

# Road Transport (General) Act 2005 No 11

[2005-11]



New South Wales

## Status Information

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**  
[Road Transport Legislation Amendment \(Offender Nomination\) Act 2012 No 17](#), Sch 1 [3] (not commenced)
- **See also**  
[Road Transport \(General\) Amendment \(Vehicle Sanctions\) Bill 2012](#)

### Authorisation

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# Road Transport (General) Act 2005 No 11



New South Wales

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# Road Transport (General) Act 2005 No 11



New South Wales

An Act to provide for the administration and enforcement of road transport legislation; to make further provision with respect to the use of vehicles on roads and road related areas and related matters; and for other purposes.

## Chapter 1 Preliminary

### Part 1.1 Introductory

#### Note—

This Act and the regulations made under it form part of the **road transport legislation** identified by section 5. Other road transport legislation includes the *Motor Vehicles Taxation Act 1988*, the *Road Transport (Driver Licensing) Act 1998*, the *Road Transport (Safety and Traffic Management) Act 1999*, the *Road Transport (Vehicle Registration) Act 1997* and the statutory rules made under those Acts. As part of the road transport legislation, this Act is subject to various provisions in this Act concerning the administration and enforcement of the road transport legislation generally.

#### 1 Name of Act

This Act is the *Road Transport (General) Act 2005*.

#### 2 Commencement

- (1) This Act commences on a day or days to be appointed by proclamation, except as provided by this section.
- (2) Schedule 3.33 [1]–[3] and [15]–[19] commence on the commencement of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* or on the commencement of this Act, whichever occurs later.

#### 3 Definitions (cf former Act, s 3, model provisions, s 6)

- (1) In this Act:

**applicable road law** means:

- (a) Chapter 3 and Part 4.2, or
- (b) regulations made under Chapter 3 or Part 4.2, or
- (c) the *Road Transport (Mass, Loading and Access) Regulation 2005*, or

- (d) regulations made under section 11B or 11C (except in Chapter 3, unless otherwise provided by the regulations), or
- (e) any other provision of the road transport legislation prescribed by the regulations for the purposes of this definition.

**applicable road law offence** means an offence against an applicable road law.

**approved road transport compliance scheme** means a scheme, agreement or arrangement that:

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

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

- (c) a system of accreditation-based compliance, or
- (d) an intelligent transport system, or
- (e) a system applying alternative legal entitlements to those otherwise applicable, such as one based on performance-based standards.

**associate**—see section 23.

**Australian applicable road law** means an applicable road law or a corresponding applicable road law.

**Australian applicable road law offence** means an offence against an Australian applicable road law.

**Australian authorised officer** means an authorised officer or a person appointed as an authorised officer under a corresponding applicable road law.

**Australian Authority** means the Authority or a corresponding Authority.

**Australian driver licence** has the same meaning as it has in the [Road Transport \(Driver Licensing\) Act 1998](#).

**Australian police officer** means:

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

**Australian registrable vehicles register** means:



- (a) the Register within the meaning of the *Road Transport (Vehicle Registration) Act 1997*, or
- (b) a register maintained under the law of another jurisdiction that corresponds, or substantially corresponds, to the Register within the meaning of the *Road Transport (Vehicle Registration) Act 1997*.

**authorised officer** means:

- (a) a police officer, or
- (b) a person appointed as an authorised officer, or a class of persons appointed as authorised officers, under section 121 (Authorised officers), or
- (c) a person (or a person belonging to a class or description of persons) prescribed by the regulations.

**Authority** means Roads and Maritime Services constituted under the *Transport Administration Act 1988*.

**base** of a driver—see section 22 (Driver’s base).

**body corporate** includes the Crown in any capacity and any body or entity that is not an individual.

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

- (a) its GCM and GVM, and
- (b) its speed capabilities.

**combination** means a group consisting of a motor vehicle connected to one or more other vehicles.

**commercial benefits penalty order** means an order under Division 4 of Part 3.5.

**compensation order** means an order under Division 1 of Part 5.5.

**compliance purposes**—see section 134.

**condition** includes a restriction.

**conduct** means an act, an omission to perform an act or a state of affairs.

**corresponding applicable road law** means a law of another jurisdiction corresponding, or substantially corresponding, to an applicable road law or a law of another jurisdiction that is declared under the regulations to be a corresponding

applicable road law.

**corresponding Authority** means:

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

**corresponding law** means:

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

**depot** includes a base of operations.

**drive** includes the following:

- (a) be in control of the steering, movement or propulsion of a vehicle,
- (b) in relation to a trailer, draw or tow the trailer,
- (c) ride a vehicle.

**driver** means any person driving a vehicle, and includes any person riding a cycle.

**driver** of a vehicle or combination includes:

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

**driver licence** has the same meaning as it has in the [Road Transport \(Driver Licensing\) Act 1998](#).

**driver licence** means (in Parts 4.2 and 4.3 and section 230):

- (a) an Australian driver licence, or
- (b) a learner licence issued under a law in force in a State or internal Territory authorising the holder to drive a motor vehicle on a road.

**employee** means an individual who works under a contract of employment, apprenticeship or training.

**employer** means a person who employs persons under:

- (a) contracts of employment, apprenticeship or training, or
- (b) contracts for services.

**engage in conduct** means:

- (a) do an act, or
- (b) omit to perform an act.

**equipment**, in relation to a vehicle or combination, includes tools, devices and accessories in or on the vehicle or combination.

**exercise** a function includes perform a duty.

**extract** from a record, device or other thing else means a copy of any information contained in the record, device or other thing.

**function** includes a power, authority or duty.

**garage address** of a vehicle means:

- (a) in the case of a heavy vehicle that is normally kept at a depot when not in use—the principal depot of the vehicle, or
- (b) in the case of a heavy vehicle that is not normally kept at a depot when not in use:
  - (i) where the vehicle has only one registered operator—the home address of the registered operator, or
  - (ii) where the vehicle has more than one registered operator—each of the home addresses of the registered operators, or
- (c) in the case of a vehicle that is not a heavy vehicle—the place nominated by the applicant for registration of the vehicle as the place where the vehicle is normally kept.

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

- (a) as specified by the vehicle's manufacturer on an identification plate on the vehicle, or
- (b) as specified by the Authority if:
  - (i) a sum is not specified by the vehicle's manufacturer on an identification plate

on the vehicle, or

- (ii) a sum so specified on an identification plate is no longer appropriate because the vehicle has been modified.

**goods** includes:

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

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

**GVM (gross vehicle mass)** of a vehicle means the maximum loaded mass of the vehicle:

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

**heavy combination** means a combination that includes a heavy vehicle.

**heavy vehicle** means a motor vehicle or trailer that has a GVM greater than 4.5 tonnes, and includes:

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

**home address** of a person means:

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

**horse** includes any animal used for the carriage of persons or goods.

**infringement penalty** means a penalty imposed under a penalty notice or a notice

of the same kind under an Australian applicable road law.

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

- (a) a vehicle or combination or its equipment or load, the driver of a vehicle or combination, the operator of a fleet of vehicles or combinations or another person involved in road transport, and
- (b) without limiting the above, the operation of a vehicle or combination in relation to its legal entitlements.

**journey documentation** means any documentation (other than transport documentation) directly or indirectly associated with:

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

whether the documentation is in paper, electronic or any other form, and whether or not the documentation has been transmitted physically, electronically or in any other manner, and whether or not the documentation relates to a particular journey or to journeys generally, and includes (without limiting this definition) any of the following:

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

**jurisdiction** means the Commonwealth or a State or Territory.

**learner licence** has the same meaning as it has in the [Road Transport \(Driver Licensing\) Act 1998](#).

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

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

**light rail vehicle** has the same meaning as it has in the [Road Transport \(Safety and Traffic Management\) Act 1999](#).

**load** of a vehicle or combination, or in or on a vehicle or combination, means:

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

and includes a part of a load as so defined.

**major offence** means:

- (a) a crime or offence referred to in the definition of **convicted person** in section 188 (1), or
- (b) any other crime or offence that, at the time it was committed, was a major offence under this Act, the [Road Transport \(General\) Act 1999](#) or the [Traffic Act 1909](#).

**minor risk breach** of a mass, dimension or load restraint requirement—see section 31.

**motor vehicle** means a vehicle that is built to be propelled by a motor that forms part of the vehicle.

**night** means the period between sunset on one day and sunrise on the next day.

**owner:**

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

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

**penalty notice** means a penalty notice issued under Part 5.3.

**premises** includes any structure, building, vessel or place (whether built on or not), and any part of any such structure, building, vessel or place.

**prescribed speeding offence** means an offence under the [Road Transport \(Safety and Traffic Management\) Act 1999](#) (or regulations made under that Act) involving the use of a vehicle on a road at an excessive speed, being an offence that is prescribed by the regulations.

**public authority** means:

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

**public place** includes a place:

- (a) of public resort open to or used by the public as of right, or
  - (b) for the time being:
    - (i) used for a public purpose, or
    - (ii) open to access by the public, whether on payment or otherwise, or
  - (c) open to access by the public by the express or tacit consent or sufferance of the owner of that place, whether the place is or is not always open to the public,
- but does not include:
- (d) a track that at the material time is being used as a course for racing or testing motor vehicles and from which other traffic is excluded during that use, or
  - (e) a road, or
  - (f) a place declared by the regulations not to be a public place.

**public safety** means the safety of persons or property, including the safety of:

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

**reasonable steps defence**—see sections 87, 88 and 89.

**records** means any documents or documentation, whether in paper, electronic or any other form.

**registered**, in relation to a vehicle, means registered under the [Road Transport \(Vehicle Registration\) Act 1997](#).

**registered operator**:

- (a) in relation to a vehicle (including a vehicle in a combination)—means the person recorded by an Australian Authority on a register maintained in accordance with an Australian applicable road law, or a person recorded in an Australian registrable vehicles register, as the person responsible for the vehicle, or
- (b) in relation to a combination—means the person recorded by an Australian Authority on a register maintained in accordance with an Australian applicable road law, or a person recorded in an Australian registrable vehicles register, as the person responsible for the towing vehicle in the combination.



**registrable vehicle** has the same meaning as it has in the [Road Transport \(Vehicle Registration\) Act 1997](#).

**registration** of a vehicle means registration of the vehicle under an Australian applicable road law or in an Australian registrable vehicles register.

**responsible entity** in relation to a freight container—see section 63 (Meaning of “responsible entity”).

**responsible person** for a vehicle—see section 6.

**rider** of an animal includes a person having charge of the animal.

**road** means an area that is open to or used by the public and is developed for, or has as one of its main uses, the driving or riding of motor vehicles.

**road infrastructure** includes:

- (a) a road, including its surface or pavement, and
- (b) anything under or supporting a road or its surface or pavement and maintained by a roads authority, and
- (c) any bridge, tunnel, causeway, road-ferry, ford or other work or structure forming part of a road system or supporting a road, and
- (d) any bridge or other work or structure located above, in or on a road and maintained by a roads authority, and
- (e) any traffic control devices, railway or tramway equipment, electricity equipment, emergency telephone systems or any other facilities (whether of the same or a different kind) in, on, over, under or connected with anything referred to in paragraphs (a)–(d), and
- (f) anything declared by the regulations to be included in this definition,

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

**road related area** means:

- (a) an area that divides a road, or
- (b) a footpath or nature strip adjacent to a road, or
- (c) an area that is open to the public and is designated for use by cyclists or animals, or
- (d) an area that is not a road and that is open to or used by the public for driving,

riding or parking vehicles, or

(e) a shoulder of a road, or

(f) any other area that is open to or used by the public and that has been declared under section 15 to be an area to which specified provisions of this Act or the regulations apply.

**road transport** or **transport by road** means the transport of goods or passengers by road by means of a vehicle or combination.

**road transport legislation**—see section 5.

**roads authority** has the same meaning as it has in the [Roads Act 1993](#).

**run** the engine of a vehicle or combination includes to start or stop the engine.

**severe risk breach** of a mass, dimension or load restraint requirement—see section 33.

**special purpose vehicle** means:

- (a) a vehicle (other than one declared by the regulations not to be a special purpose vehicle for the purposes of this definition) where the primary purpose for which it was built, or permanently modified, was not the carriage of goods or passengers, or
- (b) a vehicle declared by the regulations to be a special purpose vehicle for the purposes of this definition.

**specifications** of a vehicle means the physical dimensions and other physical attributes of the vehicle and its fittings.

**substantial risk breach** of a mass, dimension or load restraint requirement—see section 32.

**this jurisdiction** means New South Wales.

**trader's plate** has the same meaning as it has in the [Road Transport \(Vehicle Registration\) Act 1997](#).

**traffic** includes vehicular traffic and pedestrian traffic and all other forms of road traffic.

**trailer** means a vehicle that:

- (a) is built to be towed, or is towed, by a motor vehicle, and
- (b) is not capable of being propelled in the course of normal use on roads without

being towed by a motor vehicle,

whether or not its movement is aided by some other power source, but does not include:

- (c) a motor vehicle being towed, or
- (d) anything declared by the regulations to be excluded from this definition.

**transport documentation** means:

- (a) any contractual documentation directly or indirectly associated with:
  - (i) a transaction for or relating to the actual or proposed transport of goods or passengers by road or any previous transport of the goods or passengers by any mode, or
  - (ii) goods or passengers themselves so far as the documentation is relevant to their actual or proposed transport, or
- (b) any associated documentation:
  - (i) contemplated in the contractual documentation, or
  - (ii) required by law, or customarily provided, in connection with the contractual documentation or with the transaction,

whether the documentation is in paper, electronic or any other form, and whether or not the documentation has been transmitted physically, electronically or in any other manner, and includes (without limiting this definition) an invoice, vendor declaration, delivery order, consignment note, load manifest, export receipt advice, bill of lading, contract of carriage, sea carriage document, or container weight declaration, relating to the goods or passengers.

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

**use** of a vehicle includes standing the vehicle on a road.

**vehicle** means:

- (a) any description of vehicle on wheels (including a light rail vehicle) but not including any other vehicle used on a railway or tramway, or
  - (b) any other vehicle prescribed by the regulations.
- (2) A reference in a provision of this Act relating to the road transport legislation (other than this Act or the regulations) to an expression that is defined in the legislation includes, for the purposes of the application of the provision to the legislation, the

expression as defined in the legislation.

- (3) Each reference in this Act (except as provided by this Act) to a **road** includes a **road related area**.

