

CLAUSE NOTES

HEAVY VEHICLE ROAD TRANSPORT BILL 2008

PART 1 PRELIMINARY

DIVISION 1 INTRODUCTION

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| Clause 1 | Short title and citation |
| Clause 2 | This clause provides that the Act will commence on a day to be proclaimed. |
| Clause 3 | This clause sets out the primary objectives of the Act in relation to safety, efficiency and accountability, as well as specific objectives in relation to nationally consistent improved compliance and enforcement regulation. A specific objective is the recognition of chain of responsibility embracing all responsible parties in the transport chain. |
| Clause 4 | <p>This clause provides that the Act is to bind:</p> <p>(a) The Crown in all its capacities; and</p> <p>(b) The Crown is not liable to be prosecuted for an offence.</p> |
| Clause 5 | This clause provides that the Act is to apply in respect of those laws identified as “Australian road laws” in each jurisdiction. |

DIVISION 2 INTERPRETATION AND ASSOCIATED CONCEPTS

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| Clause 6 | This clause sets out definitions of terms used in the Act, including the definition of persons with special duties such as drivers, operators, consignors, loaders, packers, receivers and ‘responsible’. |
| Clause 7 | This clause notes that examples have been used to aid in interpreting the clauses and these examples are to be part of the Act but are not exhaustive and do not limit, but may extend, the meaning of the provisions. |

- Clause 8 This clause states that a note is explanatory and is not part of this Act.
- Clause 9 This clause provides that this Act does not limit or detract from the provisions of any other laws that apply in this state and are in addition to the requirements in other laws, particularly laws relating to workplace health and safety.
- Clause 10 1. This clause is a definition clause that clarifies that a reference to an *operator* means the person responsible for controlling or directing the operations of a vehicle or the towing vehicle in a combination.
2. The clause further provides that a person is not an operator merely because they own a vehicle or combination; drive a vehicle or combination; maintain or arrange the maintenance of a vehicle or combination; and/or arrange for the registration of a vehicle.
- Clause 11 This clause defines the *base* of a driver of a vehicle or combination.
- Clause 12 This clause describes the type of relationships necessary under the act to deem one person an *associate* of another.

Part 2 Enforcement Officers

This part provides for the exercise of some or all of the powers contained in the Act by authorized officers appointed by a road transport Authority, and police officers.

- Clause 13 1. This clause provides for the exercise of some or all of the powers contained in the Act by authorized officers appointed by a road transport Authority and police officers.
2. Authorities may appoint persons or classes of person to be authorized officers. Authorized officers need not be employees of the Authority or of the government or of a government agency.
3. Authorized officers may exercise any powers granted to them under road transport laws.

4. However an Authority may restrict those powers or make those powers conditional.

Clause 14

1. This clause provides that an Authority may delegate to authorized officers any of its powers under the legislation.
2. In addition, an Authority may delegate any of its powers under the legislation to members of the police force or to classes of police officers.
3. Any person directing an authorized officer must have an appropriate delegation from the Authority of the jurisdiction where those powers are exercised.

Clause 15

1. This clause requires the Authority to issue each authorized officer with an identification card identifying the officer. This is subject to the scope for arrangements to this effect that avoid unnecessary duplication in respect of authorized officers who already hold an identification card issued by another authority (for example, an officer who is from WorkCover or another State).
2. The card must include a recent photograph of the authorized officer and must specify the Authority's name and list either the officer's name and signature or a number assigned by the Authority to the officer. The identification card must also state that the officer is an authorized officer.

Clause 16

1. This clause requires each authorized officer to produce his or her identification card if the officer is not wearing an approved uniform or badge upon request; or
2. If it is not practical to produce the identification card immediately, it must be produced as soon as practicable afterwards.

Clause 17

This clause requires an authorized officer to return his or her identity when his or her authorization ceases to

have effect and makes it an offence for a failure to do so.

Clause 18 This clause enables the authorization of officers from other jurisdictions to exercise powers under the Act. This is more likely to be used in cross border situations in jurisdictions such as New South Wales and Queensland.

Clause 19 There are references in the legislation to both an authority and an authorized officer. This clause clarifies that an authority may exercise any power conferred by or under a road law on an authorized officer. Thus, references to an authorized officer include reference to the Authority. The Authority for this purpose is the Transport Commission.

PART 3 General Enforcement Powers

This part specifies the general powers of authorized officers under the Act.

DIVISION 1 PRELIMINARY

Clause 20 This clause defines the meaning of qualified, fit and authorized as it pertains to driving a vehicle or running an engine. This is relevant to the offences in Division 3 of this Part.

Clause 21 This clause defines the meaning of “unattended” which is important when referring to the offences in Division 3 of this Part pertaining to the power to move unattended or broken down vehicles or combinations.

Clause 22 This clause defines the term broken down which is relevant to the power in Division 3 of this Part pertaining to the power to move unattended or broken down vehicles or combinations.

Clause 23 This clause defines when a power is exercised under the Act for compliance purposes.

DIVISION 2 DIRECTIONS TO STOP, MOVE OR LEAVE VEHICLES OR COMBINATIONS

Clause 24	This clause applies to the division to the driver of a vehicle or combination in certain places.
Clause 25	<p>1. A police officer or authorized officer is empowered by this clause to direct a driver of a heavy vehicle or combination to:</p> <p>(a) Stop the vehicle or combination;</p> <p>(b) Keep it stationary; or</p> <p>(c) Not alter, remove or interfere with the vehicle or load (subject to subsequent directions).</p> <p>2. 'Stop' is defined to include direct to the nearest safe location for it to stop.</p> <p>3. An offence is committed by a driver if there is failure to comply with a direction to stop and the offence is one of strict liability.</p> <p>4. The power to stop vehicles is provided for the purpose of the exercise of other powers under the road laws. In effect, this power allows a vehicle to be stopped where there is a suspected breach to check on compliance or to verify whether there is, in fact, a breach of the road law. The power is fundamental to monitor compliance, to ensure timely enforcement to monitor compliance, to ensure timely enforcement and to ensure a suspected danger to the public is ended immediately.</p>
Clause 26	This clause provides for a power to direct the movement of a vehicle or combination to exercise other powers under this law.
Clause 27	<p>1. This clause empowers a police officer or authorized officer to enter and move a vehicle or combination where the police officer or authorized officer has a belief on reasonable grounds that the vehicle or combination is causing a danger or traffic obstruction.</p> <p>2. The power may be exercisable by the police officer or authorized officer either by driving the vehicle or</p>

causing the vehicle to be moved to the extent necessary to prevent danger or obstruction.

3. This is an important supplementary power and is essential to timely enforcement of the road laws and contributes directly to minimizing the danger to the public where there is a breach by allowing immediate action to be taken to remedy that breach. The power to move vehicles, whether attended or not, will ensure that the power to stop vehicles is not frustrated.

