

TASMANIA

HEAVY VEHICLE ROAD TRANSPORT BILL 2008

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SCHEDULE 1 – PROVISIONS WITH RESPECT TO WARRANTS

HEAVY VEHICLE ROAD TRANSPORT BILL 2008

*(Brought in by the Minister for Infrastructure, the Honourable
Graeme Lindsay Sturges)*

A BILL FOR

**An Act to provide for the administration and enforcement
of nationally consistent road transport laws, to make
further provision with respect to the use of heavy vehicles
on public streets and for related purposes**

Be it enacted by His Excellency the Governor of Tasmania, by
and with the advice and consent of the Legislative Council and
House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

Division 1 – Introduction

1. Short title

This Act may be cited as the *Heavy Vehicle
Road Transport Act 2008*.

2. Commencement

The provisions of this Act commence on a day
or days to be proclaimed.

3. Objects of Act

- (1) The general objects of this Act are –

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- (a) to improve road transport safety; and
- (b) to minimise adverse impacts of road transport on roads, bridges and road infrastructure, the environment and the community; and
- (c) to promote the effective and efficient observance of the requirements of road transport law.

(2) The particular objects of this Act are –

- (a) to provide a system that encourages effective and efficient compliance with the requirements of road transport law; and
- (b) to provide a system that –
 - (i) promotes improved outcomes for road safety, the environment, road infrastructure and traffic management; and
 - (ii) reduces unfair competitive advantage –

through improved compliance with and accountability for the requirements of road transport law; and
- (c) to provide an effective, efficient and equitable scheme for the enforcement of the requirements of road transport law; and

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- (d) to recognise a chain of responsibility of parties who have a role in the transport of goods or passengers by road and to make the parties accountable for their acts and omissions; and
 - (e) to confer powers to promote safety in the use of vehicles in road transport.
- (3) It is the intention of Parliament that the objects of this Act will be achieved in the context of nationally consistent road transport laws, and in particular in the context of nationally consistent compliance and enforcement laws, having regard to regional differences.

4. Act binds Crown

This Act binds the Crown in right of Tasmania and, so far as the legislative power of Parliament permits, in all its other capacities.

5. Application of Act

- (1) This Act contains provisions relating to compliance with and enforcement of certain Australian road laws in this jurisdiction, so far as those laws relate to heavy vehicles or heavy combinations, or both.
- (2) Accordingly, in this Act (except in the provisions referred to in subsection (3)) references to vehicles or combinations are taken

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to be references to heavy vehicles or heavy combinations.

(3) The excepted provisions are as follows:

- (a) the definitions of garage address, motor vehicle and trailer in section 6 (Interpretation);
- (b) section 138 (Averments);
- (c) section 139 (Certificate evidence);
- (d) section 143 (Evidence not affected by nature of vehicle or combination);
- (e) section 149 (Indemnity not affected by certain matters);
- (f) provisions specified in regulations made for the purposes of this subsection.

(4) References in this Act to a vehicle include a heavy vehicle that forms part of a combination of heavy vehicles and light vehicles.

Division 2 – Interpretation and associated concepts

6. Interpretation

(1) In this Act, unless the contrary intention appears –

“approved road transport compliance scheme” means a scheme, agreement or arrangement that –

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(a) is prescribed by the regulations;
or

(b) is identified by, or is of a class
identified by, the regulations –

and that makes provision for compliance
with and enforcement of any Australian
road laws, including (for example) a
scheme, agreement or arrangement that
provides for –

(c) a system of accreditation-based
compliance; or

(d) an intelligent transport system; or

(e) a system applying alternative
legal entitlements to those
otherwise applicable, such as one
based on performance-based
standards;

“Australian authorised officer” means an
authorised officer or a person appointed
as an authorised officer under a
corresponding law;

“Australian Authority” means the Authority
or a corresponding Authority;

“Australian driver licence” has the same
meaning as in the *Vehicle and Traffic Act*
1999;

“Australian police officer” means –

(a) a police officer; or

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- (b) a member (however described) of the police force or police service of another jurisdiction;

“Australian road law” means a road law or a corresponding road law;

“Australian road law offence” means an offence against an Australian road law;

“authorised officer” means a person authorised by the Authority under section 9(2) of the *Traffic Act 1925*;

“Authority” means the Transport Commission incorporated under the *Transport Act 1981*;

“base” of a driver – see section 11 (Driver’s base);

“body corporate” includes the Crown in any capacity and any body or entity that is not an individual;

“capabilities” of a vehicle means the functional capabilities of the vehicle or any of its components, as determined by the vehicle’s manufacturer or by an Australian Authority, and includes –

- (a) its GCM and GVM; and
- (b) its speed capabilities;

“combination” means a motor vehicle connected to one or more trailers;

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“commercial benefits penalty order” means
an order under Division 4 of Part 6;

“compensation order” means an order under
Part 7;

“condition” includes a restriction;

“conduct” means an act, an omission to
perform an act or a state of affairs;

“consignee” of goods means a person who –

- (a) with the person’s authority, is
named or otherwise identified as
the intended consignee of the
goods in the transport
documentation relating to the
transport of the goods by road; or
- (b) actually receives the goods after
completion of their transport by
road –

but does not include a person who
merely unloads the goods;

“consignor” of goods means –

- (a) a person who, with the person’s
authority, is named or otherwise
identified as the consignor of the
goods in the transport
documentation relating to the
transport of the goods by road; or
- (b) if paragraph (a) does not apply,
the person who –

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- (i) engages an operator of a vehicle or combination, either directly or indirectly or through an agent or other intermediary, to transport the goods by road; or
 - (ii) has possession of, or control over, the goods immediately before the goods are transported by road; or
 - (iii) loads a vehicle with the goods, for transport by road, at a place where goods in bulk are stored or temporarily held and that is unattended (except by a driver of the vehicle, a trainee driver or any person necessary for the normal operation of the vehicle) during loading; or
- (c) if paragraphs (a) and (b) do not apply, and the goods are imported into Australia, the person who imports the goods;

“container weight declaration” – see section 59;

“corresponding Authority” means –

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- (a) the Authority as defined in a corresponding road law (except in the case of a jurisdiction for which a person is prescribed under paragraph (b)); or
 - (b) a person prescribed by the regulations as the corresponding Authority for another jurisdiction for the purposes of this Act;

“corresponding law” means –

- (a) a law of another jurisdiction corresponding, or substantially corresponding, to this Act; or
- (b) a law of another jurisdiction that is declared under the regulations to be a corresponding law, whether or not the law corresponds, or substantially corresponds, to this Act;

“corresponding road law” means –

- (a) a law of another jurisdiction corresponding, or substantially corresponding, to a road law; or
- (b) a law of another jurisdiction that is declared under the regulations to be a corresponding road law, whether or not the law corresponds, or substantially corresponds, to a road law;

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“declared route” means a public street, or a part of a public street, declared under section 154 (Declared zones and routes) to be a declared route for the purposes of this Act;

“declared zone” means a zone declared under section 154 (Declared zones and routes) to be a declared zone for the purposes of this Act;

“depot” includes a base of operations;

“dimension requirement” means a requirement of an Australian road law that relates to the dimensions of a vehicle or combination, or a load or component of a vehicle or combination, including (for example) –

- (a) the dimensions of a vehicle or combination, disregarding its load (if any); and
- (b) the dimensions of a vehicle or combination including its load; and
- (c) the dimensions of the load on a vehicle or combination; and
- (d) the internal measurements of a vehicle or combination, including (for example) the distance between –

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- (i) components of a vehicle or combination; and
 - (ii) vehicles in a combination; and
 - (iii) a vehicle in a combination and a component of another vehicle in the combination;

“drive” includes to be in control of a vehicle or combination;

“driver” of a vehicle or combination includes –

- (a) a two-up driver of the vehicle or combination who is present in or near the vehicle or combination; and
- (b) a person who is driving the vehicle or combination as a driver under instruction or under an appropriate learner licence or learner permit;

“employee” means an individual who works under a contract of employment, apprenticeship or training;

“employed driver” means a driver who is employed by someone else to drive a heavy vehicle;

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“employer” means a person who employs another person under –

- (a) a contract of employment, apprenticeship or training; or
- (b) a contract for services;

“engage in conduct” means –

- (a) do an act; or
- (b) omit to do an act;

“equipment”, in relation to a vehicle or combination, includes tools, devices and accessories in or on the vehicle or combination;

“extract” from a record, device or other thing means a copy of any information contained in the record, device or other thing;

“formal warning” means a warning under Division 2 of Part 5;

“freight container” means –

- (a) a re-usable container of the kind referred to in Australian/New Zealand Standard AS/NZS 3711.1:2000, *Freight containers - Classification, dimensions and ratings*, that is designed for repeated use for the transport of goods by one or more modes of transport; or

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- (b) a re-usable container of the same or a similar design and construction to a container referred to in paragraph (a) though of different dimensions; or
 - (c) a container of a kind prescribed by the regulations –

but does not include anything prescribed by the regulations to be excluded from this definition;

“garage address” of a vehicle means –

- (a) in the case of a heavy vehicle that is normally kept at a depot when not in use, the principal depot of the vehicle; or
- (b) in the case of a heavy vehicle that is not normally kept at a depot when not in use –
 - (i) where the vehicle has only one registered operator, the home address of the registered operator; or
 - (ii) where the vehicle has more than one registered operator, each of the home addresses of the registered operators;

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“GCM (gross combination mass)” of a vehicle means the greatest possible sum of the maximum loaded mass of the vehicle and of any vehicles that may be towed by it at the one time –

- (a) as specified by the vehicle’s manufacturer on an identification plate on the vehicle; or
- (b) as specified by the Authority if –
 - (i) a sum is not specified by the vehicle’s manufacturer on an identification plate on the vehicle; or
 - (ii) a sum so specified on an identification plate is no longer appropriate because the vehicle has been modified;

“goods” includes –

- (a) animals (whether alive or dead);
and
- (b) a container (whether empty or not) –

but does not include people, fuel, water, lubricants and equipment required for the normal operation of the vehicle or combination in which they are carried;

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“GVM (gross vehicle mass)” of a vehicle means the maximum loaded mass of the vehicle –

- (a) as specified by the vehicle’s manufacturer on an identification plate on the vehicle; or
- (b) as specified by the Authority if –
 - (i) a mass is not specified by the vehicle’s manufacturer on an identification plate on the vehicle; or
 - (ii) a mass so specified on an identification plate is no longer appropriate because the vehicle has been modified;

“heavy combination” means a combination that includes a heavy vehicle;

“heavy vehicle” means a motor vehicle or trailer that has a GVM greater than 4.5 tonnes, and includes –

- (a) a special-purpose vehicle that has such a GVM; and
- (b) a passenger-carrying vehicle that has such a GVM;

“home address” of a person means –

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- (a) in the case of an individual, the person's residential address or place of abode in Australia; or
- (b) in the case of a body corporate that has a registered office in Australia, the address of the registered office; or
- (c) in any other case, the address of the person's principal or only place of business in Australia;

“improvement notice” means an improvement notice under Division 1 of Part 5;

“individual” means a natural person;

“intelligent transport system” means a system involving the use of electronic or other technology (whether located in or on a vehicle or combination, or on or near a public street, or elsewhere) that has the capacity and capability to monitor, collect, store, display, analyse, transmit or report information relating to –

- (a) a vehicle or combination or its equipment or load, the driver of a vehicle or combination, the operator of a fleet of vehicles or combinations or another person involved in road transport; and

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- (b) without limiting the above, the operation of a vehicle or combination in relation to its legal entitlements;

“journey documentation” means any documentation (other than transport documentation) directly or indirectly associated with –

- (a) the actual or proposed physical transport of goods or passengers by road or any previous transport of the goods or passengers by any mode; or
- (b) goods or passengers themselves so far as the documentation is relevant to their actual or proposed physical transport –

whether the documentation is in paper, electronic or any other form, and whether or not the documentation has been transmitted physically, electronically or in any other manner, and whether or not the documentation relates to a particular journey or to journeys generally, and includes (for example) any of the following:

- (c) records kept, used or obtained by a responsible person in connection with the transport of the goods or passengers;

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- (d) workshop, maintenance and repair records relating to a vehicle or combination used, or claimed to be used, for the transport of the goods or passengers;
- (e) a subcontractor's payment advice relating to the goods or passengers or the transport of the goods or passengers;
- (f) records kept, used or obtained by the driver of the vehicle or combination used, or claimed to be used, for the transport of the goods or passengers, including (for example) a driver's run sheet, a logbook entry, a fuel docket or receipt, a food receipt, a tollway receipt, pay records and mobile or other phone records;
- (g) information reported through the use of an intelligent transport system;
- (h) driver manuals and instruction sheets;
- (i) advice in any form from check weighing performed before, during or after a journey;

“jurisdiction” means the Commonwealth or a State or Territory;

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“legal entitlements” of a vehicle or combination (or component of a vehicle or combination) means the particulars of the entitlements, conferred by or under an Australian road law, that authorise the vehicle or combination (or component) to be operated on a road, and includes –

- (a) any entitlements arising under or as affected by a permit, authorisation, approval, exemption, notice or anything else given or issued in writing under such a law; and
- (b) any entitlements arising under or as affected by restrictions, or by the application of restrictions, under an Australian road law or other laws (for example, sign-posted mass limits for bridges, hazardous weather condition permits, and special road-protection limits); and
- (c) any entitlements arising under or as affected by an approved road transport compliance scheme;

“load” of a vehicle or combination, or in or on a vehicle or combination, means –

- (a) all the goods, passengers and drivers in or on the vehicle or combination; and

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- (b) all fuel, water, lubricants and readily removable equipment carried in or on the vehicle or combination and required for its normal operation; and
- (c) personal items used by a driver of the vehicle or combination; and
- (d) anything that is normally removed from the vehicle or combination when not in use –

and includes a part of a load as so defined;

“load restraint requirement” means a requirement of an Australian road law that relates to the restraint or positioning of a load or any part of a load on a vehicle or combination;

“loader” means a person who –

- (a) loads a vehicle or combination with goods for transport by road; or
- (b) loads a vehicle or combination with a freight container (whether or not containing goods) for transport by road; or
- (c) without limiting the above, loads a freight container already in or on a vehicle or combination with goods for transport by road; or

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- (d) supervises an activity referred to in paragraph (a), (b) or (c); or
 - (e) manages or controls an activity referred to in paragraph (a), (b), (c) or (d);

“mass requirement” means a requirement of an Australian road law that relates to the mass of a vehicle or combination or the mass of or on any component of a vehicle or combination, and includes –

- (a) a requirement of an Australian road law concerning mass limits relating to –
 - (i) the unladen mass of a vehicle or combination (that is, the actual mass of the vehicle or combination excluding any load in or on the vehicle or combination); or
 - (ii) the gross mass of a vehicle or combination (that is, the unladen mass of the vehicle or combination together with any load in or on the vehicle or combination); or

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(iii) the mass of the load in or on a vehicle or combination; or

(iv) the mass on a tyre, an axle or an axle group of the vehicle or combination; and

(b) a requirement of an Australian road law concerning mass limits relating to axle spacing; and

(c) a mass limit set out on a sign erected or displayed under an Australian road law (for example, a signposted bridge limit);

“motor vehicle” has the same meaning as in the *Vehicle and Traffic Act 1999*;

“night” means the period between sunset on one day and sunrise on the next day;

“officer” means an authorised officer or a police officer;

“operator” – see section 10 (Operators);

“owner” –

(a) in relation to a vehicle (including a vehicle in a combination), means a person who –

(i) is the sole owner, a joint owner or a part owner of the vehicle; or

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- (ii) has possession or use of the vehicle under a credit, hire-purchase, lease or other agreement, except an agreement requiring the vehicle to be registered in the name of someone else; or
 - (b) in relation to a combination, means a person who –
 - (i) is the sole owner, a joint owner or a part owner of the towing vehicle in the combination; or
 - (ii) has possession or use of the towing vehicle in the combination under a credit, hire-purchase, lease or other agreement, except an agreement requiring the vehicle to be registered in the name of someone else;

“package” of goods means the complete product of the packing of the goods for transport by road, consisting of the goods and their packaging;

“packaging” of goods means the container (including a freight container) in which the goods are received or held for transport by road, and includes anything

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that enables the container to receive or hold the goods or to be closed;

“packer” of goods means a person who –

- (a) puts the goods in packaging for transport by road; or
- (b) assembles the goods in an outer packaging or unit load for transport by road; or
- (c) supervises an activity referred to in paragraph (a) or (b); or
- (d) manages or controls an activity referred to in paragraph (a), (b) or (c);

“passenger”, in relation to a vehicle or combination, does not include a driver of the vehicle or combination or any person necessary for the normal operation of the vehicle or combination;

“passenger-carrying vehicle” means a vehicle where the primary purpose for which it was built, or permanently modified, was the carriage of passengers;

“premises” includes any structure, building, vessel or place (whether built on or not), and any part of any such structure, building, vessel or place;

“prescribed distance” means –

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- (a) a distance (travelling in any direction) within a radius of 30 kilometres of the location of the vehicle or combination when the direction is given; or
 - (b) any point along the forward route of the journey, if the direction is given in the course of a journey of the vehicle or combination;

“prohibition order” means an order under Division 7 of Part 6;

“public authority” means –

- (a) the Crown in any capacity; or
- (b) a body established by or under law, or the holder of an office established by or under law, for a public purpose, including a local government authority; or
- (c) a police force or police service;

“public safety” means the safety of persons or property, including the safety of –

- (a) the drivers of and passengers in vehicles and combinations; and
- (b) persons on or in the vicinity of (or likely to be on or in the vicinity of) roads, road infrastructure and public places; and

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- (c) vehicles and combinations and any loads in or on them;

“public street” has the same meaning as in the *Traffic Act 1925*;

“records” means any documents, documentation or records, whether in paper, electronic or any other form;

“registered operator” –

- (a) in relation to a vehicle (including a vehicle in a combination), means the person recorded as the person responsible for that vehicle on a register maintained in accordance with –
 - (i) the *Vehicle and Traffic Act 1999*; or
 - (ii) a law of another State or a Territory dealing with the use of motor vehicles and trailers on roads; or
- (b) in relation to a combination, means the person recorded as the person responsible for the towing vehicle in the combination on a register maintained in accordance with –
 - (i) the *Vehicle and Traffic Act 1999*; or

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- (ii) a law of another State or a Territory dealing with the use of motor vehicles and trailers on roads; or
 - (c) if the registration of a vehicle has expired, or been cancelled, the person last recorded as the person responsible for that vehicle under paragraph (a) or (b), unless that person has notified the relevant Australian Authority that he or she is no longer responsible for that vehicle;

“registration” of a vehicle means registration of the vehicle under –

- (a) the *Vehicle and Traffic Act 1999*; or
- (b) a law of another State or a Territory dealing with the use of motor vehicles and trailers on roads;

“regulations” means regulations made and in force under this Act;

“responsible entity”, in relation to a freight container, see section 81 (Definition);

“responsible person” means any person having, at a relevant time, a role or responsibilities associated with road transport, and includes any of the following:

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- (a) an owner of a vehicle or combination or of a vehicle in a combination;
- (b) a driver of a vehicle or combination;
- (c) an operator or registered operator of a vehicle or combination;
- (d) a person in charge or apparently in charge of a vehicle or combination;
- (e) a person in charge or apparently in charge of the garage address of a vehicle or combination or the base of the driver or drivers of a vehicle or combination;
- (f) a person appointed under an approved road transport compliance scheme to have monitoring or other responsibilities under the scheme, including (for example) responsibilities for certifying, monitoring or approving vehicles or combinations under the scheme;
- (g) an operator of an intelligent transport system;
- (h) a person in charge of premises entered by an officer under this Act;

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- (i) a person who consigns goods for transport by road;
 - (j) a person who packs goods in a freight container or other container or in a package or on a pallet for transport by road;
 - (k) a person who loads goods or a container on a vehicle or combination for transport by road;
 - (l) a person who unloads goods or a container containing goods consigned for transport by road;
 - (m) a person to whom goods are consigned for transport by road;
 - (n) a person who receives goods packed outside Australia in a freight container or other container or on a pallet for transport by road in Australia;
 - (o) an owner or operator of a weighbridge, or weighing facility, used to weigh vehicles or combinations or an occupier of premises where such a weighbridge or weighing facility is located;
 - (p) a responsible entity for a freight container;

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- (q) a person who controls or directly influences the loading or operation of a vehicle or combination;
- (r) an agent, employer, employee or subcontractor of any person referred to in a preceding paragraph of this definition;

“road authority” means –

- (a) a public authority that is responsible for the care, control or management of roads; or
- (b) any person or body (whether or not a public authority) prescribed by the regulations for the purposes of this definition, in relation to specified roads or specified classes of roads;

“road infrastructure” includes –

- (a) a road, including its surface or pavement; and
- (b) anything under or supporting a road or its surface or pavement and maintained by a road authority; and
- (c) any bridge, tunnel, causeway, ford or other work or structure forming part of a road system or supporting a road; and

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- (d) any bridge or other work or structure located above, in or on a road and maintained by a road authority; and
 - (e) any traffic control devices, railway or tramway equipment, electricity equipment, emergency telephone systems or any other facilities (whether of the same or a different kind) in, on, over, under or connected with anything referred to in paragraph (a), (b), (c) or (d); and
 - (f) anything declared by the regulations to be included in this definition –

but does not include anything declared by the regulations to be excluded from this definition;

“road law” means –

- (a) this Act; and
- (b) regulations made under this Act; and
- (c) any other legislation prescribed by the regulations for the purposes of this definition;

“road law offence” means an offence against a road law;

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“road transport” or **“transport by road”**
means the transport of goods or
passengers by road by means of a vehicle
or combination;

“run”, in relation to the engine of a vehicle or
combination, includes to start or stop the
engine;

“self-employed driver” means a driver who
is not an employed driver;

“special-purpose vehicle” means –

- (a) a vehicle that has been built, or
permanently modified, to be used
primarily for a purpose other than
the carriage of passengers or
goods; or
- (b) a vehicle declared by the
regulations under the *Vehicle and
Traffic Act 1999* to be a special
purpose vehicle for the purposes
of the definition of special
purpose vehicle in Schedule 2 of
that Act;

“specifications” of a vehicle means the
physical dimensions and other physical
attributes of the vehicle and its fittings;

“suitable location”, in relation to a direction
given by an officer, means a location that
the officer believes on reasonable
grounds to be suitable for the purpose of
complying with the direction, having

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regard to any matters the officer considers relevant in the circumstances;

“supervisory intervention order” means an order under Division 6 of Part 6;

“this jurisdiction” means Tasmania;

“traffic” includes vehicular traffic, pedestrian traffic and all other forms of road traffic;

“trailer” has the same meaning as in the *Vehicle and Traffic Act 1999*;

“transport documentation” means –

(a) any contractual documentation directly or indirectly associated with –

(i) a transaction for or relating to the actual or proposed transport of goods or passengers by road or any previous transport of the goods or passengers by any mode; or

(ii) goods or passengers themselves so far as the documentation is relevant to their actual or proposed transport; or

(b) any associated documentation –

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(i) contemplated in the contractual documentation; or

(ii) required by law, or customarily provided, in connection with the contractual documentation or with the transaction –

whether the documentation is in paper, electronic or any other form, and whether or not the documentation has been transmitted physically, electronically or in any other manner, and includes (for example) an invoice, vendor declaration, delivery order, consignment note, load manifest, export receival advice, bill of lading, contract of carriage, sea carriage document or container weight declaration, relating to the goods or passengers;

“two-up driver” means a person accompanying a driver of a vehicle or combination on a journey or part of a journey, who has been, is or will be sharing the task of driving the vehicle or combination during the journey;

“unit load” means a load of packaged goods that are –

(a) wrapped in plastic, and strapped or otherwise secured to a pallet or

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other base and to each other, for transport; or

- (b) placed together in a protective outer container (except a freight container) for transport; or
- (c) secured together in a sling for transport;

“vehicle” includes a trailer;

“work record” means a work diary or a record of work time, rest time and driving time required to be kept by a driver in accordance with regulations under the *Vehicle and Traffic Act 1999*.