#### 4 Notes (cf former Act, s 4)

Notes included in this Act are explanatory notes and do not form part of this Act.

##### Note—

For the purposes of comparison, a number of provisions of this Act contain bracketed notes in headings drawing attention (“cf”) to equivalent or comparable (though not necessarily identical) provisions of other Acts. For instance, the abbreviation “former Act” in the notes is a reference to the *Road Transport (General) Act 1999* (as in force immediately before its repeal). A reference to “model provisions” is a reference to the *Road Transport Reform (Compliance and Enforcement) Bill* model provisions approved by the Australian Transport Council.

#### 5 Meaning of “road transport legislation” (cf former Act, s 5)

- (1) In this Act, the **road transport legislation** means the following:

- (a) this Act,
- (b) the *Road Transport (Driver Licensing) Act 1998*,
- (c) (Repealed)
- (d) the *Road Transport (Safety and Traffic Management) Act 1999*,
- (e) the *Road Transport (Vehicle Registration) Act 1997*,
- (f) the *Motor Vehicles Taxation Act 1988*,
- (g) any other Act or regulation (or any provision of such an Act or regulation) prescribed by the regulations,
- (h) any statutory rule made under any Act referred to in paragraphs (a)–(f) (or any provision of such an Act).

- (2) A regulation referred to in subsection (1) (g) prescribing an Act or regulation (or provision of an Act or regulation) cannot be made without the concurrence of the Minister administering the Act or regulation concerned.

- (3) A provision of this Act relating to the road transport legislation does not apply to the road transport legislation if that legislation provides otherwise either expressly or by necessary intendment.

#### 6 Responsible person for a vehicle (cf former Act, s 7)

- (1) In the road transport legislation, the **responsible person** for a vehicle is:

- (a) in relation to a registered vehicle—each of the following persons:

- (i) a registered operator of the vehicle, except where the vehicle has been disposed of by the operator,
  - (ii) if the vehicle has been disposed of by a previous registered operator—a person who has acquired the vehicle from the operator,
  - (iii) a person who has a legal right to possession of the vehicle (including any person who has the use of the vehicle under a lease or hire-purchase agreement, but not the lessor while the vehicle is being leased under any such agreement), and
- (b) in relation to an unregistered vehicle to which a trader's plate is affixed—each of the following persons:
- (i) the person to whom the trader's plate is issued under the *Road Transport (Vehicle Registration) Act 1997*,
  - (ii) a person who has a legal right to possession of the vehicle (including any person who has the use of the vehicle under a lease or hire-purchase agreement, but not the lessor while the vehicle is being leased under any such agreement), and
- (c) in relation to an unregistered vehicle to which no trader's plate is affixed—each of the following persons:
- (i) a person who was last recorded as a registered operator of the vehicle,
  - (ii) a person who has a legal right to possession of the vehicle (including any person who has the use of the vehicle under a lease or hire-purchase agreement, but not the lessor while the vehicle is being leased under any such agreement), and
- (d) any other person (or class of persons) prescribed by the regulations for the purposes of this definition.
- (2) For the purposes of subsection (1) (d), the regulations may prescribe different persons for different provisions of the road transport legislation.

**Note—**

A wider definition of **responsible person** applies for the purposes of Chapter 3.

**7 Rights, liabilities and obligations of multiple responsible persons** (cf former Act, s 8)

- (1) Subject to any regulations made under subsection (2), if more than one person is the responsible person for a vehicle at any one time, a reference in any relevant legislation to the responsible person for a vehicle within the meaning of this Act or any other road transport legislation is taken to include a reference to each person who is a responsible person for such a vehicle.

(2) The regulations may provide for the determination of the respective rights, liabilities and obligations of each responsible person for a vehicle under any relevant legislation, but only with the concurrence of the Minister administering the relevant legislation.

(3) In this section:

**relevant legislation** means:

- (a) a provision of the road transport legislation, or
- (b) a provision of any other Act (or a provision of a regulation made under any such Act) concerned with the responsible person for a vehicle within the meaning of this Act or any other road transport legislation.

#### **8 Act to bind Crown** (cf former Act, s 70)

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

#### **9 Contracting out prohibited** (cf model provisions, s 187)

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

### **Part 1.2 Regulations**

#### **10 Regulations** (cf former Act, s 71)

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without limiting subsection (1), the regulations may make provision for or with respect to the following:
  - (a) (Repealed)
  - (b) the fixing of fees for services provided by the Authority under this Act or the regulations,
  - (c) the collection and recovery of fees fixed under this Act or the regulations,
  - (d) the refund, or partial refund, of fees fixed under this Act or the regulations,
  - (e) the waiver or postponement of fees fixed under this Act or the regulations.
- (3) The regulations may impose a fee in respect of services provided by the Authority under this Act or the regulations despite the fact that the fee may also comprise a tax.

- (4) The regulations may create offences punishable by a penalty not exceeding 30 penalty units.

**11 National road transport regulations** (cf Roads Act, s 264A)

- (1) Without limiting the generality of section 10 or any other provision of this or any other Act authorising regulations to be made, regulations may be made under this Act, for the State, for or with respect to any matters referred to in section 9 of the *Road Transport Reform (Vehicles and Traffic) Act 1993* of the Commonwealth.
- (2) Any such regulations may apply to a vehicle, animal or person on a road.
- (3) Any such regulations may make provision for a matter by applying, adopting or incorporating:
- (a) any regulations as in force from time to time under the *Road Transport Reform (Vehicles and Traffic) Act 1993* of the Commonwealth, and
  - (b) any national standards as in force from time to time under the *Motor Vehicle Standards Act 1989* of the Commonwealth, and
  - (c) any other publication, as in force from time to time, relating to the construction, design or equipment of motor vehicles.
- (4) Any such regulations may apply any provisions of the road transport legislation relating to the prosecution of offences, including liability for offences, or enforcement or relating to evidential matters to the exclusion of provisions of this Act or other regulations made under this Act relating to those matters.
- (5) Any such regulations may:
- (a) confer any function on the Minister for the purposes of administering their provisions, and
  - (b) exempt or provide for the granting of exemptions from their provisions, either conditionally or unconditionally.
- (6) The Minister may declare, by notice published in the Gazette, that:
- (a) a specified area that is open to or used by the public is an area to which specified regulations apply, or
  - (b) this Act and the regulations, or specified provisions of this Act or the regulations, do not apply to a specified road.
- Such a declaration has effect until it is revoked by a further notice published in the Gazette, or for the period specified in the regulations.
- (7) Without limiting any other power authorising the delegation of the Minister's

functions, the Minister may delegate to any other person any function conferred on the Minister by or under this section other than this power of delegation.

**11A Regulations relating to intelligent transport systems**

- (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.
- (2) Regulations may be made for or with respect to the following matters relating to intelligent transport systems:
  - (a) conditions relating to intelligent transport systems,
  - (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,
  - (c) the records to be kept in relation to information obtained by the use of an intelligent transport system,
  - (d) the reports to be made in relation to the operation of, or any other matter relating to, an intelligent transport system,
  - (e) regulating or prohibiting tampering with intelligent transport systems,
  - (f) notification of persons about whom or in respect of whom information is obtained by the use of an intelligent transport system,
  - (g) certification of providers of intelligent transport systems or of intelligent transport systems,
  - (h) the functions of providers and auditors of intelligent transport systems,
  - (i) the operation of intelligent transport systems,
  - (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,
  - (k) monitoring and auditing of intelligent transport systems, providers of intelligent transport systems and persons required or permitted to use intelligent transport systems,
  - (l) the use of certificates relating to the following matters as evidence in any proceedings before a court or tribunal:
    - (i) conditions relating to the use of intelligent transport systems imposed under this Act or the regulations,



- (ii) vehicles, operators and drivers subject to conditions referred to in subparagraph (i),
  - (iii) operators, providers and auditors of intelligent transport systems,
  - (iv) information obtained by the use of intelligent transport systems,
  - (v) whether an intelligent transport system was or was not subject to any malfunction at a specified time,
  - (vi) the map used for the purposes of an intelligent transport system,
  - (vii) reports relating to intelligent transport systems,
  - (viii) the correct operation and functioning of an intelligent transport system,
  - (ix) the position of a vehicle on the surface of the earth at a particular time,
  - (x) mathematical (including statistical) procedures used in relation to information obtained by the use of an intelligent transport system,
- (m) the use of reports generated by an intelligent transport system as evidence in any proceedings before a court or tribunal,
- (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,
- (o) specifying the nature of the evidence that may or may not be used to rebut an evidentiary presumption established by a regulation made under paragraph (n).
- (3) A regulation made for the purposes of this section may create an offence punishable by a penalty not exceeding 200 penalty units.
- (4) Sections 16 and 18 of the [Workplace Surveillance Act 2005](#) 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.
- (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.
- (6) In this section:
- authority** includes a permit, authorisation, approval, notice or anything else granted or issued in writing under an applicable road law.

### **11B Regulations relating to fatigue management**

- (1) Regulations may be made for or with respect to the management and prevention of

driver fatigue in connection with the driving of heavy vehicles and heavy combinations.

- (2) Without limiting the generality of subsection (1), regulations may be made for or with respect to the following:
- (a) the duties of drivers of heavy vehicles and heavy combinations,
  - (b) the duties of employers of drivers of heavy vehicles and heavy combinations, prime contractors, operators, schedulers, consignors, consignees, loading managers, loaders and unloaders,
  - (c) the duties of other persons who make use of or engage in activities involving the use or operation of heavy vehicles or heavy combinations or who may do so,
  - (d) the periods that drivers of heavy vehicles and heavy combinations spend working and resting,
  - (e) the making, keeping, possession and inspection of records in respect of heavy vehicles or heavy combinations and their drivers,
  - (f) the medical examination of drivers of heavy vehicles and heavy combinations,
  - (g) risk management processes, principles and factors to be applied,
  - (h) reasonable steps defences or other defences for offences under regulations made under this section,
  - (i) the recognition of decisions in other jurisdictions in relation to the management of fatigue in drivers of heavy vehicles or heavy combinations,
  - (j) the accreditation of operator fatigue management systems and auditing of such systems.
- (3) A regulation made under this section may create an offence punishable by a penalty not exceeding 250 penalty units.
- (4) 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.

### **11C Regulations relating to speeding compliance**

- (1) Regulations may be made for or with respect to the management and prevention of speeding in connection with heavy vehicles or heavy combinations.
- (2) Without limiting subsection (1), regulations may be made for or with respect to the following:
- (a) the duties of employers of drivers of heavy vehicles and heavy combinations,

prime contractors, schedulers, operators, consignors and consignees,

(b) the duties of other persons who make use of or engage in activities involving the use or operation of heavy vehicles or heavy combinations or who may do so.

(3) A regulation made under this section may create an offence punishable by a penalty not exceeding 250 penalty units.

(4) 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.

**12 Regulations may provide that [Roads Act 1993](#) does not apply in certain circumstances** (cf [Roads Act](#), s 264B)

For the purpose of facilitating the administration and enforcement of the road transport legislation, the regulations may provide that any specified provision of the [Roads Act 1993](#) (or any specified regulation made under any provision of that Act) does not apply to a vehicle, person or animal (or any class of vehicles, persons or animals) to the extent specified by the regulations.

**13 Regulations may exclude vehicles, animals and persons from this Act or the regulations** (cf former Act, s 72)

(1) The regulations may:

(a) exempt a vehicle, person or animal (or a class of vehicles, persons or animals of a kind) identified in the regulations from the operation of this Act or the regulations (or specified provisions of this Act or the regulations), or

(b) authorise the Authority to exempt a vehicle, person or animal (or a class of vehicles, persons or animals of a kind) identified in the regulations from the operation of this Act or the regulations (or specified provisions of this Act or the regulations).

(2) An exemption granted by or under a regulation referred to in subsection (1) may be given unconditionally or on specified conditions.

(3) The regulations may provide for the Authority:

(a) to suspend the operation of any regulation referred to in subsection (1) in such manner and in such circumstances as may be specified by the regulations, or

(b) to suspend the operation of an exemption given by it to any vehicle, person or animal in such manner and in such circumstances as may be specified by the regulations,

or both.

## Chapter 2 Scope of Act

### Part 2.1 Inter-relationship between road transport legislation and other law

#### 14 General relationship with other laws (cf former Act, s 6)

- (1) **Other Acts and laws not affected except as provided by this section** Nothing in the road transport legislation:
  - (a) affects any of the provisions of any other Act or any statutory rule, or takes away any powers vested in any person or body by any other Act or statutory rule, except as provided by this section, or
  - (b) affects any liability of any person at common law except to the extent that the road transport legislation provides otherwise expressly or by necessary intendment.
- (2) **This Act generally prevails over other legislation in cases of inconsistency** However (subject to subsection (3)):
  - (a) an Act that forms part of the road transport legislation prevails over any other Act or statutory rule to the extent of any inconsistency, and
  - (b) a statutory rule that forms part of the road transport legislation prevails over any other Act or statutory rule to the extent of any inconsistency in respect of driver licensing, vehicle registration or traffic on roads (or other related matters).
- (3) **Regulations may displace operation of subsection (2)** Despite subsection (2), the regulations may provide that any other Act or a statutory rule (or any provision of another Act or statutory rule) prevails over an inconsistent provision of the road transport legislation.

**Note—**

The expression **statutory rule** is defined in section 21 (1) of the [Interpretation Act 1987](#) to mean:

- (a) a regulation, by-law, rule or ordinance:
  - (i) that is made by the Governor, or
  - (ii) that is made by a person or body other than the Governor, but is required by law to be approved or confirmed by the Governor, or
- (b) a rule of court.

### Part 2.2 Alteration of scope of operation of road transport legislation

#### 15 Power to include or exclude areas in road transport legislation (cf former Act, s 9)

- (1) The Minister may declare, by order published in the Gazette, that the road transport

legislation, or any specified provision of the road transport legislation:

- (a) applies to a specified area of the State that is open to or used by the public, or
- (b) does not apply to a specified road.

(2) The declaration has effect until it is revoked, or for the period specified in the declaration.

**16 Power to exclude vehicles, persons or animals from road transport legislation** (cf former Act, s 10)

(1) The Minister may declare, by order published in the Gazette, that the road transport legislation (or a specified provision of the road transport legislation) does not apply to a vehicle, person or animal in any location or circumstance specified in the order.

