



New South Wales

Road Transport (General) Amendment (Intelligent Access Program) Bill 2006

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Road Transport (General) Act 2005* and the *Road Transport (Mass, Loading and Access) Regulation 2005* made under that Act to provide for:

- (a) compliance by vehicle operators and drivers with conditions relating to access to and use of roads to be monitored by intelligent transport systems, and
- (b) the collection, use and disclosure of information obtained by the use of such intelligent transport systems.

The provisions of the Bill generally reflect the proposals contained in the National Transport Commission's national model Bill relating to intelligent access programs.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision that gives effect to the amendments to the *Road Transport (General) Act 2005* set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the amendments to the *Road Transport (Mass, Loading and Access) Regulation 2005* set out in Schedule 2.

Clause 5 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent. Section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendment of Road Transport (General) Act 2005

Schedule 1 [1] inserts proposed section 11A. The proposed section enables regulations to be made in relation to intelligent transport systems that are required or permitted to be used by or under a road transport law or any exemption, authority or condition given or imposed by or under any such law. The regulation-making power covers areas including conditions, the regulation or prohibition of the collection, storage, use and disclosure of information obtained by the use of such a system or for the purposes of a system, the keeping of records, tampering with such systems and the certification and functions of providers and auditors of such systems. Regulations may also be made with respect to evidentiary matters relating to information obtained from such systems and other related matters. An *intelligent transport system* is a system involving the use of electronic or other technology that has the capacity and capability to monitor, collect, store, display, analyse, transmit or report information relating to vehicles, drivers, operators or other persons involved in road transport.

Schedule 1 [2] enables regulations containing savings and transitional provisions to be made as a consequence of the enactment of the proposed Act.

Schedule 2 Amendment of Road Transport (Mass, Loading and Access) Regulation 2005

Permit and notice conditions

The *Road Transport (Mass, Loading and Access) Regulation 2005* (the **Regulation**) regulates mass and loading of heavy vehicles and combinations and access conditions to roads for heavy vehicles and combinations. The Regulation sets out mass, loading and dimension requirements, as well as access requirements, but also provides for exemptions from certain requirements on conditions. Exemptions are given under the Regulation in the form of a notice published in the Gazette or a permit issued by the Roads and Traffic Authority (the **RTA**). The amendments made to the Regulation by the Schedule expressly provide for each notice and permit under the Regulation, that relates to heavy vehicles, to be able to be made subject to a condition that a vehicle to which it applies, and any driver of the vehicle, participate

in a program involving the use of an intelligent transport system to monitor compliance with the notice or permit.

Schedule 2 [2] amends clause 14 to enable the condition to be imposed on a notice applying to Class 1 vehicles.

Schedule 2 [3] amends clause 16 to enable the condition to be imposed on a permit applying to Class 1 vehicles.

Schedule 2 [4] amends clause 22 to enable the condition to be imposed on a notice or permit applying to Class 2 vehicles.

Schedule 2 [5] amends clause 25 to enable the condition to be imposed on a notice applying to Class 3 vehicles.

Schedule 2 [6] amends clause 27 to enable the condition to be imposed on a permit applying to Class 3 vehicles.

Schedule 2 [7] amends clause 36 to enable the condition to be imposed on a permit applying to certain heavy vehicles.

Operation of intelligent access programs

The Schedule also sets out provisions for the operation of intelligent monitoring systems, including systems required under concessions under the Regulation or the *Road Transport (General) Act 2005*.

Schedule 2 [1] amends the object of the Regulation to reflect the new provisions.

Schedule 2 [8] inserts proposed Part 6A (clauses 72A–72ZF). The proposed Part contains the following provisions:

Division 1 Preliminary

Proposed clause 72A applies the proposed Part to operators and drivers of vehicles, and vehicles, that are subject to permits, notices or exemptions under the Regulation or under the *Road Transport (General) Act 2005*, to which are attached conditions requiring participation in a program involving the use of an intelligent transport system to monitor compliance with the conditions of the notice, permit or exemption.

Proposed clause 72B defines expressions used in the proposed Part, including **concession** (a notice, permit or exemption under the Regulation or an exemption under the *Road Transport (General) Act 2005*), **intelligent access condition** (a condition requiring participation in a program involving the use of an intelligent transport system to monitor compliance with the conditions of the notice, permit or exemption), **intelligent access system** (an intelligent transport system that is installed in or in relation to a vehicle for the purposes of an intelligent access condition) and **personal information** (information or an opinion, whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion).

Division 2 Intelligent access programs

Proposed clause 72C sets out matters that may be specified in an intelligent access condition, including the kinds of intelligent transport systems, service providers and matters to be monitored. Systems and service providers may not be specified unless certified by Transport Certification Australia Ltd (*TCA*). Each intelligent transport system must use the spatial data set issued by TCA (the *intelligent access map*).

Proposed clause 72D confers on TCA functions relating to the management of the certification and auditing of intelligent access systems on behalf of the RTA.

Division 3 Operation of intelligent access systems

Proposed clause 72E requires the operator of a vehicle to notify the RTA immediately of any malfunction in an intelligent access system and also requires the driver of a vehicle to notify the operator of the vehicle of any such malfunction.

Proposed clause 72F makes it an offence to engage in conduct that results in an intelligent access system being altered, installed or used with the intention that the system will fail to collect, store or report intelligent access information or fail to do so correctly, or to be negligent or reckless as to whether the system will fail to do so.

Proposed clause 72G requires a service provider or TCA to report any suspected offence under proposed clause 72F (a *tampering offence*) to the RTA. The proposed clause also makes it an offence for a service provider or TCA to disclose to any other person any knowledge of or suspicion about a tampering offence.

Proposed clause 72H requires an auditor of an intelligent access system to report any suspected tampering offence to the RTA (if an operator or driver is involved) or TCA (if a service provider is involved). An auditor must also report any other suspected contravention of the proposed Part by a service provider to TCA.

Proposed clause 72I requires a service provider to make a non-compliance report about an operator to the RTA if the service provider detects or knows of a breach of a concession or an electronically generated report indicates apparent tampering.