Clause 28

Where a driver fails to comply with a direction under this Division, an officer is empowered by this clause to direct the driver to vacate the driver's seat, leave the vehicle or combination; and not to (re)occupy the driver's seat until permitted to do so by an authorized officer or police officer. Failure to comply is an offence.

Clause 29

1. This clause allows a direction to 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

Clause 30

1. This clause empowers a police officer or authorized officer to enter and move an unattended vehicle or combination for the purpose of exercising powers under the Act.

2. The power to move an unattended vehicle or combination may be exercisable by the police officer or authorized officer either by driving the vehicle or causing the vehicle to be moved (for example, by towing the vehicle).

3. A police officer or authorized officer may drive the vehicle or combination only if the police officer or authorized officer holds an Australian driver license of the appropriate class to drive the vehicle or combination.

4. A police officer or authorized officer may, by virtue of this clause, use reasonable force to enter the vehicle or combination.

Clause 31

1. This clause empowers a police officer or authorized officer to enter and move an unattended vehicle or combination that 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 power may be exercisable by the police officer or authorized officer either by driving the vehicle or causing the vehicle to be moved.

3. Unlike clause 30, the police officer or authorized officer need not hold the appropriate license of the appropriate class 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 officer and who is fit and willing to drive it.

4. This clause also allows a police officer or authorized officer to use reasonable force to enter the vehicle or combination.

Clause 32

Clause 20(3) permits a person is authorized to drive a vehicle if they have the authority of the operator to do so. This clause exempts the application of clause 20(3) (requiring the authority of an operator to drive a particular vehicle) from this Part, as it is immaterial whether or not the authorized officer or police officer has the authority to drive a vehicle if they are seeking to exercise the powers under clauses 30 or 31 to enter and move an unattended vehicle.

DIVISION 4

POWERS OF INSPECTION AND SEARCH

Clause 33

1. This clause provides a general power, for a police officer, authorized officer or other person directed by the police officer or authorized officer, to inspect a heavy vehicle or combination for the purposes of checking compliance with road transport laws.

2. An inspection may include weighing, testing, checking placard and other information required to be in or on the vehicle or combination, measuring or taking photographs.

3. An inspection may also include the inspection of any information or documents that are required to be carried on or in the vehicle under the road transport laws. This is to be contrasted with the power to search under clause 34 where there needs to be a belief on reasonable grounds of an offence. The power to inspect under clause 33 only applies in respect of information and documents that are required to be kept under the Australian road laws or an approved road transport compliance scheme. The power to search under clause 34, however, extends to other information and documents that may provide evidence of an offence.

4. This power does not extend to a power to enter the vehicle or combination except to the extent necessary to find information required to be displayed on or in it to indicate its capabilities/entitlements.

5. This clause does not authorize the use of force, but allows the opening of unlocked doors, panels, objects or other things and the moving, but not the removal of, anything that is not locked up or sealed.

Clause 34

1. This clause provides that an authorized officer or police officer may search a vehicle or combination to which Division 3 applies if they believe on reasonable grounds that specified circumstances exist.

2. Whereas clause 33 authorises inspection for the purposes of determining whether an Australian road law or approved road transport compliance scheme is being complied with, clause 34 extends to the search of a vehicle or combination if the officer has formed a reasonable belief that specified circumstances exist. The reason for this distinction is that a search power under clause 34 is more intrusive than an inspection under clause 33.

3. Clause 34(6) provides that the inspector may form the necessary belief during or after an inspection, or

independently of an inspection. Although a search will usually be preceded by an inspection, this need not be the case. That is, provided the requisite belief has been formed as to the existence of one of the circumstances that are specified in clause 34(2) as justifying a search of the vehicle or combination, it is possible to conduct that search without first exercising the more limited inspection power under clause 33.

4. Clause 34(6) provides examples of what the power to search allows an authorized officer to do.
5. The clause enable the search and seizure of an information, documents, etc, that may provide evidence of an offence (contrast this with clause 33 which only applies to the inspection of information, documents, etc., that are required to be kept under an Australian law or approved road transport compliance scheme.

Clause 35

1. This provision provides a general power to check for compliance (if there are grounds to suspect an offence, then the powers provided for in clause 36, to enter and search and seize evidence from such vehicles, may be exercised).
2. Clause 35 empowers a police officer or authorized officer or authorized officer, or other person directed by the police officer or authorized officer to enter and inspect:
 - (a) the garage address or driver base of a heavy vehicle or any other premises from which an operator carries on his or her business, even if the address is used solely for residential purposes;
 - (b) a place where records are required to be kept under a road transport law;
 - (c) any premises from which an operator of intelligent transport system technology carries on his or her business;

- (d) any premises where a heavy vehicle or heavy combination is located;
 - (e) any heavy vehicle or combination at the garage address or driver base, or other premises or place.
3. The entry and inspection may be made at any time during the hours the business is usually operating without the consent of the occupier. However, if the premises are unattended at the time of the proposed entry, or the premises are used for predominantly residential purposes, consent to the inspection or search must have been obtained.
4. The combined effect of clauses 35 and 36 is that an authorized officer is required to obtain consent before exercising a power to inspect or search premises when –
- (a) a business is carried on at the premises and the proposed entry is to be made outside the usual business operating hours applicable at the premises (clause 35(5)(a));
 - (b) the premises are unattended at the time of the proposed entry (clause 35(6)(a));
 - (c) the premises are used for predominantly residential purposes (clause 35(6)(b)).
5. “Inspection” includes weighing, testing, measuring, seeking any information required to be kept in or on the vehicle as to its capabilities/ entitlements or taking photographs of any part of a vehicle and the equipment or load of the vehicle at the premises.
6. An inspection may also include the inspection of any information or documents that are required to be kept under the road transport laws. This is to be contrasted with the power to search under clause 34 where there needs to be a belief on reasonable grounds of an offence

having being committed. The power to inspect premises under clause 35 only applies in respect of information and documents that are required to be kept under the Australian road laws or an approved road transport compliance scheme. The power to search a vehicle or combination under clause 34, however, extends to other information and documents that may provide evidence of an offence.

Clause 36

1. This clause provides that an authorized officer or police officer may search premises if they believe on reasonable grounds that specified circumstances exist.

Whereas clause 35 authorises inspection for the purposes of determining whether an Australian road law or approved road transport compliance scheme is being complied with, clause 36 extends to the search of a vehicle or combination if the officer has formed a reasonable belief that specified circumstances exist. The reason for this distinction is that the search power under clause 36 is more intrusive than an inspection under clause 35.

3. Clause 36(4) provides that the officer may form the necessary belief during or after an inspection, or independently of an inspection. Although a search will usually be preceded by an inspection, this not need be the case.

4. Clause 36(9) lists the sort of things an authorized officer is empowered to search for.

5. The clause enables the search and seizure of any information, documents, etc, that may provide evidence of an offence (contrast this with clause 35 which only applies to the inspection of information, documents, etc., that are required to be kept under an Australian road law or approved road transport compliance scheme.

