the chief executive officer of the Regulator to attend Board meetings and to participate in discussions. However, the chief executive officer is not entitled to vote. Also the chief executive officer must disclose any direct personal interest in matters before the Board and must not be present during consideration of these matters.

Clause 616 describes who will be the presiding member at a Board meeting and, if the voting is otherwise tied, this clause provides for the presiding member to have a second vote to decide the matter.

Clause 617 provides that a decision of the Board is a decision of the majority of votes cast at a meeting where there is a quorum present.

Clause 618 provides that the Chairperson or presiding member is to ensure minutes are taken of meetings.

Clause 619 provides for the Chairperson to call the first meeting. Subsequent calling of meetings will be governed by the procedures in developed under clause 613.

Clause 620 provides that a decision of the Board is not invalidated by a defect in a Board member's appointment.

Subdivision 4 Committees

Clause 621 allows the Board to establish committees to assist in the exercise of the Board's functions.

Division 3 Chief executive officer

Clause 622 provides for a chief executive officer for the Regulator to be appointed by the Board. The chief executive officer may be appointed for a maximum of five years, but may be reappointed. The chief executive officer is considered to be a member of the staff. As a member of staff, the remuneration and conditions of employment are governed by clause 624.

Clause 623 provides the chief executive officer is responsible for the day to day management of the Regulator and any other functions conferred by the Board.

Clause 624 allows the chief executive officer to delegate is functions, other than the power of delegation, to appropriately qualified members of the Regulator staff or chief executives of departments or other entities in participating jurisdictions.

Division 4 Staff

Clause 625 provides for the Regulator to employ staff, including the chief executive officer, on terms and conditions decided by the Regulator subject to any relevant industrial award or other agreement that applies to the staff.

Clause 626 allows staff from participating jurisdictions, the Commonwealth or local governments to be seconded to the Regulator.

Clause 627 allows the Regulator to engage contractors and consultants.

Part 12.3 Miscellaneous

Division 1 Finance

Clause 628 establishes the National Heavy Vehicle Regulator Fund to be administered by the Regulator. The Fund does not form part of the consolidated fund or consolidated account for any participating jurisdiction or the Commonwealth.

Clause 629 provides for the monies that are to be paid into the Fund including:

- Money appropriated by a Parliament for the purposes of the Fund
- Fees, charges, costs and expenses paid to or recovered by the Regulator under the Law
- Proceeds of investments of money in the Fund
- Subject to any declared trusts, all grants, gifts and donations made to the Regulator
- Money directed to be paid into the Fund by this Law or another law of a participating jurisdiction or the Commonwealth
- Other money or property received by the Regulator in connection with the exercise of its functions
- Money paid to the Regulator for the provision of services under a service agreement to a State or Territory.

Clause 630 provides that the moneys that may be paid out of the Fund include:

- Costs, expenses, discharging any liabilities incurred in the administration or enforcement of this Law, including payments to States and Territories for the provision of services under a service agreement
- Moneys directed to be paid out of the Fund under this Law
- Other payments recommended by the Regulator and approved by the responsible Ministers.

Under clause 596 the responsible Ministers will decide their own procedures including voting requirements for approval of payments out of the Fund under 630 (c).

Clause 631 allows the Regulator to make secure, low risk investments of moneys in the Fund.

Clause 632 requires the Regulator to:

- carry out its operations efficiently, effectively and economically
- keep proper books and records for all money it receives

- ensure expenditure from the Fund is for lawful purposes and reasonable value for money is received from money expended from the Fund
- have procedures that afford adequate safeguards for correctness, regularity and proprietary of payments from the Fund, receiving and accounting for payments into the Fund and prevention of fraud and mistake
- prepare financial statements in accordance with Australian Accounting Standards
- facilitate audits of financial statements including any additional audits required by the responsible Ministers.

Division 2 Reporting and planning arrangements

Clause 633 provides for the Regulator to prepare an annual report within 3 months of the end of each financial year. The clause outlines the matters to be included in the annual report and these may include matters prescribed under national regulations. The clause also provides for the tabling of the annual report in the Parliaments of each participating jurisdiction and the Commonwealth and that it is to be published on the Regulator's website.