Proposed clause 72J makes it an offence for an operator of a vehicle to knowingly give false or misleading information, or knowingly omit anything that makes information false or misleading in a material particular, that is relevant to the operation of the vehicle to a service provider with whom the operator has an agreement for the provision of an intelligent access system. The proposed clause also makes it an offence if the operator of a vehicle knowingly gives or omits such information or a thing intending the service provider to enter into such an agreement with the operator.

Proposed clause 72K makes it an offence for a service provider to knowingly give false or misleading information, or knowingly omit anything that makes information false or misleading, in a material particular that is relevant to the operation of the vehicle to the RTA or TCA.

Division 4 Collection, storage, use and disclosure of intelligent access information

Proposed clause 72L makes it clear that the provisions of the proposed Division are in addition to any other law.

Proposed clause 72M requires the operator of a vehicle to inform the driver before the driver begins a journey in the vehicle that the vehicle will be monitored by a service provider and of matters relating to the information to be collected.

Proposed clause 72N prohibits an operator from using or disclosing any intelligent access information about a driver that is obtained when the driver is not at work.

Proposed clause 72O contains offences about the collection, storage, use or disclosure of intelligent access information by service providers. A service provider:

- (a) must not collect, store, use or disclose any such information otherwise than as required or permitted under the Regulation or any other law, and
- (b) must take reasonable steps to ensure that information is necessary for or is directly related to the purpose for which it was collected or a directly related purpose, not excessive for that purpose and is accurate, up-to-date, complete and not misleading, and
- (c) must keep non-compliance reports, and related data, for at least 4 years, and
- (d) must take reasonable steps to destroy any other information after 1 year.

Proposed clause 72P permits service providers to collect, store and use intelligent access information for compliance purposes. Service providers may disclose the information for compliance purposes and with the consent of the person concerned. They may disclose information about an operator of a vehicle (other than a non-compliance report) to the operator or to another person with the consent of the operator (if it does not enable another person to be identified).

Proposed clause 72Q contains offences about the collection, storage, use or disclosure of intelligent access information by TCA. TCA:

- (a) must not collect, store, use or disclose any such information otherwise than as required or permitted under the Regulation or any other law, and
- (b) must take reasonable steps to ensure that information is accurate, up-to-date, complete and not misleading.

Proposed clause 72R permits TCA to collect, store, use and disclose intelligent access information for the performance of its functions and compliance purposes, and, with consent, for research purposes. TCA may disclose the information with the consent of the person concerned. TCA may disclose information about an operator of a vehicle to the operator, an auditor or the RTA. Information about breaches by a service provider may be disclosed only to an auditor or the RTA.

Proposed clause 72S contains offences about the collection, storage, use or disclosure of intelligent access information by auditors. An auditor:

- (a) must not collect, store, use or disclose any such information otherwise than as required or permitted under the Regulation or any other law, and

- (b) must take reasonable steps to ensure that information is necessary for the purpose for which it was collected or a directly related purpose, not excessive for that purpose, accurate, up-to-date, complete and not misleading.

Proposed clause 72T permits an auditor to collect, store, use and disclose intelligent access information for the performance of its functions and to report breaches and tampering offences. An auditor may collect information for the purposes of an intelligent access audit of a service provider. An auditor may disclose information about an operator of a vehicle to the operator, TCA or the RTA or with the consent of the person concerned. Information about breaches or tampering offences may be disclosed only to TCA or the RTA.

Proposed clause 72U prohibits TCA or an auditor from using or disclosing intelligent access information unless reasonable steps are first taken to ensure that it is accurate, up-to-date, complete and not misleading.

Proposed clause 72V requires service providers, TCA and auditors to take reasonable steps to protect intelligent access information collected by them. In addition, TCA and an auditor must destroy any information after 1 year unless it is required as evidence in proceedings.

Proposed clause 72W requires service providers and TCA to prepare and make publicly available a policy on the management of information. It also requires service providers, TCA and auditors to take reasonable steps, at the request of an individual, to provide information about information held in relation to the individual and to give the individual access to personal information held about the individual. This does not apply to information about non-compliance or tampering reports.

Proposed clause 72X requires service providers, TCA and auditors to make records about intelligent access information they use or disclose within 5 business days of the use or disclosure. In addition, a service provider is to keep a record of intelligent access information it collects.

Proposed clause 72Y enables an individual to request a service provider, TCA or an auditor to alter personal information held about the individual and requires appropriate alterations to be made to ensure information is accurate, up-to-date, complete and not misleading. A refusal of such a request is to be reviewed by TCA (if the decision is made by a service provider or an auditor) or the RTA (if the decision is made by TCA). The reviewing body may direct information to be altered.

Division 5 General

Proposed clause 72Z provides for the application, to intelligent access information, of a provision of the *Workplace Surveillance Act 2005* which limits the purposes for which surveillance records made at work can be used, while also providing for the collection, use, storage and disclosure of that information in accordance with the proposed Part.

Proposed clause 72ZA sets out the records that must be kept by TCA of transactions with the RTA, service providers and auditors. It also requires auditors to keep and retain records of their transactions with service providers and TCA.

Proposed clause 72ZB enables auditors to carry out intelligent access audits and requires service providers to give auditors access to relevant records kept under the proposed Part.

Proposed clause 72ZC is an evidentiary provision that sets out matters about which prima facie evidence may be given in any proceedings by way of a certificate issued by the RTA. Those matters include evidence about intelligent access conditions, operators of vehicles, malfunctions and non-compliance reports.

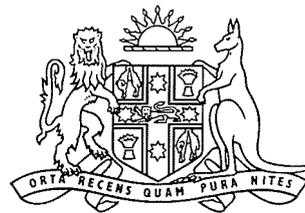
Proposed clause 72ZD is an evidentiary provision that enables prima facie evidence about the intelligent access map, and the certification and appointment of service providers and auditors, to be given in any proceedings by way of a certificate issued by TCA.

Proposed clause 72ZE sets out evidentiary presumptions that are to apply (unless evidence sufficient to raise doubt about them is adduced) in relation to the intelligent access map, the operation of equipment and software in an intelligent access system, the position of a vehicle and the operation of an intelligent access system.