(2) The declaration has effect until it is revoked, or for the period specified in the declaration.

**17 Consultation required with Minister administering [Motor Accidents Act 1988](#) in certain cases** (cf former Act, s 11)

Before making a declaration under this Part in respect of the [Road Transport \(Vehicle Registration\) Act 1997](#) (or any regulation made under that Act), the Minister is to consult with the Minister administering the [Motor Accidents Act 1988](#).

**18 Authority to maintain database of declarations and orders made under this Part** (cf former Act, s 13)

(1) The Authority is to maintain a database, in accordance with the regulations, containing information about declarations and orders made under this Part that are in force from time to time.

(2) The database may be kept in the form of, or as part of, a computer database or in such other form as the Authority considers appropriate.

(3) The Authority is to give members of the public access to information contained in the database in accordance with the regulations.

(4) A failure by the Authority to comply with this section does not affect the validity of any declaration or order.

### **Chapter 3 Mass, dimension and load restraint requirements for**

## vehicles

### Part 3.1 Preliminary

#### 19 Operation of this Chapter (cf model provisions, s 64)

Except where expressly provided, nothing in this Chapter limits the operation of other provisions of this Act, or any other road transport legislation, in relation to a breach or apprehended breach of a mass, dimension or load restraint requirement.

#### 20 Definitions

In this Chapter:

**access requirement** means a requirement of an applicable road law that relates to the roads or class of roads on which a vehicle may or may not be taken, or otherwise limits the area in which a vehicle may or may not operate.

**consignee** of goods means a person who:

(a) with the person's authority, is named or otherwise identified as the intended consignee of the goods in the transport documentation relating to the transport of the goods by road, or

(b) actually receives the goods after completion of their transport by road,

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

**consignor** of goods means a person who:

(a) with the person's authority, is named or otherwise identified as the consignor of the goods in the transport documentation relating to the transport of the goods by road, or

(b) if paragraph (a) does not apply to the person or anyone else:

(i) engages an operator of a vehicle or combination, either directly or indirectly or through an agent or other intermediary, to transport the goods by road, or

(ii) has possession of, or control over, the goods immediately before the goods are transported by road, or

(iii) loads a vehicle with the goods, for transport by road, at a place where goods in bulk are stored or temporarily held and that is unattended (except by a driver of the vehicle, a trainee driver or any person necessary for the normal operation of the vehicle) during loading, or

(c) if paragraphs (a) and (b) do not apply to the person or anyone else, and the goods are imported into Australia—imports the goods.

**container weight declaration** means a declaration referred to in Division 6 of Part 3.3, and includes a copy of such a declaration or a version of such a declaration in electronic or other form.

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

- (a) the dimensions of a vehicle or combination, disregarding its load (if any), or
- (b) the dimensions of a vehicle or combination including its load, or
- (c) the dimensions of the load on a vehicle or combination, or
- (d) the internal measurements of a vehicle or combination, including (for example) the distance between:
  - (i) components of a vehicle or combination, or
  - (ii) vehicles in a combination, or
  - (iii) a vehicle in a combination and a component of another vehicle in the combination.

**formal warning** means a warning under Division 3 of Part 3.5.

**freight container** means:

- (a) a re-usable container of the kind mentioned in Australian Standard AS 3711.1:2000, *Freight containers—Classification, dimensions and ratings*, that is designed for repeated use for the transport of goods by one or more modes of transport, or
- (b) a re-usable container of the same or a similar design and construction to a container referred to in paragraph (a) though of different dimensions, or
- (c) a container of a kind prescribed by the regulations,

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

**improvement notice** means a notice under Division 2 of Part 3.5.

**incremental pricing charges** means charges to road users, for concessions relating to mass, dimension, load restraint or access requirements, that are based on road users' activities, or likely activities, as a consequence of the concessions and the impact of those activities.

**incremental pricing scheme** means a scheme for the incremental pricing of concessions relating to mass, dimension, load restraint or access requirements that is

established by regulations made under section 28A.

**legislatively specified mass requirement** means:

- (a) a mass requirement specified in an applicable road law or in another law of this jurisdiction, or
- (b) a mass requirement specified in writing under the authority of an applicable road law or of another law of this jurisdiction, or
- (c) a mass requirement indicated by a sign erected or displayed under the authority of an applicable road law or of another law of this jurisdiction.

**load restraint requirement** means a requirement of an Australian applicable road law that relates to the restraint or positioning of a load or any part of a load on a vehicle or combination.

**loader** means a person who:

- (a) loads a vehicle or combination with goods for transport by road, or
- (b) loads a vehicle or combination with a freight container (whether or not containing goods) for transport by road, or
- (c) without limiting the above, loads a freight container already in or on a vehicle or combination with goods for transport by road, or
- (d) supervises an activity mentioned in paragraph (a), (b) or (c), or
- (e) manages or controls an activity mentioned in paragraph (a), (b), (c) or (d).

**mass requirement** means a requirement of an Australian applicable road law that relates to the mass of a vehicle or combination or the mass of or on any component of a vehicle or combination, and includes:

- (a) a requirement of an Australian applicable road law concerning mass limits relating to:
  - (i) the tare mass of a vehicle or combination (that is, the actual mass of the vehicle or combination excluding any load in or on the vehicle or combination), or
  - (ii) the gross mass of a vehicle or combination (that is, the unladen mass of the vehicle or combination together with any load in or on the vehicle or combination), or
  - (iii) the mass of the load in or on a vehicle or combination, or
  - (iv) the mass on a tyre, an axle or an axle group of the vehicle or combination, and
- (b) a requirement of an Australian applicable road law concerning mass limits relating to axle spacing, and



- (c) mass limits set out on signs erected or displayed under an Australian applicable road law (for example, a sign-posted bridge limit).

**operator**—see section 21 (Operators).

**package** of goods means the complete product of the packing of the goods for transport by road, consisting of the goods and their packaging.

**packaging** of goods means the container (including a freight container) in which the goods are received or held for transport by road, and includes anything that enables the container to receive or hold the goods or to be closed.

**packer** of goods means a person who:

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

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

**prohibition order** means an order under Division 7 of Part 3.5.

**responsible person**, in relation to a heavy vehicle or combination, means any person having, at a relevant time, a role or responsibilities associated with road transport, and includes any of the following:

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

- (h) a person in charge of premises entered by an authorised officer under this Act,
- (i) a person who consigns goods for transport by road,
- (j) a person who packs goods in a freight container or other container or in a package or on a pallet for transport by road,
- (k) a person who loads goods or a container on a vehicle or combination for transport by road,
- (l) a person who unloads goods or a container containing goods consigned for transport by road,
- (m) a person to whom goods are consigned for transport by road,
- (n) a person who receives goods packed outside Australia in a freight container or other container or on a pallet for transport by road in Australia,
- (o) an owner or operator of a weighbridge, or weighing facility, used to weigh vehicles or combinations or an occupier of premises where such a weighbridge or weighing facility is located,
- (p) a responsible entity for a freight container,
- (q) a person who controls or directly influences the loading or operation of a vehicle or combination,
- (r) an agent, employer, employee or subcontractor of any person referred to in the preceding paragraphs of this definition.

**supervisory intervention order** means an order under Division 6 of Part 3.5.

**unit load** means a load of packaged goods that are:

- (a) wrapped in plastics, and strapped or otherwise secured to a pallet or other base and to each other, for transport, or
- (b) placed together in a protective outer container (except a freight container) for transport, or
- (c) secured together in a sling for transport.

## **21 Operators** (cf model provisions, s 11)

- (1) For the purposes of this Chapter and Part 4.2, a person is an **operator** of a vehicle or combination if:
  - (a) in the case of a vehicle (including a vehicle in a combination)—the person is responsible for controlling or directing the operations of the vehicle, or

(b) in the case of a combination—the person is responsible for controlling or directing the operations of the towing vehicle in the combination.

(2) A person is not an operator merely because the person does any or all of the following:

- (a) owns a vehicle or combination,
- (b) drives a vehicle or combination,
- (c) maintains or arranges for the maintenance of a vehicle or combination,
- (d) arranges for the registration of a vehicle.

**Note—**

Section 80 (Liability of registered operators and owners) contains provisions relating to the liability of registered operators and owners in connection with offences committed by persons who are operators of vehicles or combinations.

**22 Driver's base** (cf model provisions, s 12)

(1) For the purposes of this Chapter, the **base** of a driver of a heavy vehicle or heavy combination is:

- (a) the place recorded for the time being as the driver's base in the log book kept by the driver of the heavy vehicle or heavy combination, or
- (b) if no place is recorded as specified in paragraph (a)—the garage address of the heavy vehicle or towing vehicle of the heavy combination, as recorded by an Australian Authority, or
- (c) if no place is recorded as specified in paragraph (a) or (b)—the place from which the driver normally works and receives instructions.

(2) For the purposes of this section, if a driver is a self-employed driver and an employed driver at different times, the driver may have one base as a self-employed driver and another base as an employed driver.

(3) For the purposes of this section, if a driver has 2 or more employers, the driver may have a different base in relation to each employer.

**23 Associates** (cf model provisions, s 13)

(1) For the purposes of this Chapter, a person is an **associate** of another if:

- (a) one is a spouse, de facto partner, parent, brother, sister or child of the other, or
- (b) they are members of the same household, or
- (c) they are partners, or

- (d) they are both trustees or beneficiaries of the same trust, or one is a trustee and the other is a beneficiary of the same trust, or
- (e) one is a body corporate and the other is a director or member of the governing body of the body corporate, or
- (f) one is a body corporate (other than a public company whose shares are listed on a stock exchange) and the other is a shareholder in the body corporate, or
- (g) they are related bodies corporate within the meaning of the [Corporations Act 2001](#) of the Commonwealth, or
- (h) a chain of relationships can be traced between them under any one or more of the above paragraphs.

**Note—**

“De facto partner” is defined in section 21C of the [Interpretation Act 1987](#).

(2) In this section:

**beneficiary** of a trust includes an object of a discretionary trust.

**24 Determining whether a breach “involves” risk** (cf model provisions, s 65)

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

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

**25 Meaning of “imminent” loss or shifting of load** (cf model provisions, s 66)

(1) For the purposes of this Chapter, the loss or shifting of the load of a vehicle or combination is **imminent** if it is assessed by the officer or court concerned to be likely to occur during the journey being or about to be undertaken by which the load is being or is to be transported, having regard to:

- (a) the nature and condition of the vehicle or combination, and
- (b) the nature, condition, placement and securing of the load, and
- (c) the length of the journey, and
- (d) the nature and condition of the route of the journey, and
- (e) any other relevant factors.

- (2) For the purposes of this Act, the disembarkation of persons from, or the movement of persons on, a vehicle or combination does not constitute a loss or shifting of the load of the vehicle or combination.

## **Part 3.2 Mass, dimension, load restraint and other restrictions for vehicles**

### **26 Regulations may impose restrictions** (cf Roads Act, s 108)

- (1) The regulations may impose mass, dimension or load restraint restrictions with respect to the use of roads by vehicles.
- (2) A person must not drive, or cause to be driven, along a road any vehicle that contravenes the mass, dimension or load restraint restrictions imposed by the regulations otherwise than in accordance with an excess permit.

Maximum penalty: 30 penalty units.

- (3) Subsection (2) does not apply to a heavy vehicle or heavy combination.

#### **Note—**

Offences relating to breaches relating to heavy vehicles or heavy combinations are contained in regulations made under this Act and are also dealt with under Part 3.3.

### **27 Excess permits**

- (1) The Authority may issue an excess permit in respect of a vehicle.
- (2) An excess permit may exempt a vehicle, either unconditionally or subject to conditions, from any specified mass, dimension, load restraint or access requirement imposed by an applicable road law.
- (3) Without limiting subsection (2), an excess permit may be made subject to conditions of the following kinds:
  - (a) a condition imposed by a regulation under section 28A,
  - (b) a condition imposing a maximum laden mass on the vehicle or any part of the vehicle,
  - (c) a condition imposing a maximum unladen mass on the vehicle or any part of the vehicle,
  - (d) a condition imposing a maximum mass on the vehicle's load,
  - (e) a condition specifying the minimum or maximum dimensions of the vehicle or the vehicle's load,
  - (f) a condition imposing a requirement as to the restraint or positioning of a load or

any part of a load of the vehicle,

- (g) a condition specifying any road or class of roads on which the vehicle may or may not be taken or area in which the vehicle may or may not be operated,
- (h) a condition specifying a time, or period, when the vehicle may or may not be operated,
- (i) a condition specifying signage or other warning or safety requirements, including conditions as to escort vehicles.

(4) An excess permit remains in force for the period specified in the permit.

(5) An application for an excess permit must be in a form approved by the Authority and accompanied by the application fee (if any) approved by the Authority.

**Note—**

An excess permit that is granted in connection with an incremental pricing scheme may also be subject to additional charges established under regulations made under section 28A.

**28 Mass requirements on certain roads and bridges etc** (cf Roads Act, s 112)

- (1) The council of a local government area or the Authority may do either or both of the following things:
  - (a) it may, by means of notices conspicuously displayed on or adjacent to a road or any bridge or causeway forming part of a road, prohibit vehicles with a laden mass exceeding a specified maximum mass from passing along or over the road, bridge or causeway,
  - (b) it may, by means of notices conspicuously displayed on or adjacent to a road or any road-ferry maintained in connection with a road, prohibit vehicles with a laden mass exceeding a specified maximum mass from using the road-ferry.
- (2) Despite subsection (1) (a), the regulations may prescribe circumstances in which a notice displayed in accordance with that paragraph does not operate to prohibit a vehicle passing along or over a road, bridge or causeway.
- (3) The powers conferred by this section may only be exercised with respect to classified roads by the Authority.
- (4) Any person who fails to comply with the terms of a notice displayed for the purposes of this section is guilty of an offence.

Maximum penalty: 30 penalty units.

- (5) In this section, **classified road** has the same meaning as it has in the [Roads Act 1993](#).

## 28A Incremental pricing schemes

(1) Regulations may be made for or with respect to the following matters:

(a) conditions of mass, dimension, load restraint or access concessions relating to incremental pricing charges,

**Note—**

See section 76 for the definition of *mass, dimension, load restraint or access concession*.