- (2) Nothing in the definition of “suitable location” in subsection (1), or in any other provision of this Act, prevents –
 - (a) the intended destination of the journey concerned; or
 - (b) the depot of the vehicle, or of a vehicle in the combination, concerned –

from being the nearest suitable location.

- (3) A reference in this Act to a mass, dimension or load restraint requirement is a reference to a mass requirement, a dimension requirement or a load restraint requirement.

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7. Examples

- (1) An example (however expressed) in this Act is part of this Act.
- (2) If this Act includes an example (however expressed) of the operation of a provision of this Act –
 - (a) the example is not exhaustive; and
 - (b) the example does not limit, but may extend, the meaning of the provision.

8. Notes

A note in this Act is explanatory and is not part of this Act.

9. Relationship of this Act to other laws

- (1) The provisions of this Act are in addition to, and do not limit or derogate from, the provisions of any other law of this State.
- (2) Evidence of a relevant contravention of this Act or the regulations is admissible in any proceedings for an offence against the *Workplace Health and Safety Act 1995* or any regulations made under that Act.
- (3) Compliance with this Act or the regulations, or with any requirement imposed under this Act or the regulations, is not, in itself, evidence that a person complied with the *Workplace Health and*

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Safety Act 1995 or any regulations made under that Act or with a common law duty of care.

10. Operators

- (1) For the purposes of this Act, a person is an operator of a vehicle or combination if –
 - (a) in the case of a vehicle (including a vehicle in a combination), the person is responsible for controlling or directing the operations of the vehicle; or
 - (b) in the case of a combination, the person is responsible for controlling or directing the operations of the towing vehicle in the combination.
- (2) A person is not an operator merely because the person does any or all of the following:
 - (a) owns a vehicle or combination;
 - (b) drives a vehicle or combination;
 - (c) maintains or arranges for the maintenance of a vehicle or combination;
 - (d) arranges for the registration of a vehicle.

Note Section 126 (Liability of registered operators) contains provisions relating to the liability of registered operators in connection with offences committed by persons who are operators of vehicles or combinations.

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11. Driver's base

- (1) For the purposes of this Act, the base of a driver of a vehicle or combination is –
 - (a) the place recorded for the time being as the driver's base in the work records of the driver; or
 - (b) if no place is recorded as specified in paragraph (a), the garage address of the vehicle or towing vehicle of the combination, as recorded by an Australian Authority; or
 - (c) if no place is recorded as specified in paragraph (a) or (b), the place from which the driver normally works and receives instructions.
- (2) For the purposes of this section, if a driver is a self-employed driver and an employed driver at different times, the driver may have one base as a self-employed driver and another base as an employed driver.
- (3) For the purposes of this section, if a driver has 2 or more employers, the driver may have a different base in relation to each employer.

12. Associates

- (1) For the purposes of this Act, a person is an associate of another if –

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- (a) one is a spouse, parent, brother, sister or child of the other; or
 - (b) they are members of the same household; or
 - (c) they are partners; or
 - (d) they are both trustees or beneficiaries of the same trust, or one is a trustee and the other is a beneficiary of the same trust; or
 - (e) one is a body corporate and the other is a director or member of the governing body of the body corporate; or
 - (f) one is a body corporate (other than a public company whose shares are listed on a stock exchange) and the other is a shareholder in the body corporate; or
 - (g) they are related bodies corporate within the meaning of the *Corporations Act 2001* of the Commonwealth; or
 - (h) a chain of relationships can be traced between them under any one or more of the above paragraphs.
- (2) For the purposes of subsection (1), a beneficiary of a trust includes an object of a discretionary trust.

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PART 2 – ENFORCEMENT OFFICERS

13. Exercise of powers by authorised officers

- (1) An authorised officer has the powers conferred on authorised officers by a road law.
- (2) However, the Authority may, by instrument in writing applicable to a specified authorised officer or each authorised officer of a specified class –
 - (a) provide that the authorised officer may not exercise specified powers; or
 - (b) provide that the authorised officer may exercise specified powers only; or
 - (c) otherwise restrict the powers that the authorised officer may exercise, including (for example) by limiting the circumstances in which the authorised officer may exercise any powers conferred on the authorised officer.
- (3) In addition, the regulations may identify powers that may only be exercised by an authorised officer, or a class of authorised officers, specifically empowered by the Authority under subsection (2)(b) to exercise them.
- (4) Nothing in this Act is to be taken as limiting any functions or powers conferred on an authorised officer under any other Act.

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14. Delegation

- (1) The Authority may, by instrument in writing, delegate all or any of its powers under this Act (other than this power of delegation) to specified authorised officers or authorised officers of specified classes.
- (2) The Commissioner of Police may, by instrument in writing, delegate all or any of the Commissioner's powers under this Act (other than this power of delegation) to specified police officers or police officers of specified classes.
- (3) A delegate may sub-delegate a delegated power, but only if and to the extent that the instrument of delegation authorises the sub-delegation of the power.
- (4) Nothing in this section affects any other Act or law by or under which powers may be delegated by the Authority or the Commissioner of Police or by or under which powers of the Authority or the Commissioner of Police may otherwise be exercised by other persons.

15. Identification cards

- (1) The Authority may –
 - (a) issue an authorised officer with an identification card; or
 - (b) designate a card, issued to an authorised officer by another person, body or authority (whether or not of this

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jurisdiction), as an identification card for the purposes of this Act.

- (2) An identification card issued by the Authority must –
 - (a) contain a photograph of the authorised officer, the name of the Authority and either –
 - (i) the name and signature of the authorised officer; or
 - (ii) a unique number that has been assigned to the authorised officer by the Authority; and
 - (b) identify the authorised officer as an authorised officer.
- (3) The Authority must not designate a card issued to an authorised officer by another person, body or authority as an identification card for the purposes of this Act unless the card –
 - (a) contains a photograph of the authorised officer, the name of the other person, body or authority and either –
 - (i) the name and signature of the authorised officer; or
 - (ii) a unique number that has been assigned to the authorised officer by the other person, body or authority; and

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- (b) identifies in some way (however expressed) the authorised officer as an authorised officer under another law or as having official functions under another law.

16. Production of identification

- (1) This section applies to powers conferred on authorised officers or police officers by or under a road law, but only where the physical presence of an officer at the scene is necessary for the exercise of the power.
- (2) An authorised officer must not exercise a power unless an identification card has been issued to or designated for the authorised officer.
- (3) An authorised officer who is exercising or about to exercise a power is required to comply with a request to identify himself or herself, by producing his or her identification card.
- (4) A police officer who is exercising or about to exercise a power is required to comply with a request to identify himself or herself, by either of the following methods (at the police officer's choice):
 - (a) producing his or her police identification;
 - (b) stating orally or in writing his or her name, rank and place of duty.
- (5) An officer is required to comply with a requirement under subsection (3) or (4) –

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- (a) immediately; or
 - (b) if it is not practicable to comply with the requirement immediately, as soon as practicable.
- (6) An officer need only identify himself or herself once to a particular person during the course of an incident, even though more than one power is being exercised during the course of the incident.
- (7) In this section –

“incident” means –

- (a) a single incident; or
- (b) a connected series of incidents involving the same or substantially the same parties and occurring during a period of 72 hours;

“power” means a power under an Australian road law;

“request”, in relation to the exercise of a power, means a request made by a person (if any) in respect of whom the power is being or is about to be exercised.

17. Return of identification cards

- (1) A person commits an offence if –

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- (a) the Authority has issued an identification card to the person; and
 - (b) the person was but is no longer an authorised officer; and
 - (c) the Authority has requested the person to return the card to the Authority within a specified period; and
 - (d) the person did not return the card during the period.

Penalty: Fine not exceeding 20 penalty units.

- (2) It is a defence in proceedings for an offence under subsection (1) if the defendant establishes that he or she has a reasonable excuse.

18. Reciprocal powers of officers

- (1) This section has effect in relation to another jurisdiction while the corresponding law of the other jurisdiction contains provisions corresponding to this section.
- (2) The Minister may enter into an agreement with a Minister of the other jurisdiction for the purposes of this section, and amend or revoke any such agreement.
- (3) To the extent envisaged by such an agreement –
 - (a) authorised officers or police officers of this jurisdiction may, in this jurisdiction or the other jurisdiction, exercise powers

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conferred respectively on authorised officers or police officers of the other jurisdiction by or under the corresponding law of the other jurisdiction; and

- (b) authorised officers or police officers of the other jurisdiction may, in this jurisdiction or the other jurisdiction, exercise powers conferred respectively on authorised officers or police officers by or under this Act.
- (4) Anything done or omitted to be done by an officer of this jurisdiction under subsection (3)(a) is taken to have been done or omitted to be done under this Act as well as under the corresponding law.
- (5) The regulations may make provision for or with respect to the exercise of powers under this section.

19. Authority may exercise powers of authorised officers

- (1) The Authority may exercise any power conferred by or under a road law on an authorised officer, other than a power that requires the physical presence of an authorised officer.
- (2) Accordingly, in this Act (except this Part) references to an authorised officer include references to the Authority.

PART 3 – GENERAL ENFORCEMENT POWERS

Division 1 – Preliminary

20. Meaning of qualified, fit or authorised to drive or run engine

- (1) For the purposes of this Part, a person is “qualified” to drive a vehicle or combination (or to run its engine) if the person –
 - (a) holds an Australian driver licence of the appropriate class to drive it and the Australian driver licence is not suspended; and
 - (b) is not prevented by or under a law (including, for example, by the conditions of the licence) from driving it at the relevant time.
- (2) For the purposes of this Part, a person is fit to drive a vehicle or combination (or to run its engine) if the person –
 - (a) is apparently physically and mentally fit to drive the vehicle or combination; and
 - (b) (without limiting the above) is not apparently affected by alcohol or drugs.
- (3) For the purposes of this Part, a person is “authorised” –

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- (a) to drive a vehicle or combination if the person is its operator or has the authority of the operator to drive it; or
- (b) to run the engine of a vehicle or combination if the person is its operator or has the authority of the operator to drive it or to run the engine –

whether or not the person is qualified to drive the vehicle or combination (or run its engine) as referred to in subsection (1).

21. Meaning of unattended vehicle or combination and driver of disconnected trailer

- (1) For the purposes of this Part, a vehicle or a combination is “unattended” if –
 - (a) where the officer concerned –
 - (i) is present at the scene, there is, after inspection and enquiry by the officer that is reasonable in the circumstances, apparently no person in, on or in the vicinity of the vehicle or the combination who appears to be a driver of the vehicle or the combination; or
 - (ii) is not present at the scene but is able to inspect the scene by means of a camera or other remote surveillance system, there is, after inspection by the officer

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that is reasonable in the
circumstances, apparently no
person in, on or in the vicinity of
the vehicle or the combination
who appears to be a driver of the
vehicle or the combination; or

(b) where there is apparently such a person
in, on or in the vicinity of the vehicle or
combination, the officer believes on
reasonable grounds that –

(i) the person is not qualified, not fit
or not authorised to drive it; or

(ii) the person is or appears to be
unwilling to drive it; or

(iii) the person is subject to a
direction under section 28
(Direction to leave vehicle or
combination) in relation to the
vehicle or combination.

(2) A reference in this Part to the driver of a vehicle
is, in a case where the vehicle is a trailer and is
not connected (either directly or by one or more
other trailers) to a towing vehicle, a reference to
the driver of the towing vehicle to which the
trailer was or apparently was last connected.

22. Meaning of broken down vehicle or combination

For the purposes of this Part –

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- (a) a motor vehicle is “broken down” if it is not possible to drive the vehicle because it is disabled through damage, mechanical failure, lack of fuel or any similar reason; and
- (b) a vehicle that is a trailer is “broken down” if it is not connected (either directly or by one or more other trailers) to a towing vehicle, whether or not the trailer is also disabled through damage, mechanical failure or any similar reason; and
- (c) a combination is “broken down” if it is not possible to drive the combination because the combination or a vehicle comprised in the combination is disabled through damage, mechanical failure, lack of fuel or any similar reason.

23. Meaning of compliance purposes

For the purposes of this Part, a power to give a direction to a person is exercised “for compliance purposes” if the power is exercised –

- (a) to find out whether the Australian road laws or an approved road transport compliance scheme are being complied with by that or any other person; or
- (b) to investigate a breach or suspected breach of an Australian road law or an

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approved road transport compliance
scheme by that or any other person.

***Division 2 – Directions to stop, move or leave vehicles or
combinations***

24. Application of Division

- (1) This Division applies to a vehicle or combination located –
 - (a) on a public street; or
 - (b) in or on a public place; or
 - (c) in or on premises occupied or owned by the Authority or by any other public authority; or
 - (d) in or on premises where the officer is lawfully present after entry under this Part.
- (2) This Division applies to the driver of a vehicle or combination who is apparently in, on or in the vicinity of the vehicle or combination.

25. Direction to stop vehicle or combination to enable exercise of other powers

- (1) An officer may, for the purpose of or in connection with exercising other powers under this Act, direct –

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- (a) the driver of a vehicle or combination to stop the vehicle or combination; or
 - (b) the driver of a vehicle or combination or any other person not to do any one or more of the following:
 - (i) move the vehicle or combination;
 - (ii) interfere with it or any equipment in or on it;
 - (iii) interfere with its load.
- (2) A direction to stop a vehicle or combination may require that it be stopped without delay, or that it be stopped at the nearest place for it to be safely stopped as indicated by the officer.
- (3) A direction to stop the vehicle or combination, or not to move it, or not to interfere with it or any equipment in or on it or with its load, does not prevent an officer from giving the driver or another person any later inconsistent directions under other provisions of the road laws.
- (4) A direction ceases to be operative to the extent that an officer –
 - (a) gives the driver or other person a later inconsistent direction; or
 - (b) indicates to the driver or other person that the direction is no longer operative.
- (5) A person commits an offence if –

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-
- (a) the person is subject to a direction under subsection (1); and
 - (b) the person engages in conduct that results in a contravention of the direction.

Penalty: Fine not exceeding 60 penalty units.

- (6) An offence against subsection (5) is an offence of strict liability.
- (7) In this section –

“stop”, in relation to a vehicle or combination, means to stop the vehicle or combination and keep it stationary.

26. Direction to move vehicle or combination to enable exercise of other powers

- (1) An officer may, for the purpose of or in connection with the exercise of other powers under this Act –
 - (a) direct the driver or operator of a vehicle or combination to move it or cause it to be moved to the nearest suitable location that is within the prescribed distance and specified by the officer; and
 - (b) direct the driver or operator of a vehicle or combination or any other person not to interfere with –
 - (i) the vehicle or combination or any equipment in or on it; or

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- (ii) the vehicle's or combination's load.

(2) A person commits an offence if –

- (a) the person is subject to a direction under subsection (1); and
- (b) the person engages in conduct that results in a contravention of the direction.

Penalty: Fine not exceeding 60 penalty units.

(3) Subject to subsection (4), an offence against subsection (2) is an offence of strict liability.

(4) It is a defence in proceedings for an offence under subsection (2) if the defendant establishes that –

- (a) it was not possible to move the vehicle or combination concerned because it was broken down; and
- (b) the breakdown occurred for a physical reason beyond the driver's or operator's control; and
- (c) the breakdown could not be readily rectified in a way that would enable the direction to be complied with within a reasonable time.

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27. Direction to move vehicle or combination in case of danger or obstruction

- (1) This section applies where an officer believes on reasonable grounds that a vehicle or combination is –
 - (a) causing serious harm, or creating an imminent risk of serious harm, to public safety, the environment or road infrastructure; or
 - (b) causing or likely to cause an obstruction to traffic.
- (2) The officer may direct the driver or operator of the vehicle or combination to do either or both of the following:
 - (a) to move it, or cause it to be moved, to the extent necessary to avoid the harm or obstruction;
 - (b) to do anything else reasonably required by the officer, or to cause anything else reasonably required by the officer to be done, to avoid the harm or obstruction.
- (3) A person commits an offence if –
 - (a) the person is subject to a direction under subsection (2); and
 - (b) the person engages in conduct that results in a contravention of the direction.

Penalty: Fine not exceeding 60 penalty units.

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- (4) Subject to subsection (5), an offence against subsection (3) is an offence of strict liability.
- (5) It is a defence in proceedings for an offence under subsection (3) if the defendant establishes that –
 - (a) it was not possible to move the vehicle or combination concerned because it was broken down; and
 - (b) the breakdown occurred for a physical reason beyond the driver's or operator's control; and
 - (c) the breakdown could not be readily rectified in a way that would enable the direction to be complied with within a reasonable time.

28. Direction to leave vehicle or combination

- (1) This section applies where –
 - (a) the driver of a vehicle or combination fails to comply with a direction given by an officer under another provision of this Division; or
 - (b) an officer believes on reasonable grounds that the driver of a vehicle or combination is not qualified, is not fit or is not authorised to drive the vehicle or combination in order to comply with such a direction.

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- (2) The officer may direct the driver to do any one or more of the following:
- (a) to vacate the driver's seat;
 - (b) to leave the vehicle or combination;
 - (c) not to occupy the driver's seat until permitted to do so by an officer;
 - (d) not to enter the vehicle or combination until permitted to do so by an officer.
- (3) The officer may direct any other person to do either or both of the following:
- (a) to leave the vehicle or combination;
 - (b) not to enter the vehicle or combination until permitted to do so by an officer.
- (4) A person commits an offence if –
- (a) the person is subject to a direction under subsection (2) or (3); and
 - (b) the person engages in conduct that results in a contravention of the direction.

Penalty: Fine not exceeding 60 penalty units.

- (5) An offence against subsection (4) is an offence of strict liability.

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29. Manner of giving directions under this Division

- (1) A direction under this Division may be given to a driver orally or by means of a sign or signal (electronic or otherwise), or in any other manner.
- (2) A direction under this Division may be given to an operator orally or by telephone, facsimile, electronic mail or radio, or in any other manner.

Division 3 – Power to move unattended or broken down vehicles or combinations

30. Moving unattended vehicle or combination: to enable exercise of other powers

- (1) This section applies where an officer –
 - (a) believes on reasonable grounds that a vehicle or combination is unattended on a public street; and
 - (b) is seeking to exercise other powers under this Act; and
 - (c) believes on reasonable grounds that the vehicle or combination should be moved to enable or facilitate the exercise of those powers.
- (2) The officer may –
 - (a) move the vehicle or combination (by driving or towing it or otherwise); or

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- (b) authorise another person to move it (by driving or towing it or otherwise) –

to the extent reasonably necessary to enable or facilitate the exercise of the powers concerned.

- (3) The officer may enter the vehicle or combination, or authorise another person to enter it, for the purpose of moving the vehicle or combination.
- (4) The officer or person authorised by the officer may use reasonable force to do any or all of the following:
 - (a) to open unlocked doors and other unlocked panels and objects;
 - (b) to gain access to the vehicle or combination, or its engine or other mechanical components, to enable the vehicle or combination to be moved;
 - (c) to enable the vehicle or combination to be towed.
- (5) The officer or person authorised by the officer may drive the vehicle or combination only if qualified and fit to drive it.

31. Moving unattended or broken down vehicle or combination where danger or obstruction

- (1) This section applies where an officer believes on reasonable grounds that –

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- (a) a vehicle or combination on a public street is unattended or broken down; and
- (b) the vehicle or combination is causing serious harm, or creating an imminent risk of serious harm, to public safety, the environment or road infrastructure, or is causing or likely to cause an obstruction to traffic.

(2) The officer may –

- (a) move the vehicle or combination or any vehicle forming part of the combination (by driving or towing it or otherwise); or
- (b) authorise another person to move it (by driving or towing it or otherwise) –

to the extent reasonably necessary to avoid the harm or obstruction.

(3) The officer may –

- (a) enter the vehicle or combination, or authorise another person to enter it, for the purpose of moving the vehicle; or
- (b) separate any or all of the vehicles forming part of the combination, or authorise another person to separate them, for the purpose of moving any or all of the vehicles.

(4) The officer may drive the vehicle or combination even though the officer is not qualified to drive it, if the officer believes on reasonable grounds

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that there is no other person in, on or in the vicinity of the vehicle or combination who is more capable of driving it than the officer and who is fit and willing to drive it.

- (5) The person authorised by the officer may drive the vehicle or combination even though the authorised person is not qualified to drive it, if the officer believes on reasonable grounds that there is no other person in, on or in the vicinity of the vehicle or combination who is more capable of driving it than the authorised person and who is fit and willing to drive it.
- (6) The officer or person driving a vehicle or combination under the authority of this section is exempt from any other road law to the extent that the other law would require him or her to be licensed or otherwise authorised to drive it.
- (7) The officer or person authorised by the officer may use reasonable force to the extent reasonably necessary to avoid the harm or obstruction.

32. Operator's authorisation not required for driving under this Part

It is immaterial that the officer or person driving a vehicle or combination under the authority of this Part is not authorised to drive it (as referred to in section 20(3)).

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Division 4 – Powers of inspection and search

Note This Division authorises:

- premises of operators and a range of other premises to be inspected and searched
- vehicles or combinations to be inspected in or on any such premises and on roads, public places and certain official premises.

33. Power to inspect vehicle or combination on public street, public place or certain official premises

- (1) This section applies to a vehicle or combination located –
- (a) on a public street; or
 - (b) in or on a public place; or
 - (c) in or on premises occupied or owned by the Authority or by any other public authority –

whether or not the vehicle or combination is unattended.

- (2) An officer may inspect a vehicle or combination for compliance purposes.
- (3) The officer may enter the vehicle or combination for the purpose of or in connection with conducting the inspection.
- (4) The officer may exercise powers under this section at any time, and without the consent of the driver or other person apparently in charge of the vehicle or combination or any other person.