Proposed clause 72ZF makes non-compliance reports and tampering reports admissible in evidence and prima facie evidence of the facts stated in them and establishes a presumption that they contain a correct report of information generated and recorded by the intelligent access system concerned.

Schedule 2 [9] inserts a definition.

First print



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New South Wales

Road Transport (General) Amendment (Intelligent Access Program) Bill 2006

No. , 2006

A Bill for

An Act to amend the Road Transport (General) Act 2005 and the Road Transport (Mass, Loading and Access) Regulation 2005 with respect to the use of intelligent transport systems for certain monitoring and compliance purposes; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Road Transport (General) Amendment (Intelligent Access Program) Act 2006</i> .	3 4
2 Commencement	5
This Act commences on a day or days to be appointed by proclamation.	6
3 Amendment of Road Transport (General) Act 2005 No 11	7
The <i>Road Transport (General) Act 2005</i> is amended as set out in Schedule 1.	8 9
4 Amendment of Road Transport (Mass, Loading and Access) Regulation 2005	10 11
The <i>Road Transport (Mass, Loading and Access) Regulation 2005</i> is amended as set out in Schedule 2.	12 13
5 Repeal of Act	14
(1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.	15 16
(2) The repeal of this Act does not, because of the operation of section 30 of the <i>Interpretation Act 1987</i> , affect any amendment made by this Act.	17 18

Schedule 1	Amendment of Road Transport (General) Act 2005	1
		2
	(Section 3)	3
[1] Section 11A		4
	Insert after section 11:	5
11A Regulations relating to intelligent transport systems		6
(1)	This section applies to an intelligent transport system that is required or permitted to be used by or under an applicable road law or any exemption, authority or condition given or imposed by or under an applicable road law.	7 8 9 10
(2)	Regulations may be made for or with respect to the following matters relating to intelligent transport systems:	11 12
(a)	conditions relating to intelligent transport systems,	13
(b)	regulating or prohibiting the collection, storage, use and disclosure of information obtained by the use of an intelligent transport system, or obtained for the purposes of such a system or a proposed system,	14 15 16 17
(c)	the records to be kept in relation to information obtained by the use of an intelligent transport system,	18 19
(d)	the reports to be made in relation to the operation of, or any other matter relating to, an intelligent transport system,	20 21
(e)	regulating or prohibiting tampering with intelligent transport systems,	22 23
(f)	notification of persons about whom or in respect of whom information is obtained by the use of an intelligent transport system,	24 25 26
(g)	certification of providers of intelligent transport systems or of intelligent transport systems,	27 28
(h)	the functions of providers and auditors of intelligent transport systems,	29 30
(i)	the operation of intelligent transport systems,	31
(j)	without limiting paragraph (b), the use of information obtained by the use of an intelligent transport system for compliance or other law enforcement purposes,	32 33 34
(k)	monitoring and auditing of intelligent transport systems, providers of intelligent transport systems and persons required or permitted to use intelligent transport systems,	35 36 37

Road Transport (General) Amendment (Intelligent Access Program)
Bill 2006

Schedule 1 Amendment of Road Transport (General) Act 2005

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| (l) | the use of certificates relating to the following matters as evidence in any proceedings before a court or tribunal: | 1 |
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| (i) | conditions relating to the use of intelligent transport systems imposed under this Act or the regulations, | 3 |
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| (ii) | vehicles, operators and drivers subject to conditions referred to in subparagraph (i), | 5 |
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| (iii) | operators, providers and auditors of intelligent transport systems, | 7 |
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| (iv) | information obtained by the use of intelligent transport systems, | 9 |
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| (v) | whether an intelligent transport system was or was not subject to any malfunction at a specified time, | 11 |
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| (vi) | the map used for the purposes of an intelligent transport system, | 13 |
| | | 14 |
| (vii) | reports relating to intelligent transport systems, | 15 |
| (viii) | the correct operation and functioning of an intelligent transport system, | 16 |
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| (ix) | the position of a vehicle on the surface of the earth at a particular time, | 18 |
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| (x) | mathematical (including statistical) procedures used in relation to information obtained by the use of an intelligent transport system, | 20 |
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| (m) | the use of reports generated by an intelligent transport system as evidence in any proceedings before a court or tribunal, | 23 |
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| (n) | evidentiary presumptions as to the correct operation and functioning of an intelligent transport system, other matters relating to the operation of an intelligent transport system and information obtained by using such a system. | 26 |
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| (3) | A regulation made for the purposes of this section may create an offence punishable by a penalty not exceeding 200 penalty units. | 30 |
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| (4) | Sections 16 and 18 of the <i>Workplace Surveillance Act 2005</i> do not apply to or in respect of the operation of an intelligent transport system, except to the extent provided by the regulations under this Act. | 32 |
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| (5) | This section is in addition to, and does not limit, any other regulation-making power contained in this Act or any other applicable road law. | 36 |
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(6) In this section:	1
<i>authority</i> includes a permit, authorisation, approval, notice or anything else granted or issued in writing under an applicable road law.	2 3 4
[2] Schedule 1 Savings, transitional and other provisions	5
Insert at the end of clause 1 (1):	6
<i>Road Transport (General) Amendment (Intelligent Access Program) Act 2006</i>	7 8