Clause 634 provides that the responsible Ministers may direct the Regulator to provide other reports relating to the exercise of the Regulator's functions.

Clause 635 provides for the Regulator to annually provide a 3 year corporate plan to the responsible Ministers for approval. The corporate plan is to include the Regulator's objectives, how the Regulator intends achieving the objectives and the proposed budget of the Regulator. The clause also requires the Regulator to advise the responsible Ministers if it makes a significant amendment to the corporate plan or if an issue arises that would have a significant impact on implementing an objective.

Division 3 Oversight of the Regulator and Board

Clause 636 provides for the application of the following Queensland Acts: *Information Privacy Act 2009*, *Public Records Act 2002* and *Right to Information Act 2009* to guide the procedures and standards appropriate for privacy, recordkeeping and access to information for the Regulator and the Board. National regulations will be used to modify the Queensland Acts to ensure they can operate effectively for this scheme in all participating jurisdictions. In particular, the national regulations will be used to make necessary adjustments to cater for administrative arrangements.

Clause 637 provides that persons exercising functions under the Heavy Vehicle National Law must act honestly and with integrity, in good faith and with a reasonable degree of care, diligence and skill. This clause also provides for an offence for a person improperly using their position or information that comes to their knowledge through the exercise of their functions under this Law.

Clause 638 provides for the protection of personal liability for some of the person's exercising functions under the Law. For 'protected persons' liability instead attaches to the Regulator. 'Protected persons' has been defined to clarify who would be indemnified and who would not. Where the definition of 'protected person' in this clause refers to any other person exercising functions under this Law' it relates to functions of the Regulator and not other types of activities that may be mentioned in the law. For example, placing an electronic work diary label under clause 315 or a statement by an approved auditor under clause 409 may be activities identified in this law but it is not a function under this law.

Chapter 13 General

Part 13.1 General offences

Division 1 Offence about discrimination or victimisation

Clause 639 provides protection for employees or prospective employees from being dismissed, discriminated against or victimised because they have helped or provided information to a public authority or a law enforcement agency (both of which terms are defined in clause 5) or made a complaint about a contravention or alleged contravention of this Law. Such protection is afforded by the creation of offences by an employer or potential employer for such conduct, with a maximum penalty of $10000 applying to each offence.

There is a reverse onus of proof for an offence against this clause. If all the facts constituting the offence are proved other than the reason for the defendant's action, the defendant must prove that the defendant's action was not for the reason that the employee or prospective employee helped or gave information to a public authority or law enforcement agency or made a complaint.

Clause 640 establishes that if an employer is convicted of an offence against clause 639 the court may impose one or more of a range of orders as well as a penalty for the offence. For example, a court may order the employer to pay damages to or reinstate the employee.

It is an offence for a person against whom an order is made not to comply with the order, with a maximum penalty of $10000 applying.

Division 2 Offences about false or misleading information

Clause 641 creates offences for a person who knowingly provides false or misleading statements to an official (with a maximum penalty of $10000 applying) or who recklessly provides false or misleading statements to an official (with a maximum penalty of $8000 applying).

Clause 642 creates offences for a person who knowingly provides false or misleading documents to an official (with a maximum penalty of $10000 applying) or who recklessly provides false or misleading documents to an official (with a maximum penalty of $8000 applying).

Clause 643 creates an offence for a responsible person for a heavy vehicle (defined in clause 5) to give information to another responsible person for a heavy vehicle that they know or ought reasonably to know is false or misleading. A maximum penalty of $10000 applies. For example, a person who prepares the schedule for a heavy vehicle must not provide information to the driver of a heavy vehicle about the schedule that they know or reasonably ought to know is false or misleading.

Clause 644 creates a range of offences, each with a maximum penalty of $10000, for falsely representing that a current and properly issued heavy vehicle authority is held. A heavy vehicle authority is a heavy vehicle accreditation or an exemption, authorisation, permit or other authority issued under this law. For example, this clause creates an offence for a person to represent that they hold a mass or dimension exemption (permit) to operate a class 1 heavy vehicle or a class 3 heavy vehicle which does not comply with a dimension requirement vehicle and to operate the vehicle accordingly, if no such permit is held.