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- (5) Without limiting the above, the power to inspect a vehicle or combination under this section includes any or all of the following:
- (a) the power to weigh, test, measure or take photographs of the vehicle or combination or any part of it or its equipment or load;
 - (b) the power to check the existence or details of, or take photographs of, placards or other information required by or under an Australian road law or by or under an approved road transport compliance scheme to be displayed in or on the vehicle or combination, including placards or other information relating to its specifications, capabilities or legal entitlements;
 - (c) the power to inspect and take copies of or extracts from any records that are located in or on the vehicle or combination and that are required to be carried in or on the vehicle or combination by or under an Australian road law or by or under an approved road transport compliance scheme;
 - (d) the power to access or download information that is required to be kept by or under an Australian road law or by or under an approved road transport compliance scheme and that is –

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- (i) stored electronically in equipment located in or on the vehicle; or
 - (ii) accessible electronically from equipment located in or on the vehicle.
- (6) This section does not authorise the use of force, but the officer may under this section do any or all of the following:
 - (a) open unlocked doors and other unlocked panels and objects;
 - (b) inspect anything that has been opened or otherwise accessed under the power to use reasonable force in the exercise of a power to enter or move a vehicle or combination under Division 3;
 - (c) move but not take away anything that is not locked up or sealed.

34. Power to search vehicle or combination on public street, public place or certain official premises

- (1) This section applies to a vehicle or combination located –
 - (a) on a public street; or
 - (b) in or on a public place; or
 - (c) in or on premises occupied or owned by the Authority or by any other public authority –

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whether or not the vehicle or combination is unattended.

- (2) An officer may search a vehicle or combination for compliance purposes, if the officer believes on reasonable grounds that –
 - (a) the vehicle or combination has been, is being, or is likely to be used in the commission of an Australian road law offence or in the commission of a breach of an approved road transport compliance scheme; or
 - (b) the vehicle or combination has been or may have been involved in an incident involving death or personal injury or damage to property.
- (3) The officer may form the necessary belief during or after an inspection or independently of an inspection.
- (4) The officer may enter the vehicle or combination for the purpose of or in connection with conducting the search.
- (5) The officer may exercise powers under this section at any time, and without the consent of the driver or other person apparently in charge of the vehicle or combination or any other person.
- (6) Without limiting the above, the power to search a vehicle or combination under this section includes any or all of the following:

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- (a) the power to search for evidence of an Australian road law offence or a breach of an approved road transport compliance scheme;
- (b) the power to search for and inspect any records, devices or other things that relate to the vehicle or combination or any part of its equipment or load and that are located in or on the vehicle or combination;
- (c) the power to take copies of or extracts from any or all of the following:
 - (i) any records that are located in or on the vehicle or combination and that are required to be carried in or on the vehicle or combination by or under an Australian road law or by or under an approved road transport compliance scheme;
 - (ii) any transport documentation or journey documentation located in or on the vehicle or combination;
 - (iii) any other records, or any readout or other data obtained from any device or thing, located in or on the vehicle or combination that the officer believes on reasonable grounds provide, or may on further inspection provide, evidence of an Australian road

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law offence or a breach of an
approved road transport
compliance scheme;

- (d) any powers that may be exercised during an inspection of a vehicle or combination under section 33(5).
- (7) The power to search a vehicle or combination under this section does not include a power to search a person.
- (8) The officer may seize and remove any records, devices or other things from the vehicle or combination that the officer believes on reasonable grounds provide, or may on further inspection provide, evidence of an Australian road law offence or a breach of an approved road transport compliance scheme.
- (9) The officer may use reasonable force in the exercise of powers under this section.

35. Power to inspect premises

- (1) This section applies to the following premises:
 - (a) any premises at or from which a responsible person carries on business, or that are occupied by a responsible person in connection with such a business, or that are a registered office of a responsible person;
 - (b) the garage address of a vehicle or combination;

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- (c) the base of the driver or drivers of a vehicle or combination;
 - (d) any premises where records required to be kept by or under an Australian road law or by or under an approved road transport compliance scheme are located or where any such records are required to be located.
- (2) An officer may inspect premises for compliance purposes.
- (3) The officer may enter the premises for the purpose of conducting the inspection.
- (4) Without limiting the above, the officer may inspect, or enter and inspect, any vehicle or combination at the premises.
- (5) The inspection may be made –
 - (a) at any time with the consent of the occupier or other person apparently in charge of the premises; or
 - (b) if a business is carried on at the premises, at any time during the usual business operating hours applicable at the premises (whether or not the premises are actually being used for that purpose), and without consent.
- (6) This section does not authorise, without consent, the entry or inspection of –

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- (a) premises that are apparently unattended, unless the officer believes on reasonable grounds that the premises are not unattended; or
 - (b) premises that are, or any part of premises that is, used predominantly for residential purposes.
 - (7) Without limiting the above, the power to inspect premises under this section includes any or all of the following:
 - (a) the power to inspect and take copies of or extracts from any records located at the premises and required to be kept by or under an Australian road law or by or under an approved road transport compliance scheme;
 - (b) the power to check for the existence of and inspect any devices (including weighing, measuring, recording or monitoring devices) required to be installed, used or maintained by or under an Australian road law or by or under an approved road transport compliance scheme, and to inspect and take copies of or extracts from any readout or other data obtained from any such device;
 - (c) the power to exercise with respect to a vehicle or combination located at the premises any powers that may be exercised during an inspection of a

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vehicle or combination under
section 33(5);

- (d) the power to use photocopying equipment on the premises free of charge for the purpose of copying any records or other material under paragraph (a) or (b).

- (8) This section does not authorise the use of force, but the officer may under this section do any or all of the following:

- (a) open unlocked doors and other unlocked panels and objects;
- (b) inspect anything that has been opened or otherwise accessed under the power to use reasonable force in the exercise of a power to enter or move a vehicle or combination under Division 3;
- (c) move but not take away anything that is not locked up or sealed.

36. Power to search premises

- (1) This section applies to the following premises:

- (a) any premises at or from which a responsible person carries on business, or that are occupied by a responsible person in connection with such a business, or that are a registered office of a responsible person;

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- (b) the garage address of a vehicle or combination;
 - (c) the base of the driver or drivers of a vehicle or combination;
 - (d) any premises where records required to be kept by or under an Australian road law or by or under an approved road transport compliance scheme are located or where any such records are required to be located;
 - (e) any premises where the officer concerned believes on reasonable grounds that –
 - (i) a vehicle or combination is or has been located; or
 - (ii) transport documentation or journey documentation is located.
- (2) An officer may search premises for compliance purposes, if the officer believes on reasonable grounds –
- (a) that there may be at the premises records, devices or other things that may provide evidence of an Australian road law offence or of the commission of a breach of an approved road transport compliance scheme; or
 - (b) that –
 - (i) a vehicle or combination has been or may have been involved in an

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incident involving death or
personal injury or damage to
property; and

(ii) the vehicle or combination is
connected with the premises.

- (3) For the purposes of this section, a vehicle or combination is “connected” with the premises if –
- (a) the premises are the garage address of the vehicle or combination; or
 - (b) the vehicle or combination is, or has within the past 72 hours been, located at the premises; or
 - (c) the premises are or may be otherwise connected (directly or indirectly) with the vehicle or combination or any part of its equipment or load.
- (4) The officer may form the necessary belief during or after an inspection under section 35 or independently of such an inspection.
- (5) The officer may enter the premises for the purpose of conducting the search.
- (6) Without limiting the above, the officer may search, or enter and search, any vehicle or combination at the premises.
- (7) The search may be conducted –
- (a) at any time under the authority of a warrant under this Act; or

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- (b) at any time with the consent of the occupier or other person apparently in charge of the premises; or
 - (c) if a business is carried on at the premises, at any time during the ordinary business hours applicable at the premises (whether or not the premises are actually being used for that purpose), and without a warrant and without the consent of the occupier or other person apparently in charge of the premises or any other person; or
 - (d) if the officer believes on reasonable grounds that subsection (2)(b) applies, at any time, and without a warrant and without the consent of the occupier or other person apparently in charge of the premises or any other person.
- (8) This section does not authorise, without a warrant or consent, the entry or searching of –
- (a) premises that are unattended, unless the officer believes on reasonable grounds that the premises are not unattended; or
 - (b) premises that are, or any part of premises that is, used predominantly for residential purposes.
- (9) Without limiting the above, the power to search premises under this section includes any or all of the following:

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- (a) the power to search for evidence of an Australian road law offence or a breach of an approved road transport compliance scheme;
- (b) the power to search for and inspect any records, devices or other things that relate to a vehicle or combination or any part of its equipment or load and that are located at the premises;
- (c) the power to take copies of or extracts from any or all of the following:
 - (i) any records that are located at the premises and are required to be kept by or under an Australian road law or by or under an approved road transport compliance scheme;
 - (ii) any transport documentation or journey documentation located at the premises;
 - (iii) any other records, or any readout or other data obtained from any device or thing, located at the premises that the officer believes on reasonable grounds provide, or may on further inspection provide, evidence of an Australian road law offence or a breach of an approved road transport compliance scheme;

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- (d) the power to use photocopying equipment on the premises free of charge for the purpose of copying any records or other material under paragraph (c);
 - (e) the power to exercise with respect to a vehicle or combination located at the premises any powers that may be exercised during a search of a vehicle or combination under section 34(6);
 - (f) any powers that may be exercised during an inspection of premises under section 35(7).
- (10) The power to search premises under this section does not include a power to search a person.
 - (11) The officer may seize and remove any records, devices or other things from the premises that the officer believes on reasonable grounds provide, or may on further inspection provide, evidence of an Australian road law offence or a breach of an approved road transport compliance scheme.
 - (12) The officer may use reasonable force in the exercise of powers under this section.

37. Residential purposes

For the purposes of this Division, premises are, or any part of premises is, taken not to be used for residential purposes merely because temporary or casual sleeping or other

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accommodation is provided there for drivers of vehicles or combinations.

Division 5 – Directions

38. Direction to produce records, devices or other things

- (1) An officer may, for compliance purposes, direct any responsible person to produce –
 - (a) any records required to be kept by or under an Australian road law; or
 - (b) any records comprising transport documentation or journey documentation in the person's possession or under the person's control; or
 - (c) any records, or any devices or other things that contain or may contain records, in the person's possession or under the person's control relating to or indicating –
 - (i) the use, performance or condition of a vehicle or combination; or
 - (ii) ownership, insurance or registration of a vehicle or combination; or
 - (iii) any load or equipment carried or intended to be carried by a vehicle or combination (including

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insurance of any such load or
equipment); or

- (d) any records, or any devices or other things that contain or may contain records, in the person's possession or under the person's control demonstrating that a vehicle's garage address recorded in the relevant register is the vehicle's actual garage address.

(2) The direction must –

- (a) specify the records, devices or other things or the classes of records, devices or other things that are to be produced; and
- (b) state where and to whom the records, devices or other things are to be produced.

Note Section 43 (Directions to state when to be complied with) deals with the time for compliance.

(3) The officer may do any or all of the following:

- (a) inspect records, devices or other things that are produced;
- (b) make copies of, or take extracts from, records, devices or other things that are produced;
- (c) seize and remove records, devices or other things that are produced that the officer believes on reasonable grounds

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may on further inspection provide evidence of an Australian road law offence.

- (4) A person commits an offence if –
- (a) the person is subject to a direction under subsection (1); and
 - (b) the person engages in conduct that results in a contravention of the direction.

Penalty: In the case of –

- (a) an individual, a fine not exceeding 40 penalty units; or
 - (b) a body corporate, a fine not exceeding 200 penalty units.
- (5) Subject to subsection (6), an offence against subsection (4) is an offence of strict liability.
- (6) It is a defence in proceedings for an offence under subsection (4) if the defendant establishes that he or she has a reasonable excuse.

39. Direction to provide information

- (1) An officer may, for compliance purposes, direct a responsible person to provide information to the officer about a vehicle or combination or any load or equipment carried or intended to be carried by a vehicle or combination.

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- (2) Without limiting the above, a direction under subsection (1) may require a responsible person who is associated with a particular vehicle or combination to do any or all of the following:
- (a) to state the name, home address and business address of –
 - (i) other responsible persons of specified types who are associated with the vehicle or combination; and
 - (ii) if so requested, in the case of a combination, the registered operator of each vehicle in the combination;
 - (b) to provide information about the current or intended trip of the vehicle or combination, including –
 - (i) the location of the start or intended start of the trip; and
 - (ii) the route or intended route of the trip; and
 - (iii) the location of the destination or intended destination of the trip.
- (3) A person commits an offence if –
- (a) the person is subject to a direction under subsection (1); and
 - (b) the person engages in conduct that results in a contravention of the direction.

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Penalty: In the case of –

- (a) an individual, a fine not exceeding 40 penalty units; or
- (b) a body corporate, a fine not exceeding 200 penalty units.

(4) A person commits an offence if –

- (a) the person is subject to a direction under subsection (1); and
- (b) the person provides any information that is false or misleading in a material particular in purported response to the direction.

Penalty: In the case of –

- (a) an individual, a fine not exceeding 100 penalty units; or
- (b) a body corporate, a fine not exceeding 500 penalty units.

(5) Subject to subsections (6) and (7), an offence against this section is an offence of strict liability.

(6) It is a defence in proceedings for an offence of contravening a direction under subsection (1) if the defendant establishes that he or she did not know and could not reasonably be expected to have known or ascertained the required information.

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- (7) It is a defence in proceedings for an offence of contravening a direction under subsection (1), in relation to a failure to state another person's business address, if the defendant establishes that –
- (a) the other person did not have a business address; or
 - (b) the other person's business address was not connected (directly or indirectly) with road transport involving vehicles or combinations.

40. Direction to provide reasonable assistance for powers of inspection and search

- (1) An officer may direct a responsible person to provide assistance to the officer to enable the officer to effectively exercise a power under section 33, 34, 35 or 36.
- (2) Without limiting the above, the assistance may include helping the officer to do any or all of the following:
 - (a) to find and gain access to any records or information relating to a vehicle or combination, including but not limited to –
 - (i) records and information required to be kept in or on a vehicle or combination (including records and information indicating its

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- performance, specifications,
capabilities or legal entitlements);
or
 - (ii) records and information
(including records and
information relating to its
performance, specifications,
capabilities or legal entitlements)
in a useable form for the purpose
of ascertaining its compliance
with requirements imposed by or
under an Australian road law;
 - (b) to find and gain access to electronically
stored information;
 - (c) to weigh or measure –
 - (i) the whole or any part of a vehicle
or combination, including an axle
or axle group; or
 - (ii) the whole or any part of its
equipment or load;
 - (d) to operate equipment or facilities for a
purpose relevant to the power being or
proposed to be exercised;
 - (e) to access photocopying equipment free of
charge for the purpose of copying any
records or other material.
- (3) This section authorises the giving of a direction
to run the engine of a vehicle or combination,

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but not otherwise to drive the vehicle or combination.

(4) A direction –

- (a) can only be given in relation to a power under section 33, 34, 35 or 36 while the power can lawfully be exercised; and
- (b) ceases to be operative if the power ceases to be exercisable.

Note Accordingly, a direction cannot be given under this section, or remain operative, in relation to the exercise of a power under Division 4 where consent is required for the exercise of the power, unless unwithdrawn consent is given for the exercise of the power or the power can lawfully be exercised without consent.

(5) A person commits an offence if –

- (a) the person is subject to a direction under subsection (1); and
- (b) the person engages in conduct that results in a contravention of the direction.

Penalty: In the case of –

- (a) an individual, a fine not exceeding 60 penalty units; or
 - (b) a body corporate, a fine not exceeding 300 penalty units.
- (6) Subject to subsection (7), an offence against subsection (5) is an offence of strict liability.

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- (7) It is a defence to proceedings under subsection (5) if the defendant establishes that –
 - (a) the direction was unreasonable; or
 - (b) without limiting the above, the direction or its subject matter is outside the scope of the business or other activities of the person.
- (8) If the responsible person to whom a direction to run the engine of a vehicle or combination is given under this section fails to comply with the direction or no responsible person is available or willing to do so, the officer may –
 - (a) enter the vehicle or combination and run its engine; or
 - (b) authorise any other person to do so.

41. Provisions relating to running engine

- (1) This section applies to a person (in this section referred to as the “authorised person”) who is –
 - (a) a responsible person to whom a direction is given under section 40 to run the engine of a vehicle or combination; or
 - (b) an officer authorised by section 40(8) to run the engine of a vehicle or combination; or

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- (c) a person authorised by an officer under section 40(8) to run the engine of a vehicle or combination.
- (2) The authorised person may run the engine even though the person is not qualified to drive the vehicle or combination, if the officer believes on reasonable grounds that there is no other person in, on or in the vicinity of the vehicle or combination who is more capable of running the engine than the authorised person and who is fit and willing to run the engine.
- (3) The authorised person may use reasonable force in complying with the direction to run the engine or when acting under the authority of section 40(8) to run the engine.
- (4) It is immaterial that the authorised person does not have the authority of the registered operator to run the engine.
- (5) The authorised person is, in complying with the direction to run the engine or when acting under the authority of section 40(8) to run the engine, exempt from any other road law to the extent that the other law would require him or her to be licensed or otherwise authorised to do so.

42. Manner of giving directions under this Division

- (1) A direction under this Division may be given orally, in writing or in any other manner.

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- (2) A direction not given in person may be sent or transmitted by post, telephone, facsimile, electronic mail, radio or in any other manner.

43. Directions to state when to be complied with

- (1) If given orally, a direction under this Division must state whether it is to be complied with immediately or within a specified period.
- (2) If given in writing, a direction under this Division must specify the period within which it is to be complied with.

Division 6 – Warrants

44. Warrants

- (1) This section applies where an officer believes on reasonable grounds that –
 - (a) there may be at particular premises, then or within the next 72 hours, records, devices or other things that may provide evidence of an Australian road law offence; or
 - (b) a vehicle or combination has been or may have been involved in an incident involving death or personal injury or damage to property and –

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- (i) the vehicle or combination is or has been located at particular premises; or
 - (ii) particular premises are or may be otherwise connected (directly or indirectly) with the vehicle or combination or any part of its equipment or load.
 - (2) The officer may apply to a magistrate for a warrant authorising the officer to exercise a power to enter and search the premises under section 36.
 - (3) A search warrant authorises an officer –
 - (a) to enter premises; and
 - (b) to search premises in accordance with section 36; and
 - (c) to seize any property found in the course of the search that the officer believes, on reasonable grounds, provides evidence of an Australian road law offence of the kind specified in the warrant.
 - (4) Nothing in this section limits any other statutory law relating to search warrants.
 - (5) Schedule 1 has effect in relation to the issue, execution, effect and expiry of warrants for the purposes of this section.

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Division 7 – Other provisions regarding inspections and searches

45. Use of assistants and equipment

- (1) An officer may exercise powers under this Part with the aid of such assistants and equipment as the officer considers reasonably necessary in the circumstances.
- (2) Powers that may be exercised by an officer under this Part may be exercised by an assistant authorised and supervised by the officer, but only if the officer considers that it is reasonably necessary in the circumstances that an assistant exercise the powers.

46. Use of equipment to examine or process things

- (1) Without limiting section 45 (Use of assistants and equipment), an officer exercising a power under this Part may bring to, or on to, a vehicle, combination or premises any equipment reasonably necessary for the examination or processing of things found in, on or at the vehicle, combination or premises in order to determine whether they are things that may be seized.
- (2) If –
 - (a) it is not practicable to examine or process the things at the vehicle, combination or premises; or

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- (b) the occupier of the vehicle, combination or premises consents in writing –

the things may be moved to another place so that the examination or processing can be carried out in order to determine whether they are things that may be seized.

- (3) The officer, or a person assisting the officer, may operate equipment already in, on or at the vehicle, combination or premises to carry out the examination or processing of a thing found in, on or at the vehicle, combination or premises in order to determine whether it is a thing that may be seized, if the officer or person assisting believes on reasonable grounds that –
 - (a) the equipment is suitable for the examination or processing; and
 - (b) the examination or processing can be carried out without damage to the equipment or the thing.

47. Use or seizure of electronic equipment

- (1) If –
 - (a) a thing found by an officer in, on or at a vehicle, combination or premises is, or includes, a disk, tape or other device for the storage of information; and
 - (b) equipment in, on or at the vehicle, combination or premises may be used

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with the disk, tape or other storage device; and

- (c) the officer concerned believes on reasonable grounds that the information stored on the disk, tape or other storage device is relevant to determine whether an Australian road law or approved road transport compliance scheme has been contravened –

the officer or a person assisting the officer may operate the equipment to access the information.

- (2) If the officer or a person assisting the officer finds that a disk, tape or other storage device in, on or at the vehicle, combination or premises contains information of a kind referred to in subsection (1)(c), he or she may –
- (a) put the information in documentary form and seize the documents so produced; or
- (b) copy the information to another disk, tape or other storage device and remove that storage device from the vehicle, combination or premises; or
- (c) if it is not practicable to put the information in documentary form or to copy the information, seize the disk, tape or other storage device and the equipment that enables the information to be accessed.
- (3) An officer or a person assisting an officer must not operate or seize equipment for the purpose

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referred to in this section unless the officer or person assisting believes on reasonable grounds that the operation or seizure of the equipment can be carried out without damage to the equipment.

Division 8 – Other provisions regarding seizure

48. Receipt for and access to seized material

If a record, device or other thing is seized and removed under this Part, the officer concerned must –

- (a) give a receipt for it to the person from whom it is seized and removed; and
- (b) if practicable, allow the person who would normally be entitled to possession of it reasonable access to it.

49. Embargo notices

- (1) This section applies where –
 - (a) an officer is authorised to seize any record, device or other thing under this Part; and
 - (b) the record, device or other thing cannot, or cannot readily, be physically seized and removed.
- (2) The officer may issue an embargo notice under this section.

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- (3) An “embargo notice” is a notice forbidding the movement, sale, leasing, transfer, deletion of information from or other dealing with the record, device or other thing, or any part of it, without the written consent of the officer, the Authority or the Commissioner of Police.
- (4) The embargo notice –
 - (a) must be in the form, or contain the particulars, required by the regulations; and
 - (b) must list the activities that it forbids; and
 - (c) must set out a copy of subsection (8).
- (5) The officer may issue the embargo notice –
 - (a) by causing a copy of the notice to be served on the occupier of the vehicle, combination or premises concerned; or
 - (b) if that person cannot be located after all reasonable steps have been taken to do so, by affixing a copy of the notice to the record, device or other thing in a prominent position.
- (6) A person commits an offence if –
 - (a) the person knows that an embargo notice relates to a record, device or other thing; and
 - (b) the person –

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- (i) does anything that is forbidden by the embargo notice under this section; or
- (ii) instructs any other person to do anything that is forbidden by the embargo notice under this section or to do anything that the person is forbidden to do by the notice.