Clause 37

This clause makes it clear that premises, or parts of premises, that are used for business purposes

are not used for “residential purposes” merely because sleeping or other accommodation is provided there for drivers of heavy vehicles.

DIVISION 5

DIRECTIONS

Clause 38

1. This clause empowers an authorized officer or police officer to direct any person with responsibilities associated with heavy vehicles or combinations or their operation to provide to the officer any information, documents, records, devices or things in their possession or control relating to the use, performance or condition of the vehicles or combinations and other specific matters that may assist in the officer checking compliance with the road transport laws.

2. A written direction with respect to any heavy vehicle or combination or its use may be left at or posted to the garage address as recorded by the registration authority for the heavy vehicle or of the towing vehicle for the combination or any other address that the Authority or officer reasonably believes will ensure the applicable registered operator ought to receive it. It may be posted to or left at the registered address of a consignor, loader, packer and so forth. The direction should specify a time period for compliance with the direction.

3. A police officer or authorized officer may inspect, make copies of, take extracts from, or seize and remove documents, records, devices or things produced that are believed by the officer to provide evidence of a road transport law offence.

4. The clause makes it an offence if a person does not comply with a direction to produce the required information without a reasonable excuse.

5. Clause 54(1)(a) expressly excludes the privilege against self-incrimination as a defence to providing documents and other information.

6. Clause 48 requires an officer to provide a receipt to a person from whom any documents, record, device or thing is seized; and allows reasonable access to the documents, records, devices or things by the person who is entitled to possession of the document, record, device or thing wherever practicable.

Clause 39

1. This clause provides that an authorized officer or police may, to check compliance, direct a 'responsible person' to state a person's name, home address and business address. 'Responsible person' is defined under clause 6.

2. It is an offence to fail to comply with this direction, or to knowingly provide a false name and address. It is a defence to a charge of failing to provide a business address that the person did not have a business address, or that the person's business address was not connected with road transport involving heavy vehicles.

Clause 40

1. Clause 40(1) allows authorized officers or police officers to direct a responsible person to provide assistance to the inspector to enable the inspector effectively to exercise a power under clauses 33-36.

2. Clause 40(2) lists the sorts of directions that may be given.

3. Clause 40(3) provides that clause 40 does not authorize an inspector to direct a person to drive a vehicle.

4. It is an offence to fail to comply with such a direction, but it is a defence if the direction was unreasonable, or the direction or its subject-matter was outside the scope of the business or other activities of the person.

Clause 41

1. Clause 41 specifies the circumstances in which an authorized person may enter a vehicle and run its engine, or authorize another person to do so.

The authorized person may use reasonable force when entering a vehicle and running its engine.

Clause 42

This clause clarifies that a direction under this Division may be given orally, in writing or in any other manner. A direction not given in person may be sent or transmitted by post, telephone, facsimile, electronic mail, radio or in any other manner.

Clause 43

If given orally, a direction under this Division must state whether it is to be complied with then and there or within a specified period. If given in writing, a direction under this Division must state the period within which it is to be complied with.

DIVISION 6

WARRANTS

Clause 44

This clause provides for the issue of search warrants. The power to apply for, and act on, a search warrant is additional to, and separate from, the power to inspect and search premises under Division 4.

The clause allows an authorized officer or police officer to apply to a magistrate for the issue of a search warrant in relation to premises, if they believe on reasonable grounds that there is on the premises evidence of a contravention of a road or transport law (or will be evidence within the next 72 hours.).

Schedule 1 provides for the issue, execution, effect, effect and expiry of warrants for the purposes of this section.

DIVISION 7

OTHER PROVISIONS REGARDING INSPECTIONS AND SEARCHES

Clause 45

This clause states that authorized officers/police officers may use assistants and equipment but only if considered reasonably necessary in the circumstances.

Clause 46

This clause enables an authorized officer or police officer exercising powers under this Division to bring on to a vehicle, combination or premises any equipment reasonably necessary for determining evidence that may be seized.

Clause 47

1. This clause allows for the operation of electronic equipment to access information contained on a disk, tape or other storage device, if the authorized officer or police officer reasonably believes that the information contained on the storage device is relevant to determine whether a contravention has occurred.
2. Subclause (2) provides what the officer may do if he or she finds information contained on a disk, tape or other storage device.
3. Subclause (3) provides that equipment must not be operated or seized unless there are reasonable grounds for believing that the operation or seizure can be carried out without damage to the equipment.

DIVISION 8

OTHER PROVISIONS REGARDING SEIZURE

Clause 48

This clause requires an authorized officer or police officer who has seized a document, or other thing to give a copy to the owner and provide the owner reasonable access to it.

Clause 49

This clause provides for the issue of an embargo notice in respect of evidence that cannot, or cannot readily, be physically seized and removed. An

embargo notice is a notice forbidding the movement, sale, leasing, transfer, deleting of information from or other dealing with a thing, or any part of the thing, without the permission of the officer or Authority or the Commissioner of Police.

DIVISION 9

MISCELLANEOUS

Clause 50

This clause provides that the power to use reasonable force only authorizes a police officer to use force against a person.

Clause 51

This clause provides that where consent is required to be given in relation to the powers under Part 3, this must be informed and voluntary.

Consent may be withdrawn after it has been given, and the power concerned must no longer be exercised by virtue of the consent.

This clause ensures that a person's consent to entry onto premises is genuine and informed.

Clause 52

This clause provides that an authorized officer or police officer may, on the same occasion, give directions under one or more provisions of Part 3 of the Bill.

Clause 53

This clause provides that if damage is caused by the unreasonable exercise of a power under this Part or the unauthorized use of force reasonable steps must be taken to return a vehicle, combination, equipment, load or premises to the condition it was immediately before the action was taken that if action resulted in damage.

Clause 54

This clause provides that a person is not entitled to refuse to supply information under clauses 38, 39 and 40 in accordance with a direction with a direction on the basis of the privilege against self-incrimination. The effect of this clause is to expressly exclude the privilege as a defence to an offence of failing to comply with a direction.

However sub-clauses (2) and (3) grants the privilege against self-incrimination in regard to answering questions under clauses 39 (direction to provide information) and clause 40 (direction to provide reasonable assistance for powers of inspection and search) and locating, identifying, or revealing a document or its contents (clauses 38, 39 and 40).

In limited circumstances, a person will be entitled to rely upon a defence against self-incrimination where:

- (a) they would have been required to answer a question, locate or reveal the whereabouts of a record; and
- (b) they objected to doing so on the basis that to do so might incriminate the person; and
- (c) there were reasonable grounds for the objection

Clause 55

This clause provides that any records, devices or other things seized, or any information obtained, may be given to any public authority of any jurisdiction considered appropriate by the Authority or the Commissioner of Police for the purpose of law enforcement, subject to applicable privacy legislation.