Part 13.2 Industry codes of practice

Clause 645 enables the Regulator to make guidelines for industry codes of practice that may be registered under the Law.

Clause 646 provides that the Regulator may register an industry code of practice prepared in accordance with the guidelines. In doing so the Regulator may make the registration subject to conditions. For example, the Regulator may register an industry code of practice on the condition that it is reviewed after a certain period. The Regulator may amend or add conditions or cancel the registration if a condition applying to the registration is contravened or the guidelines in force under clause 645 are changed and the registered code does not comply with the amended guidelines.

Part 13.3 Legal proceedings

Division 1 Proceedings

Clause 647 provides that a proceeding for an offence against this law is to be by way of a summary proceeding and establishes the maximum period for which a proceeding must start as being the later of 2 years after the commission of the offence or 1 year from when the offence comes to the complainant's knowledge but within 3 years after the commission of the offence.

The period provided for the commencement of proceedings is longer than normally allowed under the *Justices Act 1886* and is a potential breach of fundamental legislative principles.

Division 2 Evidence

Clause 648 provides that it is not necessary to prove the appointment of an official or the police commissioner.

Clause 649 provides that a signature purported to be the signature of an official or the police commissioner is evidence of the signature.

Clause 650 provides that in a proceeding for an offence against this Law, certain statements made in the complaint for the offence are evidence of the matters so stated. Examples of matters that may be stated include that at a stated time or during a stated period a vehicle or combination was a heavy vehicle, or that a person was the registered operator of a heavy vehicle, or that a stated location was or was part of a road or a road-related area.

This clause effectively shifts the evidential burden to the accused person and is a potential breach of fundamental legislative principles.

Clause 651 provides that a certificate issued by the Regulator may be used as evidence of the matter so stated in the certificate. Examples of matters that may be stated include that at a stated time or during a stated period a vehicle was or was not registered under this Law, or a stated exemption or authorisation under this Law applied or did not apply to the stated person or stated heavy vehicle.

This clause effectively shifts the evidential burden to the accused person and is a potential breach of fundamental legislative principles.

Clause 652 provides that a certificate issued by a road authority may be used as evidence of the matter so stated in the certificate. Examples of matters that may be stated include that at a stated time or during a stated period a vehicle was or was not registered or licensed under a law administered by the road authority or a stated location was or was not part of a road or road-related area.

This clause effectively shifts the evidential burden to the accused person and is a potential breach of fundamental legislative principles.

Clause 653 provides that a certificate issued by the Regulator stating that a matter appears in or has been worked out from a record kept by the Regulator or appears in or has been worked out from a record accessed by the Regulator for the administration or enforcement of this law, is evidence of the matter so stated.

This clause effectively shifts the evidential burden to the accused person and is a potential breach of fundamental legislative principles.

Clause 654 provides that a statement made by an authorised officer about the functioning of a weighing device or an intelligent transport system is evidence of the matter so stated.

This clause effectively shifts the evidential burden to the accused person and is a potential breach of fundamental legislative principles.

Clause 655 requires that a defendant who intends to challenge evidence provided by certificate under subclauses 651, 652, 653 or 654(1) must give notice of their intention to challenge and describes the way in which such notice is to be given.

Clause 656 provides that a record made by the operator of a weighbridge or weighing facility about the mass of a heavy vehicle or a component of a heavy vehicle is admissible in a proceeding under this Law and is evidence of the mass of the vehicle or component of the vehicle at the time it was weighed.

Clause 657 provides that a manufacturer may make a written statement as to a range of matters relating to:

- the mass rating for a heavy vehicle or a component of a heavy vehicle; or
- the performance rating for equipment used to restrain a load.

The manufacturer's statement is admissible in a proceeding and is evidence of the matter so stated.

Clause 658 provides that the maximum load capacity marked or printed on a tyre is evidence of the maximum load capacity for the tyre at cold inflation pressure decided by the manufacturer. It also provides for how mass can be determined if it is impracticable to work out the mass on each tyre in an axle or axle combination.

Clause 659 provides that transport documentation and journey documentation are admissible in a proceeding under this Law and provide evidence about certain matters, such as the status of parties to a transaction and the destination of a load.

