

Transport and Other Legislation (Heavy Vehicle National Law) Amendment Bill 2013

Explanatory Notes

Short title

The short title is the *Transport and Other Legislation (Heavy Vehicle National Law) Amendment Act 2013*.

Policy objectives and the reasons for them

The Bill:

- makes consequential amendments to existing Queensland legislation to remove provisions that regulate heavy vehicles that will be covered by the Heavy Vehicle National Law (National Law) and to insert references to the National Law where relevant;
- makes a small number of changes to the application laws for the *Heavy Vehicle National Law Act 2012*, which are needed as a result of the *Heavy Vehicle National Law Amendment Act 2013* and to address some specific issues about the way the National Law will apply in Queensland; and
- contains transitional provisions specific to Queensland to clarify the operation of the general savings and transitional provision in the National Law. This is to ensure that there is a smooth transition from the regulation of heavy vehicle operations under the *Transport Operations (Road Use Management) Act 1995* to the National Law. The Bill also contains provisions which allow heavy vehicle registration to continue under Queensland legislation until the commencement of the registration chapter in the National Law.

These changes will take effect at the same time as the operational provisions of the National Law commence in Queensland. The operational provisions are scheduled to commence on 1 July 2013, subject to all States and Territories having passed the necessary application legislation through their respective Parliaments.

Achievement of policy objectives

Changes to application laws

There are a small number of changes to the application laws which are needed as a result of the *Heavy Vehicle National Law Amendment Act 2013*. For example, the provisions specify that under the National Law as adopted in Queensland:

- police officers may use force against persons in the circumstances provided for in the *Police Powers and Responsibilities Act 2000* (see s.491 of the National Law);
- authorised officers are able to use force against property (not persons) for certain powers in the National Law, such as moving heavy vehicles or gaining entry to places (see s.492 of the National Law);
- authorised officers are able to seize heavy vehicles, for example if they are evidence of an offence against the National Law (see s.552 of the National Law).

The Bill also inserts a provision in the application law allowing an authorised officer to require the driver of a heavy vehicle to produce their driver licence for compliance purposes. It also inserts provisions to require that the police commissioner's approval be obtained prior to a blue light being fitted to a heavy vehicle.

Transitional provisions

The Bill inserts new provisions in the Queensland application laws which provide for the operation of the general savings and transitional provision in the National Law. The amendments will ensure that the following are not affected by the commencement of the National Law in Queensland:

- the enforcement and prosecution of heavy vehicle offences that were committed under the *Transport Operations (Road Use Management) Act 1995*; and
- particular orders that were made under *Transport Operations (Road Use Management) Act 1995* and which are still in effect at the time of commencement of the National Law.

The Bill also inserts a declaratory regulation-making power that will enable examples of matters such as accreditations, permits, and exemptions that exist under the *Transport Operations (Road Use Management) Act 1995* to be identified in a regulation. This will put beyond doubt that these matters are intended to be transitioned to exist under the National Law via the general savings and transitional provision in the National Law.

Although chapter 2 of the National Law contains provisions dealing with registration of heavy vehicles, those provisions will not be proclaimed into force until the necessary national information and telecommunication infrastructure can be put in place by the National Heavy Vehicle Regulator (the Regulator) to manage national registration. Until that time, the *Transport Operations (Road Use Management – Vehicle Registration) Regulation 2010* will continue to apply to registration of heavy vehicles whose garage address is in Queensland. The Bill contains provisions to assist in interpreting the National Law (other than chapter 2) as it relates to registration. The effect of these provisions is that until the proclamation of chapter 2, registration of a heavy vehicle under a participating jurisdiction's existing registration laws is taken to be registration for purposes other than chapter 2.

Consequential amendments

The Bill principally makes consequential amendments to the *Transport Operations (Road Use Management) Act 1995*, but also amends the *Police Powers and Responsibilities Act 2000* and makes minor consequential amendments to other legislation.

Most aspects of heavy vehicle regulation will be dealt with under the National Law. However, since the inception of the project to create the Regulator, it has been acknowledged that some matters affecting heavy vehicles will continue to be dealt with in State-based legislation. All States and Territories will retain aspects of heavy vehicle regulation in their State-based laws in a similar way to Queensland.

The following matters will continue to be dealt with under the *Transport Operations (Road Use Management) Act 1995*:

- heavy vehicle driver licensing (including accreditation of driver trainers for heavy vehicle driver licensing);
- transport of dangerous goods;
- road rules and matters related to traffic movement; and
- drink driving and drug driving.

Regulation of the tow truck industry will continue under the *Tow Truck Act 1973*. Compulsory third party insurance for heavy vehicles will continue to be regulated under the *Motor Accident Insurance Act 1994*.

The *Transport Operations (Road Use Management – Accreditation and Other Provisions) Regulation 2005* will continue to be used to accredit:

- approved inspection stations, at which heavy vehicles are inspected to ensure that they meet vehicle standards;
- approved examiners, who conduct the inspections of heavy vehicles at approved inspection stations; and
- approved persons, who certify modifications to heavy vehicles.

Authorised officers appointed under the *Transport Operations (Road Use Management) Act 1995* (which includes all Queensland police officers) will continue to have enforcement powers for heavy vehicles in relation to the matters outlined above which are not covered by the National Law. For example, authorised officers will continue to have powers to stop, inspect and search heavy vehicles for matters associated with driver licensing, driver training, the transport of dangerous goods, requirements for tow trucks and compulsory third party insurance.

The Queensland Police Service will continue to enforce breaches of the Queensland Road Rules and drink and drug driving by drivers of heavy vehicles.

Alternative ways of achieving policy objectives

The Bill is required as a consequence of adoption of the National Law. There are no alternative ways to achieve the policy objectives.

Estimated cost for government implementation

The cost of implementation will be met from existing departmental budget allocations.

Consistency with fundamental legislative principles

The Bill is generally consistent with fundamental legislative principles. Potential breaches of fundamental legislative principles are outlined below.

Rights and liberties of individuals

Activation of provisions of the National Law concerning use of force against the person and use of force against property

Sections 491 and 492 of the National Law enable the Application Act of a jurisdiction to specify the extent to which:

- a police officer may use force against a person in the exercise of a function under the National Law;
- an authorised officer (who is not a police officer) may use force against property in the exercise of a function under the National Law.

This Bill inserts section 37 into the application provisions of the National Law dealing with these matters.

Section 37(1) authorises a police officer to use force against a person in the exercise of a function under the National Law if the *Police Powers and Responsibilities Act 2000* authorises the police officer to use force against the person. The *Police Powers and Responsibilities Act 2000* provides for the use of force by police officers for all matters relating to Queensland law. In general terms, section 615 of that Act authorises the use of reasonably necessary force, other than force likely to cause grievous bodily harm to a person or a person's death. Section 616 of the Act authorises the use of force likely to cause grievous bodily harm or a person's death in certain restricted circumstances. It is considered that the use of force in accordance with the *Police Powers and Responsibilities Act 2000* is consistent with existing Queensland government policy and that Act is the appropriate instrument setting out when force should be used by police officers. It also aligns the use of force under the National Law with the training and instruction provided to police officers in Queensland.

Section 37(2) enables authorised officers (who are not police officers) to use force against property for certain provisions of the National Law. In all cases, the use of force must be 'reasonable' or 'reasonably necessary'. The use of 'reasonable force' is required to enable appropriate enforcement of the National Law in certain circumstances, including using force to gain entry to premises, search premises, gain entry to a heavy vehicle to move it, and entering and searching a heavy vehicle for investigation purposes.

In most cases, the use of force by an authorised officer would be limited to matters such as opening unlocked doors, unlocked compartments or a vehicle's bonnet, or breaking the seal on a load of cargo to inspect it (the officer would replace the seal after the inspection). However, in limited circumstances, more serious use of force may be used where authorised by a warrant. Without this limited use of force, enforcement of the National Law could be impeded and offences could go undetected, especially where evidence is hidden or concealed in places where it is necessary to use force to obtain access. The current powers for authorised officers in relation to heavy vehicles under the *Transport Operations (Road Use Management) Act 1995* also include the power to use reasonable force in similar circumstances, so there is no underlying change in policy (see, for example, sections 28(5), 33B(6), 33C(7), 35(2)(a), 35C(2) and 39(1C)). Authorised officers receive appropriate training in all processes and procedures prior to appointment, including on-road enforcement powers and entering premises. It should also be noted that safeguards for the protection of property are built into the National Law. Section 578 of the National Law requires authorised officers to take reasonable steps to cause as little inconvenience and do as little damage as possible. Further, section 581 of the National Law provides for compensation to be paid for costs, damage or loss caused by unreasonable or unauthorised use of force.