Schedule 2	Amendment of Road Transport (Mass, Loading and Access) Regulation 2005	1
		2
	(Section 4)	3
[1] Clause 4 Object		4
Insert at the end of clause 4 (c):		5
, and		6
(d) the use of intelligent transport systems to monitor compliance with conditions of concessions under this Regulation or the Act.		7
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[2] Clause 14 Class 1 notices		10
Insert after clause 14 (3):		11
(4) Without limiting subclause (1), the conditions of a Class 1 notice may include a condition that a vehicle to which it applies, and any operator or driver of the vehicle, must participate in a program involving the use of an intelligent transport system to monitor compliance with the notice.		12
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[3] Clause 16 Class 1 permits		17
Insert after clause 16 (3):		18
(4) Without limiting subclause (1), the conditions of a Class 1 permit may include a condition that a vehicle to which it applies, and any operator or driver of the vehicle, must participate in a program involving the use of an intelligent transport system to monitor compliance with the permit.		19
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[4] Clause 22 Conditions of a Class 2 notice or permit		24
Insert after clause 22 (3):		25
(4) The Authority may issue a Class 2 notice or Class 2 permit subject to a condition that a vehicle to which it applies, and any operator or driver of the vehicle, must participate in a program involving the use of an intelligent transport system to monitor compliance with the notice or permit.		26
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[5] Clause 25 Exemption by notice in Gazette	1
Insert after clause 25 (2):	2
(2A) The Authority may issue a Class 3 notice subject to a condition that a vehicle to which it applies, and any operator or driver of the vehicle, must participate in a program involving the use of an intelligent transport system to monitor compliance with the notice.	3 4 5 6 7
[6] Clause 27 Exemption by permit	8
Insert after clause 27 (3):	9
(4) The Authority may grant a Class 3 permit subject to a condition that the vehicle to which it applies, and any operator or driver of the vehicle, must participate in a program involving the use of an intelligent transport system to monitor compliance with the permit.	10 11 12 13 14
[7] Clause 36 Permits and notices relating to eligible vehicles	15
Insert after clause 36 (3):	16
(3A) Without limiting subclause (3), the Authority may issue a permit subject to a condition that the vehicle to which it applies, and any operator or driver of the vehicle, must participate in a program involving the use of an intelligent transport system to monitor compliance with the permit.	17 18 19 20 21
[8] Part 6A	22
Insert after Part 6:	23
Part 6A Intelligent access programs	24
Division 1 Preliminary	25
72A Application of Part	26
This Part applies to an operator or driver of a vehicle, and a vehicle, if a notice, permit or exemption under this Regulation or an exemption under the Act affecting the vehicle is subject to a condition requiring participation in a program involving the use of an intelligent transport system to monitor compliance with the notice, permit or exemption.	27 28 29 30 31 32

72B Definitions

- (1) In this Part:
- auditor** means a person appointed by TCA to conduct intelligent access audits.
- concession** means a notice, permit or exemption under this Regulation, or an exemption under the Act, that is subject to an intelligent access condition.
- intelligent access audit**—see clause 72ZB.
- intelligent access condition** means a condition requiring participation in a program involving the use of an intelligent transport system to monitor compliance with a notice, permit or condition.
- intelligent access information** means information generated or collected for a purpose related to a concession or an intelligent access condition.
- intelligent access map**—see clause 72C (5).
- intelligent access system** means an intelligent transport system that is installed in or in relation to a vehicle for the purposes of an intelligent access condition.
- non-compliance report** means a report generated by an intelligent access system as to any of the following:
- (a) a breach of a condition of a concession,
- (b) apparent tampering with the system, being a report electronically generated by the system itself.
- operator** of a vehicle has the same meaning as it has in Chapter 3 of the Act.
- personal information** means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.
- service provider** means the provider of an intelligent transport system.
- tampering offence** means an offence under clause 72F.
- TCA** means Transport Certification Australia Ltd ACN 113 379 936.
- (2) For the purposes of this Part, an intelligent transport system **malfunctions** if:
- (a) it ceases to work at all or works only intermittently, or

- (b) it does not perform one or more functions required for the purpose of the relevant intelligent access condition or performs any such function intermittently, or 1
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- (c) it performs any such function in a way that produces inaccurate or unreliable results or does so intermittently. 4
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- (3) For the purposes of the application of this Part to the use or disclosure by a person or body of personal information, an intelligent access program identifying number or code issued by the Authority for a vehicle is taken to be personal information if it becomes known to the person or body and that person or body has the ability to associate it with a particular individual. 6
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Division 2 Intelligent access programs 12

72C Condition requiring participation in intelligent access program 13

- (1) An intelligent access condition may specify the following matters: 14
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 - (a) the intelligent transport systems that may be installed in or in relation to a vehicle for the purposes of the condition, 16
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 - (b) the service provider or providers from whom any such intelligent transport system is to be obtained, 18
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 - (c) the roads or other places on which and the periods during which the vehicle is to be monitored by the intelligent transport system, 20
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 - (d) the matters that are to be monitored, and the information that is to be provided, by the intelligent transport system, 23
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 - (e) the period within which the intelligent transport system must generate, and send to the Authority, a non-compliance report after the system detects a breach of the conditions of the concession or a suspected tampering offence. 25
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- (2) Nothing in this clause limits the matters that may be specified in an intelligent access condition. 30
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- (3) The Authority must not specify an intelligent transport system for the purposes of an intelligent access condition unless the system is certified by TCA for that purpose. 32
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- (4) The Authority must not specify a service provider for the purposes of an intelligent access condition unless the service provider is the holder of a current certification by TCA as a service provider. 35
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(5)	It is a condition of a concession that an intelligent transport system installed in accordance with an intelligent access condition to which the concession is subject is to use, as its spatial data set for roads, the spatial data set issued by TCA from time to time for use with intelligent access systems (the <i>intelligent access map</i>).	1 2 3 4 5 6
72D	Operational functions of TCA	7
	TCA has the following functions for the purpose of managing the certification and auditing of intelligent access programs on behalf of the Authority:	8 9 10
	(a) the certification and cancellation of the certification of service providers and intelligent transport systems,	11 12
	(b) the appointment and coordination of auditors,	13
	(c) the consideration of reports by auditors,	14
	(d) any functions ancillary to the other functions specified in this clause.	15 16
Division 3	Operation of intelligent access systems	17
72E	Malfunction reporting obligations	18
(1)	If the operator of a vehicle becomes aware that an intelligent access system fitted to or in relation to the vehicle is malfunctioning, the operator must notify the Authority of the malfunction immediately, orally or by facsimile or email.	19 20 21 22
(2)	If the driver of a vehicle becomes aware that an intelligent access system fitted to or in relation to the vehicle is malfunctioning, the driver must notify the operator of the vehicle of the malfunction immediately, orally or by facsimile or email.	23 24 25 26
(3)	An operator or driver of a vehicle who notifies a malfunction must keep a written record of the notification, containing the following:	27 28 29
	(a) the date, time and type of the malfunction,	30
	(b) the location of the vehicle at the time of the malfunction,	31
	(c) the name of the person who made the notification and of the person to whom the notification was made.	32 33
(4)	An operator or driver of a vehicle who makes a record under subclause (3) must retain it for 4 years after it is made. Maximum penalty: 60 penalty units.	34 35 36