(b) the determination of incremental pricing charges,

(c) the notification of incremental pricing charges,

(d) conditions of mass, dimension, load restraint or access concessions relating to payment (including prepayment) of incremental pricing charges,

(e) the payment of money received by the Authority from incremental pricing charges to roads authorities and the use by roads authorities of that money,

(f) the use of information obtained by the use of an intelligent transport system or by other means for the purposes of incremental pricing schemes, including (but not limited to) the calculation of incremental pricing charges,

(g) the application of regulations made under section 11A to or in respect of the use, for the purposes of implementing and administering incremental pricing schemes, of information obtained by the use of an intelligent transport system,

(h) the monitoring and auditing of incremental pricing schemes and participants in such schemes,

(i) the records to be kept and information provided by such participants,

(j) regulating or prohibiting the collection, storage, use and disclosure of information obtained for the purposes of incremental pricing schemes or proposed schemes,

(k) without limiting paragraph (j), the use of information obtained for the purposes of an incremental pricing scheme for compliance or law enforcement purposes,

(l) the use of certificates relating to the following matters as evidence in any proceedings before a court or tribunal:

(i) conditions relating to incremental pricing schemes,

(ii) vehicles, operators and drivers subject to conditions referred to in subparagraph (i),

(iii) information obtained by the use of intelligent transport systems or by other means and used for the purposes of incremental pricing schemes,

- (m) specifying the nature of the evidence that may or may not be used to rebut an evidentiary presumption established by a regulation made under paragraph (l),
  - (n) refunds of excess charges,
  - (o) any other matters ancillary or incidental to the operation of incremental pricing charges or schemes.
- (2) A regulation made for the purposes of this section may create an offence punishable by a penalty not exceeding 200 penalty units.
- (3) 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.
- (4) Words and expressions used in this section have the same meaning as they have in Division 9 of Part 3.3.

## **Part 3.3 Special provisions—mass, dimension and load restraint requirements for heavy vehicles**

### **Division 1 Preliminary**

#### **29 Operation of this Part** (cf model provisions ss 5 (2), 64)

This Part applies to heavy vehicles or heavy combinations or both and, accordingly, in this Part references to vehicles or combinations are taken to be references to heavy vehicles or heavy combinations.

### **Division 2 Categorisation of breaches**

#### **Subdivision 1 Categories of breaches**

#### **30 Categories generally** (cf model provisions, s 67)

For the purposes of this Act, breaches of mass, dimension or load restraint requirements are categorised as follows:

- (a) minor risk breaches,
- (b) substantial risk breaches,
- (c) severe risk breaches.

#### **31 Minor risk breaches** (cf model provisions, s 68)

- (1) **Mass requirement** A breach of a mass requirement is a minor risk breach if the subject-matter of the breach is less than the lower limit for a substantial risk breach of the requirement.



- (2) **Dimension requirement** A breach of a dimension requirement is a minor risk breach if the subject-matter of the breach is less than the lower limit for a substantial risk breach of the requirement.
- (3) **Load restraint requirement** A breach of a load restraint requirement is a minor risk breach if the loss or shifting of the load concerned:
  - (a) has not occurred and is not imminent, and
  - (b) is assessed by the officer or court concerned not to involve (if it were to occur) an appreciable risk of harm to public safety, the environment, road infrastructure or public amenity.

### **32 Substantial risk breaches** (cf model provisions, s 69)

- (1) **Mass requirement** A breach of a mass requirement is a substantial risk breach if the subject-matter of the breach:
  - (a) is equal to or greater than the lower limit for a substantial risk breach of the requirement, and
  - (b) is less than the lower limit for a severe risk breach of the requirement.
- (2) **Dimension requirement** A breach of a dimension requirement is a substantial risk breach if the subject-matter of the breach:
  - (a) is equal to or greater than the lower limit for a substantial risk breach of the requirement, and
  - (b) is less than the lower limit for a severe risk breach of the requirement.
- (3) **Load restraint requirement** A breach of a load restraint requirement is a substantial risk breach if:
  - (a) the loss or shifting of the load concerned:
    - (i) has already occurred or is imminent, and
    - (ii) is assessed by the officer or court concerned not to involve an appreciable risk of harm to public safety, the environment or road infrastructure, or
  - (b) the loss or shifting of the load concerned:
    - (i) has not occurred and is not imminent, and
    - (ii) is assessed by the officer or court concerned to involve an appreciable risk of harm to public safety, the environment, road infrastructure or public amenity.

### **33 Severe risk breaches** (cf model provisions, s 70)

- (1) **Mass requirement** A breach of a mass requirement is a severe risk breach if the

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

- (2) **Dimension requirement** A breach of a dimension requirement is a severe risk breach if the subject-matter of the breach is equal to or greater than the lower limit for a severe risk breach of the requirement.
- (3) **Load restraint requirement** A breach of a load restraint requirement is a severe risk breach if the loss or shifting of the load concerned:
- (a) has already occurred or is imminent, and
  - (b) is assessed by the officer or court concerned to involve an appreciable risk of harm to public safety, the environment, road infrastructure or public amenity.

## **Subdivision 2 Lower limits (for substantial or severe risk breaches of mass or dimension requirements)**

### **34 Lower limits—mass breaches** (cf model provisions, s 71)

- (1) This section applies to a mass requirement imposed by reference to:

- (a) a legislatively specified mass requirement, or
- (b) a manufacturer's mass rating, or
- (c) the lower of:
  - (i) a legislatively specified mass requirement, and
  - (ii) a manufacturer's mass rating,

for a vehicle or combination, or for any component of a vehicle or combination, or for any load in or on a vehicle or combination.

- (2) **Substantial risk breach** The lower limit for a substantial risk breach of a mass requirement to which this section applies is:

- (a) in the case of a mass requirement that relates to the gross mass of a vehicle or combination:
  - (i) 105% of the maximum permissible mass, rounded up to the nearest 0.1 tonne, or
  - (ii) 0.5 tonne,whichever is the greater, or
- (b) in any other case—105% of the maximum permissible mass, rounded up to the nearest 0.1 tonne.

**Note—**

105% of the maximum permissible mass is equivalent to the permissible mass plus an additional 5%.

- (3) **Severe risk breach** The lower limit for a severe risk breach of a mass requirement to which this section applies is 120% of the maximum permissible mass, rounded up to the nearest 0.1 tonne.

**Note—**

120% of the maximum permissible mass is equivalent to the permissible mass plus an additional 20%.

**35 Lower limits—width breaches** (cf model provisions, s 72)

- (1) This section applies to a dimension requirement imposed by reference to the length of a projection of a load from either side of a vehicle.
- (2) Nothing in this section affects a person's liability for a breach of a dimension requirement to which section 36 (Lower limits—width breaches: overall width of vehicle or combination) applies.
- (3) **Substantial risk breach** The lower limit for a substantial risk breach of a dimension requirement to which this section applies is 40 millimetres over the maximum permissible dimension limit.
- (4) **Severe risk breach** The lower limit for a severe risk breach of a dimension requirement to which this section applies is 80 millimetres over the maximum permissible dimension limit.

**36 Lower limits—width breaches: overall width of vehicle or combination** (cf model provisions, s 73)

- (1) This section applies to a dimension requirement imposed by reference to the overall width of a vehicle or combination with or without a load.
- (2) In the case of a vehicle or combination with a load, a breach of a dimension requirement to which this section applies is categorised by reference to the length of the projection of the load from a side of the vehicle or combination.
- (3) If the load projects from both sides and the length of the projection from one side is greater than the length of the projection from the other side, the breach is to be categorised by reference to the longer projection.
- (4) Nothing in this section affects a person's liability for a breach of a dimension requirement to which section 35 (Lower limits—width breaches) applies.
- (5) **Substantial risk breach** The lower limit for a substantial risk breach of a dimension requirement to which this section applies is:
- (a) in the case of a vehicle or combination with a load projecting from a side of the

vehicle or combination, 40 millimetres measured from a side of the vehicle or combination, or

(b) in any other case of a vehicle or combination with or without a load, 40 millimetres over the maximum permissible dimension limit.

(6) **Severe risk breach** The lower limit for a severe risk breach of a dimension requirement to which this section applies is:

(a) in the case of a vehicle or combination with a load projecting from a side of the vehicle or combination, 80 millimetres measured from a side of the vehicle or combination, or

(b) in any other case of a vehicle or combination with or without a load, 80 millimetres over the maximum permissible dimension limit.

**37 Lower limits—height breaches** (cf model provisions, s 74)

(1) This section applies to a dimension requirement imposed by reference to the overall height of a vehicle or combination with or without a load.

(2) **Substantial risk breach** The lower limit for a substantial risk breach of a dimension requirement to which this section applies is 150 millimetres over the maximum permissible dimension limit.

(3) **Severe risk breach** The lower limit for a severe risk breach of a dimension requirement to which this section applies is 300 millimetres over the maximum permissible dimension limit.

**38 Lower limits—overall length breaches** (cf model provisions, s 75)

(1) This section applies to a dimension requirement imposed by reference to the overall length of a vehicle or combination with or without a load.

(2) **Substantial risk breach** The lower limit for a substantial risk breach of a dimension requirement to which this section applies is 0.35 metre over the maximum permissible dimension limit.

(3) **Severe risk breach** The lower limit for a severe risk breach of a dimension requirement to which this section applies is 0.60 metre over the maximum permissible dimension limit.

### **Subdivision 3 Recategorisation of certain breaches**

**39 Lower limits—width breaches: recategorisation of certain breaches** (cf model provisions, s 76)

(1) This section applies to a breach of a dimension requirement to which section 35 (Lower limits—width breaches) or section 36 (Lower limits—width breaches: overall

width of vehicle or combination) applies, where:

- (a) the breach is committed:
    - (i) at night, or
    - (ii) in hazardous weather conditions causing reduced visibility, or
    - (iii) on a declared route or in a declared zone (within the meaning of Part 3.6), and
  - (b) the breach would, because of lower limits applicable under section 35 or 36 and apart from this Subdivision, be a minor risk breach or a substantial risk breach.
- (2) A breach to which this section applies that would, apart from this section, be a minor risk breach is taken to be a substantial risk breach.
- (3) A breach to which this section applies that would, apart from this section, be a substantial risk breach is taken to be a severe risk breach.

**40 Lower limits—overall length breaches: recategorisation of certain breaches involving rear projections** (cf model provisions, s 77)

- (1) This section applies to a breach of a dimension requirement to which section 38 (Lower limits—overall length breaches) applies, where:
- (a) the rear of a load on a vehicle or combination fails to carry a required warning signal, and
  - (b) the breach would, because of lower limits applicable under section 38 and apart from this Subdivision, be a minor risk breach or a substantial risk breach.

**Note—**

The *Road Transport (Mass, Loading and Access) Regulation 2005* provides that the rear of a load on a vehicle must carry a warning signal if the load projects more than 1.2 metres behind the vehicle or in other specified circumstances.

- (2) A breach to which this section applies that would, apart from this section, be a minor risk breach is taken to be a substantial risk breach.
- (3) A breach to which this section applies that would, apart from this section, be a substantial risk breach is taken to be a severe risk breach.

**41 Lower limits—dimension breaches: recategorisation of certain breaches involving dangerous projections** (cf model provisions, s 78)

- (1) This section applies to a breach of a dimension requirement to which a provision of Subdivision 2 applies, where:
- (a) the load on a vehicle or combination projects from the vehicle or combination in a way that is dangerous to persons or property, and

- (b) the breach would, because of lower limits applicable under those other provisions and apart from this Subdivision, be a minor risk breach or a substantial risk breach.

**Note—**

The *Road Transport (Mass, Loading and Access) Regulation 2005* provides that a load on a vehicle must not project in a way that is dangerous to property, even if all dimension and warning requirements are met.

- (2) A breach to which this section applies that would, apart from this section, be a minor risk breach is taken to be a substantial risk breach.
- (3) A breach to which this section applies that would, apart from this section, be a substantial risk breach is taken to be a severe risk breach.

## **Subdivision 4 Miscellaneous**

### **42 Regulations for increasing lower limits** (cf model provisions, s 79)

- (1) The regulations may specify a different lower limit, or a different method of calculating a lower limit, for a substantial risk breach or a severe risk breach of a mass, dimension or load restraint requirement to which a provision of Subdivision 2 applies.
- (2) The regulations must not specify a limit that is lower than that provided by the relevant provision of Subdivision 2.
- (3) The regulations may provide that a specified limit or method applies generally or in specified classes of cases.

**Note—**

This section enables higher breakpoints to be applied because of there being less risk associated with a particular breach.

### **43 Special categorisation of breaches of requirements relating to dangerous projections** (cf model provisions, s 80)

- (1) This section applies to a breach of a requirement of an Australian applicable road law:
  - (a) to the effect that a load on a vehicle or combination must not project in a way that is dangerous to a person or property, even if all dimension, warning or other requirements are met, and
  - (b) that is not, apart from this section, a mass, dimension or load restraint requirement.
- (2) For the purposes of this Act, a breach to which this section applies is taken to be:
  - (a) a breach of a dimension requirement, and

(b) a minor risk breach of that requirement, unless subsection (3) applies.

(3) The breach is taken to be a substantial risk breach if the breach is committed:

(a) at night, or

(b) in hazardous weather conditions causing reduced visibility.

#### **44 Other provisions for categorisation to prevail** (cf model provisions, s 81)

This Division has effect subject to any other provisions of the applicable road laws.

### **Division 3 Enforcement powers**

#### **Note—**

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

(a) **Minor risk breaches**

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

(b) **Substantial risk breaches**

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

(c) **Severe risk breaches**

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

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

#### **45 Minor risk breaches** (cf model provisions, s 82)

(1) **Application of section** This section applies to a vehicle or combination, where an authorised officer believes on reasonable grounds that:

(a) the vehicle or combination is the subject of one or more minor risk breaches of mass, dimension or load restraint requirements, and

(b) the vehicle or combination is not the subject of a substantial risk breach or a severe risk breach.

(2) **Authorisation or direction** The officer may:

(a) if the officer does not give a direction under paragraph (b)—authorise the driver of the vehicle or combination to continue its journey under section 49 (Authorisation to continue journey where only minor risk breaches), or

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

**Note—**

Section 49 enables the officer to permit the vehicle or combination to continue its journey (conditionally or unconditionally) if only minor risk breaches exist and no direction to rectify the breaches has been given or remains in force.

- (3) **Particular circumstances** Without limiting the above, particular circumstances warranting the giving of a direction exist where:

- (a) rectification is reasonable and can be carried out easily, or
- (b) rectification is necessary in the public interest to avoid potential risk of harm to public safety, the environment, road infrastructure or public amenity.