Penalty: In the case of –

- (a) an individual, a fine not exceeding 80 penalty units; or
 - (b) a body corporate, a fine not exceeding 400 penalty units.
- (7) It is a defence in proceedings for an offence against subsection (6) if the defendant establishes that he or she –
- (a) moved the record, device or other thing, or part of it, for the purpose of protecting or preserving it; and
 - (b) notified the officer who issued the embargo notice of the move, and of the new location of the record, device or other thing or part of it, within 48 hours after the move.
- (8) A person commits an offence if –
- (a) an embargo notice has been served on the person; and

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- (b) the person fails to take reasonable steps to prevent any other person from doing anything forbidden by the notice.

Penalty: In the case of –

- (a) an individual, a fine not exceeding 80 penalty units; or
 - (b) a body corporate, a fine not exceeding 400 penalty units.
- (9) Despite anything in any other Act, a sale, lease or transfer or other dealing with a record, device or other thing, or part of it, in contravention of this section is void.
 - (10) Subject to subsection (7), an offence against this section is an offence of strict liability.

Division 9 – Miscellaneous

50. Power to use force against persons to be exercised only by police officers

A provision of this Part that authorises a person to use reasonable force does not authorise a person who is not a police officer to use force against a person.

51. Consent

- (1) Before obtaining the consent of a person for the purposes of a provision of this Part, the officer

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concerned must inform the person that he or she may refuse to give consent.

- (2) An entry by or the exercise of any other power under this Part by an officer by virtue of the consent of a person is not lawful unless the person voluntarily consented to the entry.
- (3) Consent may be withdrawn after it has been given, and if it is withdrawn the power concerned must no longer be exercised by virtue of the consent.

52. Directions may be given under more than one provision

- (1) An officer may, on the same occasion, give directions under one or more provisions of this Part.
- (2) Without limiting the above, an officer may, in the course of exercising powers under a provision of this Part, give –
 - (a) further directions under the provision; or
 - (b) directions under one or more other provisions of this Part –or both.

53. Restoring vehicle, combination or premises to original condition after action taken

If –

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- (a) an officer or a person authorised by the officer takes any action in the exercise or purported exercise of any power under this Part in relation to a vehicle or combination or its equipment or load or in relation to any premises; and
- (b) damage is caused by the unreasonable exercise of the power or by the use of force that was not authorised under this Part –

the officer must take reasonable steps to return the vehicle, combination, equipment, load or premises to the condition it was in immediately before the action was taken.

54. Self-incrimination no excuse

- (1) Subject to subsections (2) and (3) –
 - (a) a person is not excused from producing a record, or a device or other thing that contains or may contain a record, under section 38 (Direction to produce records, devices or other things) on the ground that it (or the information in it) might incriminate the person; and
 - (b) a person is not excused from providing any information under section 39 (Direction to provide information) on the ground that the information might incriminate the person; and

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-
- (c) a person is not excused from providing any assistance under section 40 (Direction to provide reasonable assistance for powers of inspection and search) on the ground that the assistance may result in information being provided that might incriminate the person.
- (2) It is a defence in proceedings for an offence of failing to comply with a direction under section 39 or 40 if the defendant establishes that –
- (a) the defendant, in complying with the direction, would have been required to answer a question; and
- (b) the defendant objected to complying with the direction on the ground that the answer might incriminate the defendant; and
- (c) there were reasonable grounds for the objection.
- (3) It is a defence in proceedings for an offence of failing to comply with a direction under section 38, 39 or 40 if the defendant establishes that –
- (a) the defendant, in complying with the direction, would have been required –
- (i) to locate, identify or reveal the whereabouts of a record; or

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- (ii) to explain the contents of a record; and
 - (b) the defendant had objected to complying with the direction on the ground that the record (or the information in it) might incriminate the defendant; and
 - (c) there were reasonable grounds for the objection.
- (4) Subsection (2) does not apply –
 - (a) to a body corporate; or
 - (b) in relation to –
 - (i) a record that is required to be kept by law; or
 - (ii) any information in such a record –

whether or not the record has been kept properly or has been kept at all.
- (5) Subsection (3) does not apply –
 - (a) to a body corporate; or
 - (b) in relation to –
 - (i) a record that is required to be kept by law; or
 - (ii) any information in such a record –

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whether or not the record has been kept properly or has been kept at all; or

- (c) in relation to locating, identifying or revealing the whereabouts of a record, or a record of a class, that was specifically identified in the direction concerned.

55. Providing evidence to other authorities

- (1) Any records, devices or other things seized under this Act, or any information obtained under this Act, may, for the purposes of law enforcement, be given to any public authority of any jurisdiction (including any corresponding Authority) considered appropriate by the Authority or the Commissioner of Police, but only after consultation with the public authority concerned.
- (2) This section has effect subject to the *Personal Information Protection Act 2004*.

56. Obstructing or hindering officers

- (1) Subject to subsection (2), a person commits an offence if –
 - (a) an officer is exercising a power under this Act; and
 - (b) the person obstructs or hinders the officer in the exercise of the power.

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Penalty: In the case of –

- (a) an individual, a fine not exceeding 80 penalty units; or
 - (b) a body corporate, a fine not exceeding 400 penalty units.
- (2) An offence is not committed under this section in relation to a power under Division 4 unless it is established that the power –
 - (a) was being exercised lawfully; and
 - (b) without limiting paragraph (a), was –
 - (i) exercisable without consent; or
 - (ii) being exercised under the authority of a warrant.
- (3) The onus of proof of a matter set out in subsection (2) lies on the prosecution in proceedings for an offence under this section.
- (4) An offence against subsection (1) is an offence of strict liability.

57. Impersonating authorised officers

- (1) A person commits an offence if the person impersonates an authorised officer.

Penalty: Fine not exceeding 100 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.

**PART 4 – MASS, DIMENSION AND LOAD RESTRAINT
REQUIREMENTS**

Division 1 – Preliminary

58. Purpose and operation of this Part

- (1) The principal purpose of this Part is to make provision for compliance with, and enforcement of, Australian road laws in circumstances where a load is or may be a factor in a breach or apprehended breach of a mass, dimension or load restraint requirement.
- (2) Except where expressly provided, nothing in this Part limits the operation of other Parts of this Act, or any other road laws, in relation to a breach or apprehended breach of a mass, dimension or load restraint requirement.

Note A laden vehicle or combination could also be subject to compliance and enforcement provisions of other road laws because the vehicle or combination might contravene legislative provisions regarding mass or dimension even when the load is disregarded.

59. Definitions

For the purposes of this Part –

“**container weight declaration**” means a declaration referred to in Division 7 of Part 4, and includes a copy of such a declaration or a version of such a declaration in electronic or other form;

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“minor risk breach” of a mass, dimension or load restraint requirement – see section 61;

“reasonable steps defence” – see sections 69 and 70;

“severe risk breach” of a mass, dimension or load restraint requirement – see section 61;

“substantial risk breach” of a mass, dimension or load restraint requirement – see section 61.

60. Determining whether a breach involves risk

For the purposes of this Part, in determining whether or not a breach of a mass, dimension or load restraint requirement involves an appreciable risk of harm to public safety, the environment, road infrastructure or public amenity, regard is to be had to –

- (a) the nature and severity of the breach; and
- (b) the consequences or likely consequences of the breach; and
- (c) any other relevant factors.

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Division 2 – Categorisation of breaches

61. Meaning of minor, substantial or severe risk breaches

For the purposes of this Act, a breach of a mass, dimension or load restraint requirement is a –

- (a) minor risk breach if the breach is categorised as a minor risk breach under the regulations; or
- (b) substantial risk breach if the breach is categorised as a substantial risk breach under the regulations; or
- (c) severe risk breach if the breach is categorised as a severe risk breach under the regulations.

Division 3 – Enforcement powers

Note The enforcement powers provided by this Division vary according to the risk category involved. The principal features are as follows:

Minor risk breaches

The officer may authorise the driver to continue the journey (conditionally or unconditionally), but in particular circumstances the officer may direct the driver to rectify breaches then and there or to move the vehicle or combination to a suitable location (within a limited distance) and not proceed until breaches are rectified.

Substantial risk breaches

The officer must direct the driver not to proceed until breaches are rectified, but in particular circumstances (or acting under particular instructions) the officer may direct the driver to

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move the vehicle or combination to the nearest suitable location and not proceed until breaches are rectified.

Severe risk breaches

The officer must direct the driver not to proceed until breaches are rectified, but in limited particular circumstances (or acting under particular instructions) the officer may direct the driver to move the vehicle or combination to the nearest safe location and not proceed until breaches are rectified.

Directions may instead be given to the operator of the vehicle or combination, who is required to ensure that the direction is carried out.

62. Minor risk breaches

- (1) This section applies to a vehicle or combination, where an officer believes on reasonable grounds that –
 - (a) the vehicle or combination is the subject of one or more minor risk breaches of mass, dimension or load restraint requirements; and
 - (b) the vehicle or combination is not the subject of a substantial risk breach or a severe risk breach.
- (2) The officer may –
 - (a) if the officer does not give a direction under paragraph (b), authorise the driver of the vehicle or combination to continue its journey under section 65 (Authorisation to continue journey where only minor risk breaches); or

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-
- (b) if the officer believes on reasonable grounds that particular circumstances exist warranting the giving of a direction under this paragraph, direct the driver or operator of the vehicle or combination –
 - (i) to rectify specified breaches of mass, dimension or load restraint requirements then and there; or
 - (ii) if the officer also believes on reasonable grounds that the vehicle or combination should be moved to another location, to move it or cause it to be moved to a specified suitable location that is within the prescribed distance, and not to proceed from there until specified breaches of mass, dimension or load restraint requirements are rectified.

Note Section 65 enables the officer to permit the vehicle or combination to continue its journey (conditionally or unconditionally) if only minor risk breaches exist and no direction to rectify the breaches has been given or remains in force.

- (3) Without limiting the above, particular circumstances warranting the giving of a direction exist where –
 - (a) rectification is reasonable and can be carried out easily; or
 - (b) rectification is necessary in the public interest to avoid potential risk of harm to

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public safety, the environment, road infrastructure or public amenity.

- (4) A direction may be given under this section unconditionally or subject to conditions imposed by the officer.
- (5) A person commits an offence if –
 - (a) the person is subject to a direction under subsection (2); and
 - (b) the person engages in conduct that results in a contravention of the direction.

Penalty: In the case of –

- (a) an individual –
 - (i) for a first offence, a fine not exceeding 30 penalty units; or
 - (ii) for a subsequent offence, a fine not less than 12 penalty units and not exceeding 60 penalty units; or
- (b) a body corporate –
 - (i) for a first offence, a fine not exceeding 150 penalty units; or
 - (ii) for a subsequent offence, a fine not less than 12 penalty units

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and not exceeding 300
penalty units.

(6) A person commits an offence if –

- (a) the person is subject to a direction under subsection (2); and
- (b) the direction is subject to a condition; and
- (c) the person engages in conduct that results in a contravention of the condition.

Penalty: In the case of –

(a) an individual –

- (i) for a first offence, a fine not exceeding 30 penalty units; or
- (ii) for a subsequent offence, a fine not less than 12 penalty units and not exceeding 60 penalty units; or

(b) a body corporate –

- (i) for a first offence, a fine not exceeding 150 penalty units; or
- (ii) for a subsequent offence, a fine not less than 12 penalty units

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and not exceeding 300
penalty units.

- (7) An offence against this section is an offence of strict liability.

63. Substantial risk breaches

- (1) This section applies to a vehicle or combination, where an officer believes on reasonable grounds that –
- (a) the vehicle or combination is the subject of one or more substantial risk breaches; and
 - (b) the vehicle or combination is not the subject of a severe risk breach.
- (2) The officer must –
- (a) direct the driver or operator of the vehicle or combination not to proceed until specified breaches of mass, dimension or load restraint requirements are rectified; or
 - (b) if the officer believes on reasonable grounds that –
 - (i) particular circumstances exist warranting the moving of the vehicle or combination to another location; or

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- (ii) particular instructions have been given authorising or requiring the moving of the vehicle or combination to another location –

direct the driver or operator of the vehicle or combination to move it or cause it to be moved to the nearest suitable location as specified by the officer, and not to proceed from there until specified breaches of mass, dimension or load restraint requirements are rectified.

- (3) Without limiting the above, particular circumstances warranting the moving of a vehicle or combination exist where moving the vehicle or combination is necessary in the public interest to avoid potential risk of harm to public safety, the environment, road infrastructure or public amenity.
- (4) Particular instructions authorising or requiring the moving of a vehicle or combination are specific instructions or standing instructions given by the Authority (orally or in writing, or by telephone, facsimile, electronic mail or radio, or in any other manner) authorising or requiring the moving of the vehicle or combination in the relevant circumstances.
- (5) A direction may be given under this section unconditionally or subject to conditions imposed by the officer.
- (6) A person commits an offence if –

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- (a) the person is subject to a direction under subsection (2); and
- (b) the person engages in conduct that results in a contravention of the direction.

Penalty: In the case of –

(a) an individual –

- (i) for a first offence, a fine not exceeding 30 penalty units; or
- (ii) for a subsequent offence, a fine not less than 12 penalty units and not exceeding 60 penalty units; or

(b) a body corporate –

- (i) for a first offence, a fine not exceeding 150 penalty units; or
- (ii) for a subsequent offence, a fine not less than 12 penalty units and not exceeding 300 penalty units.

(7) A person commits an offence if –

- (a) the person is subject to a direction under subsection (2); and

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- (b) the direction is subject to a condition;
and
- (c) the person engages in conduct that results
in a contravention of the condition.

Penalty: In the case of –

(a) an individual –

- (i) for a first offence, a
fine not exceeding 30
penalty units; or
- (ii) for a subsequent
offence, a fine not less
than 12 penalty units
and not exceeding 60
penalty units; or

(b) a body corporate –

- (i) for a first offence, a
fine not exceeding 150
penalty units; or
- (ii) for a subsequent
offence, a fine not less
than 12 penalty units
and not exceeding 300
penalty units.

- (8) An offence against this section is an offence of
strict liability.

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64. Severe risk breaches

- (1) This section applies to a vehicle or combination, where an officer believes on reasonable grounds that the vehicle or combination is the subject of one or more severe risk breaches.
- (2) The officer must –
 - (a) direct the driver or operator of the vehicle or combination not to proceed until specified breaches of mass, dimension or load restraint requirements are rectified; or
 - (b) if the officer believes on reasonable grounds that –
 - (i) particular circumstances exist warranting the moving of the vehicle or combination to another location; or
 - (ii) particular instructions have been given authorising or requiring the moving of the vehicle or combination to another location –

direct the driver or operator of the vehicle or combination to move it or cause it to be moved to the nearest safe location as specified by the officer, and not to proceed from there until specified breaches of mass, dimension or load restraint requirements are rectified.

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-
- (3) Particular circumstances warranting the moving of a vehicle or combination exist only –
- (a) where there is an appreciable risk of harm to public safety, the environment, road infrastructure or public amenity; or
 - (b) where there is a risk to the welfare of people or live animals in or on the vehicle or combination.
- (4) Particular instructions authorising or requiring the moving of a vehicle or combination are specific instructions or standing instructions given by the Authority (orally or in writing, or by telephone, facsimile, electronic mail or radio, or in any other manner) authorising or requiring the moving of the vehicle or combination in the relevant circumstances.
- (5) A direction may be given under this section unconditionally or subject to conditions imposed by the officer.
- (6) A person commits an offence if –
- (a) the person is subject to a direction under subsection (2); and
 - (b) the person engages in conduct that results in a contravention of the direction.

Penalty: In the case of –

- (a) an individual –

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- (i) for a first offence, a fine not exceeding 30 penalty units; or
 - (ii) for a subsequent offence, a fine not less than 12 penalty units and not exceeding 60 penalty units; or
- (b) a body corporate –
 - (i) for a first offence, a fine not exceeding 150 penalty units; or
 - (ii) for a subsequent offence, a fine not less than 12 penalty units and not exceeding 300 penalty units.
- (7) A person commits an offence if –
 - (a) the person is subject to a direction under subsection (2); and
 - (b) the direction is subject to a condition; and
 - (c) the person engages in conduct that results in a contravention of the condition.

Penalty: In the case of –

- (a) an individual –

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-
- (i) for a first offence, a fine not exceeding 30 penalty units; or
 - (ii) for a subsequent offence, a fine not less than 12 penalty units and not exceeding 60 penalty units; or
 - (b) a body corporate –
 - (i) for a first offence, a fine not exceeding 150 penalty units; or
 - (ii) for a subsequent offence, a fine not less than 12 penalty units and not exceeding 300 penalty units.
- (8) An offence against this section is an offence of strict liability.
- (9) In this section –
- “risk of harm to public safety”** does not (subject to subsection (10)) include risk of harm to the safety of the vehicle or combination or any load in or on it;
- “safe location”** means a location that the officer believes on reasonable grounds poses a reduced risk or no appreciable risk of harm to public safety, the

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environment, road infrastructure or
public amenity.

Note Subsection (10) ensures that the officer may take excluded matters into account in particular circumstances.

- (10) Nothing in the definition of “risk of harm to public safety” in subsection (9), or in any other provision of this section, prevents the officer from taking into account the safety of the vehicle or combination or any load in or on it if the officer believes on reasonable grounds he or she can do so without prejudicing the safety of other property or of people, the environment, road infrastructure or public amenity.

65. Authorisation to continue journey where only minor risk breaches

- (1) This section applies to a vehicle or combination, where an officer believes on reasonable grounds that –
- (a) the vehicle or combination is the subject of one or more minor risk breaches of mass, dimension or load restraint requirements; and
 - (b) the vehicle or combination is not or is no longer the subject of a substantial risk breach or a severe risk breach; and
 - (c) the driver is not or is no longer the subject of a direction for the rectification

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of the minor risk breach or any of the
minor risk breaches.

- (2) The officer may authorise the driver of the vehicle or combination to continue its journey.
- (3) An authorisation may be granted under this section unconditionally or subject to conditions imposed by the officer.
- (4) A person commits an offence if –
 - (a) the person is granted an authorisation under this section; and
 - (b) the authorisation is subject to a condition; and
 - (c) the person engages in conduct that results in a contravention of the condition.

Penalty: In the case of –

- (a) an individual –
 - (i) for a first offence, a fine not exceeding 30 penalty units; or
 - (ii) for a subsequent offence, a fine not less than 12 penalty units and not exceeding 60 penalty units; or
- (b) a body corporate –

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- (i) for a first offence, a fine not exceeding 150 penalty units; or
 - (ii) for a subsequent offence, a fine not less than 12 penalty units and not exceeding 300 penalty units.
- (5) An offence against subsection (4) is an offence of strict liability.

66. Operation of directions in relation to combinations

- (1) This section applies where a direction is given under this Division in relation to a combination.
- (2) Subject to subsection (3), nothing in this Division prevents a component vehicle of the combination from being separately driven or moved if –
 - (a) the component vehicle is not itself the subject of a breach of a mass, dimension or load restraint requirement; and
 - (b) it is not otherwise unlawful for the component vehicle to be driven or moved.
- (3) Subsection (2) does not apply where a condition of the direction prevents the component vehicle from being separately driven or moved.
- (4) In this section –

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“component vehicle” of a combination means
a towing vehicle or trailer of the
combination.

67. Directions and authorisations to be in writing

A direction or authorisation under this Division
is to be in writing, except –

- (a) in the case of a direction to move a
vehicle or combination, where the
moving is carried out in the presence of,
or under the supervision of, an officer; or
- (b) in other circumstances prescribed by the
regulations.

**68. Application of Division in relation to other
directions**

This Division applies to a vehicle or
combination regardless of whether or not the
vehicle or combination is, has been or becomes
the subject of a direction under Part 3.

Division 4 – Reasonable steps defence

69. Reasonable steps defence

- (1) If a provision of this Part states that a person has
the benefit of the “reasonable steps defence” for
an offence, it is a defence to a charge for the

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offence concerned if the person charged establishes that –

- (a) the person did not know, and could not reasonably be expected to have known, of the contravention concerned; and
 - (b) either –
 - (i) the person had taken all reasonable steps to prevent the contravention; or
 - (ii) there were no steps that the person could reasonably be expected to have taken to prevent the contravention.
- (2) Without limiting the above, in determining whether things done or omitted to be done by the person charged constitute reasonable steps, a court may have regard to –
- (a) the circumstances of the alleged offence, including (where relevant) the risk category to which the breach concerned belongs; and
 - (b) without limiting paragraph (a), the measures available and measures taken for any or all of the following:
 - (i) to accurately and safely weigh or measure the vehicle or combination or its load or to safely restrain the load in or on the vehicle or combination;

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- (ii) to provide and obtain sufficient and reliable evidence from which the weight or measurement of the vehicle or combination or its load might be calculated;
 - (iii) to manage, reduce or eliminate a potential breach arising from the location of the vehicle or combination, or from the location of the load in or on the vehicle or combination, or from the location of goods in the load;
 - (iv) to manage, reduce or eliminate a potential breach arising from weather and climatic conditions, or from potential weather and climatic conditions, affecting or potentially affecting the weight or measurement of the load;
 - (v) to exercise supervision or control over other persons involved in activities leading to the breach; and
 - (c) the measures available and measures taken for any or all of the following:
 - (i) to include compliance assurance conditions in relevant commercial arrangements with other responsible persons;
 - (ii) to provide information, instruction, training and

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supervision to employees to enable compliance with relevant laws;

(iii) to maintain equipment and work systems to enable compliance with relevant laws;

(iv) to address and remedy similar compliance problems that may have occurred in the past; and

(d) whether the person charged had, either personally or through an agent or employee, custody or control of the vehicle or combination, or of its load, or of any of the goods included or to be included in the load; and

(e) the personal expertise and experience that the person charged had or ought to have had or that an agent or employee of the person charged had or ought to have had.

(3) In this section –

“risk category” means one of the following categories of offences:

(a) minor risk breach;

(b) substantial risk breach;

(c) severe risk breach.

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70. Reasonable steps defence – reliance on container weight declaration

- (1) This section applies where the operator or driver of a vehicle or combination is charged with an offence involving a breach of a mass requirement and is seeking to establish the reasonable steps defence in relation to the offence.
- (2) To the extent that the weight of a freight container together with its contents is relevant to the offence, the person charged may rely on the weight stated in the relevant container weight declaration, unless it is established that the person knew or ought reasonably to have known that –
 - (a) the stated weight was lower than the actual weight; or
 - (b) the distributed weight of the container and its contents, together with –
 - (i) the mass or location of any other load; or
 - (ii) the mass of the vehicle or combination or any part of it –would cause one or more breaches of mass requirements.

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***Division 5 – Liability for breaches of mass, dimension or
load restraint requirements***

71. Liability of consignor

(1) A person commits an offence if –

- (a) a breach of a mass, dimension or load restraint requirement occurs; and
- (b) the person is the consignor of any goods that are in or on the vehicle or combination concerned.