Exercising a power under the TORUM Act following entry to the place under the National Law

The Bill amends the enforcement provisions of the *Transport Operations (Road Use Management) Act 1995* (TORUM Act), such as sections 30, 34, 35 and 40, to allow an authorised officer who is also an authorised officer under the National Law to exercise powers under the TORUM Act, even if entry to a place or vehicle was originally made under the National Law.

There are a number of reasons for this. As outlined above under the heading ‘Achievement of policy objectives’, a number of matters relating to heavy vehicles will remain regulated under the TORUM Act. If an authorised officer enters premises or a vehicle under the National Law, but finds evidence of an offence against the TORUM Act, the offence should not go undetected or unenforced simply because the original entry was made under a separate, but closely related, piece of legislation. Further, currently under the TORUM Act, once an authorised officer has entered premises or a vehicle for enforcing the TORUM Act, the officer can obtain evidence or enforce any aspect of that Act. This should continue to be the case under the new arrangements. Although the majority of heavy vehicle regulation has moved to the National Law, a number of matters are retained in the TORUM Act and it is important that these two pieces of legislation work seamlessly together to ensure appropriate enforcement can be undertaken. In addition, the amendments contain safeguards, such as the fact that where entry is by consent or a warrant, the authorised officer can only exercise their powers in accordance with the conditions of the consent or warrant. Without these amendments, enforcement of the TORUM Act could be impeded and offences affecting the safety of road users could go undetected.

Does the legislation reverse the onus of proof in criminal proceedings without adequate justification? – Legislative Standards Act 1992, section 4(3)(d)

The amendments to sections 30 and 31 of the application provisions of the National Law provide for certain evidence to be given by evidentiary certificates. These provisions potentially breach the fundamental legislative principle that legislation should not reverse the onus of proof in criminal proceedings without adequate justification.

The potential breach is considered justified because:

- the evidentiary certificates relate to specifying a heavy vehicle’s GVM (gross vehicle mass) or GCM (gross combination mass). These matters are generally non-contentious;
- if the matter is contentious in the context of a particular proceeding, the evidence is not conclusive and the defence can lead evidence in rebuttal;
- use of evidentiary certificates streamlines the administration of justice and provides cost savings through not having to call a witness for issues that are not in dispute.

Because of the intention to delay commencement of chapter 2 (Registration) of the National Law, the Bill also provides for a new section 63 (Supplementary certificates) to be included in the local application provisions to deal with proof of registration matters in the interim. These certificates are also about straightforward technical matters, and can be challenged.

Does the legislation provide appropriate protection against self-incrimination? – Legislative Standards Act 1992, section 4(3)(f)

Under proposed section 39 of the application provisions of the National Law, an authorised officer may require the driver of a heavy vehicle to produce their driver licence for

compliance purposes (namely, investigating a contravention or suspected contravention of the National Law or finding out whether the National Law is being complied with). Under proposed section 39(3)(b), it is not a reasonable excuse to fail to comply with the requirement if it might tend to incriminate the person or make the person liable to a penalty. Proposed section 39 is supplementary to section 568 of the National Law and like section 568 of the National Law, section 39 does not give any immunity in relation to use of a document produced as required.

It is considered appropriate that a person not have the privilege against self-incrimination because:

- the driver of a heavy vehicle is required to be licensed to drive the vehicle and as a professional driver, must carry their licence at all times;
- the driver licence is a document issued as part of a regulatory scheme to ensure appropriate licensing of drivers;
- production of the driver licence is necessary to secure compliance with the requirements of the National Law for drivers of heavy vehicles.

Does the legislation make rights and liberties, or obligations, dependent on administrative power without appropriate review? – Legislative Standards Act 1992, section 4(3)(a)(second limb).

Under proposed section 40 of the application provisions of the National Law, a vehicle may not be fitted with a blue light without the consent of the police commissioner. Similarly under proposed section 41, the written permission of the police commissioner is required before a vehicle can be fitted with a blue light.

The new provisions do not give a right to a review or appeal on the merits of a decision by the commissioner not to allow the use of a blue light. It is believed that the Queensland Police Service is the best entity to bear responsibility for the final decision of whether the use of a blue light on a particular vehicle is appropriate. These provisions also reflect current Queensland legislation which prohibits fitting of blue lights to all vehicles except with the written permission of the commissioner. There are no review or appeal rights under the existing legislation.

It is considered that the provisions can be justified based on a long standing approach to public safety concerns about the use of blue lights. That is, the provisions are justified as they are aimed at ensuring that blue lights are only used to clearly identify to other road users vehicles being used for law enforcement purposes or for an emergency.

Institution of Parliament

Declaratory regulation-making power

The Bill inserts new section 50 into the application provisions of the National Law. New section 50 contains a regulation-making power which allows a regulation to declare that the general savings and transitional provision in the National Law applies to specified Queensland matters or how it applies. It is believed that fundamental legislative principle considerations have been adequately taken into account for the following reasons:

- the purpose of the regulation-making power is to demonstrate the intended operation of the general savings and transitional provision in the National Law (see s. 748). It is

envisaged that the regulation will do this by identifying specific examples of more significant Queensland instruments intended to be covered by the operation of section 748. This is intended to give industry further assurance of the ongoing validity under the National Law of matters such as fatigue, mass, and maintenance accreditations, and permits or guidelines that have been issued under Queensland legislation and are in existence at the time of the commencement of the National Law;

- any regulation made under this head of power cannot have retrospective operation and also cannot operate to the disadvantage of any person.

Transitional regulation-making power

The Bill inserts new section 51 into the application provisions of the National Law. This section contains a transitional regulation-making power. The purpose of this section is to provide the necessary flexibility to deal with transitional issues which are specific to Queensland and which may arise subsequent to the commencement of the National Law. It is believed that any fundamental legislative principle considerations have been adequately taken into account for the following reasons:

- any regulation made under this head of power must declare that it is a transitional regulation;
- new section 51 and any regulations made under it expire after 2 years;
- while the head of power may authorise retrospective regulations to be made, these provisions must not operate in a manner prejudicial to or impose retrospective liabilities on private individuals or corporations.

Automatic increase of particular penalties

The Bill amends the *Police Powers and Responsibilities Act 2000* (PPR Act) to ensure that police officers can use their existing transport powers in the PPR Act for matters related to the National Law (for example, stopping, inspecting, entering and searching vehicles). If a person refuses to comply with a requirement of a police officer, an offence may be committed and the person may become liable to a penalty for the offence. In order to ensure that drivers and operators of heavy vehicles will be subject to the same penalties that they would be subject to under the National Law, section 53C has been inserted in the PPR Act to align the maximum penalties applying under the PPR Act with those that apply to equivalent offences under the National Law.

Under section 737 of the National Law, the maximum penalties for offences in the National Law are increased annually from 1 July 2014 in accordance with the method prescribed by the national regulations. The method prescribed by the national regulations must generally accord with increases in relevant inflation indexes or similar indexes (such as CPI). Although the annual increase of penalties is not current practice in Queensland, it is current practice in some other States and Territories. As a result, it was agreed to be included in the National Law.

One of the key principles underlying the National Law is to ensure that industry will be subject to “the same outcome in the same circumstances” in all States and Territories. A key area for implementing this is to ensure that nationally agreed penalties apply consistently in all States and Territories. The automatic increase of penalties under the PPR Act to align them with penalties applying under the National Law is to ensure this principle is upheld.

Under section 737 of the National Law, the Regulator must publish the penalty amounts applying from 1 July of each year on its website and these penalties will apply to the equivalent PPR Act penalties.

Consultation

Relevant government departments were consulted and are supportive of the Bill.

Consistency with legislation of other jurisdictions

Each jurisdiction will need to make consequential amendments to its existing legislation to remove provisions that regulate heavy vehicles that will be covered by the National Law.

Notes on provisions

Part 1 Preliminary

Clause 1 provides the short title of the Act.

Clause 2 provides that the Act commences on a day to be fixed by proclamation. The changes will take effect at the same time as the operational provisions of the National Law commence in Queensland. The operational provisions of the National Law are scheduled to commence on 1 July 2013, subject to all States and Territories having passed the necessary application legislation through their respective Parliaments.

Part 2 Amendment of Heavy Vehicle National Law Act 2012

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

Clause 4 inserts definitions into the local application provisions.

Clause 5 omits the definition of Magistrates Court.