- (4) **Conditions** A direction may be given under this section unconditionally or subject to conditions imposed by the officer.

- (5) **Offences** A person is guilty of an offence if:

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

Maximum penalty:

- (a) first offence—30 penalty units (in the case of an individual) or 150 penalty units (in the case of a corporation), or
- (b) subsequent offence—60 penalty units (in the case of an individual) or 300 penalty units (in the case of a corporation).

- (6) **Definitions** In this section:

**prescribed distance** means a distance (in any direction) within a radius of 30 kilometres of:



- (a) the location of the vehicle or combination when the direction is given, or
- (b) any point along the forward route of the journey, if the direction is given in the course of a journey of the vehicle or combination.

***suitable location*** means a location that the officer believes on reasonable grounds to be suitable for the purpose of complying with the direction, having regard to any matters the officer considers relevant in the circumstances.

**46 Substantial risk breaches** (cf model provisions, s 83)

(1) **Application of section** This section applies to a vehicle or combination, where an authorised officer believes on reasonable grounds that:

- (a) the vehicle or combination is the subject of one or more substantial risk breaches, and
- (b) the vehicle or combination is not the subject of a severe risk breach.

(2) **Direction** The officer must:

- (a) direct the driver or operator of the vehicle or combination not to proceed until specified breaches of mass, dimension or load restraint requirements are rectified, or
- (b) if the officer believes on reasonable grounds that:
  - (i) particular circumstances exist warranting the moving of the vehicle or combination to another location, or
  - (ii) particular instructions have been given authorising or requiring the moving of the vehicle or combination to another location,

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

(3) **Particular circumstances** Without limiting the above, particular circumstances warranting the moving of a vehicle or combination exist where moving the vehicle or combination is necessary in the public interest to avoid potential risk of harm to public safety, the environment, road infrastructure or public amenity.

(4) **Particular instructions** Particular instructions authorising or requiring the moving of a vehicle or combination are specific instructions or standing instructions given by the Authority (orally or in writing, or by telephone, facsimile, electronic mail, radio, or in any other manner) authorising or requiring the moving of the vehicle or combination in the relevant circumstances.

(5) **Conditions** A direction may be given under this section unconditionally or subject to conditions imposed by the officer.

(6) **Offences** A person is guilty of an offence if:

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

Maximum penalty:

- (a) first offence—30 penalty units (in the case of an individual) or 150 penalty units (in the case of a corporation), or
- (b) subsequent offence—60 penalty units (in the case of an individual) or 300 penalty units (in the case of a corporation).

(7) **Definition** In this section:

***suitable location*** means a location that the officer believes on reasonable grounds to be suitable for the purpose of complying with the direction, having regard to any matters the officer considers relevant in the circumstances.

(8) Nothing in subsection (7), or in any other provision of this section, prevents:

- (a) the intended destination of the journey concerned, or
  - (b) the depot of the vehicle, or of a vehicle in the combination, concerned,
- from being the nearest suitable location for the purposes of this section.

#### **47 Severe risk breaches** (cf model provisions, s 84)

(1) **Application of section** This section applies to a vehicle or combination, where an authorised officer believes on reasonable grounds that the vehicle or combination is the subject of one or more severe risk breaches.

(2) **Direction** The officer must:

- (a) direct the driver or operator of the vehicle or combination not to proceed until specified breaches of mass, dimension or load restraint requirements are rectified, or
- (b) if the officer believes on reasonable grounds that:
  - (i) particular circumstances exist warranting the moving of the vehicle or combination to another location, or
  - (ii) particular instructions have been given authorising or requiring the moving of

the vehicle or combination to another location,

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

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

Maximum penalty:

- (a) first offence—30 penalty units (in the case of an individual) or 150 penalty units (in the case of a corporation), or
  - (b) subsequent offence—60 penalty units (in the case of an individual) or 300 penalty units (in the case of a corporation).
- (7) **Definitions** In this section:

**risk of harm to public safety** does not (subject to subsection (9)) include risk of harm to the safety of the vehicle or combination or any load in or on it, but does include risk of harm to the safety of people or live animals in or on it.

**Note—**

Subsection (9) ensures that the officer may take excluded matters into account in particular circumstances.

**safe location** means a location that the officer believes on reasonable grounds poses a reduced risk or no appreciable risk of harm to public safety, the environment, road infrastructure or public amenity.

- (8) Nothing in the definition of **risk of harm to public safety** in subsection (7), or in any other provision of this section, prevents the officer from taking into account the safety of the vehicle or combination or any load in or on it if the officer believes on reasonable grounds he or she can do so without prejudicing the safety of other property or of people, the environment, road infrastructure or public amenity.

**48 Detention of vehicles** (cf Roads Act, s 232)

- (1) This section applies if a direction is given under this Division.
- (2) An authorised officer may detain the vehicle or combination the subject of the direction until specified breaches of mass, dimension or load restraint requirements are rectified.
- (3) It is the duty of an authorised officer by whom a vehicle is detained under this section:
- (a) to take all reasonable steps to promptly inform the driver of the vehicle, and any other person that the authorised officer considers should be informed, of where the vehicle is detained, and
  - (b) to ensure that access to the vehicle is not unreasonably withheld from any person entitled to access.
- (4) A person must not, without the consent of an authorised officer, remove a detained vehicle from the place where it is for the time being located.

Maximum penalty: 50 penalty units.

**49 Authorisation to continue journey where only minor risk breaches** (cf model provisions, s 85)

- (1) **Application of section** This section applies to a vehicle or combination, where an authorised officer believes on reasonable grounds that:
- (a) the vehicle or combination is the subject of one or more minor risk breaches of mass, dimension or load restraint requirements, and
  - (b) the vehicle or combination is not or is no longer the subject of a substantial risk breach or a severe risk breach, and
  - (c) the driver is not or is no longer the subject of a direction for the rectification of the minor risk breach or any of the minor risk breaches.
- (2) **Authorisation to continue journey** The officer may authorise the driver of the vehicle or combination to continue its journey.

(3) **Conditions** An authorisation may be granted under this section unconditionally or subject to conditions imposed by the officer.

(4) **Offences** A person is guilty of an offence if:

- (a) the person is granted an authorisation under this section, and
- (b) the authorisation is subject to a condition, and
- (c) the person engages in conduct that results in a contravention of the condition.

Maximum penalty:

- (a) first offence—30 penalty units, or
- (b) subsequent offence—60 penalty units.

**50 Operation of directions in relation to combinations** (cf model provisions, s 86)

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

**51 Directions and authorisations to be in writing** (cf model provisions, s 87)

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

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

**52 Application of Division in relation to other directions** (cf model provisions, s 88)

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 4.2.

## **Division 4 Liability for breaches of mass, dimension or load restraint requirements**

### **53 Liability of consignor** (cf model provisions, s 91)

(1) A person is guilty of an offence if:

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

Maximum penalty: see Table to Division.

(2) A person is guilty an offence if:

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

Maximum penalty:

- (a) first offence—50 penalty units (in the case of an individual) or 250 penalty units (in the case of a corporation), or
- (b) subsequent offence—100 penalty units (in the case of an individual) or 500 penalty units (in the case of a corporation).

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

### **54 Liability of packer** (cf model provisions, s 92)

(1) A person is guilty of an offence if:

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

Maximum penalty: see Table to Division.

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

- (a) the weight of a freight container containing goods consigned for road transport exceeds the maximum gross weight as marked on the container or on the container's safety approval plate, and

(b) the person is the packer of any of the goods contained in the freight container.

Maximum penalty:

- (a) first offence—50 penalty units (in the case of an individual) or 250 penalty units (in the case of a corporation), or
- (b) subsequent offence—100 penalty units (in the case of an individual) or 500 penalty units (in the case of a corporation).

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

**55 Liability of loader** (cf model provisions, s 93)

(1) A person is guilty of an offence if:

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

Maximum penalty: see Table to Division.

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

**56 Liability of operator** (cf model provisions, s 94)

(1) A person is guilty of an offence if:

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

Maximum penalty: see Table to Division.

(2) If the breach concerned is a minor risk breach, a person prosecuted for an offence under this section has the benefit of the reasonable steps defence for an offence under this section.

(3) If the breach concerned is a substantial risk breach or a severe risk breach of a mass requirement, a person prosecuted for an offence under this section has the benefit of the reasonable steps defence for an offence under this section.

**57 Liability of driver** (cf model provisions, s 95)

(1) A person is guilty of an offence if:

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

(b) the person is the driver of the vehicle or combination concerned.

Maximum penalty: see Table to Division.

- (2) If the breach concerned is a minor risk breach, a person prosecuted for an offence under this section has the benefit of the reasonable steps defence for an offence under this section.
- (3) If the breach concerned is a substantial risk breach or a severe risk breach of a mass requirement, a person prosecuted for an offence under this section has the benefit of the reasonable steps defence for an offence under this section.

**58 Liability of consignee** (cf model provisions, s 96)

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

**Note—**

Section 69 (Liability of consignee—knowledge of matters relating to container weight declaration) provides that a consignee is taken to have intended the result referred to in subsection (1) if the consignee knew or ought reasonably to have known that a container weight declaration was not provided as required or that a container weight declaration contained false or misleading information about the weight of a freight container.

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



Maximum penalty:

- (a) first offence—50 penalty units (in the case of an individual) or 250 penalty units (in the case of a corporation), or
- (b) subsequent offence—100 penalty units (in the case of an individual) or 500 penalty units (in the case of a corporation).

**59 Penalty levels: offences referred to in Table to Division** (cf model provisions, s 131)

- (1) **Application of section** This section applies to the offences referred to in the Table to this Division.
- (2) **Penalties for individuals** A court may impose on an individual who is found guilty of an offence to which this section applies, being the first offence for which the offender has been found guilty under the provision concerned, a penalty not exceeding the maximum penalty indicated in respect of the offence in Column 2 of the Table to this Division.
- (3) A court may impose on an individual who is found guilty of an offence to which this section applies, being the second or any subsequent offence for which the offender has been found guilty under the provision concerned, a penalty not exceeding the maximum penalty indicated in respect of the offence in Column 3 of the Table to this Division.
- (4) **Penalties for bodies corporate** A court may impose on a body corporate that is found guilty of an offence to which this section applies, being the first offence for which the offender has been found guilty under the provision concerned, a penalty not exceeding the maximum penalty indicated in respect of the offence in Column 4 of the Table to this Division.
- (5) A court may impose on a body corporate that is found guilty of an offence to which this section applies, being the second or any subsequent offence for which the offender has been found guilty under the provision concerned, a penalty not exceeding the maximum penalty indicated in respect of the offence in Column 5 of the Table to this Division.

**Table of penalties for mass, dimension and load restraint breaches**

| Column 1 | Column 2  | Column 3   | Column 4  | Column 5   |
|----------|---|--|---|--|
| Offence  | Maximum court-imposed penalty on individual for first offence | Maximum court-imposed penalty on individual for subsequent offence | Maximum court-imposed penalty on body corporate for first offence | Maximum court-imposed penalty on body corporate for subsequent offence |

|  |   |  |  |   |
|--|---|--|--|---|
| Minor risk<br>breach of mass<br>requirement<br>(including<br>sections 53 (1),<br>54 (1), 55, 56<br>and 57—liability<br>of consignor,<br>packer, loader,<br>operator or<br>driver)                              | 10 penalty units  | 20 penalty units   | 50 penalty units   | 100 penalty units   |
| Substantial risk<br>breach of mass<br>requirement<br>(including<br>sections 53 (1),<br>54 (1), 55, 56<br>and 57—liability<br>of consignor,<br>packer, loader,<br>operator or<br>driver)                        | 20 penalty units  | 40 penalty units   | 100 penalty units  | 200 penalty units   |
| Severe risk<br>breach of mass<br>requirement<br>(including<br>sections 53 (1),<br>54 (1), 55, 56<br>and 57—liability<br>of consignor,<br>packer, loader,<br>operator or<br>driver)                             | 50 penalty units plus<br>5 penalty units for<br>every additional 1%<br>over 120% overload | 100 penalty units<br>plus 10 penalty units<br>for every additional<br>1% over 120%<br>overload | 250 penalty units<br>plus 25 penalty units<br>for every additional<br>1% over 120%<br>overload | 500 penalty units plus 50<br>penalty units for every<br>additional 1% over 120%<br>overload |
| Minor risk<br>breach of<br>dimension or<br>load restraint<br>requirement<br>(including<br>sections 53 (1),<br>54 (1), 55, 56<br>and 57—liability<br>of consignor,<br>packer, loader,<br>operator or<br>driver) | 7.5 penalty units   | 15 penalty units   | 37.5 penalty units   | 75 penalty units  |

Substantial risk  
breach of  
dimension or  
load restraint  
requirement  
(including  
sections 53 (1), 15 penalty units      30 penalty units      75 penalty units      150 penalty units  
54 (1), 55, 56  
and 57—liability  
of consignor,  
packer, loader,  
operator or  
driver)

Severe risk  
breach of  
dimension or  
load restraint  
requirement  
(including  
sections 53 (1), 50 penalty units      100 penalty units      250 penalty units      500 penalty units  
54 (1), 55, 56  
and 57—liability  
of consignor,  
packer, loader,  
operator or  
driver)

## Division 5 Sanctions

### 60 Matters to be taken into consideration by courts (cf model provisions, s 97)

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

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

**61 Default categorisation** (cf model provisions, s 98)

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

## **Division 6 Container weight declarations**

**62 Application of Division** (cf model provisions, s 99)

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.

**63 Meaning of “responsible entity”** (cf model provisions, s 100)

A **responsible entity**, in relation to a freight container, is:

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

**64 Container weight declarations** (cf model provisions, s 101)

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

**65 Complying container weight declarations** (cf model provisions, s 102)

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

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

**66 Duty of responsible entity** (cf model provisions, s 103)

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

Maximum penalty: 40 penalty units (in the case of an individual) or 200 penalty units (in the case of a corporation).

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

**67 Duty of operator** (cf model provisions, s 104)

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

Maximum penalty: 60 penalty units (in the case of an individual) or 300 penalty units (in the case of a corporation).

- (6) A person prosecuted for an offence under this section has the benefit of the reasonable steps defence.
- (7) Any or all of subsections (2), (3) and (4) do not apply in circumstances prescribed by the regulations.