Penalty: In the case of –

- (a) a minor risk breach of a mass requirement, Level 1 penalty;
or
- (b) a substantial risk breach of a mass requirement, Level 2 penalty; or
- (c) a severe risk breach of a mass requirement, Level 3 penalty;
or
- (d) a minor risk breach of a dimension or load restraint requirement, Level 4 penalty;
or
- (e) a substantial risk breach of a dimension or load restraint requirement, Level 5 penalty;
or

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- (f) a severe risk breach of a dimension or load restraint requirement, Level 6 penalty.

(2) A person commits an offence if –

- (a) the weight of a freight container containing goods consigned for road transport exceeds the maximum gross weight as marked on the container or on the container's safety approval plate; and
- (b) the person is the consignor of any of the goods contained in the freight container.

Penalty: In the case of –

(a) an individual –

- (i) for a first offence, a fine not exceeding 50 penalty units; or
- (ii) for a subsequent offence, a fine not less than 20 penalty units and not exceeding 100 penalty units; or

(b) a body corporate –

- (i) for a first offence, a fine not exceeding 250 penalty units; or
- (ii) for a subsequent offence, a fine not less than 20 penalty units

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and not exceeding 500
penalty units.

- (3) Subject to subsection (4), an offence against this section is an offence of absolute liability.
- (4) A person charged under this section has the benefit of the reasonable steps defence for an offence under this section.

72. Liability of packer

- (1) A person commits an offence if –
 - (a) a breach of a mass, dimension or load restraint requirement occurs; and
 - (b) the person is the packer of any goods that are in or on the vehicle or combination concerned.

Penalty: In the case of –

- (a) a minor risk breach of a mass requirement, Level 1 penalty;
or
- (b) a substantial risk breach of a mass requirement, Level 2 penalty; or
- (c) a severe risk breach of a mass requirement, Level 3 penalty;
or

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- (d) a minor risk breach of a dimension or load restraint requirement, Level 4 penalty; or
- (e) a substantial risk breach of a dimension or load restraint requirement, Level 5 penalty; or
- (f) a severe risk breach of a dimension or load restraint requirement, Level 6 penalty.

(2) A person commits an offence if –

- (a) the weight of a freight container containing goods consigned for road transport exceeds the maximum gross weight as marked on the container or on the container's safety approval plate; and
- (b) the person is the packer of any of the goods contained in the freight container.

Penalty: In the case of –

- (a) an individual –
 - (i) for a first offence, a fine not exceeding 50 penalty units; or
 - (ii) for a subsequent offence, a fine not less than 20 penalty units

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and not exceeding 100
penalty units; or

(b) a body corporate –

(i) for a first offence, a
fine not exceeding 250
penalty units; or

(ii) for a subsequent
offence, a fine not less
than 20 penalty units
and not exceeding 500
penalty units.

(3) Subject to subsection (4), an offence against this
section is an offence of absolute liability.

(4) A person charged under this section has the
benefit of the reasonable steps defence for an
offence under this section.

73. Liability of loader

(1) A person commits an offence if –

(a) a breach of a mass, dimension or load
restraint requirement occurs; and

(b) the person is the loader of any goods that
are in or on the vehicle or combination
concerned.

Penalty: In the case of –

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-
- (a) a minor risk breach of a mass requirement, Level 1 penalty;
or
 - (b) a substantial risk breach of a mass requirement, Level 2 penalty; or
 - (c) a severe risk breach of a mass requirement, Level 3 penalty;
or
 - (d) a minor risk breach of a dimension or load restraint requirement, Level 4 penalty;
or
 - (e) a substantial risk breach of a dimension or load restraint requirement, Level 5 penalty;
or
 - (f) a severe risk breach of a dimension or load restraint requirement, Level 6 penalty.
- (2) Subject to subsection (3), an offence against this section is an offence of absolute liability.
 - (3) The person charged has the benefit of the reasonable steps defence for an offence under this section.

74. Liability of operator

- (1) A person commits an offence if –

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- (a) a breach of a mass, dimension or load restraint requirement occurs; and
- (b) the person is the operator of the vehicle or combination concerned.

Penalty: In the case of –

- (a) a minor risk breach of a mass requirement, Level 1 penalty; or
 - (b) a substantial risk breach of a mass requirement, Level 2 penalty; or
 - (c) a severe risk breach of a mass requirement, Level 3 penalty; or
 - (d) a minor risk breach of a dimension or load restraint requirement, Level 4 penalty; or
 - (e) a substantial risk breach of a dimension or load restraint requirement, Level 5 penalty; or
 - (f) a severe risk breach of a dimension or load restraint requirement, Level 6 penalty.
- (2) Subject to subsections (3) and (4), an offence against this section is an offence of absolute liability.

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- (3) If the breach concerned is a minor risk breach, the person charged has the benefit of the reasonable steps defence for an offence under this section.
- (4) If the breach concerned is a substantial risk breach or a severe risk breach, the person charged has the benefit of the reasonable steps defence for an offence under this section, but only so far as it relates to reliance on the weight stated in a container weight declaration.

75. Liability of driver

- (1) A person commits an offence if –
 - (a) a breach of a mass, dimension or load restraint requirement occurs; and
 - (b) the person is the driver of the vehicle or combination concerned.

Penalty: In the case of –

- (a) a minor risk breach of a mass requirement, Level 1 penalty;
or
- (b) a substantial risk breach of a mass requirement, Level 2 penalty; or
- (c) a severe risk breach of a mass requirement, Level 3 penalty;
or

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- (d) a minor risk breach of a dimension or load restraint requirement, Level 4 penalty; or
 - (e) a substantial risk breach of a dimension or load restraint requirement, Level 5 penalty; or
 - (f) a severe risk breach of a dimension or load restraint requirement, Level 6 penalty.
- (2) Subject to subsections (3) and (4), an offence against this section is an offence of absolute liability.
- (3) If the breach concerned is a minor risk breach, the person charged has the benefit of the reasonable steps defence for an offence under this section.
- (4) If the breach concerned is a substantial risk breach or a severe risk breach, the person charged has the benefit of the reasonable steps defence for an offence under this section, but only so far as it relates to reliance on the weight stated in a container weight declaration.

76. Liability of consignee

- (1) A person who is a consignee of goods consigned for road transport commits an offence if –
 - (a) the person engages in conduct; and

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- (b) that conduct results or is likely to result in inducing or rewarding a breach of a relevant mass, dimension or load restraint requirement; and
- (c) the person intends that result.

Penalty: In the case of –

(a) an individual –

- (i) for a first offence, a fine not exceeding 50 penalty units; or
- (ii) for a subsequent offence, a fine not less than 20 penalty units and not exceeding 100 penalty units; or

(b) a body corporate –

- (i) for a first offence, a fine not exceeding 250 penalty units; or
- (ii) for a subsequent offence, a fine not less than 20 penalty units and not exceeding 500 penalty units.

Note Section 87 (Liability of consignee – knowledge of matters relating to container weight declaration) provides that a consignee is taken to have intended the result referred to in subsection (1) if the consignee knew or ought reasonably to have known that a container weight declaration was not provided as required or that a container weight declaration

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contained false or misleading information about the weight of a freight container.

- (2) A person who is a consignee of goods consigned for road transport commits an offence if –
- (a) the person engages in conduct; and
 - (b) that conduct results or is likely to result in inducing or rewarding a breach of a relevant mass, dimension or load restraint requirement; and
 - (c) the person is reckless as to the matter referred to in paragraph (b).

Penalty: In the case of –

- (a) an individual –
 - (i) for a first offence, a fine not exceeding 50 penalty units; or
 - (ii) for a subsequent offence, a fine not less than 20 penalty units and not exceeding 100 penalty units; or
- (b) a body corporate –
 - (i) for a first offence, a fine not exceeding 250 penalty units; or
 - (ii) for a subsequent offence, a fine not less

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than 20 penalty units
and not exceeding 500
penalty units.

- (3) A person who is a consignee of goods consigned for road transport commits an offence if –
- (a) the person engages in conduct; and
 - (b) that conduct results or is likely to result in inducing or rewarding a breach of a relevant mass, dimension or load restraint requirement; and
 - (c) the person is negligent as to the matter referred to in paragraph (b).

Penalty: In the case of –

- (a) an individual –
 - (i) for a first offence, a fine not exceeding 50 penalty units; or
 - (ii) for a subsequent offence, a fine not less than 20 penalty units and not exceeding 100 penalty units; or
- (b) a body corporate –
 - (i) for a first offence, a fine not exceeding 250 penalty units; or

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- (ii) for a subsequent offence, a fine not less than 20 penalty units and not exceeding 500 penalty units.

77. Penalty levels

- (1) For the purposes of this Division, a reference in a penalty provision to a level is a reference to the level of the penalty as described in this section.
- (2) Level 1 means, in the case of –
 - (a) an individual –
 - (i) for a first offence, a fine not exceeding 10 penalty units; or
 - (ii) for a subsequent offence, a fine not less than 3 penalty units and not exceeding 20 penalty units; or
 - (b) a body corporate –
 - (i) for a first offence, a fine not exceeding 50 penalty units; or
 - (ii) for a subsequent offence, a fine not less than 4 penalty units and not exceeding 100 penalty units.
- (3) Level 2 means, in the case of –
 - (a) an individual –

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-
- (i) for a first offence, a fine not exceeding 20 penalty units; or
 - (ii) for a subsequent offence, a fine not less than 6 penalty units and not exceeding 40 penalty units; or
 - (b) a body corporate –
 - (i) for a first offence, a fine not exceeding 100 penalty units; or
 - (ii) for a subsequent offence, a fine not less than 6 penalty units and not exceeding 200 penalty units.
- (4) Level 3 means, in the case of –
- (a) an individual for a first offence, a fine not exceeding 50 penalty units plus a maximum of 5 penalty units for each additional 1% over 120% overload; or
 - (b) an individual for a subsequent offence –
 - (i) a fine not less than 20 penalty units plus a maximum of 2 penalty units for each additional 1% over 120% overload; and
 - (ii) a fine not exceeding 100 penalty units plus a maximum of 10 penalty units for each additional 1% over 120% overload; or
 - (c) a body corporate for a first offence, a fine not exceeding 250 penalty units plus a

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maximum of 25 penalty units for each additional 1% over 120% overload; or

(d) a body corporate for a subsequent offence –

(i) a fine not less than 20 penalty units plus a maximum of 2 penalty units for each additional 1% over 120% overload; and

(ii) a fine not exceeding 500 penalty units plus a maximum of 50 penalty units for each additional 1% over 120% overload.

(5) Level 4 means, in the case of –

(a) an individual –

(i) for a first offence, a fine not exceeding 7.5 penalty units; or

(ii) for a subsequent offence, a fine of not less than 2.5 penalty units and not exceeding 15 penalty units; or

(b) a body corporate –

(i) for a first offence, a fine not exceeding 37.5 penalty units; or

(ii) for a subsequent offence, a fine of not less than 2.5 penalty units and not exceeding 75 penalty units.

(6) Level 5 means, in the case of –

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-
- (a) an individual –
- (i) for a first offence, a fine not exceeding 15 penalty units; or
 - (ii) for a subsequent offence, a fine not less than 5 penalty units and not exceeding 30 penalty units; or
- (b) a body corporate –
- (i) for a first offence, a fine not exceeding 75 penalty units; or
 - (ii) for a subsequent offence, a fine of not less than 5 penalty units and not exceeding 150 penalty units.
- (7) Level 6 means, in the case of –
- (a) an individual –
- (i) for a first offence, a fine not exceeding 50 penalty units; or
 - (ii) for a subsequent offence, a fine of not less than 20 penalty units and not exceeding 100 penalty units; or
- (b) a body corporate –
- (i) for a first offence, a fine not exceeding 250 penalty units; or
 - (ii) for a subsequent offence, a fine of not less than 20 penalty units and not exceeding 500 penalty units.

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Division 6 – Sanctions

78. Matters to be taken into consideration by courts

- (1) The purpose of this section is to bring to the attention of courts the general implications and consequences of breaches of mass, dimension or load restraint requirements when determining the kinds and levels of sanctions to be imposed.
- (2) In determining the sanctions (including the level of fine) that are to be imposed in respect of breaches of mass, dimension or load restraint requirements, courts are to take into consideration the following matters:
 - (a) minor risk breaches involve either or both of the following:
 - (i) an appreciable risk of accelerated road wear;
 - (ii) an appreciable risk of unfair commercial advantage;
 - (b) substantial risk breaches involve one or more of the following:
 - (i) a substantial risk of accelerated road wear;
 - (ii) an appreciable risk of damage to road infrastructure;
 - (iii) an appreciable risk of increased traffic congestion;

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- (iv) an appreciable risk of diminished public amenity;
 - (v) a substantial risk of unfair commercial advantage;
 - (c) severe risk breaches involve one or more of the following:
 - (i) an appreciable risk of harm to public safety or the environment;
 - (ii) a serious risk of accelerated road wear;
 - (iii) a serious risk of harm to road infrastructure;
 - (iv) a serious risk of increased traffic congestion;
 - (v) a serious risk of diminished public amenity;
 - (vi) a serious risk of unfair commercial advantage.
 - (3) Nothing in this section affects any other matters that may or must be taken into consideration by a court.
 - (4) Nothing in this section authorises or requires a court to assign the breach to a different category of breach.
 - (5) Nothing in this section requires evidence to be adduced in relation to the matters that are to be

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taken into consideration by a court pursuant to this section.

79. Default categorisation

- (1) If a court is satisfied that there has been a breach of a mass, dimension or load restraint requirement but is not satisfied that the breach is a substantial risk breach or a severe risk breach, it may treat the breach as a minor risk breach.
- (2) If a court is satisfied that there has been a breach of a mass, dimension or load restraint requirement and that the breach is at least a substantial risk breach but is not satisfied that the breach is a severe risk breach, it may treat the breach as a substantial risk breach.

Division 7 – Container weight declarations

80. Application of Division

This Division applies to a freight container that is consigned for transport by road, either for the whole of its journey or for part of its journey.

81. Definition

For the purposes of this Division –

“responsible entity”, in relation to a freight container, means –

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- (a) the person who consigned the container for transport by road in this jurisdiction if the person was in Australia at the time of consignment; or
- (b) if there is no person as described in paragraph (a), the person who in Australia, on behalf of the consignor, arranged for the transport by road of the container in this jurisdiction; or
- (c) if there is no person as described in paragraph (a) or (b), the person who in Australia physically offered the container for transport by road in this jurisdiction.

82. Container weight declarations

- (1) A container weight declaration for a freight container is a declaration that states or purports to state the weight of the freight container and its contents.
- (2) A container weight declaration –
 - (a) may be comprised in one or more documents or other formats, including in electronic form; or
 - (b) may be as prescribed; or
 - (c) without limiting the above, may be comprised wholly or partly in a placard

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attached or affixed to the freight
container.

83. Complying container weight declarations

- (1) A container weight declaration for a freight container complies with this Division (known as a “complying container weight declaration”) if it contains the following additional information:
 - (a) the number and other particulars of the freight container necessary to identify the container;
 - (b) the name, home address or business address in Australia of the responsible entity;
 - (c) the date of the declaration;
 - (d) any other information required by the regulations.
- (2) However, a container weight declaration does not comply with this Division if –
 - (a) the contents of the container weight declaration are not readily available to an officer who seeks to ascertain its contents, there and then in the presence of the freight container (whether by examining documents located in or on the vehicle or combination or by obtaining the information by radio or mobile telephone or by any other means);
or

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- (b) it is not in a form that can be used or adapted for evidentiary purposes; or
- (c) it is not in a form that satisfies requirements prescribed by the regulations.

84. Duty of responsible entity

- (1) This section applies where a responsible entity offers a freight container to an operator for transport in this jurisdiction by a vehicle or combination.
- (2) The responsible entity must ensure that the operator or driver of the vehicle or combination is provided, before the start of the transport of the freight container in this jurisdiction, with a complying container weight declaration relating to the freight container.
- (3) The responsible entity is guilty of an offence if the responsible entity engages in conduct that contravenes subsection (2).

Penalty: In the case of –

- (a) an individual, a fine not exceeding 40 penalty units; or
 - (b) a body corporate, a fine not exceeding 200 penalty units.
- (4) Subject to subsection (5), an offence against this section is an offence of absolute liability.

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- (5) The person charged with an offence under this section has the benefit of the reasonable steps defence.

85. Duty of operator

- (1) This section applies where an operator arranges for a freight container to be transported in this jurisdiction by a vehicle or combination.
- (2) The operator must ensure that the driver of the vehicle or combination is provided, before the start of the driver's journey in the course of the transport of the freight container in this jurisdiction, with a complying container weight declaration relating to the freight container.
- (3) If the freight container is to be transported by another road or rail carrier, the operator must ensure that the other carrier is provided with a complying container weight declaration relating to the freight container (or with the prescribed particulars contained in the declaration) by the time the other carrier receives the freight container.
- (4) If the driver does not have a complying container weight declaration (or the prescribed particulars contained in the declaration), the operator is taken to have contravened subsection (2) unless the operator establishes that the driver was provided with the declaration (or the prescribed particulars).

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- (5) The operator is guilty of an offence if the operator engages in conduct that contravenes subsection (2) or (3).

Penalty: In the case of –

- (a) an individual, a fine not exceeding 60 penalty units; or
 - (b) a body corporate, a fine not exceeding 300 penalty units.
- (6) Subject to subsection (7), an offence against this section is an offence of absolute liability.
- (7) The person charged with an offence under this section has the benefit of the reasonable steps defence.
- (8) Any or all of subsections (2), (3) and (4) do not apply in circumstances prescribed by the regulations.

86. Duty of driver

- (1) A person must not drive a vehicle or combination loaded with a freight container on a public street in this jurisdiction without first having been provided with the relevant container weight declaration.
- (2) If a container weight declaration relating to a freight container is provided to a driver of a vehicle or combination with the container, the driver must, during the course of a journey in this jurisdiction, keep the declaration in or about

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the vehicle or combination or in a manner that enables it to be readily accessed from the vehicle or combination.

- (3) The driver is guilty of an offence if the driver engages in conduct that contravenes subsection (1) or (2).

Penalty: Fine not exceeding 60 penalty units.

- (4) Subject to subsection (5), an offence against this section is an offence of absolute liability.
- (5) The person charged with an offence under this section has the benefit of the reasonable steps defence.

87. Liability of consignee – knowledge of matters relating to container weight declaration

Without limiting section 76 (Liability of consignee), a consignee of goods is taken to have intended the result referred to in section 76(1)(b) if –

- (a) the conduct concerned related to a freight container; and
- (b) the person knew or ought reasonably to have known that –
- (i) a container weight declaration for the container was not provided as required by this Act; or

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- (ii) a container weight declaration provided for the container contained information about the weight of the container and its contents that was false or misleading in a material particular.

Note Section 76(1) provides that a person who is a consignee of goods consigned for road transport is guilty of an offence if the person engages in conduct that results or is likely to result in inducing or rewarding a breach of a relevant mass, dimension or load restraint requirement and the person intends that result.

Division 8 – Recovery of losses resulting from non-provision of or inaccurate container weight declarations

88. Recovery of losses for non-provision of container weight declaration

- (1) This section applies where –
 - (a) a container weight declaration has not been provided as required; and
 - (b) a person suffered loss as a result of the non-provision of the declaration.
- (2) Any person (the “plaintiff”) has a right to recover under this Act, from the responsible entity for a freight container, the monetary value of any loss incurred by the plaintiff and consequent on the non-provision of the container weight declaration relating to that freight container.

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- (3) Losses that may be recovered include any or all of the following:
 - (a) any loss incurred from delays in the delivery of the freight container or any goods contained in it or of other goods;
 - (b) any loss incurred from the spoiling of or damage to the goods;
 - (c) any loss incurred from the need to provide another vehicle or combination, and any loss incurred from any delay in the provision of another vehicle or combination;
 - (d) any costs or expenses incurred in weighing the freight container or any of its contents or both.
- (4) The plaintiff may enforce that right by bringing proceedings in a court of competent jurisdiction for an order for payment of the monetary value of the loss.

89. Recovery of losses for provision of inaccurate container weight declaration

- (1) This section applies where –
 - (a) a container weight declaration has been provided as required; and
 - (b) the declaration contains information about a freight container –

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- (i) that is false or misleading in a material particular by understating the weight of the container; or
 - (ii) that is otherwise false or misleading in a material particular by indicating that the weight of the container is lower than its actual weight; and
 - (c) a breach of a mass requirement occurred as a result of the reliance, by an operator or driver of a vehicle or combination, on the information in the declaration when transporting the container by road (whether or not enforcement action has been or may be taken in relation to the breach); and
 - (d) the operator or driver of the vehicle or combination –
 - (i) had at the time a reasonable belief that the vehicle or combination concerned was not in breach of a mass requirement; and
 - (ii) did not know, and could not reasonably have known, at the time that the minimum weight stated in the declaration was lower than the actual weight of the container; and

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- (e) a person suffered loss as a result of the provision of the declaration.
- (2) Any person (the “plaintiff”) has a right to recover under this Act, from the responsible entity for the freight container, the monetary value of any loss incurred by the plaintiff and consequent on the provision of the container weight declaration.
- (3) Losses that may be recovered include any or all of the following:
 - (a) any fine, infringement penalty or other penalty imposed on the plaintiff under an Australian road law;
 - (b) any fine, infringement penalty or other penalty imposed on an agent or employee of the plaintiff under an Australian road law and reimbursed by the plaintiff;
 - (c) any loss incurred from delays in the delivery of the freight container or any goods contained in it or of other goods;
 - (d) any loss incurred from the spoiling of or damage to the goods;
 - (e) any loss incurred from the need to provide another vehicle or combination, and any loss incurred from any delay in the provision of another vehicle or combination;

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- (f) any costs or expenses incurred in weighing the freight container or any of its contents or both.
- (4) The plaintiff may enforce that right by bringing proceedings in a court of competent jurisdiction for an order for payment of the monetary value of the loss.

90. Recovery of amount by responsible entity

- (1) This section applies where an order under section 89 (Recovery of losses for provision of inaccurate container weight declaration) has been made or is being sought against a responsible entity for payment of the monetary value of any loss incurred by a person.
- (2) The responsible entity has a right to recover under this Act, from a person (the “information provider”) who provided the responsible entity with all or any of the information that was false or misleading, so much (the “attributable amount”) of the monetary value paid or payable by the responsible entity under the order as is attributable to that information.
- (3) The responsible entity may enforce that right by –
 - (a) joining or seeking the joinder of the information provider in the proceedings for the order under section 89 and applying to the court for an order for payment of the attributable amount to be

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made when the order is made under that section; or

- (b) bringing separate proceedings in a court of competent jurisdiction for an order for payment of the attributable amount.