Clause 56

This clause states that obstruction or hindering a police officer or authorized officer exercising a power under a road transport law is an offence. The offence is one of strict liability.

Clause 57

This clause states provides that it is an offence to impersonate an authorized officer. The offence is one of strict liability.

PART 4

Mass, Dimension & Load Restraint Requirements

This part is provides for compliance with and enforcement for Australia 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.

This part is primarily drawn from the policy proposals contained in the National Road Transport

Commission's Compliance and Enforcement:
Mass, Dimension and Load Restraint Policy
(November 2000).

DIVISION 1

PRELIMINARY

Clause 58

This clause sets out that the purpose of this Part is to make provision for compliance with and enforcement of Australian road laws in circumstances where a loss is or may be a factor in a breach.

Clause 59

This clause defines the meaning of some key terms that are relevant to this Part.

Clause 60

This clause provides that for Part 4, in determining whether or not a breach of a mass, dimension or load restraint requirement involves an appreciate risk of harm to public safety, the environment, road infrastructure or public amenity, regard is to be had to: the nature and severity on the breach; and the consequences or likely consequences of the breach; and any other relevant factors.

DIVISION 2

CATEGORISATION OF BREACHES

Clause 61

This clause provides that there are three categories of mass dimension and load restraint offences – 'minor risk', 'substantial risk' or 'severe risk'.

DIVISION 3

ENFORCEMENT POWERS

In addition to the general powers, the model legislation provides a number of powers specific to mass, dimension and load restraint breaches. These powers are linked to the risk-based offence categories. The objectives of these additional powers are:-

- (a) to provide the powers necessary for enforcement officers to administer the mass, dimension and load restraint regime consistently, efficiently and fairly;
- (b) to enable enforcement effort and resources to be targeted effectively and appropriately at the offences and offence patterns or most concern;
- (c) to provide industry with the confidence that enforcement action following detection of a breach will be applied in a manner that is even handed, consistent and appropriate to the breach; and
- (d) to be sufficiently flexible to allow exceptions to the general rules to meet the needs of particular cases.

Clause 62

This clause empowers an authorized officer or police officer to authorize the continuation of the journey of a vehicle or combination with a minor risk breach (all the way to the intended destination, if appropriate). For minor risk breaches this will be the usual approach. However, the officer has the power to require the vehicle to remain stationary or to proceed to a specified location for the load to be remedied. This clause is intended to operate with clause 65.

Clause 63

1. This clause empowers an authorized officer or police officer to authorize the continuation of the journey of a vehicle or heavy combination with a substantial risk breach; however, that power is limited to authorizing travel only to the nearest town, settlement, road house or other place suitable for legalizing the load. Where that nearest suitable place is the intended destination, then the authorization can extend to the intended destination.

2. The authorization is subject to such conditions as are necessary in the opinion of the enforcement officer to minimize any potential risks to public safety and public assets (roads, road furniture and road infrastructure). Conditions may include route

restrictions; reduce speed limits, temporary restraints, and the use of warning signals.

3 .In determining whether an area is the nearest area suitable for unloading a legal load the officer may consider any relevant factors, including the distance to be traveled, the direction of travel preferred by the driver, the nature of the route, traffic conditions, and likely traffic conditions en route, any animal welfare considerations, the availability of facilities for unloading or storing the load and preserving the contents and value of the load or preventing a hazard.

Clause 64

1.As a general rule, vehicle or heavy combinations with severe risk breaches will be required to remain stationary until the legal requirements are met.

2. However, this clause provides that in exceptional circumstances, enforcement officers and police officers have the power to authorize the vehicle or heavy combination to be moved, but this power only extends to authorizing travel to the nearest safe and in the case of certain dangerous and hazardous goods, nearest suitable, place to adjust the load, where the enforcement officer or police officer believes it is in the interests of protecting public safety, or public assets, or other considerations (for example, welfare/disease control) that the vehicle or heavy combination be moved.

3.Again, the officer may impose such conditions in respect of the authorization for travel that the officer considers necessary in the circumstances.

4. In determining whether a location is safe, consideration must be given to the type of load and the availability of equipment suitable for handling the load without creating damage to the goods or causing a hazard. An important distinction is made in the Bill between what is the nearest suitable location for the purpose of clause 63 and the exercise of powers to authorize vehicles and combinations with substantial risk breaches to proceed) and the nearest safe location under clause 64 (powers to authorize vehicles and combinations

with severe risk breaches to proceed). The nearest safe location may happen to be the nearest safe place to park the vehicle off the roadway – irrespective of whether that place can be considered suitable in terms of preservation of particular cargo being carried or the intended direction of the driver or any other considerations.

Clause 65

1. This clause 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.

2. As a general rule, vehicles will be granted this authorization; however, the clause does not preclude authorized officers or police officers from exercising their powers to direct the vehicle or combination to remain stationary until the vehicle or combination is adjusted to comply with the law.

3. The officer may attach such conditions to the authorization as are necessary, in the officer's opinion and within the administrative guidelines to avoid risk to public safety and/or public assets (roads, road furniture and road infrastructure).

Clause 66

This clause provides that a component vehicle of a combination can be separately driven or moved if the component vehicle is not itself the subject of a breach of a mass, dimension or load restraint requirement; and it is not otherwise unlawful for the component vehicle to be driven or moved.

Clause 67

A direction or authorization under this Division has to be in writing, except where the moving is carried out in the presence of, or under the supervision of, an authorized officer or police officer.

Clause 68

This clause provides that 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

Clause 69

1. This clause provides a special statutory defence – a “reasonable steps defence”- where the person is charged and did not know and could not reasonably have been expected to know of the breach of the law and they had taken all reasonable steps that they could reasonably have taken.

2. A reasonable steps defence is available to drivers and operators for minor risk breaches only (see clauses 74(3) and 75(3)) – other than where there has been reliance on an inaccurate container weight declarations, in which case,

3. The clause provides a non-exhaustive list of measures that might be taken by a party to demonstrate that they have taken “reasonable steps”.

Clause 70

1. This clause provides that a person charged with a breach of a mass requirement may rely on the weight stated in a container weight declaration, unless it is established that the person knew or ought reasonably to have known that the stated weight was lower than the actual weight.

2. However they cannot rely on this if it is established that the person knew or ought reasonably to have known that the stated weight was lower than the actual weight.

DIVISION 5

LIABILITY FOR BREACHES OF MASS, DIMENSION OR LOAD RESTRAINT REQUIREMENTS

Clause 71

1. This clause provides that a consignor commits an offence for any breach of the mass, dimension and load restraint requirements under Part 4 or where 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.

2. Consignor'is defined under clause 6.
3. The offence is one of absolute liability, however, the reasonable steps defence is available.
4. A consignor is also guilty of an offence under clause 93(2) where 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.