**68 Duty of driver** (cf model provisions, s 105)

- (1) A person must not drive a vehicle or combination loaded with a freight container on a road in this jurisdiction without first having been provided with the relevant container weight declaration.
- (2) If a container weight declaration relating to a freight container is provided to a driver of a vehicle or combination with the container, the driver must, during the course of a journey in this jurisdiction, keep the declaration in or about the vehicle or combination or in a manner that enables it to be readily accessed from the vehicle or combination.
- (3) The driver is guilty of an offence if the driver engages in conduct that contravenes subsection (1) or (2).

Maximum penalty: 60 penalty units.

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

**69 Liability of consignee—knowledge of matters relating to container weight declaration** (cf model provisions, s 106)

Without limiting section 58 (Liability of consignee), a consignee of goods is taken to have intended the result referred to in section 58 (1) (b) if:

- (a) the conduct concerned related to a freight container, and
- (b) the person knew or ought reasonably to have known that:
  - (i) a container weight declaration for the container was not provided as required by this Act, or
  - (ii) a container weight declaration provided for the container contained information about the weight of the container and its contents that was false or misleading in a material particular.

**Note—**

Section 58 (1) provides that a person who is a consignee of goods consigned for road transport is guilty of an offence if the person engages in conduct that results or is likely to result in inducing or rewarding a breach of a relevant mass, dimension or load restraint requirement and the person intends that result.

## **Division 7 Recovery of losses resulting from non-provision of or inaccurate container weight declarations**

### **70 Recovery of losses for non-provision of container weight declaration** (cf model provisions, s 107)

- (1) This section applies where:
  - (a) a container weight declaration has not been provided as required by this Act, and
  - (b) a person suffered loss as a result of the non-provision of the declaration.
- (2) Any person (the **plaintiff**) has a right to recover under this Act, from the responsible entity for the freight container, the monetary value of any loss incurred by the plaintiff and consequent on the non-provision of the container weight declaration.
- (3) Losses that may be recovered include any or all of the following:
  - (a) any loss incurred from delays in the delivery of the freight container or any goods contained in it or of other goods,
  - (b) any loss incurred from spoliation of or damage to the goods,
  - (c) any loss incurred from the need to provide another vehicle or combination, and any loss incurred from any delay in the provision of another vehicle or combination,
  - (d) any costs or expenses incurred in weighing the freight container or any of its contents or both.
- (4) The plaintiff may enforce that right by bringing proceedings in a court of competent jurisdiction for an order for payment of the monetary value of the loss.

### **71 Recovery of losses for provision of inaccurate container weight declaration** (cf model provisions, s 108)

- (1) This section applies where:
  - (a) a container weight declaration has been provided as required by this Act, and
  - (b) the declaration contains information about a freight container:
    - (i) that is false or misleading in a material particular by understating the weight of the container, or
    - (ii) that is otherwise false or misleading in a material particular by indicating that the weight of the container is lower than its actual weight, and
  - (c) a breach of a mass requirement occurred as a result of the reliance, by an operator or driver of a vehicle or combination, on the information in the



declaration when transporting the container by road (whether or not enforcement action has been or may be taken in relation to the breach), and

(d) the operator or driver of the vehicle or combination:

- (i) had at the time a reasonable belief that the vehicle or combination concerned was not in breach of a mass requirement, and
- (ii) did not know, and ought not reasonably to have known, at the time that the minimum weight stated in the declaration was lower than the actual weight of the container, and

(e) a person suffered loss as a result of the provision of the declaration.

(2) Any person (the **plaintiff**) has a right to recover under this Act, from the responsible entity for the freight container, the monetary value of any loss incurred by the plaintiff and consequent on the provision of the container weight declaration.

(3) Losses that may be recovered under subsection (2) include any or all of the following:

- (a) any fine, infringement penalty or other penalty imposed on the plaintiff under an Australian applicable road law,
- (b) any fine, infringement penalty or other penalty imposed on an agent or employee of the plaintiff under an Australian applicable road law and reimbursed by the plaintiff,
- (c) any loss incurred from delays in the delivery of the freight container or any goods contained in it or of other goods,
- (d) any loss incurred from spoliation of or damage to the goods,
- (e) any loss incurred from the need to provide another vehicle or combination, and any loss incurred from any delay in the provision of another vehicle or combination,
- (f) any costs or expenses incurred in weighing the freight container or any of its contents or both.

(4) The plaintiff may enforce that right by bringing proceedings in a court of competent jurisdiction for an order for payment of the monetary value of the loss.

## **72 Recovery of amount by responsible entity** (cf model provisions, s 109)

(1) This section applies where an order under section 71 has been made or is being sought against a responsible entity for payment of the monetary value of any loss incurred by a person.

(2) The responsible entity has a right to recover under this Act, from a person (the

**information provider**) who provided the responsible entity with all or any of the information that was false or misleading, so much (the **attributable amount**) of the monetary value paid or payable by the responsible entity under the order as is attributable to that information.

- (3) The responsible entity may enforce that right by:
- (a) joining or seeking the joinder of the information provider in the proceedings for the order under section 71 and applying to the court for an order for payment of the attributable amount to be made when the order is made under that section, or
  - (b) bringing separate proceedings in a court of competent jurisdiction for an order for payment of the attributable amount.

**73 Assessment of monetary value or attributable amount** (cf model provisions, s 110)

- (1) In making an order under this Division, a court may assess:
- (a) the monetary value of any loss, as referred to in:
    - (i) section 70 (Recovery of losses for non-provision of container weight declaration), or
    - (ii) section 71 (Recovery of losses for provision of inaccurate container weight declaration), or
  - (b) the attributable amount, as referred to in section 72 (Recovery of amount by responsible entity),

in such manner as the court considers appropriate.

- (2) In making such an assessment, the court may take into account such matters as it considers relevant, including any evidence adduced in connection with any prosecution brought for a breach referred to in section 71.

**74 Costs** (cf model provisions, s 111)

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

an Australian Authority or a public authority of this or any other jurisdiction.

## **Division 8 Transport documentation**

### **75 False or misleading transport documentation: liability of consignor, packer, loader, receiver and others** (cf model provisions, s 112)

- (1) **Application of section** This section applies where goods are consigned for transport by road, or for transport partly by road and partly by some other means, and where all or any part of the transport by road occurs or is to occur in this jurisdiction.
- (2) **Liability of consignor** A person is guilty of an offence if:
  - (a) the transport documentation relating to the consignment is false or misleading in a material particular relating to the mass, dimension or load restraint of any or all of the goods consigned, and
  - (b) the person is the consignor of the goods.
- (3) **Liability of packer** A person is guilty of an offence if:
  - (a) the goods are packed in Australia in a freight container or other container or in a package or on a pallet for transport by road, and
  - (b) the transport documentation relating to the consignment is false or misleading in a material particular relating to the mass, dimension or load restraint of any or all of the goods consigned, and
  - (c) the person is the packer of the goods.
- (4) **Liability of loader** A person is guilty of an offence if:
  - (a) the goods are loaded on a vehicle or combination for transport by road, and
  - (b) the transport documentation relating to the consignment is false or misleading in a material particular relating to the mass, dimension or load restraint of any or all of the goods consigned, and
  - (c) the person is the loader of the goods.
- (5) **Liability of receiver** A person is guilty of an offence if:
  - (a) the goods are packed outside Australia in a freight container or other container or in a package or on a pallet for transport by road, and
  - (b) the transport documentation relating to the consignment is false or misleading in a material particular relating to the mass, dimension or load restraint of any or all of the goods consigned, and
  - (c) the person is the receiver of the goods in Australia.

- (6) **Container weight declaration—liability of responsible entity** A person is guilty of an offence if:
- (a) a container weight declaration provided to an operator of a vehicle or combination contains information that is false or misleading in a material particular, and
  - (b) the person is the responsible entity who offered the freight container concerned to the operator for transport.
- (7) **Container weight declaration—liability of operator** A person is guilty of an offence if:
- (a) a container weight declaration provided to a driver of a vehicle or combination contains information that is false or misleading in a material particular, and
  - (b) the person is the operator of the vehicle or combination who arranged for the freight container concerned to be transported in this jurisdiction.
- (8) **Container weight declaration—certain information not misleading** Information in a container weight declaration is not false or misleading for the purposes of this Act merely because it overstates the actual weight of the freight container and its contents.
- (9) **Reasonable steps defence** A person prosecuted for an offence under this section has the benefit of the reasonable steps defence.

**Note—**

Section 89 (Reasonable steps defence—reliance on container weight declaration) makes provision for reliance on a container weight declaration where an operator or driver is charged with an offence involving a breach of a mass requirement and is seeking to rely on the reasonable steps defence.

- (10) **Definition** In this section:

**receiver** of goods in Australia means:

- (a) the person who first receives them in Australia, otherwise than as the person who merely unloads them, or
  - (b) the person who unpacks the goods after they are first unloaded in Australia,
- but does not include a class of persons declared by the regulations to be excluded from this definition.

Maximum penalty:

- (a) first offence—50 penalty units (in the case of an individual) or 250 penalty units (in the case of a corporation), or
- (b) subsequent offence—100 penalty units (in the case of an individual) or 500 penalty units (in the case of a corporation).

## Division 9 Concessions

### 76 Definitions (cf model provisions, s 113)

In this Division:

**condition** of a mass, dimension, load restraint or access concession means a term or condition specified in or otherwise applicable to the concession, being:

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

**mass, dimension, load restraint or access concession** means a permit, authorisation, approval, exemption, notice or anything else that is granted or issued in writing under an applicable road law and that exempts a person from a provision of an applicable road law in relation to a mass, dimension, load restraint or access requirement, and includes an excess permit under section 27.

### 77 Offence of contravening condition (cf model provisions, s 114)

A person is guilty of an offence if:

- (a) the person holds a mass, dimension, load restraint or access concession, and
- (b) the person engages in conduct, and
- (c) that conduct contravenes a condition of the mass, dimension, load restraint or access concession.

Maximum penalty:

- (a) first offence—30 penalty units (in the case of an individual) or 150 penalty units (in the case of a corporation), or
- (b) subsequent offence—60 penalty units (in the case of an individual) or 300 penalty units (in the case of a corporation).

### 78 Effect of contravening condition—prosecutions or other action (cf model provisions, s 115)

- (1) If a person engages in conduct that contravenes a condition of a mass, dimension, load restraint or access concession:
  - (a) the concession does not, while the contravention continues, operate in the person's favour, and
  - (b) accordingly, the concession is to be disregarded in determining whether there has been a breach of a mass, dimension, load restraint or access requirement and in

determining the risk category to which the breach belongs.

- (2) Where, by virtue of subsection (1), a person is guilty of an offence against the provision of an applicable road law from which the person was exempted by the concession concerned, the person may be proceeded against either for that offence or for the offence under section 77 of engaging in conduct that contravenes a condition of the concession.

**79 Operation of Division** (cf model provisions, s 116)

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

**Part 3.4 Proceedings for offences for mass, loading and dimension requirements**

**Division 1 Liability of registered operators and owners**

**80 Liability of registered operators and owners** (cf model provisions, s 150, Roads Act, s 235)

- (1) This section applies to an applicable road law offence where the offence is expressed to be committed by an operator of a vehicle or combination (whether or not any other person can also commit the offence).
- (2) If an offence to which this section applies is committed:
- (a) with respect to a vehicle not forming part of a combination at the relevant time—the registered operator or owner of the vehicle is taken to have committed the offence and is punishable accordingly, or
  - (b) with respect to a whole combination or with respect to the towing vehicle of a combination—the registered operator or owner of the towing vehicle of the combination is taken to have committed the offence and is punishable accordingly, or
  - (c) with respect to a trailer forming part of a combination at the relevant time—the registered operator or owner of the towing vehicle and the registered operator or owner (if any) of the trailer are each taken to have committed the offence and are punishable accordingly.
- (3) The registered operator or owner has the benefit of the reasonable steps defence for an offence under this section, but only if the reasonable steps defence is available to a principal offender for an offence of the kind committed by the principal offender.
- (4) Subsection (2) does not apply if, during the period prescribed by the regulations and in the manner prescribed by the regulations, the registered operator or owner gives

the Authority a statutory declaration containing prescribed information, including the name and address of the operator of the vehicle or combination at the time of the offence.

- (5) This section does not affect the liability of the principal offender.
- (6) In this section:

**owner** does not include a lessor of a vehicle or combination.

**81 Complicity and common purpose (aiding and abetting)** (cf model provisions, s 151)

- (1) A person who aids, abets, counsels or procures the commission of an applicable road law offence by another person is taken to have committed that offence and is punishable accordingly.
- (2) For the person to be guilty:
  - (a) the person's conduct must have in fact aided, abetted, counselled or procured the commission of the offence by the other person, and
  - (b) the offence must have been committed by the other person.
- (3) For the person to be guilty, the person must have intended that:
  - (a) his or her conduct would aid, abet, counsel or procure the commission of any offence of the type the other person committed, or
  - (b) his or her conduct would aid, abet, counsel or procure the commission of an offence and have been reckless about the commission of the offence that the other person in fact committed.
- (4) Subsection (3) has effect subject to subsection (8).
- (5) A person cannot be found guilty of aiding, abetting, counselling or procuring the commission of an offence if, before the offence was committed, the person:
  - (a) terminated his or her involvement, and
  - (b) took reasonable steps to prevent the commission of the offence.
- (6) This section does not affect the liability of the principal offender.
- (7) A person may be found guilty of aiding, abetting, counselling or procuring the commission of an offence even if the principal offender has not been prosecuted or has not been found guilty.
- (8) Any special liability provisions that apply to an offence apply also to the offence of aiding, abetting, counselling or procuring the commission of that offence.

(9) In this section:

***special liability provision*** means:

- (a) a provision that provides that it is no defence that the defendant had a mistaken but reasonable belief as to the facts that constituted the offence, or
- (b) a provision that provides that, in a prosecution for an offence, it is not necessary to prove that the defendant knew a particular thing, or
- (c) a provision that provides that, in a prosecution for an offence, it is not necessary to prove that the defendant knew or believed a particular thing.

**82 Causing or permitting** (cf model provisions, s 152)

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

**83 Coercing, inducing or offering incentive** (cf model provisions, s 153)

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

Maximum penalty: 100 penalty units (in the case of an individual) or 500 penalty units (in the case of a corporation).