72F	Tampering with intelligent transport systems	1
(1)	A person who:	2
(a)	engages in conduct that has the result that:	3
(i)	an intelligent access system is altered, or	4
(ii)	an intelligent access system is installed or used in a way that is not in accordance with any condition of its certification by TCA, or	5 6 7
(iii)	any data instruction that an intelligent access system uses internally is altered, and	8 9
(b)	engages in the conduct intending to cause the system to fail to collect, store or report intelligent access information, or to fail to do so correctly,	10 11 12
	is guilty of an offence.	13
(2)	A person who engages in conduct and is negligent or reckless as to whether, as a result of the conduct, an intelligent transport system may fail to collect, store or report intelligent access information, or to fail to do so correctly, is guilty of an offence.	14 15 16 17
(3)	In this clause:	18
	<i>fail</i> , in relation to a system, means that the system does not perform as intended in terms of accuracy, timeliness, reliability, verifiability or any other performance parameter and includes a permanent, temporary or occasional failure.	19 20 21 22
	Maximum penalty:	23
(a)	first offence—100 penalty units, or	24
(b)	subsequent offence—200 penalty units.	25
72G	Tampering must be reported to Authority by service providers and TCA	26 27
(1)	A service provider or TCA must report to the Authority in accordance with this clause if the service provider or TCA knows, or has reasonable grounds to suspect, that a tampering offence has been committed.	28 29 30 31
	Maximum penalty (subclause (1)):	32
(a)	first offence—100 penalty units, or	33
(b)	subsequent offence—200 penalty units.	34
(2)	A report by a service provider must be in the form approved by TCA and must contain any information regarding the offence required by TCA.	35 36 37

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Bill 2006

Schedule 2 Amendment of Road Transport (Mass, Loading and Access) Regulation
2005

- (3) A report by a service provider or TCA must be made not later than 5 business days after the service provider or TCA first knows, or has reasonable grounds to suspect, that a tampering offence has been committed. 1
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- (4) A service provider or TCA must not disclose to any person other than the Authority: 5
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- (a) that the provider or TCA knows, or has reasonable grounds to suspect, that a tampering offence has been committed, or 7
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- (b) that a report has been made by the service provider or TCA under this clause, or 10
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- (c) any information from which the person to whom the disclosure is made could reasonably infer that the provider or TCA had that knowledge or suspicion or had made such a report. 12
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- Maximum penalty (subclause (4)): 16
- (a) first offence—100 penalty units, or 17
- (b) subsequent offence—200 penalty units. 18
- (5) For the purposes of subclause (1), *knowledge* or *suspicion* does not include knowledge or suspicion resulting only from: 19
20
- (a) a report, contained in a non-compliance report or otherwise made by an intelligent access system, of the electronic detection of apparent tampering with that system, or 21
22
23
24
- (b) the analysis of data produced by such a system. 25
- 72H Tampering and other matters must be reported by auditors** 26
- (1) An auditor who knows, or has reasonable grounds to suspect, that a tampering offence has been committed, must report the alleged offence: 27
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29
- (a) in the case of an offence or suspected offence by an operator or driver, to the Authority, or 30
31
- (b) in the case of an offence or suspected offence by a service provider, to TCA. 32
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(2)	An auditor who knows, or has reasonable grounds to suspect, that a service provider the subject of an audit by the auditor has contravened this Part (other than by committing a tampering offence) must report the contravention or suspected contravention to TCA.	1 2 3 4 5
	Maximum penalty:	6
(a)	first offence—100 penalty units, or	7
(b)	subsequent offence—200 penalty units.	8
72I	Non-compliance reports must be made to Authority by service provider	9 10
(1)	A service provider must make a non-compliance report to the Authority in accordance with this clause if:	11 12
(a)	the service provider’s monitoring equipment detects a breach of a concession by the operator of a vehicle, or	13 14
(b)	the service provider knows of anything that indicates that an operator may have breached a concession, or	15 16
(c)	the service provider’s monitoring equipment electronically generates a report about an apparent tampering offence.	17 18
	Maximum penalty (subclause (1)):	19
(a)	first offence—100 penalty units, or	20
(b)	subsequent offence—200 penalty units.	21
(2)	A non-compliance report must be made:	22
(a)	in the form approved by TCA and contain any information required by TCA, and	23 24
(b)	within the time specified by the Authority by notice published in the Gazette.	25 26
72J	Provision of false or misleading information to service provider by operator	27 28
(1)	An operator of a vehicle is guilty of an offence if:	29
(a)	the operator, or a person on behalf of the operator, gives information to a service provider with whom the operator has entered into an agreement for the provision of an intelligent access system, and	30 31 32 33
(b)	the information is relevant to the operation of the vehicle, and	34 35

(c)	the operator knows that the information is false or misleading in a material particular or the operator knowingly omits anything without which the information is false or misleading in a material particular.	1 2 3 4
(2)	An operator of a vehicle is guilty of an offence if:	5
(a)	the operator, or a person on behalf of the operator, gives information to a service provider intending that the service provider will enter into an agreement for the provision of an intelligent access system in reliance on the information, and	6 7 8 9 10
(b)	the operator knows that the information is false or misleading in a material particular or the operator knowingly omits anything without which the information is false or misleading in a material particular.	11 12 13 14
	Maximum penalty: 100 penalty units.	15
72K	Provision of false or misleading information by service provider	16
	A service provider is guilty of an offence if:	17
(a)	the service provider gives information to the Authority or TCA, and	18 19
(b)	the information is relevant to the operation of a vehicle to which a concession applies, and	20 21
(c)	the service provider knows that the information is false or misleading in a material particular or the service provider knowingly omits anything without which the information is false or misleading in a material particular.	22 23 24 25
	Maximum penalty: 100 penalty units.	26
Division 4	Collection, storage, use and disclosure of intelligent access information	27 28
72L	Application of Division	29
	The provisions of this Division are in addition to any other law.	30
72M	Driver to be informed about operation of intelligent access system	31
(1)	An operator (not being the driver) of a vehicle must, before the vehicle begins a journey, inform the vehicle's driver, in accordance with this clause, of the following:	32 33 34
(a)	that the vehicle will be monitored by a service provider,	35
(b)	what information will be collected by the service provider,	36
(c)	the purposes for which the information is collected,	37