Clause 6 inserts new subsections (2) and (3) into section 8. Subsection (2) provides that an offence prescribed in a regulation under the *State Penalties Enforcement Act 1999* as an infringement notice offence is an offence prescribed for section 591 of the National Law. If a person commits such an offence, the person is able to be issued with an infringement notice for the offence.

Subsection (3) provides that the *Transport Operations (Road Use Management) Act 1995* (TORUM Act) is specified for section 727(1), definition *relevant law* of the National Law. The purpose of this amendment is to allow the TORUM Act to specify when protected information as defined in section 727 of the National Law can be used under the TORUM Act.

Clause 7 amends section 10 to provide the meaning of ‘relevant tribunal or court’ for certain provisions of the National Law.

Clause 8 replaces section 18 and inserts definitions for part 4.

Clause 9 amends section 19 and omits definitions for division 2 which are now included in the definitions for part 4.

Clause 10 amends section 20 dealing with obtaining the consent of the commissioner for a mass or dimension exemption (notice) for section 118(1)(c) of the National Law. To remove any doubt, new subsection (3) declares that section 20 is a law that requires consultation with third parties for the purposes of section 167(2)(d) of the National Law. As a result, the expedited procedure for the road manager’s consent for renewal of a mass or dimension authority under section 167 does not apply if the commissioner’s consent is required under section 20.

Clause 11 amends section 21 dealing with obtaining the consent of the commissioner for a mass or dimension exemption (permit) for section 124(1)(c) of the National Law. To remove any doubt, new subsection (3) declares that section 21 is a law that requires consultation with

third parties for the purposes of section 167(2)(d) of the National Law. As a result, the expedited procedure for the road manager's consent for renewal of a mass or dimension authority under section 167 does not apply if the commissioner's consent is required under section 21.

Clause 12 amends section 30 to insert a new evidentiary provision to assist in proving a vehicle's GCM (gross combination mass) or GVM (gross vehicle mass). This provision allows the Regulator to issue a certificate which states that a vehicle's GCM or GVM was a stated amount and how that amount was identified. Note that until the commencement of chapter 2 of the National Law, the GCM or GVM of a vehicle will be determined under section 58 of the application law (as inserted by clause 18 of the Bill).

Clause 13 amends section 31 to insert a new evidentiary provision to assist in proving a vehicle's GCM (gross combination mass) or GVM (gross vehicle mass). This provision allows the road authority to issue a certificate which states that a vehicle's GCM or GVM was a stated amount and how that amount was identified. Note that until the commencement of chapter 2 of the National Law, the GCM or GVM of a vehicle will be determined under section 58 of the application law (as inserted by clause 18 of the Bill).

Clause 14 renumbers sections 37 and 38 as sections 43 and 44.

Clause 15 inserts new sections 37 to 42.

New section 37 specifies the circumstances in which police, authorised officers and persons assisting or acting under the direction or authority of an authorised officer are able to use force for the purposes of the National Law.

New section 37(1) provides that police officers are able to use force against a person in the exercise of functions under chapter 9 of the National Law if the *Police Powers and Responsibilities Act 2000* authorises the use of force.

New section 37(2) authorises the use of force against property by authorised officers (who are not also police officers) and persons assisting or acting under the direction or authority of an authorised officer for the provisions of the National Law specified in the subsection.

New section 38 provides that an authorised officer may seize a heavy vehicle, thing or thing of a class prescribed by the national regulations, in accordance with chapter 9 of the National Law, despite section 552(1).

New section 39 allows an authorised officer, for compliance purposes, to require the driver of a heavy vehicle to produce their driver licence for inspection. It creates an offence for a person not to comply with the requirement without a reasonable excuse. The requirement for a heavy vehicle driver to produce a driver licence is essential to enable effective enforcement of the National Law. As a driver licence is not a document issued under the National Law, a policy decision was made by the National Transport Commission that States and Territories should maintain this requirement in their jurisdictional laws, rather than include it in the National Law. A similar power currently exists in section 49 of the TORUM Act and this power will be retained for enforcement purposes under that Act. For consistency, the penalty for the offence has been set at 45 penalty units, which is the same level as the penalty for section 49.

New section 40 applies when an exemption must be obtained from the Regulator prior to a vehicle being authorised to be fitted with a blue light. The heavy vehicle standards as specified in a regulation made under the National Law will indicate when an exemption is required. Under the proposed heavy vehicle standards, if a heavy vehicle is a police vehicle

or, in general terms, an emergency vehicle, or a specified type of official vehicle, it can be fitted with a blue light. Other heavy vehicles, that is, most heavy vehicles, will not be permitted to have a blue light. However, it would be possible for the Regulator to give an exemption under the National Law by notice or permit to allow any of these other vehicles to be fitted with a blue light. Section 40 provides that prior to the granting of an exemption, the Regulator must first obtain the consent of the police commissioner. The section sets out the process that applies to the request for the commissioner's consent. The effect of subsection (5) is that the commissioner must not issue an exemption if it is likely to reduce the effectiveness of using blue lights to clearly identify to other road users, vehicles being used for law enforcement or in an emergency. Subsection (7) provides that the commissioner's consent may be granted on a public safety condition. The effect of subsections (9) and (10) is that the commissioner may ask the Regulator to amend or cancel the exemption if the use of the blue light is likely to adversely affect public safety. The purpose of this section and new section 41 below is to ensure that the effectiveness of using blue lights is not undermined through wide-spread usage.

New section 41 applies to a heavy vehicle other than a police vehicle that under the heavy vehicle standards may be fitted with a blue light without the need for an exemption to be obtained from the Regulator. As mentioned in the explanation for proposed new section 40, the proposed heavy vehicle standards provide that police vehicles, emergency type vehicles and a small number of types of official vehicles may be fitted with a blue light. New section 41 (2) has the effect of deeming that the heavy vehicle standards require that these emergency-type vehicles and specified official vehicles must have the written permission of the police commissioner prior to the fitting of a blue light to the vehicle. Subsection (3) continues the validity of any written permission that had been obtained from the police commissioner prior to the commencement of the National Law.

New section 42 (1)(a) ensures that the chief executive or an officer or employee of the department, as specified in the definition of 'Queensland information holder' in subsection (5), can give information to the Regulator. The information may include personal information or information given in confidence provided that it is held by the department and reasonably required by the Regulator for administering the National Law. Subsection (1)(b) provides that the Regulator may be given other assistance reasonably required by the Regulator to exercise a function under the law. Subsection (2) provides that to remove any doubt the information given to the Regulator will be 'protected information' as defined in the National Law and thereby subject to all the safeguards of the National Law. Subsection (3) provides that the section is not intended to effect the operation of section 660 of the National Law which also deals with the provision of information to the Regulator. Subsection (4) sets out a list of protections for a person acting under the authority of subsection (1).

Clause 16 inserts a new regulation-making power into section 43. This power will allow a Queensland regulation to modify the application of a regulation made under the National Law in Queensland.

Clause 17 inserts a new division 1 heading into part 6 which contains savings and transitional provisions. This heading is for the existing savings and transitional provision dealing with activities relevant to the Regulator.

Clause 18 inserts new divisions 2 to 4 into part 6.

Division 2 contains new sections 45 to 50 and deals with the operation of the general savings and transitional provision in section 748 of the National Law.

New section 45 inserts definitions for the division.

New section 46 clarifies that the division does not affect the operation of the general savings and transitional provision except to the extent expressly provided for in the division.

New section 47 deals with the investigation and enforcement of offences committed under a transport Act before commencement of the National Law in Queensland. Such an offence is defined in subsection (5) as a 'relevant offence'. Subsection (1) clarifies that to remove any doubt the general savings and transitional provision does not affect the operation of section 20 of the *Acts Interpretation Act 1954*. That is, the repeal or amendment of relevant provisions in a transport Act does not influence matters such as a penalty incurred in relation to an offence committed under that Act prior to commencement of the National Law in Queensland.

Subsection (2) provides that a transport Act, as in force before the commencement, continues to apply for the purposes of an offence committed before the commencement of the National Law. An example is provided to demonstrate the intended effect of the section.

Subsection (3) (a) ensures that a transport Act as in force before the commencement continues to have effect for all matters arising, in the investigation and enforcement of the relevant offence. Subsection (3)(b) puts beyond doubt that proceedings for the relevant offence or an associated offence may be started under the transport Act as in force before commencement. The effect of subsection (3)(c) is that any penalty infringement notice amount that applied before the commencement applies to the relevant offence and any associated offence.

The first example is to demonstrate that if a subsequent offence arises out of the investigation of the relevant offence, then this subsequent offence is to be dealt with under the transport Act in force before the commencement of the National Law.