Clause 72

1. This provides that a packer commits an offence for any breach of the mass, dimension and load restraint requirements under Part 4 or where 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.
2. Packer is defined under clause 6.
3. The offence is one of absolute liability, however, the reasonable steps defence is available.
4. A packer is also guilty of an offence under clause 93(3) and (6) where 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.

Clause 74

1. This clause provides that an operator commits an offence for any breach of the mass, dimension and load restraint requirements under Part 4.
2. Operator is defined under clause 11.
3. The offence one of absolute liability.
4. The reasonable steps defence is available for minor risk breaches but not for substantial or severe risk breaches, unless it relates to reliance on the weight stated in a container weight declaration (see clause 93(6) and (7)).

5. An operator is also liable for an offence under clause 85 (ensuring that the driver of a vehicle or combination, or other carrier, is provided with a complying container weight declaration).

6. A special defence for operators is also provided for under clause 134.

Clause 75

1. This clause provides that a driver commits an offence for any breach of the mass, dimension and load restraint requirements under Part 4.

2. Driver is defined under clause 6.

3. The offence one of absolute liability.

4. The reasonable steps defence is available for minor risk breaches but not for substantial or severe risk breaches, unless it relates to reliance on the weight stated in a container weight declaration (see clauses 93(7) and 70).

5. A driver is also liable for an offence under clause 86 (ensuring that they are provided with, and carry at all times in the vehicle, a complying container weight declaration).

6. A special defence for drivers is also provided for under clause 135.

Clause 76

1. This clause provides that a consignee commits an offence for any breach of the mass, dimension and load restraint requirements under Part 4.

2. Consignee is defined under clause 6.

3. The offence is one of strict liability, in that it must be commenced knowingly, recklessly or negligently.

4. A consignee is also guilty of an offence under clause 87 which provides that a consignee is taken to have intended the result 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 contained false

or misleading information about the weight of a freight container.

5. Clause 93(5) provides for the liability of a receiver for false and misleading documentation. A receiver is declined under clause 93(11) and may or may not be a consignee.

Clause 77

This clause sets out maximum (and in some cases) penalties that can be applied for each of the six levels of offences referred to in this Part.

DIVISION 6

SANCTIONS

Clause 78

This clause lists the general implications and consequences of breaches of mass, dimension or load restraint requirements that the Courts can refer to when determining the kinds and levels of sanctions to be imposed. However, the factors listed are neither determinative nor exhaustive.

Clause 79

This clause provides that if a court is satisfied:

1. that there has been a breach of mass, dimension or load restraint requirement but is not satisfied that the breach is a substantial risk breach or severe risk breach, this clause enables the Court to treat the breach as a minor risk breach.

2. 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

This division creates provisions that mandate the provision of accurate container weight declarations by the person defined as the reasonable entity. This requirement is to ensure that drivers and road operators receive the correct information to enable selection of the appropriate vehicle to transport the container within the relevant mass limits.

Clause 80	<p>1. This division applies to a freight container that is consigned for transport by road, or for transport partly by road and partly by some other means.</p> <p>2. The liability of consignors is found in clause 71.</p>
Clause 81	<p>This clause defines the responsible entity in relation to a freight container. It includes a person who arranges for the transport by road, the person who arranges for the transport of goods (including those entering Australia), a person who consigns goods for transport by other carriers, and an Australian agent of an overseas-based consignor.</p>
Clause 82	<p>1. This clause specifies that a container weight declaration is a legal declaration which states the weight of the container. It must accompany a container whenever all or part of the container's journey is on a road. The declaration can also be used in court proceedings.</p> <p>2. This clause defines how a container weight is declared and reported.</p>
Clause 83	<p>1. This clause states that a container weight declaration for a freight container complies with this Division if it contains certain specified information.</p> <p>2. A container weight declaration does not comply if the contents of the container weight declaration are not readily available to an authorized officer or police officer; or it is not in a form that can be used or adapted for evidentiary purposes; or it is not in a form that satisfies requirements prescribed by the regulations.</p>
Clause 84	<p>1. This clause provides that a reasonable 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, with a complying container weight declaration relating to the freight container.</p> <p>2. A responsible entity who fails to comply with its duty is guilty of an offence.</p>

3. The offence is one of absolute liability, tempered with a reasonable steps defence.

Clause 85

1. This clause imposes a similar duty on the operator to ensure that the driver of a vehicle or combination is provided, before the start of the driver's journey, with a complying container weight declaration relating to the freight container.

2. If the freight container is to be transported by another road or rail carrier, the operator must also ensure that the other carrier is provided with a complying container weight declaration before the other carrier receives the freight container.

3. An operator who fails to comply with its duty is guilty of an offence.

4. The offence is one of absolute liability, tempered with a reasonable steps defence.

Clause 86

1. This clause provides a duty on the driver to drive with a complying container weight declaration.

2. While on the road, drivers must keep a copy of the container weight declaration with the container at all times.

3. A driver who fails to comply with its duty is guilty of an offence.

4. The offence is one of absolute liability, tempered with a reasonable steps defence.

Clause 87

Clause 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. The consignee is taken to have intended the result referred to in clause 76(1)(b) if the consignee knew or ought reasonably to have known that:

(a) a container weight declaration for the container was not provided as required; or

(b) 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

DIVISION 8

RECOVERY FOR LOSSES RESULTING FROM NON-PROVISION OF OR INACCURATE CONTAINER WEIGHT DECLARATIONS

Clause 88

1. This clause provides for a right of recovery against the responsible entity for the monetary value of any loss incurred as a result of there not being a complying container weight declaration.

2. The kinds of loss that are recoverable include:

(a) loss incurred from delays in delivery of the containers or goods;

(b) loss incurred from the spoiling of any goods;

(c) loss incurred from the need to provide another vehicle;

(d) loss incurred from the need to weigh the freight container, its contents or both.

Clause 89

This clause provides that any person has a right to recover from the responsible entity the monetary value for any loss incurred as a result of a false and misleading container weight declaration that results in a breach of the offences in Division 7 of this Part.

Clause 90

If a person is successful under clause 89 against the responsible entity, this clause provides that the responsible entity has the right of recovery from the person who provided the responsible entity with all or any of the information that was false or misleading.

This clause gives a discretion to a court to calculate the amount of the loss under the above clauses in such manner as the court considers appropriate, taking into account such matters as it considers relevant.

This clause provides that a court may award costs in relation to the proceedings for an order under this Division.

TRANSPORT DOCUMENTATION

This clause provides that if a consignor, packer, loader or receiver is involved in the provision of false or misleading information about the goods, vehicle or heavy combination or load, it is an offence of absolute liability for which the reasonable steps defence is available.