(d)	the persons and authorities to which the information may be disclosed,	1 2
(e)	that the collection of the information is authorised by this Regulation,	3 4
(f)	that the driver has the rights of reasonable access to, and of correction of, any personal information collected and how those rights may be exercised,	5 6 7
(g)	the name and address of the service provider,	8
(h)	the driver's obligation under this Regulation to report malfunctions to the operator and how to make those reports.	9 10 11
	Maximum penalty: 100 penalty units.	12
(2)	An operator must inform the driver by placing a notice containing the information in the vehicle's driving cab in a place where it is clearly visible.	13 14 15
(3)	An operator must also inform the driver by including the information in writing in any contract of employment between the driver and the operator.	16 17 18
72N	Use or disclosure of information by operator about driver not at work	19 20
	An operator of a vehicle must not use or disclose any intelligent access information about a driver of the vehicle if the information is obtained during any period when the driver is not at work for the driver's employer (within the meaning of section 5 of the <i>Workplace Surveillance Act 2005</i>).	21 22 23 24 25
	Maximum penalty: 100 penalty units.	26
72O	Information offences by service providers	27
(1)	A service provider must not collect, store, use or disclose intelligent access information otherwise than as required or permitted by or under this Regulation or any other law.	28 29 30
	Maximum penalty (subclause (1)):	31
(a)	first offence—100 penalty units, or	32
(b)	subsequent offence—200 penalty units.	33
(2)	A service provider must take reasonable steps to ensure that the intelligent access information it collects:	34 35
(a)	is necessary for, or is directly related to, the purpose for which it is collected, or a directly related purpose, and	36 37
(b)	is not excessive for that purpose, and	38

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	(c) is accurate, up-to-date, complete and not misleading.	1
	Maximum penalty (subclause (2)): 50 penalty units.	2
(3)	A service provider must keep:	3
	(a) a copy of a non-compliance report made under this Part, and	4 5
	(b) the data relied on to generate the report, for at least 4 years after the report is made by the service provider.	6 7
(4)	A service provider must take reasonable steps to destroy intelligent access information, other than information referred to in subclause (3), not later than one year after the information is collected.	8 9 10 11
	Maximum penalty (subclauses (3) and (4)): 100 penalty units.	12
72P	Collection, storage, use and disclosure of intelligent access information by service providers	13 14
(1)	A service provider may collect, store and use intelligent access information for compliance purposes.	15 16
(2)	A service provider may disclose intelligent access information to the Authority, or to TCA, for compliance purposes.	17 18
(3)	A service provider may disclose intelligent access information about an operator of a vehicle to the operator but must not disclose a non-compliance report.	19 20 21
(4)	A service provider may disclose intelligent access information about an operator of a vehicle (other than a non-compliance report) to another person if:	22 23 24
	(a) the operator consents, and	25
	(b) the information does not identify any individual or contain anything by which the identity of an individual can reasonably be ascertained.	26 27 28
(5)	A service provider may use or disclose intelligent access information that includes personal information about a person with the consent of the person.	29 30 31
72Q	Information offences by TCA	32
(1)	TCA must not collect, store, use or disclose intelligent access information otherwise than as required or permitted by or under this Regulation or any other law.	33 34 35
	Maximum penalty (subclause (1)):	36
	(a) first offence—100 penalty units, or	37

(b)	subsequent offence—200 penalty units.	1
(2)	TCA must take reasonable steps to ensure that personal information that it collects is accurate, up-to-date, complete and not misleading.	2 3 4
	Maximum penalty (subclause (2)): 50 penalty units.	5
72R	Collection, storage, use and disclosure of intelligent access information by TCA	6 7
(1)	TCA may collect, store, use and disclose intelligent access information for the performance of its functions and for compliance purposes.	8 9 10
(2)	TCA may disclose intelligent access information about an operator of a vehicle to the operator but must not disclose a non-compliance report.	11 12 13
(3)	TCA may use or disclose intelligent access information about the operator of a vehicle (other than a non-compliance report) for any purpose if:	14 15 16
(a)	the operator consents, and	17
(b)	the information does not identify any individual or contain anything by which the identity of any individual can reasonably be ascertained.	18 19 20
(4)	TCA may disclose intelligent access information relating to an operator of a vehicle to an auditor or the Authority.	21 22
(5)	TCA may use or disclose intelligent access information that includes personal information about a person with the consent of the person.	23 24 25
(6)	TCA may use or disclose intelligent access information for research purposes, but only if the information contains no personal information or with the consent of any person about whom the information includes personal information.	26 27 28 29
(7)	TCA must not disclose information relating to a breach of a service provider's obligations, other than to the Authority or an auditor.	30 31 32
72S	Information offences by auditors	33
(1)	An auditor must not collect, store, use or disclose intelligent access information otherwise than as required or permitted by or under this Regulation or any other law.	34 35 36
	Maximum penalty (subclause (1)):	37
(a)	first offence—100 penalty units, or	38