The second example indicates that provisions such as those dealing with evidentiary certificates that are repealed on the commencement of the National Law will continue to apply in a proceeding for an offence against a transport Act alleged to have been committed before the commencement.

Subsection (4) clarifies that section 748(5) of the National Law applies to the prosecution of these offences. That is, once the prosecution has been completed it is to be treated as if it had occurred under the National Law.

New section 48 contains a provision dealing with 'TORUM orders' and a 'VSS notice'. These have been defined in subsection (6). In essence a TORUM order is a requirement, direction, authorisation, notice or order made or given under provisions specified in subsection (6) before commencement. These orders are those that have been given in relation to a heavy vehicle and immediately before the commencement of the National Law are still in force to require a person to do or not to do something. A VSS notice means a defect notice given before the commencement of the National Law in relation to a heavy vehicle and immediately before the commencement of the National Law the notice is still in force to require a person to do or not to do something.

Subsection (1) clarifies that the general savings and transitional provision in the National Law does not apply to a TORUM order or VSS notice. The effect of subsections (2) and (3) is that the TORUM order and the VSS notice respectively have continued validity after the commencement of the National Law. An example is provided to demonstrate the intended operation of the section. Subsection (4) (a) ensures that the TORUM Act as in force before the commencement continues to have effect for all matters arising, in the investigation and

enforcement of a 'relevant offence'. This is defined in subsection (6) to be an offence committed after the commencement of the National Law relating to noncompliance with a TORUM order or VSS notice. Subsection (4)(b) specifies that a proceeding for a relevant offence may be started under the TORUM Act as in force before the commencement. The effect of subsection (4)(c) is that any penalty infringement notice amount that applied before the commencement applies to the relevant offence.

Subsection (5) clarifies that section 748(5) of the National Law applies to the prosecution of these offences. That is, once the prosecution has been completed it is to be treated as if it had occurred under the National Law

New section 49 ensures the continuation of a work diary exemption granted under the *Transport Operation (Road Use Management—Fatigue Management) Regulation 2008* based on an inadequate English literacy ground. This transitional provision is required as these exemptions will not be transitioned over under the general savings and transitional provision. This is because the National Law only allows work diary exemptions based on literacy grounds to be issued to drivers working under standard hours. Currently in Queensland however, these work diary exemptions based on literacy grounds can be issued to those who do not operate under standard hours. This new section will transition over these non standard hours work diary exemptions to the National Law, but only for the remaining life of the exemption. (Other work diary exemptions will transition over to the National Law under the general transitional and savings provision).

New section 50 is a regulation-making power, to allow a regulation to specify examples of matters intended to be covered by the general savings and transitional provision in the National Law. This would allow for example, some of the more significant matters such as mass, maintenance, and fatigue accreditations, mass, dimension and vehicle standards permits and guidelines to be specifically identified in the regulation. This is intended to put beyond doubt that these matters have continued validity under the National Law.

New division 3 contains new sections 51 and 52 and deals with general transitional matters.

New section 51 is a regulation-making power to allow Queensland specific transitional matters to be included in a regulation.

New section 52 allows legislative references in documents to be updated to refer to the National Law where the context permits.

New division 4 contains sections 53 to 63 and contains interim registration provisions. These are provisions necessary until the commencement of chapter 2 of the National Law.

New section 53 contains definitions for division 4.

New section 54 explains that the purpose of the division is to provide for the interpretation of the National Law other than chapter 2 having regard to the delayed commencement of that chapter.

New section 55 provides that sections 4(b) and 6(2) of the National Law are excluded from the operation of the division. This is because the context in which the word 'registration' is used in these sections means that no interim provisions are required.

New sections 56 and 57 assign an interim meaning to registration and related terms as used in the identified sections. In general this is to mean registration under Queensland's registration regulation or a corresponding registration law of a participating jurisdiction as the context permits.

New section 58 assigns an interim meaning to GVM and GCM. These interim meanings are required since sections 56 and 57 of the National Law which contain important elements of the definitions of GVM and GCM in section 5 of the National Law are contained in chapter 2. Until chapter 2 commences, these definitions will be as defined under Queensland legislation.

New section 59 assigns alternative drafting for section 60 of the National Law to cater for the fact that knowledge of a vehicle's non compliance with a heavy vehicle standard has to be by participating jurisdictions' registration authorities rather than the Regulator until the commencement of chapter 2.

New section 60 provides that section 522(6) of the National Law will not apply until the commencement of chapter 2. This is because Queensland does not suspend heavy vehicle registrations. However the section also provides that a ground exists to cancel a heavy vehicle's registration under the Queensland registration regulation if there is a failure to produce or allow the heavy vehicle to be inspected as required under section 522 of the National Law.

New section 61 (1) sets out what is to be included in a defect notice for the purpose of section 527(1)(i) of the National Law. This subsection deals with the action that may be taken if the notice is not cleared by the Regulator.

New section 61(2) provides that for the purpose of section 598, the court can cancel a registration under the Queensland regulation. Since Queensland does not suspend vehicle registrations, the court will only be able to make an order to cancel the registration.

New section 62 provides authorisation for the regulatory component to be paid into the National Heavy Vehicle Regulator Fund, until the commencement of chapter 2 of the National Law. The regulatory component is to be prescribed in the regulations made under the National Law.

New section 63 creates some additional evidentiary certificate provisions that relate to registration matters. These certificates may be issued by the road authority in Queensland in the prosecution of offences in the period prior to the commencement of chapter 2 of the National Law.

Part 3 Amendment of Police Powers and Responsibilities Act 2000

Clause 19 provides that this part amends the *Police Powers and Responsibilities Act 2000* (PPR Act). The amendments in this part will allow police officers to use their existing transport powers for matters related to the National Law. In order to ensure that drivers and operators of heavy vehicles will be subject to the same penalties that they would be subject to under the National Law, specific penalty provisions for matters related to the National Law have been included and the penalty amount is the same that applies under the National Law.

Clause 20 inserts a new section 53C. The purpose of section 53C is to align the maximum penalties that apply under the PPR Act with those that apply under the National Law where the offence under the PPR Act:

- relates to compliance with or enforcement of the National Law; and
- is equivalent to an offence under the National Law.

Section 53C(1) provides that the section applies where a penalty for an offence states that the penalty is the corresponding HVNL(Q) penalty amount.

Section 53C(2) provides that the penalty for a relevant PP&R provision is the dollar amount of the penalty for an offence against the relevant PP&R provision's corresponding HVNL(Q) provision. If the penalty for a corresponding HVNL(Q) provision is increased under section 737 of the National Law, the Regulator must publish the new penalty on the Regulator's website before 1 July each year. The increased penalty will be the corresponding HVNL(Q) penalty amount for the relevant PP&R provision.

Section 53C(3) sets out the corresponding HVNL(Q) provision for each relevant PP&R provision.

Clause 21 amends section 54 dealing with powers for police officers (or someone authorised by police) to inquire into whether an offence against the TORUM Act has been committed. Section 54 is amended so that police officers (or someone authorised by police) have the same power to inquire into whether an offence against the National Law has been committed.

Clause 22 amends section 55. This section provides powers for police officers to require information from certain persons to help identify the person in control of a vehicle or tram alleged or reasonably suspected to be involved in an offence against the TORUM Act. Section 55 is amended so that police officers have the same power where there is an allegation or suspicion of an offence against the National Law.

Clause 23 amends section 58 dealing with the circumstances in which police officers can require a person to produce their driver licence. Section 58 is amended so that police officers can require a person to produce their driver licence for matters associated with the National Law.

Clause 24 amends section 60 dealing with the 'prescribed purposes' for which police officers may require a person to stop a vehicle. Section 60(3)(a) and (b) are amended so that a 'prescribed purpose' includes enforcing the National Law and to check compliance with the National Law. This ensures that police officers have the power to require a person to stop a vehicle for enforcing and checking compliance with the National Law.

The penalty in section 60(2)(b) is amended to align the penalty amount with the penalty applying under section 513(4) of the National Law. The penalty amount is worked out in accordance with section 53C.

The penalty in section 60(2)(c) is amended to align the penalty amount with the penalty applying under section 32(5) of the TORUM Act.

Clause 25 amends section 61 dealing with the power for a police officer to require a vehicle to be moved to allow the officer to exercise a power for a 'prescribed purpose'. As 'prescribed purpose' under section 60 is amended as outlined above, police officers will have powers under section 61 to require a vehicle to be moved to allow officers to enforce and check compliance with the National Law. Some minor changes to section 61 are made to make it more consistent with section 33 of the TORUM Act. For example, the distance a police officer may require a vehicle to be moved to enable the officer to exercise a power, has been increased from 25km to 30km.