- (2) Without limiting the above, a person urges another person to commit an applicable road law offence if the person threatens, intimidates, coerces, induces or offers an incentive to the other person to commit the applicable road law offence.
- (3) This section does not affect the liability of the person who actually committed the applicable road law offence.

## **Division 2 Defences**

**84 Sudden or extraordinary emergency** (cf model provisions, s 154)

- (1) It is a defence to a prosecution for an applicable road law offence if the defendant carried out the conduct constituting the offence in response to circumstances of sudden or extraordinary emergency.
- (2) This section applies if and only if the person carrying out the conduct reasonably believed that:



- (a) circumstances of sudden or extraordinary emergency exist, and
- (b) committing the offence is the only reasonable way to deal with the emergency, and
- (c) the conduct is a reasonable response to the emergency.

**85 Lawful authority** (cf model provisions, s 155)

It is a defence to a prosecution for an applicable road law offence if the defendant establishes that the conduct constituting the offence is authorised or excused by or under a law.

**86 Other defences** (cf model provisions, s 156)

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

**Note—**

An example of such a defence is the defence of duress.

### **Division 3 Reasonable steps defence**

**87 Reasonable steps defence for mass requirements: drivers, operators and owners** (cf Roads Act 1993, s 235)

- (1) If a provision of this Act, or a regulation made under this Act, states that a person has the benefit of the **reasonable steps defence** for an offence relating to a mass requirement, it is a defence to a prosecution for an offence alleged to have been committed by a person as the driver, owner or operator of a vehicle or combination if the defendant establishes that the defendant:
  - (a) did not know, and could not reasonably be expected to have known, of the contravention, and
  - (b) had taken all reasonable steps to prevent the contravention.
- (2) If the relevant contravention resulted from the fact that the mass of the vehicle or part of the vehicle (together with the mass of any load on the vehicle or part of the vehicle) exceeded any limit prescribed by the regulations, then the court is not entitled to be satisfied that the defendant took all reasonable steps to prevent the contravention unless it is satisfied that the defendant took all reasonable steps to cause the mass of the load carried on the vehicle to be ascertained at the start of the journey during which the contravention occurred.
- (3) The court is not entitled to be satisfied that the defendant took all reasonable steps to cause the mass of a load to be ascertained unless it is satisfied that:
  - (a) the load had been weighed, or

(b) the defendant, or the driver of the vehicle, was in possession of sufficient and reliable evidence from which that weight was calculated.

(4) Subsections (2) and (3) do not apply if the defendant satisfies the court that at all material times that the defendant did not, either personally or through any agent or employee, have custody or control of the vehicle concerned.

(5) If the defendant is a corporation, then, in order to satisfy the court that the corporation did not know and could not reasonably be expected to have known of the relevant contravention, the corporation must satisfy the court that:

(a) no director of the corporation, and

(b) no person having management functions in the corporation in relation to activities in connection with which the contravention occurred,

knew of the contravention or could reasonably be expected to have known of it.

**88 Reasonable steps defence for other mass, dimension and load restraint requirements** (cf model provisions, s 89)

(1) **Application** This section does not apply to an offence relating to a mass requirement if the defendant is the driver, operator or owner of the vehicle concerned.

(2) **Defence** If a provision of this Act, or a regulation made under this Act, states that a person has the benefit of the **reasonable steps defence** for an offence, it is a defence to a prosecution for an offence to which this section applies if the defendant establishes that:

(a) the defendant did not know, and could not reasonably be expected to have known, of the contravention concerned, and

(b) either:

(i) the defendant had taken all reasonable steps to prevent the contravention, or

(ii) there were no steps that the defendant could reasonably be expected to have taken to prevent the contravention.

(3) **Matters that court may have regard to** Without limiting the above, in determining whether things done or omitted to be done by the defendant constitute reasonable steps, a court may have regard to:

(a) the circumstances of the alleged offence, including (where relevant) the risk category to which the breach concerned belongs, and

(b) without limiting paragraph (a), the measures available and measures taken for any or all of the following:

- (i) to accurately and safely weigh or measure the vehicle or combination or its load or to safely restrain the load in or on the vehicle or combination,
  - (ii) to provide and obtain sufficient and reliable evidence from which the weight or measurement of the vehicle or combination or its load might be calculated,
  - (iii) to manage, reduce or eliminate a potential breach arising from the location of the vehicle or combination, or from the location of the load in or on the vehicle or combination, or from the location of goods in the load,
  - (iv) to manage, reduce or eliminate a potential breach arising from weather and climatic conditions, or from potential weather and climatic conditions, affecting or potentially affecting the weight or measurement of the load,
  - (v) to exercise supervision or control over others involved in activities leading to the breach, and
- (c) the measures available and measures taken for any or all of the following:
- (i) to include compliance assurance conditions in relevant commercial arrangements with other responsible persons,
  - (ii) to provide information, instruction, training and supervision to employees to enable compliance with relevant laws,
  - (iii) to maintain equipment and work systems to enable compliance with relevant laws,
  - (iv) to address and remedy similar compliance problems that may have occurred in the past, and
- (d) whether the defendant had, either personally or through an agent or employee, custody or control of the vehicle or combination, or of its load, or of any of the goods included or to be included in the load, and
- (e) the personal expertise and experience that the defendant had or ought to have had or that an agent or employee of the defendant had or ought to have had.

**89 Reasonable steps defence—reliance on container weight declaration** (cf model provisions, s 90)

- (1) This section applies where the owner, operator or driver of a vehicle or combination is prosecuted for an offence involving a breach of a mass requirement and is seeking to establish the reasonable steps defence in relation to the offence.
- (2) To the extent that the weight of a freight container together with its contents is relevant to the offence, the defendant may rely on the weight stated in the relevant container weight declaration, unless it is established that the defendant knew or ought

reasonably to have known that:

- (a) the stated weight was lower than the actual weight, or
- (b) the distributed weight of the container and its contents, together with:
  - (i) the mass or location of any other load, or
  - (ii) the mass of the vehicle or combination or any part of it,would cause one or more breaches of mass requirements.

#### **90 Defence of mistaken and reasonable belief not available for specified offences**

In any proceedings for offences under the following provisions, it is no defence that the defendant had a mistaken but reasonable belief as to the facts that constituted the offence:

- (a) section 53 (Liability of consignor),
- (b) section 54 (Liability of packer),
- (c) section 55 (Liability of loader),
- (d) section 56 (Liability of operator),
- (e) section 57 (Liability of driver),
- (f) section 66 (Duty of responsible entity),
- (g) section 67 (Duty of operator),
- (h) section 68 (Duty of driver),
- (i) section 75 (False or misleading transport documentation: liability of consignor, packer, loader, receiver and others),
- (j) section 81 (Complicity and common purpose (aiding and abetting)), but only in so far as it relates to an offence referred to in this section.

### **Division 4 Other special defences**

#### **91 Meaning of “deficiency concerning a vehicle or combination”** (cf model provisions, s 157)

In this Division:

***deficiency concerning a vehicle or combination*** means:

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

carried in or on the vehicle or combination.

**92 Special defence for all owners or operators** (cf model provisions, s 158)

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

**93 Special defence for drivers, owners and operators of light vehicles**

A driver or an owner or operator of a vehicle or combination (other than a heavy vehicle or heavy combination) prosecuted for an applicable road law offence involving a breach of a mass requirement has the benefit of the reasonable steps defence.

**94 Special defence for drivers** (cf model provisions, s 159)

- (1) This section applies to an applicable road law offence involving deficiencies concerning a vehicle or combination.
- (2) It is a defence to an offence to which this section applies alleged to have been committed by a person as driver of the vehicle or combination if the person establishes that the person (whether as driver or otherwise):
  - (a) did not cause or contribute to the deficiencies concerning the vehicle or combination and had no responsibility for or control over the maintenance of the vehicle or combination or its equipment at any relevant time, and

(b) did not know and could not reasonably be expected to have known of the deficiencies, and

(c) could not reasonably be expected to have sought to ascertain whether there were or were likely to be deficiencies concerning the vehicle or combination.

**95 Special defence of compliance with direction** (cf model provisions, s 160)

It is a defence to an applicable road law offence if the person establishes that the conduct constituting the offence was done in compliance with a direction (whether or not a lawful direction) given by:

(a) an authorised officer, or

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

## Division 5 Fines

**96 Provisions relating to first offences and second or subsequent offences** (cf model provisions, s 132)

- (1) **Application of section** This section has effect for the purpose of determining whether an offence is a first offence or a second or subsequent offence for the purposes of determining the maximum penalty for an offence under Part 3.3.
- (2) **Separate occasion of second or subsequent offence** A person is found guilty of a second or subsequent offence if and only if the occasion in respect of which the second or subsequent offence occurred was different from the occasion in respect of which the first offence for which the person was found guilty occurred.
- (3) **Order in which offences actually committed is immaterial** It is immaterial in which order the offences were committed.
- (4) **Risk category is immaterial** In the case of offences relating to mass, dimension or load restraint requirements, it is immaterial whether the breaches concerned are of the same risk category or of different risk categories.
- (5) **Offence to be treated as first offence in cases of uncertainty** If the court is satisfied that a person is guilty of an offence but is unable to ascertain (from the information available to the court) whether or not the offence is a first offence for which the person was found guilty, the court may impose a penalty for the offence only as if it were a first offence.
- (6) **Offences under corresponding applicable road laws** In determining whether a person has been found guilty of an offence previously under a provision of an applicable road law, regard is to be had to finding of guilt for offences committed under corresponding provisions of the applicable road laws of other jurisdictions.

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

## **Part 3.5 Additional sanctions for heavy vehicle offences**

### **Division 1 Preliminary**

#### **97 Operation of Part**

- (1) This Part applies to heavy vehicles or heavy combinations or both and accordingly, in this Part references to vehicles or combinations are taken to be references to heavy vehicles or heavy combinations.
- (2) This Part applies to an **applicable road law** only to the extent to which the law concerned relates to a mass, dimension or load restraint requirement in respect of a heavy vehicle or heavy combination or both, and, in this Part, **Australian applicable road law** and **applicable road law offences** have corresponding applications.

#### **98 Penalties imposed by courts** (cf model provisions, s 129)

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

### **Division 2 Improvement notices**

#### **99 Definition** (cf model provisions, s 117)

In this Division:

**approved officer** means:

- (a) an authorised officer (other than a police officer), or an authorised officer of a class, for the time being nominated by the Authority as an approved officer for the purposes of this Division, or
- (b) a police officer, or a police officer of a class, for the time being nominated by the

Commissioner of Police (or by a police officer authorised by the Commissioner to make nominations for the purposes of this section) as an approved officer for the purposes of this Division.

**100 Improvement notices** (cf model provisions, s 118)

- (1) This section applies where an approved officer is of the opinion that any person has contravened, is contravening or is likely to contravene any provision of an Australian applicable road law.
- (2) The approved officer may serve on the person an improvement notice requiring the person to remedy the contravention or likely contravention, or the matters or activities occasioning the contravention or likely contravention, within the period specified in the notice.
- (3) The period within which the person is required by the improvement notice to comply with the notice must be at least 7 days after service of the notice.
- (4) However, the approved officer may specify a shorter period if satisfied that it is reasonably practicable for the person to comply with the notice by the end of the shorter period.
- (5) The improvement notice must:
  - (a) state that the approved officer is of the opinion referred to in subsection (1), and
  - (b) state the reasons for that opinion, and
  - (c) specify the provisions of the Australian applicable road laws in respect of which that opinion is held, and
  - (d) include information about obtaining a review of the notice, and
  - (e) state that it is issued under this section.
- (6) The improvement notice may but need not specify the method by which the alleged contravention or likely contravention, or the matters or activities occasioning the alleged contravention or likely contravention, are to be remedied.

**101 Contravention of improvement notice** (cf model provisions, s 119)

- (1) A person is guilty of an offence if:
  - (a) the person is subject to an improvement notice, and
  - (b) without reasonable excuse, the person engages in conduct that results in a contravention of a requirement of the improvement notice.

Maximum penalty: 100 penalty units (in the case of an individual) or 500 penalty units



(in the case of a corporation).

- (2) The onus of proof of reasonable excuse in proceedings for an offence under this section lies on the defendant.
- (3) In proceedings for an offence of engaging in conduct that results in a contravention of a requirement of an improvement notice, it is a defence if the defendant establishes that:
  - (a) the alleged contravention or likely contravention that resulted in the improvement notice, or
  - (b) the matters or activities occasioning the alleged contravention or likely contravention,were remedied within the period specified in the notice, though by a method different from that specified in the improvement notice.

**102 Amendment of improvement notices** (cf model provisions, s 120)

- (1) An improvement notice served by an approved officer who is an authorised officer (other than a police officer) may be amended by any approved officer who is an authorised officer.
- (2) An improvement notice served by an approved officer who is a police officer may be amended by any approved officer who is a police officer.
- (3) An amendment of an improvement notice is effected by service on the person affected of a notice stating the terms of the amendment.
- (4) An amendment of an improvement notice is ineffective if it purports to deal with a contravention of a different provision of an Australian applicable road law from that dealt with in the improvement notice as first served.
- (5) A notice of an amendment of an improvement notice must:
  - (a) state the reasons for the amendment, and
  - (b) include information about obtaining a review of the notice, and
  - (c) state that it is issued under this section.

**103 Cancellation of improvement notices** (cf model provisions, s 121)

- (1) An improvement notice served by an approved officer who is an authorised officer (other than a police officer) may be cancelled by:
  - (a) the Authority, or
  - (b) an approved officer who is an authorised officer and who is senior in rank to the

officer who served the notice.

- (2) An improvement notice served by an approved officer who is a police officer may be cancelled by:
  - (a) the Commissioner of Police, or
  - (b) an approved officer who is a police officer and who is senior in rank to the officer who served the notice.
- (3) Notice of cancellation of an improvement notice is required to be served on the person affected.
- (4) The regulations may make provision for or with respect to identifying or determining the seniority in rank of officers for the purposes of this section.