	(b) subsequent offence—200 penalty units.	1
(2)	An auditor must take reasonable steps to ensure that intelligent access information it collects:	2
	(a) is necessary for, or is directly related to, the purpose for which it is collected, or a directly related purpose, and	3
	(a) is necessary for, or is directly related to, the purpose for which it is collected, or a directly related purpose, and	4
	(b) is not excessive for that purpose, and	5
	(b) is not excessive for that purpose, and	6
	(c) is accurate, up-to-date, complete and not misleading.	7
	Maximum penalty (subclause (2)): 50 penalty units.	8
72T	Auditors' powers to collect, store, use and disclose intelligent access information	9
		10
(1)	An auditor may collect, store, use and disclose intelligent access information for the following purposes:	11
	(a) the performance of functions under this Part,	12
	(a) the performance of functions under this Part,	13
	(b) to report a breach of a concession or a suspected tampering offence to the Authority or TCA,	14
	(b) to report a breach of a concession or a suspected tampering offence to the Authority or TCA,	15
	(c) to report to TCA a failure by a service provider to comply with its obligations under this Part.	16
	(c) to report to TCA a failure by a service provider to comply with its obligations under this Part.	17
(2)	An auditor may collect intelligent access information that is reasonably necessary to enable the auditor to carry out and report on an intelligent access audit of a service provider.	18
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(3)	An auditor must not use or disclose information relating to an operator of a vehicle, other than to the operator, TCA or the Authority.	21
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		23
(4)	An auditor must not disclose information relating to a breach of a concession or a tampering offence, other than to the Authority or TCA.	24
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(5)	An auditor may use or disclose intelligent access information with the consent of any person about whom the information includes personal information.	27
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72U	Obligations of TCA and auditors as to accuracy and other matters in relation to use or disclosure	30
		31
	TCA or an auditor must not use or disclose intelligent access information unless it first takes reasonable steps to ensure that,	32
	TCA or an auditor must not use or disclose intelligent access information unless it first takes reasonable steps to ensure that,	33
	having regard to the purpose for which the information is to be used or disclosed, the information is accurate, up-to-date,	34
	having regard to the purpose for which the information is to be used or disclosed, the information is accurate, up-to-date,	35
	complete and not misleading.	36
	Maximum penalty: 50 penalty units.	37

72V	Obligations of service providers, TCA and auditors to keep information secure	1 2
(1)	A service provider, TCA or an auditor must take reasonable steps to protect intelligent access information collected by it against unauthorised access, unauthorised use, misuse, loss, modification or unauthorised disclosure.	3 4 5 6
(2)	TCA or an auditor must take reasonable steps to destroy intelligent access information after one year unless the information is required as evidence in court proceedings.	7 8 9
(3)	TCA or an auditor may comply with subclause (1) by permanently removing anything by which an individual can be identified from the intelligent access information it holds.	10 11 12
(4)	TCA or an auditor must not fail to comply with this clause. Maximum penalty: 50 penalty units.	13 14
72W	Information management policies and disclosure to individuals by service providers and TCA	15 16
(1)	Each service provider and TCA must prepare, and make publicly available, a policy on the management of information by the service provider or TCA.	17 18 19
(2)	On a request by an individual, a service provider, TCA or an auditor must take reasonable steps to inform the individual of the following:	20 21 22
(a)	the kinds of information held about the individual,	23
(b)	the purpose for which the information is held,	24
(c)	the way in which the information is collected, held, used and disclosed,	25 26
(d)	the persons and authorities to whom or to which the information may be disclosed,	27 28
(e)	the individual's rights of reasonable access to, and correction of, the information,	29 30
(f)	how to exercise those rights.	31
(3)	On a request by an individual, a service provider, TCA or an auditor must give the individual access to personal information held about the individual by the service provider, TCA or the auditor and must do so without undue delay or cost. Maximum penalty (subclauses (1), (2) and (3)): 10 penalty units.	32 33 34 35 36

- (4) Nothing in this clause requires a service provider to inform an individual that a non-compliance report or a report about a tampering offence has been made about the individual or to give the individual access to any such report. 1
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- 72X Records of collection, use and disclosure of information by service providers, TCA and auditors** 5
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- (1) A service provider, TCA or an auditor must make a record of intelligent access information it uses or discloses, containing the following: 7
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- (a) the name of the person who used or disclosed the information, 10
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 - (b) the date of the disclosure or use, 12
 - (c) in the case of a disclosure, the person or body to whom or to which the information was disclosed, 13
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 - (d) in the case of the use of information, a brief description of how the information was used, 15
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 - (e) what provision of this Regulation or what other law permitted the use or disclosure, 17
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 - (f) a copy of any document authorising the use or disclosure. 19
- (2) The service provider, TCA or the auditor must: 20
- (a) make the record within 5 business days after the relevant use or disclosure, and 21
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 - (b) make the record in a form that allows it to be readily inspected, and 23
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 - (c) retain the record for 2 years. 25
- (3) A service provider must keep a record, in a form approved by TCA, of intelligent access information that it collects. 26
27
- (4) A service provider, TCA or an auditor must not fail to comply with this clause. 28
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- Maximum penalty: 30
- (a) first offence—100 penalty units, or 31
 - (b) subsequent offence—200 penalty units. 32
- 72Y Correction of personal information** 33
- (1) An individual may request a service provider, TCA or an auditor to make appropriate alterations to personal information about the individual held by the service provider, TCA or the auditor. 34
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- (2) If so requested, the service provider, TCA or the auditor must make appropriate alterations to ensure that the information is accurate, up-to-date, complete and not misleading. 1
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- (3) If the service provider, TCA or the auditor considers that the information is not inaccurate, out-of-date, incomplete or misleading, it may refuse to comply with the request and must: 4
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 - (a) give the individual a statement in writing of its reasons for refusing, and 7
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 - (b) if the individual so requests, attach to, or include with, the information a statement by him or her. 9
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- (4) An individual whose request is refused under this clause may apply for a review of the decision to: 11
12
 - (a) in the case of a decision by a service provider or an auditor—TCA, or 13
14
 - (b) in the case of a decision by TCA—the Authority. 15
- (5) On a review, TCA or the Authority may direct the original decision-maker to make specified alterations to the information. 16
17
- (6) A service provider, TCA or an auditor must not fail to comply with a direction given to the service provider, TCA or auditor under subclause (5). 18
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Maximum penalty (subclauses (2), (3) and (6)): 50 penalty units. 21

Division 5 General 22

72Z Application of Workplace Surveillance Act 2005 23

Section 18 of the *Workplace Surveillance Act 2005* applies to the use or disclosure of intelligent transport systems for the purposes of this Part, but does not prevent the collection, storage, use or disclosure of information in accordance with this Part. 24
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72ZA Records to be kept 28