CONCESSIONS

If a particular arrangement under which increased mass has been granted expressly makes provision for alternative breakpoints to apply, then this clause provides that those breakpoints will override the normal breakpoints, thereby providing an exception to the general rule. That is, if such “concessions” expressly provide for the breach breakpoints to be calculated from the increased limits, then these alternative breakpoints will apply.

This clause defines “concession” and “mass, dimension or load restraint concession:.

This clause creates the offence of contravening a condition under a mass, dimension or load restraint concession.

This clause provides that if a person contravenes a condition under a mass, dimension or load restraint concession, then the concession will not continue to operate in the person's favour and it will 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.

Clause 97

This clause states that 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.

PART 5

General Administrative Sanctions

DIVISION 1

IMPROVEMENT NOTICES

Clause 98

This clause defines an approved officer as an officer who is approved to issue improvement notices.

Clause 99

1. This clause empowers an approved officer to issue an improvement notice where the approved officer has a belief on reasonable grounds that a person:

(a) is contravening any provision of this model legislation or regulations; or

(b) has contravened such a provision in circumstances that make it likely that the contravention will continue or be repeated.

2. An improvement notice may require the person to whom the notice is issued to remedy the contravention or likely contravention within the period specified in the notice.

Clause 100

This clause creates the offence of failing to abide by an improvement notice.

Clause 101

This clause provides for the amendment of an improvement notice by an approved notice.

Clause 102

This clause provides for the cancellation of an improvement notice by an approved notice.

Clause 103

This clause provides that 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.

DIVISION 2

FORMAL WARNINGS

Clause 104

1. Under this clause, a police officer or authorized officer may provide a formal warning to a person instead of taking proceedings for contravention of a road law if:

(a) the contravention was minor; and

(b) if the officer chose to treat the breach at the time on the basis he or she believes the person had taken all reasonable steps to prevent the contravention and was unaware of the contravention; and

(c) the contravention could be dealt with appropriately by a formal warning.

2. The formal warning will provide an alternative to the infringement notice procedure or taking court proceedings for minor risk breaches committed by those who do not have a significant history of similar offences.

3. It is considered that the formal warning will act as a specific deterrent to minor risk offenders – the sting lying in the fact that the warning will be recorded and may be used by an authority or by the police in deciding whether or not to withdraw a subsequent formal warning or to bring infringement or court proceedings instead.

Clause 105

The clause provides for the withdrawal of a formal warning by the authority in favour of taking proceedings for a road law contravention.

Part 6

General Court Based Sanctions

DIVISION 1

PROCEEDINGS FOR OFFENCES

Clause 106

This clause enables proceedings for an offence under this Act or the regulations to be dealt with summarily.

Clause 107

This clause that proceedings for a road law offence may be commenced within the period of two years after the commission of the alleged offence or a further period of one year commencing on the day on which there was evidence of the commission of the alleged offence considered reasonably sufficient by the Authority or officer to warrant commencing proceedings.

DIVISION 2

AVAILABLE SANCTIONS

This clause provides that a court that finds a person guilty of a road law offence may impose any one or more of the penalties provided for by this Part, provided the court considers the combined effect of the penalties imposed.

DIVISION 3

FINES

Clause 109

1. This clause clarifies the difference between the first offence and a second or subsequent offence.

2. The second or subsequent offence is a second or subsequent finding of guilt where the finding of guilt relates to a separate and subsequent breach incident.

DIVISION 4

COMMERCIAL BENEFITS PENALTY ORDERS

1. This clause sets out provision for a new commercial benefits penalty order that a court may impose requiring the offender to pay an amount up to three times the amount calculated to be the commercial benefit that was, or would have been derived from the commission of the offence.

2. In calculating the commercial benefit that was or would have been derived from the commission of the offence, the court may take into account any relevant considerations including:

- (a) the value per tonne/km of the particular goods;
- (b) the distance over which the goods were carried, or were to be carried; and
- (c) the benefit received or to be received for committing the breach.

3. This penalty is based on the equitable principle that a person should not profit from his or her crime. AS such, the penalty is directed against the financial incentives to commit breaches of the mass, dimension and load restraint requirements on high-value cargoes – particularly over long distances – and is intended to act as a powerful general and specific deterrent.

DIVISION 5

REGISTRATION SANCTIONS

Clause 111

A court may, in addition to any other penalty, make an order under this clause affecting a heavy vehicle registration for an offence against the road laws. Where the offence relates to mass, dimension and load restraint, this must be a severe risk offence. The court will have the power to modify, suspend or cancel the registration of any heavy vehicle of which the offender is the registered operator, and may disqualify the offender from becoming the registered operator for a specified time.

DIVISION 6

SUPERVISORY INTERVENTION ORDERS

Clause 112

1. Under this provision a court may on application by the Authority impose what is known as a supervisory intervention order on a person the court has found guilty of a road law offence if the court considers that person to be a systematic or persistent

offender (including a body corporate) against the road laws.

2. A court order may direct the offender, at the persons' own expense and for a period not exceeding one year:

(a) to do things that the court considers will improve the person's compliance with the road laws, including:

1. appointing or removing staff to or from particular positions of influence or control;

2. retraining and supervising staff;

3. appointing an auditor to assess the person's compliance with the road laws and to report or disclose information on compliance performance, or the action taken to ensure failure to comply with road laws does not continue and the results of that action to either the authority, the court or the public generally in the form, manner and frequency specified in the order;

4. obtaining expert advice as to how to maintain appropriate compliance; and

5. implementing managerial or operational practices, systems or procedures; or

(b) to report or disclose information on compliance performance, or the action taken to ensure failure to comply with road laws does not continue and the results of that action to either the Authority, the court or the public generally in the form, manner and frequency specified in the order; or

(c) to conduct the operations specified in the order subject to the direction of the Authority or a person nominated by the Authority.

3. A court order can only be made under this provision if the court is satisfied that the order is

capable of improving the ability or willingness of a person to comply with the road laws.

4. The court is to be satisfied of this by having regard to previous offences that a person has been found guilty of committing or for which an infringement notice has been issued and any other evidence considered relevant to the person's conduct in road transport.

5. The rationale for the supervisory intervention order is that in some circumstances, a systematic or persistent offender might require supervision and further education to achieve compliance. Such an order would be onerous on the offender, but would not be as harsh a punishment as orders affecting heavy vehicle licences or registrations and orders that prohibit a person from involvement in the road transport industry.

6. The supervisory intervention order is not linked to the minor risk categorisation of offences. It should be capable of being used by a court to address situations where an offender is habitually using, say, the minor risk category as extra payload, just as it should be capable of being applied to more serious level breaches.

7. Whilst the supervisory intervention order is based on retributive, deterrent and public protection principles of punishment, its primary purpose is rehabilitative, by providing the offender with an opportunity – albeit under strict supervision – to remain in the industry and improve his or her operating performance.

Clause 113

This clause creates an offence for contravening a supervisory intervention order.