The penalty in section 61(5)(b) is amended to align the penalty amount with the penalty applying under section 516(3) of the National Law. The penalty amount is worked out in accordance with section 53C. Note that section 61(5) is being renumbered as section 61(4).

The penalty in section 61(5)(c) is amended to align the penalty amount with the penalty applying under section 33(4)(b) of the TORUM Act.

Clause 26 amends the maximum penalty in section 62(2)(a) to align the penalty amount with the penalty applying under section 514(3) of the National Law. The penalty amount is worked out in accordance with section 53C.

The penalty in section 62(2)(b) is amended to align the penalty amount with the penalty applying under section 39B(2) of the TORUM Act.

Clause 27 amends section 63 dealing with the power for police officers to inspect or test a vehicle to check whether it complies with a transport Act. Section 63 is amended so that police officers have the same power to check whether a vehicle complies with the National Law.

Clause 28 amends section 64 dealing with the circumstances under which police officers can enter vehicles and after entry, powers to enforce a transport Act, including inspecting and searching the vehicle. Section 64 is amended so that police officers can enter vehicles for matters associated with the National Law and after entry, they have the same powers to enforce the National Law as they have for a transport Act, including inspecting and searching the vehicle. Some other minor changes are made to section 64 to make it more consistent with section 35 of the TORUM Act.

Clause 29 amends section 65 dealing with the power for police officers to require a vehicle to be inspected to ensure it complies with a transport Act. Section 65 is amended so that police officers have the same power to require a vehicle to be inspected to ensure it complies with the National Law.

The penalty in section 65(3)(a) is amended to align the penalty amount with the penalty applying under section 522(5) of the National Law. The penalty amount is worked out in accordance with section 53C.

Clause 30 amends section 66 dealing with the power for police officers to issue a defect notice prohibiting the use of a vehicle until the vehicle is repaired or otherwise complies with the TORUM Act. Section 66 is amended so that police officers have the same power to issue a defect notice prohibiting the use of a heavy vehicle until it is repaired or otherwise complies with the National Law.

The penalties in sections 66(3)(b), 66(5)(a) and 66(6)(a) are amended to align with the penalty amounts applying under sections 529, 526(4) and 528(3) of the National Law, respectively. The penalty amount is worked out in accordance with section 53C.

The penalty in section 66(3)(c) is amended to align with the penalty amount applying under section 37(2)(b) of the TORUM Act.

Clause 31 amends section 67 dealing with the power for a police officer to prohibit a person driving a vehicle if the officer reasonably suspects the person would contravene the TORUM Act by driving the vehicle. Section 67 is amended so that it also applies where a vehicle is stopped under the National Law.

The penalty in section 67(3)(b) is amended to align with the penalty amount applying under section 38(3)(b) of the TORUM Act.

Clause 32 amends section 68 dealing with the power for police officers to require a person in control of a vehicle to do or not do anything to enable the officer to safely exercise powers under a transport Act or for other safety reasons. Section 68 is amended so that police

officers have the same power to ensure the officer can safely exercise powers under the National Law.

The penalty in section 68(3)(b) is amended to align the penalty amount with the penalty applying under section 577(4) of the National Law. The penalty amount is worked out in accordance with section 53C.

The penalty in section 68(3)(c) is amended to align the penalty amount with the penalty applying under section 39(3)(b) of the TORUM Act.

Clause 33 amends section 69A which defines type 1 vehicle related offences and type 2 vehicle related offences for the purpose of the vehicle impoundment provisions. The definition of ‘type 2 vehicle related offence’ includes an offence against the TORUM Act prescribed under a regulation involving a vehicle being driven in contravention of certain defect notices. Section 69A is amended so that a ‘type 2 vehicle related offence’ also includes an offence against the National Law prescribed under a regulation involving a vehicle being driven in contravention of certain defect notices issued under the National Law.

Clause 34 amends section 125 which defines ‘prescribed circumstances’ for the purposes of section 124. Under section 124, police officers have powers to seize or move vehicles, loads or other things. Section 125(1)(d) is being amended so that the ‘prescribed circumstances’ include reasonable suspicion by a police officer that a vehicle or load has been left in circumstances that are an offence against the National Law and the person in control of the vehicle or load cannot be easily located or fails to comply with a police officer’s direction to move the vehicle or load immediately.

Clause 35 amends section 382 dealing with the procedure for issuing a notice to appear. Generally, a notice to appear must be served personally. However, for offences against the TORUM Act, it may be served by registered post in accordance with section 56(2)(a) or (b) of the *Justices Act 1886*. These sections authorise service of notices to appear in certain circumstances at an address stated in a driver licence or a current certificate of registration of a motor vehicle. Section 382 is being amended so that service of notices to appear for offences against the National Law may be served in the same way as notices to appear for offences against the TORUM Act.

Clause 36 replaces the definition of ‘heavy vehicle’ in the dictionary in schedule 6 so that it refers to the definition under the National Law. It also inserts new definitions of ‘HVNL(Q) compliance’ and ‘HVNL(Q) enforcement’.

Part 4 Amendment of Transport Operations (Road Use Management) Act 1995

Clause 37 provides that this part amends the *Transport Operations (Road Use Management) Act 1995* (TORUM Act).

Clause 38 amends section 3 to acknowledge that the TORUM Act’s objectives and legislative scheme are limited with respect to heavy vehicles to the extent that the *Heavy Vehicle National Law (Queensland)* applies.

Clause 39 amends section 15 so that alternative compliance schemes under the TORUM Act only apply to private vehicles and prescribed vehicles. The Bill contains a new definition of

‘prescribed vehicle’ to replace the term ‘prescribed heavy vehicle’. Alternative compliance schemes for heavy vehicles are dealt with under chapter 8 of the National Law.

Clause 40 amends the definition of ‘AIS approval’ in section 17C(6) to refer to heavy vehicles being inspected for compliance with heavy vehicle standards provided for under a regulation made under the National Law. The provision uses the defined term ‘national regulations (HVNL)’ to refer to a regulation made under the National Law.

Clause 41 amends section 18 which lists the grounds for amending, suspending or cancelling an approval under the Act.

Section 18(1)(c)(i) is amended so that an offence against the National Law will be a ground for amending, suspending or cancelling an approval under the TORUM Act. The offences in the National Law relating to fatigue management, mass, dimension and loading and vehicle standards were all previously contained in the TORUM Act and were grounds for amending, suspending or cancelling an approval. The offences remain relevant for considering whether a person is an appropriate person to hold an approval. For example, offences against the National Law could be relevant to considering whether a person should continue to hold an accreditation as a driver trainer, a pilot vehicle driver, an escort vehicle driver or the holder of a dangerous goods driver licence.

It should be noted that the provision also refers to a law of another State that corresponds to a provision of the National Law. The reason for inclusion of ‘corresponding laws’ is in case a State or Territory does not adopt the National Law or makes changes to the National Law during its adoption.

Section 18(1)(d) is amended so that an offence against the National Law (or a corresponding law) will be a ground for amending, suspending or cancelling a heavy vehicle’s registration.

Section 18(1)(i) is amended to remove references to grounds for amending, suspending or cancelling accreditations and exemptions granted under a fatigue management regulation. All fatigue accreditations and exemptions will be dealt with exclusively under the National Law.

Section 18(1)(j) is omitted as it relates to grounds for amending, suspending or cancelling exemptions granted under a fatigue management regulation. All fatigue exemptions will be dealt with exclusively under the National Law.

Clause 42 omits section 19B dealing with the amendment, suspension and cancellation of ‘corresponding approvals’. Corresponding approvals are those that have effect under sections 168A or 168AA and only relate to fatigue management matters which will be dealt with exclusively under the National Law. Sections 168A and 168AA are being removed from the TORUM Act. As such, section 19B has no further effect and can be deleted.

Clause 43 amends section 26A dealing with an authorised officer’s power to enter places of business. Section 26A is amended so that it no longer applies to places connected with heavy vehicles but continues to apply to places connected with the transport of dangerous goods and prescribed dangerous goods vehicles. Authorised officers under the National Law have similar powers to enter places of business connected with heavy vehicles under the National Law.

Clause 44 amends section 26B dealing with an authorised officer’s power to enter places connected with incidents involving death, injury or property damage. Section 26B is amended so that it no longer applies to places connected with heavy vehicles but continues to apply to places connected with the transport of dangerous goods and prescribed dangerous

goods vehicles. Authorised officers under the National Law have similar powers to enter places connected with heavy vehicles for incidents involving death, injury or property damage under the National Law.