Clause 660 provides that evidence obtained in relation to a vehicle is not affected merely because the vehicle is not a heavy vehicle.

Clause 661 provides that a certificate purporting to be signed by a person on behalf of TCA is evidence of a matter so stated in the certificate. Examples of matters that may be stated include that at a stated time or during a stated period an intelligent transport system was or was not approved, or that a person was or was not an intelligent access service provider.

A person signing a certificate is presumed, unless the contrary is proved, to have been authorised by TCA to sign the certificate on behalf of TCA. This effectively shifts the evidential burden to the accused person and is a potential breach of fundamental legislative principles.

Clause 662 provides that for a range of matters relating to the operation of an approved intelligent transport system there is a presumption that the system was operating properly at the time unless proved otherwise. Examples of matters relating to the operation of the system include the information generated, stored, displayed, recorded, analysed, reported or transmitted by the system are correct.

This clause also establishes that in a proceeding where it is established by contrary evidence that particular information was not a correct representation of the information generated by the system, the presumption continues to apply to the remaining information.

A defendant who intends to challenge a matter provided for under this clause must give notice of their intention to challenge and describes the way in which such notice is to be given.

This clause effectively shifts the evidential burden to the accused person and is a potential breach of fundamental legislative principles.

Clause 663 provides that a report purporting to be made by an intelligent transport system is presumed to have been properly made and correct and is admissible in a proceeding under this law as evidence of the matters stated in it.

However this does not apply to information that was manually entered into the system by the operator or driver of a heavy vehicle. For example if a driver enters information about the mass of a vehicle into the system, the mass stated in a report generated by the system is not evidence of the mass of the vehicle.

It also states that in a proceeding where it is established by contrary evidence that part of a report was not a correct representation of the information generated by the system, the presumption continues to apply to the remainder of the report.

There is a requirement that a defendant who intends to challenge a matter provided for under this clause must give notice of their intention to challenge and describes the way in which such notice is to be given.

This clause effectively shifts the evidential burden to the accused person and is a potential breach of fundamental legislative principles.

Clause 664 provides that documents purporting to be made by an approved electronic recording system constituting an electronic work diary or of which an electronic work diary is a part is admissible in a proceeding under this Law and is evidence of a matter stated in it.

Clause 665 provides that a statement made by a person involved with the use or maintenance of an approved electronic recording system constituting an electronic work diary or of which an electronic work diary is a part about the maintenance of the system is admissible in a proceeding under this Law and is evidence of the matters stated in it.

Part 13.4 Protected information

Clause 666 provides definitions of certain terms used in this Part of the Law including ‘authorised use’, ‘law enforcement agency’ and ‘protected information’.

The definition of authorised use provides for the authorisation, disclosure and use of personal information about a person in certain circumstances,

including without the person's consent. This could infringe on a person's right to privacy and is a potential breach of fundamental legislative principles.

Clause 667 places a duty of confidentiality on a person who is or has been exercising functions under this Law not to disclose protected information to another person. However, the Regulator may disclose information which confirms that a stated person is the registered operator of a stated heavy vehicle or disclosing registration details to the executor or administrator of a person's deceased estate. In addition, disclosure may be made to an entity for an authorised use or to, or with, the consent of the person to whom the information relates.

Clause 668 requires that protected information may only be used for certain purposes and outlines those purposes.

Part 13.5 National regulations

Clause 669 gives authority to the Governor of the State of Queensland acting with the advice of the Executive Council of Queensland to make regulations under this Law on the unanimous recommendation of the responsible Ministers.

This clause prescribes the matters which may be included in the regulations and establishes maximum penalties which may be imposed under the regulations. The maximum penalty for an individual is $4000 and is $50000 for a corporation, this is higher than that which is normally included in regulations.

Clause 670 provides that regulations made under this Law are to be published on the NSW legislation website.

It also provides that a regulation commences on a day or days to be specified in the regulation, being not earlier than the date it is published.

Part 13.6 Other

Clause 671 states that the Regulator may approve forms and it requires the Regulator to publish the approval of a form on its website.

Clause 672 provides that the maximum penalty for an offence or contravention of a requirement of the Law is the penalty stated at the end of the relevant provision.