91. Assessment of monetary value or attributable amount

- (1) In making an order under this Division, a court may assess –

- (a) the monetary value of any loss, as referred to in –

- (i) section 88 (Recovery of losses for non-provision of container weight declaration); or

- (ii) section 89 (Recovery of losses for provision of inaccurate container weight declaration); or

- (b) the attributable amount, as referred to in section 90 (Recovery of amount by responsible entity) –

in such manner as the court considers appropriate.

- (2) In making such an assessment, the court may take into account such matters as it considers relevant, including any evidence adduced in connection with any prosecution brought for a breach referred to in section 89.

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92. Costs

- (1) A court may award costs in relation to the proceedings for an order under this Division.
- (2) A court may, in proceedings for an order under this Division, order payment of any costs or expenses incurred in weighing a freight container or any of its contents, or both, where –
 - (a) the minimum weight stated in the container weight declaration concerned was lower than the actual weight; or
 - (b) a container weight declaration was not provided.
- (3) An order under subsection (2) may be made in favour of a party to the proceedings, an Australian Authority or a public authority of this or any other jurisdiction.

Division 9 – Transport documentation

93. False or misleading transport documentation: liability of consignor, packer, loader, receiver and others

- (1) This section applies where –
 - (a) goods are consigned for transport by road, or for transport partly by road and partly by some other means; and
 - (b) all or any part of the transport by road occurs or is to occur in this jurisdiction.

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(2) A person is guilty of an offence if –

- (a) the transport documentation relating to the consignment is false or misleading in a material particular relating to the mass, dimension or load restraint of any or all of the goods consigned; and
- (b) the person is the consignor of the goods.

Penalty: In the case of –

(a) an individual –

- (i) for a first offence, a fine not exceeding 50 penalty units; or
- (ii) for a subsequent offence, a fine not less than 20 penalty units and not exceeding 100 penalty units; or

(b) a body corporate –

- (i) for a first offence, a fine not exceeding 250 penalty units; or
- (ii) for a subsequent offence, a fine not less than 20 penalty units and not exceeding 500 penalty units.

(3) A person is guilty of an offence if –

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- (a) the goods are packed in Australia in a freight container or other container or in a package or on a pallet for transport by road; and
- (b) the transport documentation relating to the consignment is false or misleading in a material particular relating to the mass, dimension or load restraint of any or all of the goods consigned; and
- (c) the person is the packer of the goods.

Penalty: In the case of –

(a) an individual –

- (i) for a first offence, a fine not exceeding 50 penalty units; or
- (ii) for a subsequent offence, a fine not less than 20 penalty units and not exceeding 100 penalty units; or

(b) a body corporate –

- (i) for a first offence, a fine not exceeding 250 penalty units; or
- (ii) for a subsequent offence, a fine not less than 20 penalty units

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and not exceeding 500
penalty units.

(4) A person is guilty of an offence if –

- (a) the goods are loaded on a vehicle or combination for transport by road; and
- (b) the transport documentation relating to the consignment is false or misleading in a material particular relating to the mass, dimension or load restraint of any or all of the goods consigned; and
- (c) the person is the loader of the goods.

Penalty: In the case of –

(a) an individual –

- (i) for a first offence, a fine not exceeding 50 penalty units; or
- (ii) for a subsequent offence, a fine not less than 20 penalty units and not exceeding 100 penalty units; or

(b) a body corporate –

- (i) for a first offence, a fine not exceeding 250 penalty units; or
- (ii) for a subsequent offence, a fine not less

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than 20 penalty units
and not exceeding 500
penalty units.

(5) A person is guilty of an offence if –

- (a) the goods are packed outside Australia in a freight container or other container or in a package or on a pallet for transport by road; and
- (b) the transport documentation relating to the consignment is false or misleading in a material particular relating to the mass, dimension or load restraint of any or all of the goods consigned; and
- (c) the person is the receiver of the goods in Australia.

Penalty: In the case of –

(a) an individual –

- (i) for a first offence, a fine not exceeding 50 penalty units; or
- (ii) for a subsequent offence, a fine not less than 20 penalty units and not exceeding 1000 penalty units; or

(b) a body corporate –

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- (i) for a first offence, a fine not exceeding 250 penalty units; or
 - (ii) for a subsequent offence, a fine not less than 20 penalty units and not exceeding 500 penalty units.
- (6) A person is guilty of an offence if –
 - (a) a container weight declaration provided to an operator of a vehicle or combination contains information that is false or misleading in a material particular; and
 - (b) the person is the responsible entity who offered the freight container concerned to the operator for transport.

Penalty: In the case of –

- (a) an individual –
 - (i) for a first offence, a fine not exceeding 50 penalty units; or
 - (ii) for a subsequent offence, a fine not less than 20 penalty units and not exceeding 100 penalty units; or
- (b) a body corporate –

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- (i) for a first offence, a fine not exceeding 250 penalty units; or
 - (ii) for a subsequent offence, a fine not less than 20 penalty units and not exceeding 500 penalty units.
 - (7) A person is guilty of an offence if –
 - (a) a container weight declaration provided to a driver of a vehicle or combination contains information that is false or misleading in a material particular; and
 - (b) the person is the operator of the vehicle or combination who arranged for the freight container concerned to be transported in this jurisdiction.

Penalty: In the case of –

- (a) an individual –
 - (i) for a first offence, a fine not exceeding 50 penalty units; or
 - (ii) for a subsequent offence, a fine not less than 20 penalty units and not exceeding 100 penalty units; or
- (b) a body corporate –

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- (i) for a first offence, a fine not exceeding 250 penalty units; or
 - (ii) for a subsequent offence, a fine not less than 20 penalty units and not exceeding 500 penalty units.
- (8) Information in a container weight declaration is not false or misleading for the purposes of this Act merely because it overstates the actual weight of the freight container and its contents.
- (9) Subject to subsection (10), an offence against this section is an offence of absolute liability.
- (10) A person charged with an offence under this section has the benefit of the reasonable steps defence.

Note Section 70 (Reasonable steps defence – reliance on container weight declaration) makes provision for reliance on a container weight declaration where an operator or driver is charged with an offence involving a breach of a mass requirement and is seeking to rely on the reasonable steps defence.

- (11) In this section –

“receiver” of goods in Australia means –

- (a) the person who first receives them in Australia, otherwise than the person who merely unloads them; or

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- (b) the person who unpacks the goods after they are first unloaded in Australia –

but does not include a class of persons declared by the regulations to be excluded from this definition.

Division 10 – Concessions

94. Definitions

In this Division –

“condition” of a mass, dimension or load restraint concession means a term or condition specified in or otherwise applicable to the concession, being –

- (a) a term or condition that imposes a different requirement in place of a requirement contained in the provision of a road law from which the holder of the concession is exempted; or
- (b) any other term or condition subject to which the concession has effect;

“mass, dimension or load restraint concession” means a permit, authorisation, approval, exemption, notice or anything else that is granted or issued in writing under a road law and that exempts a person from a provision of

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a road law in relation to a mass,
dimension or load restraint requirement.

95. Offence of contravening condition

A person is guilty of an offence if –

- (a) the person holds a mass, dimension or load restraint concession; and
- (b) the person engages in conduct that results in the contravention of a condition of that mass, dimension or load restraint concession.

Penalty: In the case of –

- (a) an individual –
 - (i) for a first offence, a fine not exceeding 30 penalty units; or
 - (ii) for a subsequent offence, a fine not less than 12 penalty units and not exceeding 60 penalty units; or
- (b) a body corporate –
 - (i) for a first offence, a fine not exceeding 150 penalty units; or

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- (ii) for a subsequent offence, a fine not less than 12 penalty units and not exceeding 300 penalty units.

96. Effect of contravening condition – prosecutions or other action

- (1) If a person engages in conduct that contravenes a condition of a mass, dimension or load restraint concession –
 - (a) the concession does not, while the contravention continues, operate in the person's favour; and
 - (b) accordingly, the concession is to be disregarded in determining whether there has been a breach of a mass, dimension or load restraint requirement and in determining the risk category to which the breach belongs.
- (2) Where, by virtue of subsection (1), a person is guilty of an offence against the provision of a road law from which the person was exempted by the concession concerned, the person may be proceeded against either for that offence or for the offence under section 95 (Offence of contravening condition) of engaging in conduct that contravenes a condition of the concession.

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97. Operation of Division

This Division has effect subject to the provisions of the road law under which the mass, dimension or load restraint concession concerned was granted or issued and to the terms of the concession itself.

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Note In addition to the sanctions under this Part, an infringement notice may be issued for an offence under this Act if that offence is a prescribed offence under Part IVB of the *Traffic Act 1925*.

Division 1 – Improvement notices

98. Definition

In this Division –

“approved officer” means –

- (a) an authorised officer, or an authorised officer of a class, for the time being nominated by the Authority as an approved officer or class of approved officers for the purposes of this Division; or
- (b) a police officer, or a police officer of a class, for the time being nominated by the Commissioner of Police (or by a police officer authorised by the Commissioner to make nominations for the purposes of this section) as an approved officer or class of approved officers for the purposes of this Division.

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99. Improvement notices

- (1) This section applies where an approved officer is of the opinion that any person has contravened, is contravening or is likely to contravene any provision of an Australian road law.
- (2) The approved officer may serve on the person an improvement notice requiring the person to remedy the contravention or likely contravention, or the matters or activities occasioning the contravention or likely contravention, within the period specified in the notice.
- (3) The period within which the person is required by the improvement notice to comply with the notice must be at least 7 days after service of the notice.
- (4) However, the approved officer may specify a shorter period if satisfied that it is reasonably practicable for the person to comply with the notice by the end of the shorter period.
- (5) The improvement notice must –
 - (a) state that the approved officer is of the opinion referred to in subsection (1); and
 - (b) state the reasons for that opinion; and
 - (c) specify the provisions of the Australian road laws in respect of which that opinion is held; and

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- (d) include information about obtaining a review of the notice; and
 - (e) state that it is issued under this section.
- (6) The improvement notice may but need not specify the method by which the alleged contravention or likely contravention, or the matters or activities occasioning the alleged contravention or likely contravention, are to be remedied.

100. Contravention of improvement notice

- (1) A person commits an offence if –
- (a) the person is subject to an improvement notice; and
 - (b) the person engages in conduct that results in a contravention of a requirement of the improvement notice.

Penalty: In the case of –

- (a) an individual, a fine not exceeding 100 penalty units; or
 - (b) a body corporate, a fine not exceeding 500 penalty units.
- (2) It is a defence in proceedings for an offence under subsection (1) if the defendant establishes that he or she has a reasonable excuse.

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- (3) It is a defence in proceedings for an offence under subsection (1) if the defendant establishes that –
- (a) the alleged contravention or likely contravention; or
 - (b) the matters or activities occasioning the alleged contravention or likely contravention –
- were remedied within the period specified in the notice, though by a method different from that specified in the improvement notice.
- (4) Subject to subsections (2) and (3), an offence against subsection (1) is an offence of strict liability.

101. Amendment of improvement notices

- (1) An improvement notice served by an approved officer who is an authorised officer may be amended by any approved officer who is an authorised officer.
- (2) An improvement notice served by an approved officer who is a police officer may be amended by any approved officer who is a police officer.
- (3) An amendment of an improvement notice is effected by service on the person affected of a notice stating the terms of the amendment.
- (4) An amendment of an improvement notice is ineffective if it purports to deal with a

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contravention of a different provision of an Australian road law from that dealt with in the improvement notice as first served.

- (5) A notice of an amendment of an improvement notice must –
- (a) state the reasons for the amendment; and
 - (b) include information about obtaining a review of the notice; and
 - (c) state that it is issued under this section.

102. Cancellation of improvement notices

- (1) An improvement notice served by an approved officer who is an authorised officer may be cancelled by –
- (a) the Authority; or
 - (b) an approved officer who is an authorised officer and who is senior in rank to the approved officer who served the notice.
- (2) An improvement notice served by an approved officer who is a police officer may be cancelled by –
- (a) the Commissioner of Police; or
 - (b) an approved officer who is a police officer and who is senior in rank to the approved officer who served the notice.

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- (3) Notice of cancellation of an improvement notice is required to be served on the person affected.
- (4) The regulations may make provision for or with respect to identifying or determining the seniority in rank of approved officers for the purposes of this section.

103. Clearance certificates

- (1) An approved officer may issue a clearance certificate to the effect that all or any specified requirements of an improvement notice have been complied with.
- (2) A requirement of an improvement notice ceases to be operative on receipt, by the person on whom the notice was served, of a clearance certificate to the effect that –
 - (a) all requirements of the notice have been complied with; or
 - (b) that specific requirement has been complied with.

Division 2 – Formal warnings

104. Formal warnings

- (1) An officer may, instead of taking proceedings against a person for a contravention of a road law, formally warn the person if the officer believes –

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- (a) the person had taken reasonable steps to prevent the contravention and was unaware of the contravention; and
 - (b) the contravention is appropriate to be dealt with by way of a formal warning under this section.
 - (2) A formal warning must be in writing.
 - (3) A formal warning may not be given for a substantial risk breach or a severe risk breach of a mass, dimension or load restraint requirement.
 - (4) In this section –
 - “proceedings”** includes action by way of an infringement notice.

105. Withdrawal of formal warnings

- (1) A formal warning may be withdrawn by a prescribed person or a person of a prescribed class by serving on the alleged offender a written notice of withdrawal within 21 days after the formal warning was given.
- (2) After the formal warning has been withdrawn, proceedings may be taken against the person for the contravention.
- (3) In this section –
 - “proceedings”** includes action by way of an infringement notice.

PART 6 – GENERAL COURT-BASED SANCTIONS

Division 1 – Proceedings for offences

106. Proceedings for offences

Proceedings for an offence under this Act or the regulations may be dealt with summarily.

107. Period within which proceedings for offences may be commenced

- (1) This section applies to road law offences, other than –
 - (a) offences prescribed by the regulations for the purposes of this section; and
 - (b) offences in respect of which proceedings may only be commenced within a period of less than 2 years after their alleged commission.
- (2) Despite anything to the contrary in any other Act, proceedings for a road law offence to which this section applies may be commenced within –
 - (a) the period of 2 years after the commission of the alleged offence; or
 - (b) a further period of one year commencing on the day on which the Authority, an authorised officer or a police officer first obtained evidence of the commission of the alleged offence considered

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reasonably sufficient by the Authority or
officer to warrant commencing
proceedings.

- (3) For the purposes of subsection (2), a certificate purporting to have been issued by the Authority, an authorised officer or a police officer as to the date when the Authority or an officer first obtained evidence considered reasonably sufficient by the Authority or officer to warrant commencing proceedings is admissible in any proceedings and is prima facie evidence of the matters stated.

Division 2 – Available sanctions

108. Penalties imposed by courts

- (1) Without affecting a court's discretion, the court is required to take into consideration, when imposing more than one of the penalties, the combined effect of the penalties imposed.
- (2) Nothing in this Part affects any discretions or powers that a court or other person or body has apart from this Part.
- (3) If one or more courts make orders under this Part that result in both a supervisory intervention order and a prohibition order being in force at the same time in relation to the same person, the supervisory intervention order has no effect while the prohibition order has effect.

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Division 3 – Fines

109. Provisions relating to first offences and subsequent offences

- (1) This section has effect for the purpose of determining whether an offence is a first offence or a subsequent offence.
- (2) A person is found guilty of a subsequent offence if and only if the occasion in respect of which the subsequent offence occurred was different from the occasion in respect of which the first offence for which the person was found guilty occurred.
- (3) It is immaterial in which order the offences were committed.
- (4) In the case of offences relating to mass, dimension or load restraint requirements, it is immaterial whether the breaches concerned are of the same risk category or of different risk categories.
- (5) If the court is satisfied that a person is guilty of an offence but is unable to ascertain (from the information available to the court) whether or not the offence is a first offence for which the person was found guilty, the court may only impose a penalty for the offence as if it were a first offence.
- (6) In determining whether a person has been found guilty of an offence previously under a provision of a road law, regard is to be had to a finding of

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guilt for offences committed under corresponding provisions of the road laws of other jurisdictions.

- (7) The regulations may make provision for or with respect to determining what are or are not to be treated as corresponding provisions of the road laws of other jurisdictions.

Division 4 – Commercial benefits penalty orders

110. Commercial benefits penalty orders

- (1) The court that finds a person guilty of a road law offence may, on the application of the prosecutor or the Authority, make an order under this section.
- (2) The court may make a commercial benefits penalty order requiring the person to pay, as a fine, an amount not exceeding 3 times the amount estimated by the court to be the gross commercial benefit that –
- (a) was received or receivable, by the person or by an associate of the person, from the commission of the offence; and
 - (b) in the case of a journey that was interrupted or not commenced because of action taken by an officer in connection with the commission of the offence, would have been received or receivable, by the person or by an associate of the

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person, from the commission of the offence had the journey been completed.

- (3) In estimating the gross commercial benefit that was or would have been received or receivable from the commission of the offence, the court may take into account –
 - (a) benefits of any kind, whether monetary or otherwise; and
 - (b) any other matters that it considers relevant, including (for example) –
 - (i) the value of any goods involved in the offence; and
 - (ii) the distance over which any such goods were or were to be carried.
- (4) However, in estimating the gross commercial benefit that was or would have been received or receivable from the commission of the offence, the court is required to disregard any costs, expenses or liabilities incurred by the person or by an associate of the person.
- (5) Nothing in this section prevents the court from ordering payment of an amount that is –
 - (a) less than 3 times the estimated gross commercial benefit; or
 - (b) less than the estimated gross commercial benefit.

Division 5 – Registration sanctions

111. Power to affect vehicle registration

- (1) This section applies to –
 - (a) a road law offence that was committed in relation to a vehicle or combination, other than a road law offence that involved a breach of a mass, dimension or load restraint requirement; or
 - (b) a road law offence that was committed in relation to a vehicle or combination and that involved a severe risk breach of a mass, dimension or load restraint requirement.
- (2) The court that finds a person guilty of a road law offence to which this section applies may make an order that the registration of a vehicle in relation to which the offence was committed and of which the person is a registered operator is –
 - (a) cancelled; or
 - (b) suspended for a specified period.
- (3) If the court makes an order under subsection (2) cancelling or suspending the registration of a vehicle of which the person found guilty is a registered operator, it may also make an order that the person, or an associate of the person, is disqualified from registering the vehicle for a specified period.

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- (4) If the court considers that another person who is not present in court may be substantially affected by an order under this section, the court may issue a summons to that other person to show cause why the order should not be made.
- (5) An order under this section operates and takes effect immediately or from a later specified date.

Division 6 – Supervisory intervention orders

112. Supervisory intervention orders

- (1) The court that finds a person guilty of a road law offence may, on the application of the prosecutor or the Authority, if the court considers the person to be a systematic or persistent offender against the Australian road laws, make an order under this section.
- (2) The court may make a supervisory intervention order requiring the person (at the person's own expense and for a specified period not exceeding one year) to do any or all of the following:
 - (a) to do specified things that the court considers will improve the person's compliance with road laws or specified aspects of road laws, including (for example) the following:
 - (i) appointing or removing staff to or from particular activities or positions;
 - (ii) training and supervising staff;

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- (iii) obtaining expert advice as to maintaining appropriate compliance;
 - (iv) installing monitoring, compliance, managerial or operational equipment (including, for example, intelligent transport system equipment);
 - (v) implementing monitoring, compliance, managerial or operational practices, systems or procedures;
 - (b) to conduct specified monitoring, compliance, managerial or operational practices, systems or procedures subject to the direction of the Authority or a person nominated by the Authority;
 - (c) to furnish compliance reports to the Authority or the court or both as specified in the order;
 - (d) to appoint a person to have responsibilities –
 - (i) to assist the person in improving compliance with road laws or specified aspects of road laws; and
 - (ii) to monitor the person's performance in complying with road laws or specified aspects of

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road laws and in complying with
the requirements of the order; and

(iii) to furnish compliance reports to
the Authority or the court, or
both, as specified in the order.

- (3) The court may specify matters that are to be dealt with in compliance reports and the form, manner and frequency in which compliance reports are to be prepared and furnished.
- (4) The court may require that compliance reports or aspects of compliance reports be made public, and may specify the form, manner and frequency in which they are to be made public.
- (5) The court may only make a supervisory intervention order if it is satisfied that the order is capable of improving the person's ability or willingness to comply with the road laws, having regard to –
 - (a) the Australian road law offences of which the person has been previously found guilty; and
 - (b) the Australian road law offences for which the person has been proceeded against by way of unwithdrawn infringement notices; and
 - (c) any other offences or other matters that the court considers to be relevant to the conduct of the person in connection with road transport.

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- (6) The order may direct that any other penalty or sanction imposed for the offence by the court is suspended until the court determines that there has been a substantial failure to comply with the order.
- (7) A court that has power to make supervisory intervention orders may revoke or amend a supervisory intervention order on the application of –
- (a) the Authority; or
 - (b) the person in respect of whom the order was made, but in that case only if the court is satisfied that there has been a change of circumstances warranting revocation or amendment.
- (8) In this section –
- “compliance report”**, in relation to a person in respect of whom a supervisory intervention order is made, means a report relating to –
- (a) the performance of the person in complying with –
 - (i) the road laws or aspects of the road laws specified in the order; and
 - (ii) the requirements of the order; and
 - (b) without limiting the above –

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- (i) things done by the person to ensure that any failure by the person to comply with the road laws or the specified aspects of the road laws does not continue; and
- (ii) the results of those things having been done.

113. Contravention of supervisory intervention order

A person commits an offence if –

- (a) the person is subject to a requirement of a supervisory intervention order; and
- (b) the person engages in conduct that results in a contravention of the requirement.

Penalty: In the case of –

- (a) an individual, a fine not exceeding 100 penalty units; or
- (b) a body corporate, a fine not exceeding 500 penalty units.

Division 7 – Prohibition orders

114. Prohibition orders

- (1) The court that finds a person guilty of a road law offence may, on the application of the prosecutor

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or the Authority, if the court considers the person to be a systematic or persistent offender against the Australian road laws, make an order under this section.

- (2) For the purpose of restricting opportunities for the person to commit or be involved in the commission of further Australian road law offences, the court may make a prohibition order prohibiting the person, for a specified period, from having a specified role or responsibilities associated with road transport.
- (3) The court cannot make a prohibition order that prohibits the person from driving or registering a vehicle.
- (4) The court may only make an order under this section if it is satisfied that the person should not continue the things that are the subject of the proposed order and that a supervisory intervention order is not appropriate, having regard to –
 - (a) the Australian road law offences of which the person has been previously found guilty; and
 - (b) the Australian road law offences for which the person has been proceeded against by way of unwithdrawn infringement notices; and
 - (c) any other offences or other matters that the court considers to be relevant to the conduct of the person in connection with road transport.