Clause 45 amends section 27 dealing with the procedure for an authorised officer to obtain consent to entry to a place. Section 27 is amended to align the requirements for the consent acknowledgement closely with those that apply under the National Law. This will assist where a place is entered with consent by an authorised officer under the TORUM Act who is also an authorised officer under the National Law (see amendments to section 30 below).

Clause 46 amends section 30 dealing with an authorised officer's powers to monitor or enforce compliance with the TORUM Act after entering a place. Section 30 will continue to apply to places entered under the TORUM Act. However, it is being amended so that it also allows an authorised officer to monitor or enforce compliance with the TORUM Act in a place the authorised officer originally entered under the National Law as an authorised officer under that Law.

The penalty in subsection (3) is consolidated into a single penalty that applies to all breaches of the subsection.

Subsections (7) and (8) are inserted to clarify that where entry by consent is subject to conditions or entry is by warrant, whether under the TORUM Act or the National Law, the entry is subject to the conditions of the consent or the terms of the warrant, as the case may be.

Clause 47 amends section 30A dealing with an authorised officer's powers after entering places under sections 26A or 26B. As a result of the amendments to sections 26A and 26B, section 30A is amended so that it no longer applies to places connected with heavy vehicles but continues to apply to places connected with the transport of dangerous goods and prescribed dangerous goods vehicles. Authorised officers under the National Law are able to exercise similar powers after entering places connected with heavy vehicles under the National Law.

Clause 48 amends section 32 dealing with the power to stop prescribed heavy vehicles to check compliance with a transport Act. As outlined above under the heading 'Achievement of policy objectives', although most heavy vehicle matters will be dealt with under the National Law, a number of heavy vehicle matters will continue to be dealt with under the TORUM Act or a transport Act (as defined). These include driver licensing, accreditation of driver trainers, the transport of dangerous goods, requirements for tow trucks and compulsory third party insurance. As such, authorised officers need to continue to have powers to stop heavy vehicles to check compliance with the TORUM Act and transport Acts for these purposes. The term 'prescribed heavy vehicle' in the dictionary is being replaced by the term 'prescribed vehicle' but will no longer include vehicles with a GVM over 4.5 tonnes. Therefore, section 32 is being amended so that authorised officers will continue to have powers to stop both 'heavy vehicles' and 'prescribed vehicles'.

Clause 49 amends section 33 dealing with the power for authorised officers to require a vehicle to be moved for exercising a power under a transport Act. As outlined above, a number of heavy vehicle matters will continue to be dealt with under the TORUM Act or a transport Act (as defined), so an authorised officer still needs the power to require a heavy vehicle to be moved for exercising a power under a transport Act. However, amendments are being made to section 33 so that the power will no longer apply to heavy vehicles in prescribed places an authorised officer has entered under section 26 or in places an authorised officer has entered under sections 26A or 26B. Authorised officers do not need this power to

enable them to deal with heavy vehicle matters remaining under transport Acts in these places. Section 33(1)(b)(ii) is being amended so that the power will apply where a heavy vehicle has been stopped under the National Law, but an authorised officer requires the vehicle to be moved to exercise a power under a transport Act.

Section 33(2) is being amended to clarify in the example that a heavy vehicle may be required to be moved ‘to’ a testing device rather than ‘onto’ a testing device, as some testing devices require vehicles to be connected to them rather than placed on them. Testing devices could include portable brake rollers, exhaust emission testing equipment and electronic interrogation devices.

Clause 50 amends section 33A dealing with the power for authorised officers to require a heavy vehicle or prescribed dangerous goods vehicle to be moved if it is causing harm or an obstruction to traffic. Section 33A is amended so that it no longer applies to heavy vehicles but continues to apply to prescribed dangerous goods vehicles. Authorised officers under the National Law have similar powers to require heavy vehicles to be moved under the National Law.

Clause 51 amends section 33B dealing with the power for authorised officers to move an unattended heavy vehicle or prescribed dangerous goods vehicle on a road to enable a power to be exercised under the TORUM Act. Section 33B is amended so that it no longer applies to heavy vehicles but continues to apply to prescribed dangerous goods vehicles. Authorised officers under the National Law have similar powers to move heavy vehicles on roads to exercise powers under the National Law.

Clause 52 amends section 33C dealing with the power for authorised officers to move an unattended or broken down heavy vehicle or prescribed dangerous goods vehicle on a road (or in certain other places) to avoid harm or an obstruction to traffic. Section 33C is amended so that it no longer applies to heavy vehicles but continues to apply to prescribed dangerous goods vehicles. Authorised officers under the National Law have similar powers to move heavy vehicles under the National Law.

Clause 53 amends section 34 dealing with the power for authorised officers to inspect or test a vehicle to check whether the vehicle complies with a transport Act. As outlined above, although most heavy vehicle matters will be dealt with under the National Law, a number of heavy vehicle matters will continue to be dealt with under the TORUM Act or a transport Act. As such, authorised officers need to continue to have powers to inspect or test heavy vehicles to check whether they comply with a transport Act. Section 34 is being amended so that a vehicle originally stopped under the National Law or a vehicle in a place an authorised officer has entered as an authorised officer under the National Law, can be inspected and tested for compliance with a transport Act.

Clause 54 amends section 35 dealing with the power for authorised officers to enter and search vehicles for enforcing a transport Act. As outlined above, although most heavy vehicle matters will be dealt with under the National Law, a number of heavy vehicle matters will continue to be dealt with under the TORUM Act or a transport Act. As such, authorised officers need to continue to have powers to enter and search heavy vehicles for enforcing a transport Act.

Section 35(1)(a) is being amended so that the power applies to a vehicle used to transport dangerous goods that is located in a place an authorised officer originally entered under the National Law as an authorised officer under that Law.

Section 35(1)(b) is being amended so that it continues to apply to heavy vehicles and prescribed vehicles, which were both covered under the former definition of 'prescribed heavy vehicle'.

Section 35(1)(e) is being omitted because all matters related to fatigue management for drivers of heavy vehicles are being dealt with under the National Law. Therefore, there are no offences relating to fatigue management for an authorised officer to enforce under a transport Act and no need for this section to apply.

The note in section 35(2)(a) is amended to update a reference to a section heading.

Clause 55 amends section 35A dealing with additional situations where inspection and search powers for heavy vehicles and prescribed dangerous goods vehicles apply. Section 35A is amended so that it no longer applies to heavy vehicles but continues to apply to prescribed dangerous goods vehicles. Authorised officers under the National Law have similar powers for heavy vehicles under the National Law.

Clause 56 amends section 35B. Section 35B deals with powers which assist authorised officers with the inspection and search powers in sections 35 and 35A in relation to downloading stored information or deciding if items can be seized. Section 35B is amended so that it no longer applies to heavy vehicles but continues to apply to prescribed dangerous goods vehicles. Authorised officers under the National Law have similar powers for heavy vehicles under the National Law.

Clause 57 amends section 35C dealing with the power for an authorised officer to run or stop the engine of a heavy vehicle or prescribed dangerous goods vehicle, to enable the officer to effectively exercise another power under the TORUM Act. Section 35C is amended so that it no longer applies to heavy vehicles but continues to apply to prescribed dangerous goods vehicles. Authorised officers under the National Law have similar powers to run or stop the engine of a heavy vehicle under the National Law.

Clause 58 amends section 37 dealing with the power for an authorised officer to prohibit the use of an unsafe vehicle. Section 37 is being amended so that it only applies to private vehicles and prescribed vehicles, but not heavy vehicles. Authorised officers under the National Law have powers to prohibit the use of a heavy vehicle by issuing a vehicle defect notice under the National Law.

Clause 59 amends section 38 dealing with the power for an authorised officer to prohibit a person driving a vehicle in contravention of the TORUM Act where the vehicle is stationary or was stopped under the TORUM Act. This power can be used, for example, in situations where an authorised officer reasonably believes a person may be affected by alcohol or drugs and it would be an offence to continue driving. Section 38 is being amended so that it also applies to vehicles stopped under the National Law.

The penalty in section 38(3)(b) is also being amended so that it continues to apply to heavy vehicles and prescribed vehicles, which were both covered under the former definition of 'prescribed heavy vehicle'.