Clause 673 sets out the procedure for serving documents required or permitted to be served on a person under this Law.

Clause 674 prescribes the procedure for serving documents required or permitted to be served under this Law by post. It establishes that service is taken to have been effected at the time at which the letter would normally be delivered in the ordinary course of post unless proved otherwise.

Clause 675 provides that the regulations may prescribe fees payable for an application under this Law or for the issue of a work diary for the driver of a fatigue-regulated heavy vehicle. It also enables the Regulator to set fees for the provision of a service in connection with the administration of this Law (other than the fees which must be prescribed in the regulations), and establishes that the fees set by the Regulator must be reasonable and not more than the reasonable cost of providing the service.

It is also a requirement for the Regulator to publish the fees it sets in the Commonwealth Gazette and on the Regulator's website.

Clause 676 states that a fee, charge or other amount payable under this Law is a debt due to the Regulator and may be recovered.

Clause 677 has the effect of voiding any contract or agreement to the extent to which it is contrary to the Law or purports to change the effect of a provision of the Law or requires the payment or reimbursement of a penalty payable by another person under the Law.

This clause does not limit parties from entering into a contract that imposes greater or more onerous obligations than those required by the Law.

Clause 678 provides that this Law does not affect any power a court, tribunal, or official has apart from the Law. This includes a power or obligation under another law to amend, suspend, cancel or otherwise deal with the registration of a heavy vehicle.

Chapter 14 Savings and transitional provisions

Clause 679 states that any jurisdiction that has signed the Inter-governmental Agreement on Heavy Vehicle Regulatory Reform may nominate a responsible Minister (as defined in clause 5) even though the jurisdiction is not yet a participating jurisdiction (as defined in clause 5) for the purposes of relevant provisions of the Law. Those are defined in this clause as the provisions relating to the function of responsible Ministers other than clause 593. Clause 593 allows a responsible Minister for a participating jurisdiction to refer a matter relevant to that jurisdiction to the Regulator for action or to ask the Regulator for information about the exercise of the Regulator's function as applied in that jurisdiction.

Sub-clause 679(3) specifies that this applies until the prescribed day for the jurisdiction. This is defined as the earlier of the participation day for the jurisdiction (defined in clause 5 as the day it becomes a participating jurisdiction) or 30 June 2014.

The effect of this clause is to ensure that responsible Ministers may participate in key decisions of the responsible Ministers as a group during the initial implementation of the scheme, including recommendations about appointment of the Board members and national regulations.

Clause 680 provides that if the responsible Ministers rely on clause 30 of Schedule 1 of the Law to appoint the members of the Board after enactment but before commencement of clause 604 and a provision conferring a function on the Board has not yet commenced, the members may meet and exercise such a function in the same way and subject to the same conditions as if the relevant provision had commenced. Clause 30 of Schedule 1 deals with the exercise of specified powers between the enactment of a provision and its commencement.

For example, the Board may appoint the chief executive officer for the Regulator even if clause 622 has not yet commenced. This will allow necessary operational matters to be in place for the simultaneous commencement of the Regulator and relevant provisions of the Law.

The clause also provides that in exercising functions, Board members are entitled to receive the remuneration and allowances specified under clause 607, even if that section has not commenced. However, in determining duration of office, a member's term does not start until clause 604

commences. In addition, the exercise of a function does not confer a right or impose a liability on a person before the relevant provision commences.

Schedule 1 Miscellaneous provisions relating to interpretation

Schedule 1 to the Law contains miscellaneous interpretation provisions of a kind usually contained in the Interpretation Act of a State or Territory. The schedule is necessary to provide consistency in interpretation across jurisdictions – see clause 10.

Schedule 2 Subject matter for conditions of mass or dimension authorities

Schedule 2 to the Law sets out the types of conditions the Regulator may consider appropriate to impose under a mass or dimension exemption (notice), or a mass or dimension (permit), or a class 2 heavy vehicle authorisation (permit) – see clauses 100, 106 and 127.

Schedule 3 Reviewable decisions

Schedule 2 to the Law sets out the decisions which are reviewable decisions for the purposes of Chapter 11 of the 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 clause 581.