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- (5) A court that has power to make prohibition orders may revoke or amend a prohibition order on the application of –
- (a) the Authority; or
 - (b) the person in respect of whom the order was made, but in that case only if the court is satisfied that there has been a change of circumstances warranting revocation or amendment.

115. Contravention of prohibition order

A person commits an offence if –

- (a) the person is subject to a prohibition contained in a prohibition order; and
- (b) the person engages in conduct that results in a contravention of the prohibition.

Penalty: In the case of –

- (a) an individual, a fine not exceeding 100 penalty units; or
- (b) a body corporate, a fine not exceeding 500 penalty units.

PART 7 – GENERAL COMPENSATION ORDERS

116. Compensation orders for damage to road infrastructure

- (1) The court that finds a person guilty of a road law offence may make an order under this Part.
- (2) The court may make a compensation order requiring the offender to pay a road authority such amount by way of compensation as the court thinks fit for damage to any road infrastructure that the road authority has incurred or is likely to incur in consequence of the offence.
- (3) A compensation order may be made on the application of the prosecutor, the road authority or the Authority.
- (4) A compensation order may only be made in favour of the road authority.
- (5) The court may make a compensation order where it is satisfied on the balance of probabilities that the commission of the offence caused or contributed to the damage.
- (6) The court may make a compensation order when it finds the offender guilty of the offence or at any time afterwards, but not later than the period within which a prosecution for the offence could have been commenced.

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117. Assessment of compensation

- (1) In making a compensation order, the court may assess the amount of compensation in such manner as it considers appropriate, including (for example) the estimated cost of remedying the damage.
- (2) In assessing the amount of compensation, the court may take into account such matters as it considers relevant, including –
 - (a) any evidence adduced in connection with the prosecution of the offence; and
 - (b) any evidence not adduced in connection with the prosecution of the offence but adduced in connection with the making of the proposed order; and
 - (c) any certificate of the road authority stating that the road authority maintains the public street concerned; and
 - (d) any other certificate of the road authority, such as a certificate –
 - (i) estimating the monetary value of all or any part of the road infrastructure or of the damage to it; or
 - (ii) estimating the cost of remedying the damage; or

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- (iii) estimating the extent of the offender's contribution to the damage.

118. Service of certificates

- (1) If a road authority proposes to use a certificate referred to in section 117 in proceedings, the road authority must serve a copy of the certificate on the defendant at least 28 working days before the day on which the matter is set down for hearing.
- (2) Such a certificate cannot be used in the proceedings unless a copy of the certificate has been served in accordance with this section.
- (3) A defendant who wishes to challenge a statement in such a certificate must serve a notice of intention in writing on the road authority at least 14 working days before the day on which the matter is set down for hearing.
- (4) The notice of intention must specify the matters in the certificate that are intended to be challenged.
- (5) If the defendant is intending to challenge the accuracy of any measurement, analysis or reading in the certificate, the defendant must specify the reason why the defendant alleges that it is inaccurate and must specify the measurement, analysis or reading that the defendant considers to be correct.

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- (6) The defendant cannot challenge any matter in the certificate if the requirements of this section have not been complied with in relation to the certificate, unless the court gives leave to do so in the interests of justice.

119. Limits on amount of compensation

- (1) If, in making a compensation order, the court is satisfied that the commission of the offence concerned contributed to the damage but that other factors not connected with the commission of the offence also contributed to the damage, the court must limit the amount of the compensation payable by the offender to the amount it assesses as being the offender's contribution to the damage.
- (2) The maximum amount of compensation cannot exceed the monetary jurisdictional limit of the court in civil proceedings.
- (3) The court may not include in the order any amount for –
 - (a) personal injury or death; or
 - (b) loss of income (whether sustained by a road authority or any other person or organisation); or
 - (c) damage to any property (including a vehicle) that is not part of the road infrastructure.

120. Costs

The court has the same power to award costs in relation to the proceedings for a compensation order as it has in relation to civil proceedings, and the relevant provisions of laws applying to costs in relation to civil proceedings apply with any necessary adaptations to costs in relation to the proceedings for the compensation order.

121. Enforcement of compensation order and costs

A compensation order, and any award of costs, are enforceable as if they were a judgment of the court in civil proceedings.

122. Relationship with orders or awards of other courts and tribunals

- (1) A compensation order may not be made if another court or tribunal has awarded compensatory damages or compensation in civil proceedings in respect of the damage based on the same or similar facts, and, if a court purports to make an order under this Part in those circumstances –
 - (a) the order is void to the extent that it covers the same matters as those covered by the other award; and
 - (b) any payments made under the order to the extent to which it is void must be repaid by the road authority.

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- (2) The making of a compensation order does not prevent another court or tribunal from afterwards awarding damages or compensation in civil proceedings in respect of the damage based on the same or similar facts, but the court or tribunal must take the order into account when awarding damages or compensation.

PART 8 – GENERAL LIABILITY AND EVIDENTIARY PROVISIONS

Division 1 – Basis of liability for road law offences

123. Multiple offenders

- (1) This section applies where a provision of a road law provides (expressly or impliedly) that each of 2 or more persons is liable for a road law offence.
- (2) Proceedings may be taken against all or any of the persons.
- (3) Proceedings may be taken against any of the persons –
 - (a) regardless of whether or not proceedings have been commenced against any of the other persons; and
 - (b) if proceedings have been commenced against any of the other persons, regardless of whether or not the proceedings have been concluded; and
 - (c) if proceedings have been concluded against any of the other persons, regardless of the outcome of the proceedings.
- (4) This section has effect subject to section 124 (Double jeopardy) and to any express provisions of a road law.

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124. Double jeopardy

- (1) A person may be punished only once in relation to the same failure to comply with a particular road law of this jurisdiction, even if the person is liable in more than one capacity.
- (2) Despite subsection (1), a person may be punished for more than one breach of a requirement where the breaches relate to different parts of the same vehicle or combination.

125. Liability of directors, partners, employers and others for offences by bodies corporate, partnerships, associations and employees

- (1) If a body corporate commits a road law offence, each director of the body corporate, and each person concerned in the management of the body corporate, is taken to have committed the offence and is punishable accordingly.
- (2) If a person who is a partner in a partnership commits a road law offence in the course of the activities of the partnership, each other person who is a partner in the partnership, and each other person concerned in the management of the partnership, is taken to have committed the offence and is punishable accordingly.
- (3) If a person who is concerned in the management of an unincorporated association commits a road law offence in the course of the activities of the unincorporated association, each other person

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concerned in the management of the unincorporated association is taken to have committed the offence and is punishable accordingly.

- (4) If an employee commits a road law offence, the employer is taken to have committed the offence and is punishable accordingly.
- (5) This section does not affect the liability of the person who actually committed the offence.
- (6) A person may be proceeded against and found guilty of an offence arising under this section whether or not the body corporate or other person who actually committed the offence has been proceeded against or been found guilty of the offence.
- (7) It is a defence to a charge for an offence arising under subsection (1) if the defendant establishes that –
 - (a) the defendant was not in a position to influence the conduct of the body corporate in relation to the actual offence; or
 - (b) the defendant, being in such a position, took reasonable precautions and exercised due diligence to prevent the commission of the actual offence.
- (8) It is a defence to a charge for an offence arising under subsection (2) or (3) if the defendant establishes that –

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- (a) the defendant was not in a position to influence the conduct of the person who actually committed the offence; or
 - (b) the defendant, being in such a position, took reasonable precautions and exercised due diligence to prevent the commission of the actual offence.
- (9) It is a defence to a charge for an offence arising under subsection (4) if the defendant establishes that –
 - (a) the defendant had no knowledge of the actual offence; and
 - (b) the defendant had taken reasonable precautions and exercised due diligence to prevent the commission of the actual offence.

126. Liability of registered operators

- (1) This section applies to a road law offence, where the offence is expressed to be committed by an operator of a vehicle or combination (whether or not any other person can also commit the offence).
- (2) If an offence to which this section applies is committed –
 - (a) with respect to a vehicle not forming part of a combination at the relevant time, the registered operator of the vehicle is taken

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to have committed the offence and is punishable accordingly; or

- (b) with respect to a whole combination or with respect to the towing vehicle of a combination, the registered operator of the towing vehicle of the combination is taken to have committed the offence and is punishable accordingly; or
 - (c) with respect to a trailer forming part of a combination at the relevant time, the registered operator of the towing vehicle and the registered operator (if any) of the trailer are each taken to have committed the offence and are punishable accordingly.
- (3) The registered operator has the benefit of any defences available to the operator.
 - (4) Subsection (2) does not apply if, during the prescribed period and in the prescribed manner, the registered operator gives the Authority a statutory declaration containing prescribed information, including the name and address of the operator of the vehicle or combination at the time of the offence.
 - (5) This section does not affect the liability of the principal offender.

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127. Complicity and common purpose (aiding and abetting)

- (1) A person who aids, abets, counsels or procures the commission of a road law offence by another person is taken to have committed that offence and is punishable accordingly.
- (2) For the person to be guilty –
 - (a) the person's conduct must have in fact aided, abetted, counselled or procured the commission of the offence by the other person; and
 - (b) the offence must have been committed by the other person.
- (3) For the person to be guilty, the person must have intended that –
 - (a) his or her conduct would aid, abet, counsel or procure the commission of any offence of the type the other person committed; or
 - (b) his or her conduct would aid, abet, counsel or procure the commission of an offence and have been reckless about the commission of the offence that the other person in fact committed.
- (4) Subsection (3) has effect subject to subsection (8).
- (5) A person cannot be found guilty of aiding, abetting, counselling or procuring the

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commission of an offence if, before the offence was committed, the person –

- (a) terminated his or her involvement; and
 - (b) took reasonable steps to prevent the commission of the offence.
- (6) This section does not affect the liability of the principal offender.
- (7) A person may be found guilty of aiding, abetting, counseling or procuring the commission of an offence even if the principal offender has not been prosecuted or has not been found guilty.
- (8) Any special liability provisions that apply to an offence apply also to the offence of aiding, abetting, counselling or procuring the commission of that offence.
- (9) In this section –

“special liability provision” means –

- (a) a provision that provides that absolute liability applies to one or more (but not all) of the elements of an offence; or
- (b) a provision that provides that, in a prosecution for an offence, it is not necessary to prove that the defendant knew a particular thing; or

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- (c) a provision that provides that, in a prosecution for an offence, it is not necessary to prove that the defendant knew or believed a particular thing.

128. Causing or permitting

- (1) A person who causes or permits another person to commit a road law offence is taken to have committed that offence and is punishable accordingly.
- (2) This section does not affect the liability of the person who actually committed the offence.
- (3) This section does not apply in relation to directions given by officers under road laws.

129. Coercing, inducing or offering incentive

- (1) A person who urges another person to commit a road law offence is guilty of an offence.

Penalty: In the case of –

- (a) an individual, a fine not exceeding 100 penalty units; or
 - (b) a body corporate, a fine not exceeding 500 penalty units.
- (2) Without limiting the above, a person urges another person to commit a road law offence if the person threatens, intimidates, coerces,

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induces or offers an incentive to the other person to commit the road law offence.

- (3) This section does not affect the liability of the person who actually committed the road law offence.

Division 2 – General defences

130. Sudden or extraordinary emergency

- (1) It is a defence in proceedings for an offence under a road law if the defendant carried out the conduct constituting the offence in response to circumstances of sudden or extraordinary emergency.
- (2) This section applies if and only if the person carrying out the conduct reasonably believed that –
- (a) circumstances of sudden or extraordinary emergency existed; and
 - (b) committing the offence was the only reasonable way to deal with the emergency; and
 - (c) the conduct was a reasonable response to the emergency.

131. Lawful authority

It is a defence in proceedings for an offence under a road law if the defendant establishes that

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the conduct constituting the offence is authorised or excused by or under a law.

132. Other defences

Nothing in this Act affects defences available under other laws of this jurisdiction.

Division 3 – Special defences

133. Meaning of “deficiency concerning a vehicle or combination”

In this Division –

“deficiency concerning a vehicle or combination” means –

- (a) a deficiency in or of the vehicle or combination or in or of any equipment carried in or on the vehicle or combination; or
- (b) a deficiency constituted by the absence of particular equipment that is required to be carried in or on the vehicle or combination.

134. Special defence for owners or operators

- (1) It is a defence to a charge for a road law offence alleged to have been committed by a person in the capacity of an owner or operator of a vehicle

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or combination if the defendant establishes that the vehicle or combination was being used at the relevant time by –

- (a) another person not entitled (whether by express or implied authority or otherwise) to use it, other than an employee or agent of the alleged offender; or
 - (b) an employee of the alleged offender who was acting at the relevant time outside the scope of the employment; or
 - (c) an agent (in any capacity) of the alleged offender who was acting at the relevant time outside the scope of the agency.
- (2) If the offence relates to a breach of a road law in connection with alleged deficiencies concerning the vehicle or combination, the defence is not available unless the alleged offender establishes that –
 - (a) the vehicle or combination had not, before it ceased to be under the alleged offender's control, been driven on a road in Australia in breach of an Australian road law arising in connection with all or any of those alleged deficiencies; and
 - (b) one or more material changes, resulting in the alleged breach, had been made after the vehicle or combination had ceased to be under the alleged offender's control.

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135. Special defence for drivers

- (1) This section applies to a road law offence involving deficiencies concerning a vehicle or combination if the offence is alleged to have been committed by a person as the driver of the vehicle or combination.
- (2) It is a defence in proceedings for an offence under subsection (1) if the defendant establishes that he or she (whether as driver or otherwise) –
 - (a) did not cause or contribute to the deficiencies concerning the vehicle or combination and had no responsibility for or control over the maintenance of the vehicle or combination or its equipment at any relevant time; and
 - (b) did not know and could not reasonably be expected to have known of the deficiencies; and
 - (c) could not reasonably be expected to have sought to ascertain whether there were or were likely to be deficiencies concerning the vehicle or combination.

136. Special defence of compliance with direction

It is a defence in proceedings for an offence under a road law if the defendant establishes that the conduct constituting the offence was done in compliance with a direction given by –

- (a) an officer; or

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- (b) an Australian Authority or a delegate of an Australian Authority.

Division 4 – General evidentiary provisions

137. Vicarious responsibility

- (1) If, in proceedings for a road law offence, it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show –
 - (a) that the conduct was engaged in by a director, employee or agent of the body corporate within the scope of his or her actual or apparent authority; and
 - (b) that the director, employee or agent had the relevant state of mind.
- (2) For the purposes of a prosecution for a road law offence, conduct engaged in on behalf of a body corporate by a director, employee or agent of the body corporate within the scope of his or her actual or apparent authority is taken to have been engaged in also by the body corporate, unless the body corporate establishes that it took reasonable precautions and exercised due diligence to avoid such conduct.
- (3) If, in proceedings for a road law offence, it is necessary to establish the state of mind of a person other than a body corporate (“the employer”) in relation to particular conduct, it is sufficient to show –

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- (a) that the conduct was engaged in by an employee or agent of the employer within the scope of his or her actual or apparent authority; and
 - (b) that the employee or agent had the relevant state of mind.
- (4) For the purposes of a prosecution for a road law offence, conduct engaged in on behalf of a person other than a body corporate (“the employer”) by an employee or agent of the employer within the scope of his or her actual or apparent authority is taken to have been engaged in also by the employer, unless the employer establishes that the employer took reasonable precautions and exercised due diligence to avoid such conduct.
- (5) In this section –
 - “**director**” of a body corporate includes a constituent member of a body corporate incorporated for a public purpose by a law of any jurisdiction;
 - “**state of mind**” of a person includes –
 - (a) the knowledge, intention, opinion, belief or purpose of the person; and
 - (b) the person’s reasons for the intention, opinion, belief or purpose.

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138. Averments

- (1) In proceedings for a road law offence, a statement or allegation in a complaint or charge made by the person bringing the proceedings that, at a specified time or during a specified period –
- (a) a specified vehicle or combination was a heavy vehicle or heavy combination; or
 - (b) a specified vehicle or combination was of a particular class of heavy vehicle or heavy combination; or
 - (c) a specified person was the registered operator of a heavy vehicle; or
 - (d) a specified person was a member of or participant in an approved road transport compliance scheme; or
 - (e) a specified location was, or was part of, a public street; or
 - (f) a specified location was subject to a specified prohibition, restriction or other requirement regarding the operation or use of vehicles or specified classes of vehicles (including, for example, a temporary restriction on load limits during wet weather) –

is prima facie evidence of that matter.

- (2) In a prosecution for a road law offence, a statement or allegation in a complaint or charge

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made by the person bringing the proceedings that the offence was committed in a specified place, at a specified time, on a specified date or during a specified period is prima facie evidence of that matter.

139. Certificate evidence

- (1) A statement in a certificate purporting to have been issued by an Australian Authority, an Australian authorised officer or an Australian police officer that, at a specified time or during a specified period –
 - (a) a specified vehicle or combination was or was not a heavy vehicle or heavy combination; or
 - (b) a specified vehicle or combination was or was not of a particular class of heavy vehicle or heavy combination; or
 - (c) a specified person was or was not the registered operator of a heavy vehicle; or
 - (d) a specified person was or was not a member of or participant in an approved road transport compliance scheme; or
 - (e) a specified location was or was not, or was or was not part of, a public street; or
 - (f) a specified location was or was not subject to a specified prohibition, restriction or other requirement regarding the operation or use of vehicles or

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specified classes of vehicles (including, for example, a temporary restriction on load limits during wet weather); or

- (g) a specified vehicle was or was not registered under an Australian road law; or
- (h) a specified vehicle was or was not insured to cover third-party personal injury or death either generally or during a specified period or in a specified situation or specified circumstances; or
- (i) any specified specifications, capabilities or legal entitlements or other information relating to a specified vehicle or combination (or a specified component of a specified vehicle or combination) were or were not recorded in an Australian Authority's records, or were or were not displayed on the vehicle or combination in accordance with an Australian road law; or
- (j) a specified person was or was not the holder of an Australian driver licence that was of a specified class, or that was subject to specified conditions, and that authorised the person to drive a vehicle or combination or a vehicle or combination of a specified class; or
- (k) a specified person was or was not the holder of an Australian driver licence that authorised the person to drive a

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vehicle or combination of a specified class either generally or at a specified time or during a specified period or on a specified route or in a specified area or subject to specified conditions; or

- (l) a specified person was or was not the holder of a permit under an Australian road law to drive or operate a specified vehicle or combination or a vehicle or combination of a specified class either generally or subject to specified conditions; or
- (m) a specified penalty, fee or charge was or was not, or is or is not, payable under an Australian road law by a specified person; or
- (n) a specified infringement notice under an Australian road law was served on a specified person in a specified way on a specified date; or
- (o) a specified infringement notice under an Australian road law was served in relation to a specified vehicle or combination; or
- (p) a specified infringement notice under an Australian road law has or has not been withdrawn or amended; or
- (q) a specified infringement notice under an Australian road law has been amended in a specified way on a specified date; or

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- (r) a specified person had or had not paid a specified infringement penalty under an Australian road law; or
 - (s) a specified person had or had not notified the Australian Authority –
 - (i) of any change of address or of a specified change of address; or
 - (ii) that the person suffered from any prescribed medical condition or from any specified prescribed medical condition; or
 - (t) a specified person, vehicle or combination was or was not subject to a specified registration, licence, permit, authorisation, approval, exemption or notice under an Australian road law; or
 - (u) a specified registration, licence, permit, authorisation, approval, exemption or notice was or was not varied, suspended, cancelled or revoked under an Australian road law; or
 - (v) a specified person, vehicle or combination had or did not have specified legal entitlements; or
 - (w) a specified document was or was not lodged, or a specified fee was or was not paid, by a specified person; or

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- (x) a specified person was or was not an authorised officer under an Australian road law; or
- (y) a specified identification card was an identification card issued or designated by the Australian Authority and was or was not current; or
- (z) a specified authorised officer was authorised to exercise a specified power, and –
 - (i) was not restricted by an Australian Authority in the exercise of the power; or
 - (ii) was not restricted in a specified way in the exercise of the power; or
- (za) a specified person was a nominated police officer and thereby authorised to exercise a specified power; or
- (zb) a specified person was a police officer authorised to nominate police officers to exercise a specified power; or
- (zc) a specified person or body was an Australian Authority; or
- (zd) a specified person was an approved officer under Division 1 of Part 5; or
- (ze) specified terms and conditions were the terms and conditions on which a

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specified person was an approved officer
under Division 1 of Part 5; or

- (zf) a specified public street, or a specified part of a specified public street, was a declared route; or
- (zg) a specified area was a declared zone; or
- (zh) a specified vehicle or combination (or specified component of a specified vehicle or combination) was weighed by or in the presence of a specified officer on a specified weighbridge or weighing facility or by the use of a specified weighing device and that a specified mass was the mass of the vehicle or combination (or component) –

is admissible in any proceedings and is prima facie evidence of the matters stated.

- (2) Without limiting subsection (1), a statement in a certificate purporting to have been issued by an Australian Authority, an Australian authorised officer or an Australian police officer as to any matter that appears in or can be calculated from records kept or accessed by the Australian Authority or officer is admissible in any proceedings and is prima facie evidence of the matters stated.

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140. Evidence regarding measurement

- (1) In any proceedings in a court, a certificate certifying a measurement in accordance with this Act is admissible in evidence and, in the absence of proof to the contrary, is proof of the accuracy of that measurement.
- (2) A certificate signed by a person authorised by the Secretary of the Department that, at a specified time on a specified date, a weighing device or other measuring instrument –
 - (a) was in proper working order; and
 - (b) was accurate; and
 - (c) had been tested in accordance with this Act; and
 - (d) was marked with the number specified in the certificate –

is admissible in evidence of the matter so certified and, in the absence of evidence to the contrary, as proof of those matters.

- (3) A certificate or copy of a certificate issued under the regulations and signed by an officer who inspected a vehicle or combination is evidence of the matters contained in the certificate, in particular –
 - (a) the mass of a vehicle or combination with or without its load; and

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- (b) the wheel load, single-axle load, axle-group load, aggregate axle load or mass on a tyre –

and, in the absence of evidence to the contrary, is proof of those matters.

- (4) A certificate signed by an officer certifying that a wheel, axle or tyre of a vehicle or combination is of a specified type or class is evidence of that matter and, in the absence of evidence to the contrary, is proof of that matter.

141. Evidence regarding weighing

Evidence of a record made by –

- (a) the operator of a weighbridge or weighing facility; or
- (b) an employee of the operator of a weighbridge or weighing facility –

of the mass of a vehicle or combination (or component of a vehicle or combination) weighed at the weighbridge or facility is admissible in any proceedings and is prima facie evidence of the mass of the vehicle or combination (or component) at the time it was weighed.

142. Evidence regarding manufacturer's ratings

- (1) Evidence of a written statement purporting to be made by the manufacturer of a vehicle or

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component of a vehicle regarding the mass rating of the vehicle or component determined by the manufacturer is admissible in any proceedings and is prima facie evidence –

- (a) of the mass rating; and
- (b) of any conditions to which the rating is subject that are included in the statement; and
- (c) that the statement was made by the manufacturer of the vehicle or component.