DIVISION 7

PROHIBITION ORDERS

Clause 114

1. This clause provides for an order prohibiting an offender from involvement in the road transport industry.

2. The order may only be made on the application of the Authority and where the court is satisfied the offender is a systematic or persistent offender against the road transport laws. An offender may be a body corporate.

3. The order may prohibit the offender, for the period specified in the order, from:

(a) operating a heavy vehicle, a particular class of heavy vehicle or combination or a heavy vehicle carrying a particular type of load; or

(b) being a director, secretary or high managerial agent of a body corporate involved in operating a heavy vehicle; or

(c) being involved in operating a heavy vehicle in any other way except by driving a heavy vehicle.

4. The order can only be made if the court is satisfied that the person should not be entitled to do the things which are the subject of the order and that a supervisory intervention order is not considered appropriate. The prohibition order may be in addition to any other penalty or sanction other than a supervisory intervention order.

5. If a person fails to comply with a supervisory intervention order, the court is to be satisfied that the issuing of another supervisory intervention order would not be appropriate for the purpose of an application for an order to prohibit a person from involvement in the road transport industry.

6. This is intended to be an extreme punishment that will have grave implications for an offender's future in the road transport industry and livelihood. It is a punishment that a court would not be inclined to order in any but extreme cases, involving elements of premeditation or scheming (but not necessarily, severe risk breaches) or habitual offenders, and in which the court takes the view that the prime

sentencing considerations are retribution, deterrence and public protection.

Clause 115

This clause creates the offence of failing to adhere to a prohibition order.

Part 7

General Compensation Orders

This part enables a court to impose a compensation order on a person who is found guilty of a road law offence. The order is to be made in favour of a road authority in respect of damage to road infrastructure incurred as a consequence of the offence.

Clause 116

This clause gives power to the court to 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.

Clause 117

In making a compensation order, the court may access the amount of compensation as it considers appropriate. Examples of matters are cited in this clause, including: the monetary value of all or any part of the road infrastructure or of the damage to it, the cost of remedying the damage and the extent of the offender's contribution to the damage.

Clause 118

1. This clause specifies that service of a certificate or notice of an intention to challenge a certificate can be by post. Proof of service of the notice should be by affidavit or declaration of service.

2. If the defendant wishes to challenge a statement in a certificate that has been served at least 14 days before the hearing date, then the defendant should give notice in writing to the person who brought the proceedings.

3. The written notice of an intention to challenge a certificate should specify the matters in the certificate that are intended to be challenged.

4. As well, the clause provides that if a defendant is intending to challenge the accuracy of any measurement, analysis or reading stated in the certificate, the defendant should specify, at least 14 days before any hearing of the matter, the reason why the measurement, analysis or reading is inaccurate and what the correct measurement, analysis or reading is.

Clause 119

1. This clause provides that if there are other factors not connected with the commission of the offence that contributed to the damage, the court must limit 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 clause also specifies that a court may not include in the order any amount for:

(a) personal injury or death; or

(b) loss of income; or

(c) damage to any property (including a vehicle) that is not part of the road infrastructure.

Clause 120

This clause provides that 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.

Clause 121

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

Clause 122

This clause provides that 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.

Part 8

General Liability and Evidentiary Provisions

DIVISION 1

BASIS OF LIABILITY FOR ROAD LAW OFFENCES

Clause 123

1. This clause provides that where more than one party is liable for a road transport law offence, proceedings may be taken against each liable party (simultaneously, if desirable). It is not intended that there be 'shifting liability' or that there be 'point the finger' type provisions – all may be jointly and severally liable, depending on their individual involvement.

2. The successful prosecution of one party for a road law offence, is not a precondition to the prosecution of another in the chain for the same breach incident.

Clause 124

1. This clause states to the effect that a person can only be punished once for the same failure to comply with any particular road transport law by a person, vehicle or combination.

2. However, a person may be liable for more than one offence if requirements relating to different parts of a vehicle, or different vehicles in a combination, are breached.

Clause 125

This clause provides that a director, secretary or senior manager (or high managerial agent) concerned in the management of the body corporate, and each person who is a partner in a partnership, and any person concerned in the management of an unincorporated association, will be individually liable and guilty of a road law offence committed by that body corporate, partnership or unincorporated association, except where:

(a) the person was not in a position to influence the conduct of the body corporate, partnership or unincorporated association in relation to the offence; or,

(b) the person was in a position of influence, but took reasonable precautions and exercised due diligence to prevent the offence being committed.

Clause 126

1. This clause states that where a contravention of a provision of the Act has been detected, the person who was the registered operator of a vehicle at the time of the offence may be proceeded against as the person who committed the offence against a road transport law.

2. This presumption of liability can be shifted if the registered operator gives to the Authority a statutory declaration setting out the name and address of the actual operator of the vehicle at the time of the offence.

Clause 127

1. The clause states that a person who aids, abets, counsels or procures the commission of an offence by another person is taken to have committed that offence. A person is guilty of aiding, abetting, counseling or procuring the commission of an offence even if the principal offender has not been prosecuted or has been found not guilty.

2. However, a person cannot be found guilty of aiding, abetting, counseling or procuring the commission of an offence if, before the offence was committed, the person terminated his or her involvement and took all reasonable steps to prevent the commission of the offence.

Clause 128

This clause provides that a person who causes or permits a road transport law offence to be committed by another person has also committed the same offence against that road transport law.

This clause provides that a person who coerces, induces or offers an incentive to a person to commit an offence against this legislation is guilty of an offence.

GENERAL DEFENCES

This clause provides for a defence to a charge for a road law offence if the defendant was responding to circumstances of sudden or extraordinary emergency, but only if the person held the requisite belief and the response was reasonable in the circumstances.

this clause states that it is a defence against a charge for a road transport law offence if the conduct constituting the offence was authorized or excused by law.

The above list of defences is not exhaustive and this clause states that nothing in this Act affects defences available under other laws of this jurisdiction.

SPECIAL DEFENCES

This clause defines what is meant by “deficiency concerning a vehicle or combination”. This has application for Clause 134 and 135.

1. This clause provides for a special operator's, carrier's and owner's defence., where the vehicle was used by someone not legally entitled to use it.
2. If the road law relates to an alleged deficiency in the vehicle, this special defence is not available if the vehicle was in breach before it was operated by the person not entitled to operate it.

Clause 135

The clause provides a defence for a driver in relation to the condition of equipment maintained by another, over which the driver had no responsibility nor control, did not know and could not have reasonably ascertained that the equipment was defective or likely to be defective or non-compliant.

Clause 136

This clause provides that it is a defence to a charge for a road law offence if the person charged establishes that the offence was committed in compliance with a direction given by an authorized officer or police officer; or an Australian Authority or a delegate of an Australian Authority.

DIVISION 4

GENERAL EVIDENTIARY PROVISIONS

Clause 137

1. This clause provides that when in any proceedings under the Act it is necessary to establish the intention of a body corporate, partnership or unincorporated association, it is sufficient to show that a servant or agent of the body corporate, partnership or unincorporated association had that intention.