- (1) TCA must keep and retain records, in accordance with this clause, of its transactions with the Authority, service providers and auditors. 29
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- (2) TCA must keep: 32
 - (a) a non-compliance record or a report made under clause 72G for at least 4 years after receiving it, and 33
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 - (b) any other record referred to in subclause (1) for at least one year after it is made. 35
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(3)	An auditor must keep and retain records of its transactions with service providers and TCA.	1 2
(4)	An auditor must keep the record for at least one year after it is made.	3 4
(5)	TCA or an auditor must not fail to comply with this clause. Maximum penalty: 5 penalty units.	5 6
(6)	This clause has effect despite any other provision of this Part.	7
72ZB	Intelligent access audits	8
(1)	An auditor may carry out an intelligent access audit.	9
(2)	A service provider must not fail to give an auditor access to any record kept by the service provider for the purposes of this Part, if required to do so by the auditor for the purposes of an intelligent access audit. Maximum penalty: 5 penalty units.	10 11 12 13 14
(3)	For the purposes of this Part, an <i>intelligent access audit</i> is the process of:	15 16
(a)	reviewing intelligent access information held by a service provider to determine its completeness and reliability, and	17 18
(b)	reviewing the processes by which that information was collected, and	19 20
(c)	examining how it is stored, used and disclosed, and	21
(d)	examining intelligent access system equipment installed in or in relation to a vehicle or used by a service provider, and	22 23
(e)	reporting to TCA on any such review or examination.	24
72ZC	Certificate evidence by Authority of matters relating to concessions and intelligent access information and other matters	25 26
(1)	A certificate purporting to have been issued by the Authority, and stating any of the following, is admissible in any proceedings and is prima facie evidence of the matter stated in it:	27 28 29
(a)	that a specified person, vehicle or combination was or was not subject to a specified intelligent access condition at a specified time or during a specified period,	30 31 32
(b)	that a specified person was or was not the operator of a specified vehicle or combination at a specified time or during a specified period,	33 34 35

(c)	that a specified non-compliance report, report of tampering or auditor's report has been received, or was received at a specified time or during a specified period, by the Authority in relation to an intelligent transport system fitted to or in relation to a vehicle to which a specified concession applied, or has not been received,	1 2 3 4 5 6
(d)	that a report of a specified malfunction was received by a specified person at a specified time or during a specified period, or has not been received,	7 8 9
(e)	that no report of a malfunction has been received, or had been received at a specified time, by the Authority in relation to an intelligent transport system fitted to or in relation to a specified vehicle,	10 11 12 13
(f)	that a specified form has been approved in accordance with this Part for a specified purpose,	14 15
(g)	that a specified mathematical (including statistical) procedure was carried out in relation to intelligent access information specified or referred to in the certificate and the results of doing so.	16 17 18 19
(2)	A procedure referred to in a certificate referred to in subclause (1) (g) is presumed (unless evidence sufficient to raise a doubt about the presumption is adduced) to be valid and reliable for the purpose for which it was used and to have been carried out correctly.	20 21 22 23 24
72ZD	Certificate evidence by TCA	25
(1)	A certificate purporting to have been issued by TCA, and stating that a particular map is the intelligent access map as issued by TCA at a specified time or during a specified period, is admissible in any proceedings and is conclusive evidence of the matter stated in it.	26 27 28 29 30
(2)	The map referred to in a certificate under subclause (1) may be in the form of an electronic data file.	31 32
(3)	A certificate purporting to have been issued by TCA, and stating the following, is admissible in any proceedings and is prima facie evidence of the matter stated in it:	33 34 35
(a)	that a particular intelligent transport system is or is not, or was or was not at a specified time or during a specified period, an intelligent transport system certified by TCA for the purposes of this Part,	36 37 38 39

(b)	that at a specified time or during a specified period a specified person was or was not a service provider certified by TCA or an auditor appointed by TCA for the purposes of this Part.	1 2 3 4
72ZE	Evidentiary presumptions	5
(1)	The intelligent access map, as issued by TCA at a specified time or during a specified period, is presumed (unless evidence sufficient to raise doubt about the presumption is adduced) to be a correct representation of the national road network at the time of its issue.	6 7 8 9 10
(2)	The equipment and software that make up an intelligent access system is presumed (unless evidence sufficient to raise doubt about the presumption is adduced) to have operated correctly on any particular occasion.	11 12 13 14
(3)	A statement of a vehicle's position on the surface of the earth at a particular time, in a non-compliance report or otherwise generated or produced by means of an intelligent access system is presumed (unless evidence sufficient to raise doubt about the presumption is adduced) to be a correct statement of the vehicle's position at the time.	15 16 17 18 19 20
(4)	It is presumed (unless evidence sufficient to raise doubt about the presumption is adduced):	21 22
(a)	that intelligent access information generated by an intelligent access system is correctly generated, and	23 24
(b)	that intelligent access information generated by an intelligent access system is correctly recorded, and	25 26
(c)	that intelligent access information generated by an intelligent access system is not changed by being stored.	27 28
(5)	If it is established that some intelligent access information has been changed by being stored, the presumption in subclause (4) (c) continues to apply to any other stored intelligent access information.	29 30 31 32
72ZF	Evidentiary matters relating to reports	33
(1)	This clause applies to the following reports:	34
(a)	a non-compliance report,	35
(b)	a report made in accordance with this Part by a service provider as to a suspected tampering offence,	36 37
(c)	a report made by an intelligent access system setting out intelligent access information.	38 39

(2) A report:	1
(a) is admissible in evidence, and	2
(b) is prima facie evidence of the facts stated in it, and	3
(c) is presumed (unless evidence sufficient to raise doubt about the presumption is adduced) to be a correct report of information generated and recorded by the intelligent access system concerned.	4 5 6 7
(3) If it is established that a part of such a report is not a correct report of the relevant part of the intelligent access information as so recorded, the presumption in subclause (2) (c) continues to apply to the remainder of the report.	8 9 10 11
[9] Dictionary	12
Insert in alphabetical order:	13
<i>the Act</i> means the <i>Road Transport (General) Act 2005</i> .	14