Clause 60 amends section 39 dealing with the power for an authorised officer to require reasonable help to enable the officer to exercise other powers under the TORUM Act. At present, under section 39(1)(b), an authorised officer can require reasonable help to exercise powers for a heavy vehicle from any 'responsible person' for the vehicle, which covers all parties in the chain of responsibility for the vehicle, including the owners, operators, registered operators, drivers, consignors, packers, loaders, consignees and schedulers. Section 39 is being amended so that an authorised officer will be able to continue to require

reasonable help from the driver or person in control of a heavy vehicle, but not from other parties in the chain of responsibility. This is sufficient for the matters relating to heavy vehicles which are remaining in the TORUM Act.

Authorised officers under the National Law will have powers to require reasonable help in relation to exercising powers for heavy vehicles from parties in the chain of responsibility under the National Law.

The penalty in section 39(3)(b) is also being amended so that it continues to apply to heavy vehicles and prescribed vehicles, which were both covered under the former definition of 'prescribed heavy vehicle'.

Clause 61 amends section 39A dealing with the power for an authorised officer who is also an authorised officer under the *Explosives Act 1999* to exercise powers in relation to explosives under that Act where a vehicle is stopped under the TORUM Act. Section 39A is being amended so that it also applies to vehicles stopped under the National Law.

Clause 62 consolidates the penalty in section 39B(2) so that a single penalty applies to all breaches of the subsection.

Clause 63 amends section 39C which requires that a person must not interfere with equipment in a vehicle or unload or move a vehicle's load while an authorised officer is exercising a function or power for which the vehicle was stopped or moved. Section 39C is being amended so that it continues to apply to heavy vehicles and prescribed vehicles required to be moved under section 33. Both these types of vehicles were covered under the former definition of 'prescribed heavy vehicle'.

Clause 64 omits chapter 3, part 3, division 2, subdivisions 5 to 7 which deal with authorised officer powers for:

- mass, dimension and loading requirements for heavy vehicles (sections 39D to 39H);
- fatigue regulated heavy vehicles (sections 39I to 39O);
- improvement notices and formal warnings for heavy vehicles (sections 39P to 39W).

Authorised officers under the National Law have powers in relation to these matters under the National Law.

Clause 65 amends section 40 dealing with the powers for an authorised officer to seize things in places entered under the TORUM Act. Section 40(1) allows an authorised officer to seize a thing which is evidence of an offence against a transport Act from a place the officer entered with the occupier's consent. Section 40(1) is being amended so that an authorised officer may seize a thing which is evidence of an offence against a transport Act from a place the officer entered with the occupier's consent as an authorised officer under the National Law. Under section 40(1)(b), seizure of the thing must be consistent with the purpose of entry as told to the occupier when asking for the occupier's consent to enter the place.

Section 40(3) allows an authorised officer to seize anything in a place if the officer reasonably believes the thing is evidence of an offence against a transport Act and the seizure is necessary to prevent the thing being hidden, lost, destroyed or used to continue or repeat the offence. Section 40(3) is being amended so that it applies to authorised officers who are also authorised officers under the National Law and who enter places under that Law. This will allow authorised officers who originally enter a place under the National Law but find evidence of offences against a transport Act to seize a thing if it is necessary to prevent it from being hidden, lost, destroyed or used to continue or repeat the offence.

Section 40(4) allows an authorised officer who enters a vehicle under part 3 of chapter 3 to seize anything in the vehicle if the officer reasonably believes it is evidence of an offence against a transport Act. Section 40(4) is being amended so that the power of seizure in that subsection applies to an authorised officer who is also an authorised officer under the National Law where the officer originally enters a vehicle under the National Law.

Clause 66 amends section 40A to update a cross-reference.

Clause 67 amends section 48A dealing with the power for an authorised officer to require personal details from a person connected with heavy vehicles, prescribed dangerous goods vehicles, vehicle offences and dangerous goods offences. Section 48A will be amended so that it no longer applies to heavy vehicles or offences involving heavy vehicles. Authorised officers under the National Law have powers to obtain personal details about persons connected with heavy vehicles under the National Law.

Clause 68 amends the example in section 49(1) relating to documents that an authorised officer may require to be produced for inspection, namely those that are issued or required to be kept under a transport Act or corresponding law. The example is amended to remove the reference to a work diary because work diaries will no longer be required to be kept under the TORUM Act, but instead will be required to be kept under the National Law. In its place, the amendment inserts the example of transport documentation which is required to be carried for dangerous goods and which an authorised officer may require to be produced for inspection.

Clause 69 amends section 49A dealing with the power for an authorised officer to require a person to provide information about heavy vehicles, dangerous goods or prescribed dangerous goods vehicles, including the current or intended journey of a vehicle. Section 49A is amended so that it no longer applies to heavy vehicles but continues to apply to dangerous goods and prescribed dangerous goods vehicles. Authorised officers under the National Law have similar powers for heavy vehicles under the National Law.

Clause 70 omits sections 50 and 50AA. Section 50 deals with powers of authorised officers for information offences, which were a chain of responsibility enforcement mechanism for heavy vehicles. Information offences must be prescribed to be information offences under a regulation. The only offences prescribed were fatigue management offences under section 178 of the *Transport Operations (Road Use Management – Fatigue Management) Regulation 2008* and mass, dimension and loading offences under sections 21, 37 and 44 of the *Transport Operations (Road Use Management – Mass, Dimensions and Loading) Regulation 2005*. As these matters and all chain of responsibility matters for heavy vehicles are dealt with exclusively under the National Law, section 50 is being deleted. Section 50AA deals with the powers of the chief executive and commissioner for information offences. Section 50AA is being deleted for the same reasons as section 50 as outlined above.

Clause 71 amends section 50AB dealing with the power for authorised officers to require help to find and access documents or information for heavy vehicles and the transport of dangerous goods. Currently, section 50AB allows an authorised officer to require any responsible person for a heavy vehicle to help the officer. Section 50AB is being amended so that for a heavy vehicle, an authorised officer can only require the person in control of the heavy vehicle or a person at a place entered by the authorised officer in relation to the heavy vehicle to help the officer. This is sufficient for the matters relating to heavy vehicles which are remaining in the TORUM Act. It is also consistent with the powers under sections 30(2)(f) and 39(1)(a).

Clause 72 amends section 51F dealing with reciprocal powers of authorised officers in relation to heavy vehicles, prescribed dangerous goods vehicles and the transport of

dangerous goods under the TORUM Act and corresponding laws where a Ministerial agreement is entered into between the Commonwealth, States or Territories. Section 51F is being amended so that it will no longer apply to heavy vehicles but continues to apply to prescribed dangerous goods vehicles and the transport of dangerous goods. As the National Law contains a national scheme for heavy vehicles, section 51F is no longer required to apply to heavy vehicles.

Clause 73 omits the heading of chapter 3, part 5, division 1, subdivision 1 because the other subdivisions are being deleted.

Clause 74 omits sections 53B to 53D which contain offences for false or misleading transport documentation relating to heavy vehicles, false or misleading information in container weight declarations for heavy vehicles and giving false or misleading information to a responsible person for a heavy vehicle. These provisions all deal with heavy vehicles and similar provisions are contained in the National Law, so they are being deleted from the TORUM Act.

Clause 75 omits chapter 3, part 5, division 1, subdivisions 2 to 4 which deal with:

- extended liability offences for heavy vehicles (sections 57AA to 57C);
- the reasonable steps defence for certain heavy vehicle offences (sections 57D to 57G);
- the non-application of the mistake of fact defence for certain heavy vehicle offences (section 57H).

These provisions all deal with offences for heavy vehicles and similar provisions are contained in the National Law, so they are being deleted from the TORUM Act.

Clause 76 amends section 60 dealing with evidentiary certificates to remove matters specific to heavy vehicles which will no longer be dealt with under the TORUM Act and will be exclusively dealt with under the National Law. Some evidentiary matters relating to heavy vehicles need to remain in the TORUM Act for matters which will continue to be regulated by the Act.

The example in section 60(7) is amended to remove the reference to ‘work diary’ because work diaries will no longer be required to be kept under the TORUM Act, but instead will be required to be kept under the National Law. In its place, the amendment inserts the example of ‘Australian driver licence’.

Clause 77 omits section 61A which deals with evidentiary matters relating to statements by manufacturers about heavy vehicles. These matters will be dealt with exclusively under the National Law so the provision does not need to remain in the TORUM Act.

Clause 78 replaces section 61B dealing with the evidentiary effect of transport documentation and journey documentation for heavy vehicles, prescribed dangerous goods vehicles and the transport of dangerous goods. Section 61B has been re-drafted so that it no longer applies to heavy vehicles or journey documentation but continues to apply to prescribed dangerous goods vehicles, the transport of dangerous goods and transport documentation. The evidentiary effect of transport documentation and journey documentation for heavy vehicles will be dealt with under the National Law.