2. Further, in respect of any proceedings for an offence by a body corporate, partnership or unincorporated association under a road transport law, any statement made by an officer of the body corporate is admissible as evidence against the body corporate.

Clause 138

This clause provides for various averments to be made in complaints or charges in prosecutions for road law offences.

Clause 139

This clause provides for various matters to be certified by an Australian Authority or a corresponding Australian Authority or an Australian police authority and to be admissible in any proceedings, and, prima facie proof of the matters stated.

Clause 140

This Clause provides that certain certificates are prima facie evidence of the things specified in the certificate. These include:

- (a) a measurement in accordance with this Act;
- (b) a weight from a certain weighing device;
- (c) the mass of a vehicle or the vehicle's wheel or axle load; or
- (d) that a wheel, axle or type of a vehicle is of a specified type or class.

Clause 141

This clause provides that a certificate or averment in respect of an approved weighbridge record should be admissible evidence and taken to be evidence of the mass ascertained by weighing the vehicle, in the absence to the contrary, and provided all requirements as to its accuracy and reliability are satisfied.

Clause 142

This clause provides that a statement made by a manufacturer and tendered by either the prosecution or the defence that a vehicle or vehicle component was rated by its manufacturer to a particular mass, will be prima facie proof of the safe mass standard of the vehicle or component.

Clause 143

This clause provides that if 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 heavy combination.

Clause 144

This clause provides that for the purposes of this Act, it is not necessary to prove the appointment of an office holder nor a signature purporting to be the signature of an office holder is evidence of the signature it purports to be.

Clause 145

This clause provides that transport or journey documentation is admissible in any proceedings under or for the purposes of the road laws 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.

Part 9

Miscellaneous

DIVISION 1

INDEMNITIES

Clause 146

1. This clause provides for an immunity from civil prosecution for an authorized officer in respect of any act or omission done honestly and in good faith in the course of his or her duties.

2. A liability that would, apart from this immunity, attach to an authorized officer, attaches instead to the relevant Authority. This is subject to any jurisdictional provision for any such liability applying to that Authority.

Clause 147

1. This clause provides for an immunity from civil prosecution for persons authorized by authorized officers in respect of any act or omission done honestly and in good faith in the course of his or her duties.

2. A liability that would, apart from this immunity, attach to that person attaches instead to the relevant Authority. This is subject to any jurisdictional provision for any such liability applying to that Authority.

Clause 148

1. This clause provides for an immunity from civil prosecution for persons authorized by police officers in respect of any act or omission done honestly and in good faith in the course of his or her duties.

2. A liability that would, apart from this immunity, attach to that person attaches instead to the Crown.

Clause 149

This clause provides that the indemnity is not affected by facts that may subsequently come to light that suggest that the vehicle was not effected by the laws.

Clause 150

This clause states that 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.

DIVISION 2

MUTUAL RECOGNITION

CLAUSE 151

This clause allows for the decisions of Authorities to be mutually recognized in all jurisdictions. The provision allows scope for the jurisdictions into which travel is authorized to impose restrictions or revoke authorizations where local circumstances dictate.

Clause 152

This clause allows for the decisions of courts to be mutually recognized in all jurisdictions.

DIVISION 3

GENERAL

Clause 153

This clause provides that the Act does not affect any power that a court, a tribunal, the Authority or an authorized officer or police officer has apart from this Act. Nor does it affect a power or obligation under another law to modify, suspend, cancel or otherwise deal with any licence or registration.

Clause 154

This clause provides that the Minister may, by notice in the Gazette, declare that a specified area is a declared zone for the purposes of this Act; or a specified road, or a specified part of a specified road, is a declared route for the purposes of this Act.

Clause 155

1. This clause makes it an offence under the Act for an employer to dismiss an employee or contractor, or in any other way damage the employment prospects of an employee or contractor who has acted within his or her rights under the Act. Protection is specifically given to any employee or contractor who:

(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. The same rule applies to employees who are seeking employment.

3. In the case where a prosecution is brought against an employer under this clause of the Act, and the employer is found guilty, then the court may, in addition to the penalty, order that:

(a) damages be paid to the injured employee or contractor;

(b) the dismissed employee or contractor be reinstated; or

(c) The prospective employee or contractor be employed.

4. For example, this offence could apply in the case where a person refuses or deliberately omits to offer employment to a prospective employee or prospective contractor, or who dismisses an

employee or contractor or alters an employee's or contractor's position to his or her detriment simply because the employee or contractor has reported or raised concerns about a breach of the road laws.

Clause 156

1. There is a duty on a person engaged or previously engaged by the Authority to ensure that personal information or information that is commercially sensitive for the person about whom it is kept, is not released by the Authority, except as provided for this Act or another law.

2. Information relevant to the imposition of any penalty under this Act or any other road law that is to be tendered to a court should not be subject to this provision.

3. It is an offence to release personal or commercially sensitive information otherwise than as permitted by or to deal with a request for information otherwise than in accordance with the Information Privacy Principles.

Clause 157

1. This clause provides that a person commits an offence if the person makes a statement to a Authority or to an official exercising a road law power knowing that the statement is inaccurate, false or misleading in a material particular.

2. The offence is subject to the same indicative maximum fine value as for the substantive offence.

3. The clause creates a similar offence where the statement is made by the person negligently or recklessly as to whether the statement is inaccurate, false or misleading.

4. Another offence created is if a person gives a document to an Authority or official exercising road laws knowing, or recklessly, or negligently that the document is false or misleading in a materially particular way.

5. A person will not have committed an offence if at the time the document is provided, the Authority or official was told that the document was false or misleading in a materially particular way and specified how the document was false or misleading.

Clause 158

1. This clause provides that a responsible person must not provide another responsible person with information that is false or misleading in a material particular knowingly or recklessly.

2. The clause also provides that if the responsible person tells the other responsible person at the time of providing the information that the information is false or misleading and clarifies the true nature of the information, then the responsible person has not committed an offence.

Clause 159

This clause provides that an authorized officer or police officer may amend or revoke a direction given, or conditions imposed, under this Act.

Clause 160

This clause provides that the regulations may provide a system for review of decisions made under this Act and identified in the regulations.

Clause 161

This clause provides that a term of a 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.

Clause 162.

1. Notwithstanding clause 55 (providing evidence to other authorities), this clause enables the Authority to provide information to a corresponding Authority about any action taken by the Authority under any road law; or any information obtained under this Act.

2. Such information sharing is subject to relevant jurisdictional privacy legislation.

Clause 163

This clause allows for regulations under the Act to be made.

Clause 164

This clause provides that the Act will be administered by the Minister for Infrastructure and that the appropriate department responsible to the Minister in relation to the Bill is the Department of Infrastructure, Energy and Resources.