(2) Evidence of a written statement purporting to be made by the manufacturer of load restraint equipment designed for use on a vehicle or combination (or a component of a vehicle or combination) regarding the strength or performance rating of the equipment determined by the manufacturer is admissible in any proceedings and is prima facie evidence –

- (a) of the strength or performance rating; and
- (b) that the equipment was designed for that use; and
- (c) of any conditions to which the rating is subject that are included in the statement; and
- (d) that the statement was made by the manufacturer of the equipment.

143. Evidence not affected by nature of vehicle or combination

Evidence obtained in relation to a vehicle or combination in consequence of the exercise of powers under this Act is not affected merely because the vehicle or combination is not a heavy vehicle or heavy combination.

144. Proof of appointments and signatures unnecessary

- (1) For the purposes of this Act, it is not necessary to prove the appointment of an office holder.
- (2) For the purposes of this Act, a signature purporting to be the signature of an office holder is evidence of the signature it purports to be.
- (3) In this section –

“office holder” means –

- (a) the Commissioner for Transport;
or
- (b) the Registrar of Motor Vehicles appointed or employed under section 5 of the *Vehicle and Traffic Act 1999*; or
- (c) the chief executive or equivalent office of any other Australian Authority; or
- (d) the Commissioner of Police; or

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- (e) the head of the police force or police service of any other jurisdiction; or
- (f) an authorised officer; or
- (g) any other Australian authorised officer; or
- (h) a police officer; or
- (i) any other Australian police officer.

145. Transport documentation and journey documentation

- (1) Transport documentation or journey documentation is admissible in any proceedings under or for the purposes of the road law and is prima facie evidence of –
 - (a) the identity and status of the parties to the transaction to which it relates; and
 - (b) the destination or intended destination of the load to which it relates.
- (2) The reference in subsection (1) to the status of parties includes a reference to their status as responsible persons in relation to the transaction.

PART 9 – MISCELLANEOUS

Division 1 – Indemnities

146. Indemnity for authorised officers

- (1) An authorised officer does not incur civil liability for an act or omission done honestly and in good faith in the course of exercising his or her powers under the road law.
- (2) A liability that would, apart from subsection (1), attach to an authorised officer attaches instead to –
 - (a) the Authority, if the authorised officer was at the relevant time subject to the control and direction of the Authority in connection with the exercise of the power concerned; or
 - (b) another Australian Authority, if the authorised officer was at the relevant time subject to the control and direction of the other Australian Authority in connection with the exercise of the power concerned; or
 - (c) the authorised officer's employer, if the authorised officer was at the relevant time –
 - (i) not subject to the control and direction of an Australian Authority in connection with the

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exercise of the power concerned;
and

- (ii) acting in the capacity of an employee of a person or body; or
- (d) in any other case, the Crown in right of this jurisdiction.

(3) If –

- (a) a prescribed corresponding law of another jurisdiction provides that a liability that would, apart from a provision of that law, attach to an authorised officer of that jurisdiction attaches instead to the Authority; and
- (b) the authorised officer was at the relevant time subject to the control and direction of the Authority in connection with the exercise of the power concerned –

the liability accordingly attaches to the Authority by force of this section.

Note Subsection (3) is intended to complement and give effect to a provision of a corresponding law that transfers liability to the Authority of this jurisdiction, but only where the corresponding law is prescribed by the regulations.

147. Indemnity for persons authorised by authorised officers

- (1) A protected person does not incur civil liability for an act or omission done honestly and in good faith when acting under the authorisation.

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- (2) A liability that would, apart from subsection (1), attach to the protected person attaches instead to –
- (a) the Authority, if the authorised officer concerned was at the relevant time subject to the control and direction of the Authority in connection with the exercise of the power with respect to which the authorisation was given to the protected person; or
 - (b) another Australian Authority, if the authorised officer concerned was at the relevant time subject to the control and direction of the other Australian Authority in connection with the exercise of the power with respect to which the authorisation was given to the protected person; or
 - (c) the authorised officer’s employer, if the authorised officer concerned was at the relevant time –
 - (i) not subject to the control and direction of an Australian Authority in connection with the exercise of the power with respect to which the authorisation was given to the protected person; and
 - (ii) acting in the capacity of an employee of a person or body; or

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- (d) in any other case, the Crown in right of this jurisdiction.

(3) If –

- (a) a prescribed corresponding law of another jurisdiction provides that a liability that would, apart from a provision of that law, attach to a person who is a protected person within the meaning of that law, attaches instead to the Authority; and
- (b) the authorised officer concerned of the other jurisdiction was at the relevant time subject to the control and direction of the Authority in connection with the exercise of the power concerned –

the liability accordingly attaches to the Authority by force of this section.

Note Subsection (3) is intended to complement and give effect to a provision of a corresponding law that transfers liability to the Authority of this jurisdiction, but only where the corresponding law is prescribed by the regulations.

(4) In this section –

“protected person” means a person who is authorised under this Act by an authorised officer to do or to omit to do something.

148. Indemnity for persons authorised by police officers

- (1) A protected person does not incur civil liability for an act or omission done honestly and in good faith when acting under the authorisation.
- (2) A liability that would, apart from this section, attach to the protected person attaches instead to the Crown in right of this jurisdiction.
- (3) In this section –

“protected person” means a person who is authorised under this Act by a police officer to do or to omit to do something.

149. Indemnity not affected by certain matters

- (1) An indemnity under this Division is not affected merely because a vehicle or combination was in fact not a heavy vehicle or heavy combination.
- (2) An indemnity under this Division is not affected merely because a vehicle or combination was in fact not subject to a particular category of breach of a mass, dimension or load restraint requirement.

150. Other indemnities not affected

This Division does not affect any other indemnity provided under another law, if the other indemnity is not inconsistent with an indemnity provided under this Division.

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Division 2 – Mutual recognition

151. Effect of administrative actions of authorities of other jurisdictions

- (1) An administrative action of an administrative authority under or in connection with a corresponding road law has the same effect in this jurisdiction as it has in the other jurisdiction.
- (2) Nothing in this section gives an administrative action effect in this jurisdiction or in a particular place in this jurisdiction –
 - (a) in so far as the action is incapable of having effect in or in relation to this jurisdiction or that place; or
 - (b) if any terms of the action expressly provide that the action does not extend or apply to or in relation to this jurisdiction or that place; or
 - (c) if any terms of the action expressly provide that the action has effect only in the other jurisdiction or a specified place in the other jurisdiction.
- (3) This section applies only to administrative actions of kinds prescribed by the regulations.
- (4) In this section –

“administrative action” means an action of an administrative nature, as in force from time to time;

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“administrative authority” means –

- (a) a corresponding Authority; or
- (b) a person holding an office constituted by or under the law of another jurisdiction and prescribed by the regulations; or
- (c) a body constituted by or under the law of another jurisdiction and prescribed by the regulations.

152. Effect of court orders of other jurisdictions

- (1) An order of a court or tribunal of another jurisdiction under or in connection with a corresponding road law has the same effect in this jurisdiction as it has in the other jurisdiction.
- (2) Nothing in this section gives an order effect in this jurisdiction or in a particular place in this jurisdiction –
 - (a) in so far as the order is incapable of having effect in or in relation to this jurisdiction or that place; or
 - (b) if any terms of the order expressly provide that the order does not extend or apply to or in relation to this jurisdiction or that place; or
 - (c) if any terms of the order expressly provide that the order has effect only in

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the other jurisdiction or a specified place
in the other jurisdiction.

- (3) This section applies only to orders of kinds prescribed by the regulations.
- (4) In this section –

“order” means an order in any judicial or other proceedings, civil or criminal, as in force from time to time.

Division 3 – General

153. Other powers not affected

- (1) Except where expressly provided in this Act, nothing in this Act affects any power that a court, a tribunal, the Authority or an officer has apart from this Act.
- (2) Without limiting the above, nothing in this Act affects a power or obligation under another law to modify, suspend, cancel or otherwise deal with any licence or registration.

154. Declared zones and routes

- (1) The Minister may, by notice in the *Gazette*, declare –
 - (a) a specified area to be a declared zone for the purposes of this Act; or

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- (b) a specified public street, or a specified part of a specified public street, to be a declared route for the purposes of this Act.
- (2) A notice under subsection (1) is not a statutory rule for the purposes of the *Rules Publication Act 1953*.

155. Dismissal or other victimisation of employee or contractor assisting with or reporting breaches

- (1) An employer must not dismiss an employee or contractor, injure in any way an employee or contractor in his or her employment or alter an employee's or contractor's position to his or her detriment because the employee or contractor –
 - (a) has assisted or has given any information to a public agency in respect of a breach or alleged breach of an Australian road law; or
 - (b) has made a complaint about a breach or alleged breach of an Australian road law to the employer, a fellow employee or fellow contractor, a trade union or a public agency.
- (2) An employer or prospective employer must not refuse or deliberately omit to offer employment to a prospective employee or prospective contractor or treat a prospective employee or prospective contractor less favourably than another prospective employee or prospective

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contractor would be treated in relation to the terms on which employment is offered because the first-mentioned prospective employee or contractor –

- (a) has assisted or has given any information to a public agency in respect of a breach or alleged breach of an Australian road law; or
- (b) has made a complaint about a breach or alleged breach of an Australian road law to a former employer, a former fellow employee or former fellow contractor, a trade union or a public agency.

(3) A person commits an offence if –

- (a) the person engages in conduct that results in a contravention of subsection (1); and
- (b) the person is an employer of the person concerned.

Penalty: In the case of –

- (a) an individual, a fine not exceeding 100 penalty units; or
- (b) a body corporate, a fine not exceeding 500 penalty units.

(4) A person commits an offence if –

- (a) the person engages in conduct that results in a contravention of subsection (2); and

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- (b) the person is an employer or prospective employer of the person concerned.

Penalty: In the case of –

- (a) an individual, a fine not exceeding 100 penalty units; or
 - (b) a body corporate, a fine not exceeding 500 penalty units.
- (5) In proceedings for an offence under this section, if all the facts constituting the offence other than the reason for the defendant's action are proved, the onus of proving that the defendant's action was not actuated by the reason alleged in the charge lies on the defendant.
- (6) If a person is found guilty of an offence under this section, the court may, in addition to imposing a penalty on the offender, make either or both of the following orders:
 - (a) an order that the offender pay within a specified period to the employee or contractor or to the prospective employee or prospective contractor such damages as it thinks fit by way of compensation;
 - (b) an order that –
 - (i) the employee or contractor be reinstated or re-employed in the employee's or contractor's former position or (if that position is not available) in a similar position; or

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- (ii) the prospective employee or prospective contractor be employed in the position for which the prospective employee or prospective contractor had applied or (if that position is not available) in a similar position.
 - (7) The maximum amount of damages cannot exceed the monetary jurisdictional limit of the court in civil proceedings.
 - (8) An order for payment of damages is enforceable as if it were a judgment of the court sitting in civil proceedings.
 - (9) A person commits an offence if –
 - (a) the person is subject to an order under subsection (6)(b); and
 - (b) the person engages in conduct that results in a contravention of that order.
- Penalty: In the case of –
- (a) an individual, a fine not exceeding 100 penalty units; or
 - (b) a body corporate, a fine not exceeding 500 penalty units.
 - (10) An offence against subsection (9) is an offence of strict liability.
 - (11) In this section –

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“contractor” means an individual who works under a contract for services;

“public agency” means an Australian Authority, an Australian authorised officer, an Australian police officer or any other public authority of any jurisdiction.

156. Confidentiality

- (1) This section applies to a person engaged or previously engaged in the administration of this Act and (without limiting the foregoing) to –
 - (a) a person who is or was a delegate of the Authority; or
 - (b) a person who is or was employed by, or engaged to provide services to or on behalf of, the Authority; or
 - (c) a person who is or was employed by, or engaged to provide services to, a person or body engaged to provide services to the Authority.
- (2) A person to whom this section applies must not divulge or communicate information obtained (whether by that person or otherwise) in the administration of this Act except –
 - (a) as required or authorised by or under this or any other Act; or

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- (b) with the consent of the person from whom the information was obtained or to whom the information relates; or
 - (c) in connection with the administration of a road law; or
 - (d) to an Australian Authority, an Australian authorised officer or an Australian police officer; or
 - (e) to a prescribed public authority of any jurisdiction; or
 - (f) to a public authority of any jurisdiction for law enforcement purposes; or
 - (g) to a court or in connection with any legal proceedings; or
 - (h) in accordance with guidelines approved by the Minister.
- (3) Information that has been disclosed under subsection (2) for a particular purpose must not be used for any other purpose by –
- (a) the person to whom the information was disclosed; or
 - (b) any other person who gains access to the information (whether properly or improperly and whether directly or indirectly) as a result of that disclosure.
- (4) A person commits an offence if the person engages in conduct that results in a contravention of subsection (2) or (3).

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Penalty: In the case of –

- (a) an individual, a fine not exceeding 100 penalty units; or
 - (b) a body corporate, a fine not exceeding 500 penalty units.
- (5) An offence against subsection (4) is an offence of strict liability.
- (6) Nothing in this section prevents information from being used –
 - (a) to assist a person in deciding whether or not to withdraw a formal warning for any offence; or
 - (b) to enable the Authority to accumulate aggregate data and to enable the Authority to authorise use of the aggregate data for the purposes of research or education.

157. False or misleading statements or records provided to Authority or officials

- (1) A person commits an offence if –
 - (a) the person makes a statement to the Authority or to an official who is exercising a power under a road law; and
 - (b) the person knows that the statement is false or misleading in a material particular.

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Penalty: In the case of –

- (a) an individual, a fine not exceeding 100 penalty units; or
- (b) a body corporate, a fine not exceeding 500 penalty units.

(2) A person commits an offence if –

- (a) the person makes a statement to the Authority or to an official who is exercising a power under a road law; and
- (b) the statement is false or misleading in a material particular; and
- (c) the person is reckless as to whether the statement is false or misleading in a material particular.

Penalty: In the case of –

- (a) an individual, a fine not exceeding 100 penalty units; or
- (b) a body corporate, a fine not exceeding 500 penalty units.

(3) A person commits an offence if –

- (a) the person gives a record to the Authority or to an official who is exercising a power under a road law; and
- (b) the person knows that the record is false or misleading in a material particular.

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Penalty: In the case of –

- (a) an individual, a fine not exceeding 100 penalty units; or
 - (b) a body corporate, a fine not exceeding 500 penalty units.
- (4) Subsection (3) does not apply if, at the time the person gave the record to the Authority or official, the person informed the Authority or official that the record was false or misleading in a material particular and specified in what respect it was false or misleading.
- (5) A person is guilty of an offence if –
 - (a) the person gives a record to the Authority or to an official who is exercising a power under a road law; and
 - (b) the record is false or misleading in a material particular; and
 - (c) the person is reckless as to whether the record is false or misleading in a material particular.

Penalty: In the case of –

- (a) an individual, a fine not exceeding 100 penalty units; or
 - (b) a body corporate, a fine not exceeding 500 penalty units.

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- (6) The penalty for an offence under this section committed in relation to an official exercising a power under a road law is –
- (a) if there is one offence under the provision of the road law under which the power is exercised, the penalty for that offence; or
 - (b) if there is more than one offence under that provision, the penalties for those offences if the penalties are the same, or the lower or lowest of the penalties if they are different; or
 - (c) if there is no offence under that provision, a penalty of 100 penalty units.
- (7) In this section –
- “official”** means an officer or a person who is assisting an officer.

158. False or misleading information provided to responsible persons

- (1) A responsible person must not provide to another responsible person information in oral or written form that is false or misleading in a material particular if –
- (a) the person providing the information either knows that, or is reckless as to whether, the information is false or misleading in a material particular; and

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- (b) the material particular relates to an Australian road law offence that is or could be committed by any other responsible person if that person were to rely on the material particular; and
- (c) the person receiving the information does not know and could not reasonably be expected to know or ascertain that the information is false or misleading in that particular.

Penalty: In the case of –

- (a) an individual, a fine not exceeding 100 penalty units; or
 - (b) a body corporate, a fine not exceeding 500 penalty units.
- (2) Subsection (1) does not apply if, at the time the person gave the information to another responsible person in written form, the person informed the other responsible person that the information was false or misleading in a material particular and specified in what respect it was false or misleading.

159. Amendment or revocation of directions or conditions

- (1) An authorised officer may amend or revoke a direction given, or conditions imposed, by an authorised officer under this Act.

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- (2) A police officer may amend or revoke a direction given, or conditions imposed, by a police officer or an authorised officer under this Act.

160. Review of decisions

The regulations may provide a system for review of decisions made under this Act and identified in the regulations.

161. Contracting out prohibited

A term of any contract or agreement that purports to exclude, limit or modify the operation of this Act or of any provision of this Act is void to the extent that it would otherwise have that effect.

162. Authority may provide information to corresponding Authorities

- (1) The Authority may provide information to a corresponding Authority about –
- (a) any action taken by the Authority under any road law; or
 - (b) any information obtained under this Act, including any information contained in any records, devices or other things inspected or seized under this Act.

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- (2) This section has effect subject to the *Personal Information Protection Act 2004*.
 - (3) This section neither affects nor is affected by section 55 (Providing evidence to other authorities).

163. Regulations

- (1) The Governor may make regulations for the purposes of this Act.
- (2) Without limiting the generality of subsection (1), the regulations may –
 - (a) make provision for or with respect to the provision of specified information to specified public authorities about specified action taken under this Act; and
 - (b) incorporate or adopt by reference, with or without modifications, provisions of other legislation and other documents.
- (3) The regulations may be made so as to apply differently according to such factors as are specified in the regulations.
- (4) The regulations may –
 - (a) provide that a contravention of any of the regulations is an offence; and
 - (b) in respect of such an offence, provide for the imposition of a fine not exceeding 100 penalty units.

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- (5) The regulations may authorise any matter to be from time to time determined, applied or regulated by the Authority.
- (6) The regulations may rescind or revoke other regulations or other subordinate legislation.
- (7) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or complementary legislation.
- (8) Regulations made under subsection (7) may take effect on the day on which this Act commences or a later date as specified in the regulations, whether the day so specified is before or after the day on which the regulations are made.

164. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Infrastructure; and
- (b) the department responsible to that Minister in relation to the administration of this Act is the Department of Infrastructure, Energy and Resources.

**SCHEDULE 1 – PROVISIONS WITH RESPECT TO
WARRANTS**

Section 44

1. Definitions

In this Schedule –

“issuing magistrate”, in relation to a warrant,
means the magistrate who issues the
warrant;

“occupier” includes a person in charge of
premises.

2. Application for warrant in standard situation

- (1) An application to a magistrate for a warrant is to be in writing.
- (2) The magistrate may issue the warrant if satisfied that there are reasonable grounds for doing so.
- (3) However, the magistrate must not issue the warrant unless –
 - (a) the application for the warrant sets out the grounds for seeking the warrant; and
 - (b) the applicant for the warrant has given the magistrate, either orally or in writing, any further information that the magistrate requires concerning the grounds for seeking the warrant; and

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- (c) the information given by the applicant is –
 - (i) made in person, verified before the magistrate on oath or by affidavit; or
 - (ii) made by the applicant over the phone, verified by a statement to the magistrate that the information is true.
- (4) The warrant is to be in such form as the issuing magistrate determines, but it must at least specify –
 - (a) when the warrant is issued; and
 - (b) the premises it authorises to be entered; and
 - (c) whether entry is authorised to be made at any time or only during certain hours; and
 - (d) a description of the kind of property authorised to be seized under the warrant; and
 - (e) any conditions that the warrant is subject to; and
 - (f) when the warrant ceases to have effect.

3. Warrant may be applied for and issued by telephone, &c., in urgent situation

- (1) Despite clause 2, a police officer of or above the rank of sergeant may apply to a magistrate for a warrant by telephone or radio if the police officer believes that the urgency of the situation requires it.
- (2) The magistrate may complete and sign the warrant in the same way as for a warrant applied for in person if satisfied that –
 - (a) there are reasonable grounds for issuing the warrant urgently; and
 - (b) it is not practicable in the circumstances for the police officer to apply for the warrant in person.
- (3) The issuing magistrate is to –
 - (a) inform the police officer of –
 - (i) the terms of the warrant; and
 - (ii) the date on which, and the time at which, the warrant was signed; and
 - (iii) the date on which, and the time at which, the warrant ceases to have effect; and
 - (b) record on the warrant the reasons for issuing it.
- (4) The police officer is to –

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- (a) complete a form of warrant in the same terms as the warrant signed by the issuing magistrate; and
 - (b) write on the form –
 - (i) the name of the issuing magistrate; and
 - (ii) the date on which, and the time at which, the warrant was signed; and
 - (c) send the completed form of warrant to the issuing magistrate not later than the day after the warrant is executed or ceases to have effect.
- (5) On receipt of the form of warrant, the issuing magistrate is to attach it to the warrant that the magistrate signed.
- (6) The form of warrant completed by the police officer has the same force as the warrant signed by the issuing magistrate.

4. Record of proceedings before issuing magistrate

A magistrate who issues a warrant is to cause a record to be made of all relevant particulars of the grounds the magistrate has relied on to justify the issue of the warrant.

5. Expiry of warrant

A warrant ceases to have effect –

- (a) on the date specified in the warrant as the date on which it ceases to have effect; or
- (b) if it is withdrawn before that date by the issuing magistrate; or
- (c) after it has been executed; or
- (d) if the person to whom it is issued ceases to be an officer –

whichever occurs first.

6. Report to issuing magistrate following execution of warrant, &c.

- (1) An officer who is issued with a warrant must furnish a report in writing to the issuing magistrate –
 - (a) stating whether or not the warrant has been executed; and
 - (b) if the warrant has been executed, setting out briefly the result of the execution of the warrant, including a brief description of anything seized; and
 - (c) if the warrant has not been executed, setting out briefly the reasons why it has not been executed.

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- (2) The report is to be furnished within 10 days after the warrant has been executed or otherwise ceases to have effect, whichever occurs first.

7. Death, absence, &c., of issuing magistrate

If the magistrate who issued a warrant has died, has ceased to be a magistrate or is absent, a report that is required to be furnished to that magistrate –

- (a) must still be made; but
- (b) may be furnished to any other magistrate.

8. Duty to show warrant

An officer who is executing a warrant must produce it for inspection by an occupier of the premises if requested to do so by that occupier.

9. Assistance and use of force in executing warrant

- (1) An officer may execute a warrant using such assistance as the officer considers necessary.
- (2) Except as may be otherwise provided by the terms of the warrant or this Act, an officer may execute a warrant using such force as may reasonably be required in the circumstances.

10. Defect in warrant

A warrant is not invalidated by any defect that does not affect its substance in a material particular.