Clause 79 amends section 61C so that it continues to apply to evidence about heavy vehicles and prescribed vehicles. Both these types of vehicles were covered under the former definition of ‘prescribed heavy vehicle’. As some evidentiary matters relating to heavy vehicles will remain in the TORUM Act, it is appropriate for this provision to continue to apply to heavy vehicles.

Clause 80 omits sections 61D to 61J. These sections deal with evidentiary matters for the intelligent access program and electronic work diaries. Both of these matters relate to heavy vehicles and will be dealt with exclusively under the National Law. As such, these provisions do not need to remain in the TORUM Act.

Clause 81 amends section 66 dealing with transport matters that local governments may or may not regulate by local laws. Section 66 currently provides that local governments may not make local laws about anything provided for in chapter 5 of the TORUM Act, including anything about which a regulation may be made under chapter 5 or exercise a power conferred by chapter 5 on someone else. However, local governments may exercise powers that are not inconsistent with chapter 5. Section 66 also sets out specific things about which local governments may make local laws.

With the introduction of the National Law, most regulation of heavy vehicles is being moved from the TORUM Act to the National Law. In particular, a number of matters about which regulations may currently be made under the TORUM Act will instead be dealt with in national regulations made under the National Law.

In order to ensure the status quo continues to apply, section 66 is being amended so that it also applies to the following situations:

- local governments may not make local laws about anything provided for in the National Law, including anything about which a national regulation may be made under the National Law;
- local governments may not exercise a power conferred by the National Law on someone else;
- local governments may exercise powers that are not inconsistent with the National Law.

Clause 82 replaces the heading of chapter 5, part 5.

Clause 83 amends section 124A to omit cross-references to provisions being omitted by this Bill.

Clause 84 amends section 148 to include a reference to heavy vehicle standards prescribed under the National Law. It is intended that a national regulation will be made dealing with heavy vehicle standards for the purposes of the National Law.

Clause 85 omits section 150(1)(g) which is a regulation-making power for fatigue management of drivers of heavy vehicles. Fatigue management of drivers of heavy vehicles will be dealt with exclusively under the National Law, so this provision is omitted from the TORUM Act.

Clause 86 omits section 150AB which is a further regulation-making power for fatigue management of drivers of heavy vehicles. Fatigue management of drivers of heavy vehicles will be dealt with exclusively under the National Law, so this provision is omitted from the TORUM Act.

Clause 87 omits section 150C which is a further regulation-making power for evidentiary matters relating to fatigue management of drivers of heavy vehicles. Evidentiary matters relating to fatigue management of drivers of heavy vehicles will be dealt with exclusively under the National Law, so this provision is omitted from the TORUM Act.

Clause 88 omits chapters 5B to 5D which deal with:

- breaches of mass, dimension and loading requirements for heavy vehicles (chapter 5B);

- non-compliance with mass, dimension and loading concessions for heavy vehicles (chapter 5C);
- chain of responsibility matters for heavy vehicle speeding (chapter 5D).

These matters will be dealt with exclusively in the National Law, so they are being deleted from the TORUM Act.

Clause 89 omits chapter 6, parts 1 and 2 which deal with:

- powers of courts and matters courts must consider when imposing a sanction for non-compliance with mass, dimension and loading requirements for heavy vehicles (chapter 6, part 1);
- matters relating to court powers and proceedings for particular offences about heavy vehicles (chapter 6, part 2).

These matters will be dealt with exclusively in the National Law, so they are being deleted from the TORUM Act.

Clause 90 amends section 163F which provides definitions for the part. Section 163F is amended by renumbering the heading and omitting the definitions of ‘heavy vehicle offence’ and ‘supervisory intervention order’, which will no longer be used in this part. A new definition of ‘dangerous goods vehicle offence’ is inserted for the part. Further details about how the definition of ‘dangerous goods vehicle offence’ is used are outlined below in relation to the amendments to section 164AB.

Clause 91 amends section 164(3) to provide that section 164(2) does not apply in relation to dangerous goods vehicle offences. The note to section 164(3) is also updated to direct the reader to division 3 for dangerous goods vehicle offences.

Clause 92 makes a drafting correction to section 164AA.

Clause 93 amends section 164AB dealing with road compensation orders. Road compensation orders are made by a court that convicts a person of an offence involving a heavy vehicle requiring the person to pay compensation for damage caused to road infrastructure as a result of the offence.

Section 164AB is amended so that road compensation orders can no longer be awarded for offences involving heavy vehicles. Similar powers to grant road compensation orders for heavy vehicles are provided under the National Law.

However, section 164AB is also amended so that road compensation orders can be awarded for offences involving vehicles carrying dangerous goods. Vehicles carrying dangerous goods are also capable of doing significant damage to road infrastructure when they are involved in offences and it is appropriate that road compensation orders should be able to be granted for offences involving these vehicles.

Although not strictly a consequential amendment as a result of the National Law, this change is not a significant policy shift because there is already a similar provision in section 164 of the TORUM Act which allows a court that convicts a person of an offence against a transport Act to order a person to pay an amount for damage caused in committing the offence. However, the road compensation order provisions provide a more streamlined process for proving the monetary value of damage caused and allow the compensation to be paid to the State or local government, depending on whether it is a State-controlled or local government road.

Clause 94 amends section 164AE so that it applies to offences involving ‘dangerous goods vehicles’ rather than ‘heavy vehicles’. Further details are outlined above in relation to the amendments to section 164AB.

Clause 95 amends section 164A dealing with commercial benefits penalty orders. Section 164A is amended so that it no longer applies to offences involving heavy vehicles but continues to apply to offences involving prescribed dangerous goods vehicles and the transport of dangerous goods. The National Law contains similar powers to award commercial benefits penalty orders for offences involving heavy vehicles.

Clause 96 omits section chapter 6, part 3, division 5 dealing with supervisory intervention orders for offences involving heavy vehicles. The National Law contains similar powers to award supervisory intervention orders for offences involving heavy vehicles.

Clause 97 renumbers parts 3 and 4 of chapter 6 as parts 1 and 2 of chapter 6.

Clause 98 omits sections 168A and 168AA dealing with corresponding administrative actions, corresponding orders and corresponding decisions. Corresponding administrative actions and corresponding orders under section 168A are prescribed in section 182 of the *Transport Operations (Road Use Management – Fatigue Management) Regulation 2008* and all relate to fatigue management for drivers of heavy vehicles. Corresponding decisions in section 168AA also all relate to fatigue management for drivers of heavy vehicles. As fatigue management for drivers of heavy vehicles is to be dealt with exclusively under the National Law, these sections are omitted from the TORUM Act.

Clause 99 amends section 168B dealing with giving evidence about a heavy vehicle or a dangerous goods matter to an external public authority. Section 168B is amended so that it no longer applies to heavy vehicles but continues to apply to dangerous goods matters.

Clause 100 amends section 168C which allows the chief executive to give information about a heavy vehicle or a dangerous goods matter to a corresponding authority. Section 168C is amended so that it no longer applies to heavy vehicles but continues to apply to dangerous goods matters.

Clause 101 amends section 168D which provides that contracting out of the TORUM Act is prohibited for heavy vehicles, prescribed dangerous goods vehicles and the transport of dangerous goods. Section 168D is amended so that it no longer applies to heavy vehicles but continues to apply to prescribed dangerous goods vehicles and the transport of dangerous goods.

Clause 102 inserts a new part 17 in chapter 7 dealing with transitional matters for the *Transport and Other Legislation (Heavy Vehicle National Law) Amendment Act 2013*.

New section 224 inserts definitions for part 17.

New section 225 inserts a transitional provision for section 168B. It allows the chief executive or commissioner to give prescribed evidence to an external public authority after the commencement as if section 168B had not been amended. However, the prescribed evidence must have been seized or obtained under the TORUM Act prior to the commencement.

New section 226 inserts a transitional provision for section 168C. It allows the chief executive to give information to a corresponding authority about a heavy vehicle after the commencement as if section 168C had not been amended. However, the information about the heavy vehicle must have existed prior to the commencement.

Clause 103 amends schedule 3 which sets out decisions that are reviewable decisions under the TORUM Act. Schedule 3 is amended to remove references to provisions which are omitted by the Bill.

Clause 104 amends schedule 4 to remove definitions that are no longer used in the TORUM Act and to make other changes to definitions. Most of the changes to definitions are to remove parts of the definitions that apply to heavy vehicles.

Part 5 Minor and consequential amendments

Clause 105 provides for minor and consequential amendments to Acts as outlined in the schedule.