**104 Clearance certificates** (cf model provisions, s 122)

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

### **Division 3 Formal warnings**

**105 Formal warnings** (cf model provisions, s 123)

- (1) An authorised officer may, instead of taking proceedings against a person for a contravention of an applicable road law, formally warn the person if the officer believes:
  - (a) the person had taken reasonable steps to prevent the contravention and was unaware of the contravention, and
  - (b) the contravention is appropriate to be dealt with by way of a formal warning under this section.
- (2) A formal warning must be in writing.
- (3) A formal warning may not be given for a substantial risk breach or a severe risk breach of a mass, dimension or load restraint requirement.
- (4) In this section:

***proceedings*** includes action by way of a penalty notice.

**106 Withdrawal of formal warnings** (cf model provisions, s 124)

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

***proceedings*** includes action by way of a penalty notice.

**Division 4 Commercial benefits penalty orders**

**107 Commercial benefits penalty orders** (cf model provisions, s 133)

- (1) The court that finds a person guilty of an applicable road law offence may, on the application of the prosecutor or the Authority, make an order under this section.
- (2) The court may make a commercial benefits penalty order requiring the person to pay, as a fine, an amount not exceeding 3 times the amount estimated by the court to be the gross commercial benefit that:
  - (a) was received or receivable, by the person or by an associate of the person, from the commission of the offence, and
  - (b) in the case of a journey that was interrupted or not commenced because of action taken by an authorised officer in connection with the commission of the offence—would have been received or receivable, by the person or by an associate of the person, from the commission of the offence had the journey been completed.
- (3) In estimating the gross commercial benefit that was or would have been received or receivable from the commission of the offence, the court may take into account:
  - (a) benefits of any kind, whether monetary or otherwise, and
  - (b) any other matters that it considers relevant, including (for example):
    - (i) the value of any goods involved in the offence, and
    - (ii) the distance over which any such goods were or were to be carried.
- (4) However, in estimating the gross commercial benefit that was or would have been received or receivable from the commission of the offence, the court is required to disregard any costs, expenses or liabilities incurred by the person or by an associate of the person.

- (5) Nothing in this section prevents the court from ordering payment of an amount that is:
- (a) less than 3 times the estimated gross commercial benefit, or
  - (b) less than the estimated gross commercial benefit.

## **Division 5 Registration sanctions**

### **108 Power to affect vehicle registration** (cf model provisions, s 135)

- (1) This section applies to:
- (a) an applicable road law offence that was committed in relation to a vehicle or combination, other than an applicable road law offence that involved a breach of a mass, dimension or load restraint requirement, or
  - (b) an applicable road law offence that was committed in relation to a vehicle or combination and that involved a severe risk breach of a mass, dimension or load restraint requirement.
- (2) The court that finds a person guilty of an applicable road law offence to which this section applies may make an order that the registration of a vehicle in relation to which the offence was committed and of which the person is a registered operator is:
- (a) cancelled, or
  - (b) suspended for a specified period.
- (3) If the court makes an order under subsection (2) cancelling or suspending the registration of a vehicle of which the person found guilty is a registered operator, it may also make an order that the person, or an associate of the person, is disqualified from registering the vehicle for a specified period.
- (4) If the court considers that another person who is not present in court may be substantially affected by an order under this section, the court may issue a summons to that other person to show cause why the order should not be made.
- (5) An order under this section operates by force of this Act and takes effect immediately or from a later specified date.
- (6) Nothing in this section affects any power of the Authority to cancel the registration of a vehicle.

#### **Note—**

For licence sanctions that may be used against offenders, see Part 5.4.

## **Division 6 Supervisory intervention orders**

### **109 Supervisory intervention orders** (cf model provisions, s 136)

- (1) The court that finds a person guilty of an applicable road law offence may, on the application of the prosecutor or the Authority, if the court considers the person to be a systematic or persistent offender against the Australian applicable road laws, make an order under this section.
- (2) The court may make a supervisory intervention order requiring the person (at the person's own expense and for a specified period not exceeding one year) to do any or all of the following:
  - (a) to do specified things that the court considers will improve the person's compliance with applicable road laws or specified aspects of applicable road laws, including (for example) the following:
    - (i) appointing or removing staff to or from particular activities or positions,
    - (ii) training and supervising staff,
    - (iii) obtaining expert advice as to maintaining appropriate compliance,
    - (iv) installing monitoring, compliance, managerial or operational equipment (including, for example, intelligent transport system equipment),
    - (v) implementing monitoring, compliance, managerial or operational practices, systems or procedures,
  - (b) to conduct specified monitoring, compliance, managerial or operational practices, systems or procedures subject to the direction of the Authority or a person nominated by the Authority,
  - (c) to furnish compliance reports to the Authority or the court or both as specified in the order,
  - (d) to appoint a person to have responsibilities:
    - (i) to assist the person in improving compliance with applicable road laws or specified aspects of applicable road laws, and
    - (ii) to monitor the person's performance in complying with applicable road laws or specified aspects of applicable road laws and in complying with the requirements of the order, and
    - (iii) to furnish compliance reports to the Authority or the court or both as specified in the order.
- (3) The court may specify matters that are to be dealt with in compliance reports and the

form, manner and frequency in which compliance reports are to be prepared and furnished.

- (4) The court may require that compliance reports or aspects of compliance reports be made public, and may specify the form, manner and frequency in which they are to be made public.
- (5) The court may only make a supervisory intervention order if it is satisfied that the order is capable of improving the person's ability or willingness to comply with the applicable road laws, having regard to:
  - (a) the Australian applicable road law offences of which the person has been previously found guilty, and
  - (b) the Australian applicable road law offences for which the person has been proceeded against by way of penalty notices that have not been withdrawn, and
  - (c) any other offences or other matters that the court considers to be relevant to the conduct of the person in connection with road transport.
- (6) The order may direct that any other penalty or sanction imposed for the offence by the court is suspended until the court determines that there has been a substantial failure to comply with the order.
- (7) A court that has power to make supervisory intervention orders may revoke or amend a supervisory intervention order on the application of:
  - (a) the Authority, or
  - (b) the person in respect of whom the order was made, but in that case only if the court is satisfied that there has been a change of circumstances warranting revocation or amendment.
- (8) In this section:

**compliance report**, in relation to a person in respect of whom a supervisory intervention order is made, means a report relating to:

- (a) the performance of the person in complying with:
  - (i) the applicable road laws or aspects of the applicable road laws specified in the order, and
  - (ii) the requirements of the order, and
- (b) without limiting the above:
  - (i) things done by the person to ensure that any failure by the person to comply with the applicable road laws or the specified aspects of the applicable road

laws does not continue, and

(ii) the results of those things having been done.

**110 Contravention of supervisory intervention order** (cf model provisions, s 137)

A person is guilty of an offence if:

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

Maximum penalty: 100 penalty units (in the case of an individual) or 500 penalty units (in the case of a corporation).

**Division 7 Prohibition orders**

**111 Prohibition orders** (cf model provisions, s 138)

- (1) The court that finds a person guilty of an applicable road law offence may, on the application of the prosecutor or the Authority, if the court considers the person to be a systematic or persistent offender against the Australian applicable road laws, make an order under this section.
- (2) For the purpose of restricting opportunities for the person to commit or be involved in the commission of further Australian applicable road law offences, the court may make a prohibition order prohibiting the person, for a specified period, from having a specified role or responsibilities associated with road transport.
- (3) The court may not make a prohibition order that prohibits the person from driving or registering a vehicle.
- (4) The court may make an order under this section only if it is satisfied that the person should not continue the things the subject of the proposed order and that a supervisory intervention order is not appropriate, having regard to:
  - (a) the Australian applicable road law offences of which the person has been previously found guilty, and
  - (b) the Australian applicable road law offences for which the person has been proceeded against by way of penalty notices that have not been withdrawn, and
  - (c) any other offences or other matters that the court considers to be relevant to the conduct of the person in connection with road transport.
- (5) A court that has power to make prohibition orders may revoke or amend a prohibition order on the application of:
  - (a) the Authority, or

- (b) the person in respect of whom the order was made, but in that case only if the court is satisfied that there has been a change of circumstances warranting revocation or amendment.

**112 Contravention of prohibition order** (cf model provisions, s 139)

A person is guilty of an offence if:

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

Maximum penalty: 100 penalty units (in the case of an individual) or 500 penalty units (in the case of a corporation).

### Part 3.6 General

**113 Effect of administrative actions of authorities of other jurisdictions** (cf model provisions, s 175)

(1) In this section:

**administrative action** means an action of an administrative nature, as in force from time to time.

**administrative authority** means:

- (a) a corresponding Authority, or
  - (b) a person holding an office constituted by or under the law of another jurisdiction and prescribed by the regulations, or
  - (c) a body constituted by or under the law of another jurisdiction and prescribed by the regulations.
- (2) An administrative action of an administrative authority under or in connection with a corresponding applicable road law has the same effect in this jurisdiction as it has in the other jurisdiction.
- (3) Nothing in this section gives an administrative action effect in this jurisdiction or in a particular place in this jurisdiction:
- (a) in so far as the action is incapable of having effect in or in relation to this jurisdiction or that place, or
  - (b) if any terms of the action expressly provide that the action does not extend or apply to or in relation to this jurisdiction or that place, or
  - (c) if any terms of the action expressly provide that the action has effect only in the other jurisdiction or a specified place in the other jurisdiction.



- (4) This section applies only to administrative actions of kinds prescribed by the regulations.

**114 Effect of court orders of other jurisdictions** (cf model provisions, s 176)

- (1) In this section:

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

- (2) An order of a court or tribunal of another jurisdiction under or in connection with a corresponding applicable road law has the same effect in this jurisdiction as it has in the other jurisdiction.
- (3) Nothing in this section gives an order effect in this jurisdiction or in a particular place in this jurisdiction:
- (a) in so far as the order is incapable of having effect in or in relation to this jurisdiction or that place, or
  - (b) if any terms of the order expressly provide that the order does not extend or apply to or in relation to this jurisdiction or that place, or
  - (c) if any terms of the order expressly provide that the order has effect only in the other jurisdiction or a specified place in the other jurisdiction.
- (4) This section applies only to orders of kinds prescribed by the regulations.

**115 Declared zones and routes** (cf model provisions, s 180)

The Minister may, by notice in the Gazette, declare:

- (a) a specified area to be a declared zone for the purposes of this Act, or
- (b) a specified road, or a specified part of a specified road, to be a declared route for the purposes of this Act.

**116 Dismissal or other victimisation of employee or contractor assisting with or reporting breaches** (cf model provisions, s 181)

- (1) An employer must not dismiss an employee or contractor, injure an employee or contractor in his or her employment or alter an employee's or contractor's position to his or her detriment because the employee or contractor:
- (a) has assisted or has given any information to a public agency in respect of a breach or alleged breach of an Australian applicable road law, or
  - (b) has made a complaint about a breach or alleged breach of an Australian applicable road law to the employer, a fellow employee or fellow contractor, a trade union or a public agency.

(2) An employer or prospective employer must not refuse or deliberately omit to offer employment to a prospective employee or prospective contractor or treat a prospective employee or prospective contractor less favourably than another prospective employee or prospective contractor would be treated in relation to the terms on which employment is offered because the first-mentioned prospective employee or contractor:

(a) has assisted or has given any information to a public agency in respect of a breach or alleged breach of an Australian applicable road law, or

(b) has made a complaint about a breach or alleged breach of an Australian applicable road law to a former employer, a former fellow employee or former fellow contractor, a trade union or a public agency.

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

(a) the person engages in conduct that results in a contravention of subsection (1), and

(b) the person is an employer of the person concerned.

Maximum penalty: 100 penalty units (in the case of an individual) or 500 penalty units (in the case of a corporation).

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

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

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

Maximum penalty: 100 penalty units (in the case of an individual) or 500 penalty units (in the case of a corporation).

(5) In proceedings for an offence under this section, if all the facts constituting the offence other than the reason for the defendant's action are proved, the onus of proving that the defendant's action was not actuated by the reason alleged lies on the defendant.

(6) If a person is found guilty of an offence under this section, the court may, in addition to imposing a penalty on the offender, make either or both of the following orders:

(a) an order that the offender pay within a specified period to the employee or contractor or to the prospective employee or prospective contractor such damages as it thinks fit by way of compensation,

(b) an order that:

(i) the employee or contractor be reinstated or re-employed in the employee's or

contractor's former position or (if that position is not available) in a similar position, or

(ii) the prospective employee or prospective contractor be employed in the position for which the prospective employee or prospective contractor had applied or (if that position is not available) in a similar position.

- (7) The maximum amount of damages cannot exceed the monetary jurisdictional limit of the court in civil proceedings.
- (8) An order for payment of damages is enforceable as if it were a judgment of the court sitting in civil proceedings.
- (9) A person who fails to comply with an order for employment, reinstatement or re-employment is guilty of an offence.
- (10) A person is guilty of an offence if:
- (a) the person is subject to an order under subsection (6) (b), and
  - (b) the person engages in conduct that results in a contravention of the order.

Maximum penalty: 100 penalty units (in the case of an individual) or 500 penalty units (in the case of a corporation).

(11) Nothing in this section limits or affects the [Public Interest Disclosures Act 1994](#).

(12) In this section:

**contractor** means an individual who works under a contract for services.

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

### **117 Confidentiality** (cf model provisions, s 182)

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

- (a) as required or authorised by or under this or any other Act, or
  - (b) with the consent of the person from whom the information was obtained or to whom the information relates, or
  - (c) in connection with the administration of applicable road laws, or
  - (d) to an Australian Authority, an Australian authorised officer or an Australian police officer, or
  - (e) to a public authority prescribed by the regulations of any jurisdiction, or
  - (f) to a public authority of any jurisdiction for law enforcement purposes, or
  - (g) to a court or in connection with any legal proceedings, or
  - (h) in accordance with guidelines approved by the Minister.
- (3) Information that has been disclosed under subsection (2) for a particular purpose must not be used for any other purpose by:
- (a) the person to whom the information was disclosed, or
  - (b) any other person who gains access to the information (whether properly or improperly and whether directly or indirectly) as a result of that disclosure.
- (4) A person is guilty of an offence if the person engages in conduct that results in a contravention of subsection (2) or (3).
- Maximum penalty: 100 penalty units (in the case of an individual) or 500 penalty units (in the case of a corporation).
- (5) Nothing in this section prevents information from being used:
- (a) to assist a person in deciding whether or not to withdraw a formal warning for any offence, or
  - (b) to enable the Authority or Transport for NSW to accumulate aggregate data and to enable the Authority or Transport for NSW to authorise use of the aggregate data for the purposes of research or education.
- (6) Nothing in this section prevents the Authority (or an officer of the Authority) from disclosing information to Transport for NSW.

**118 False or misleading information provided to responsible persons** (cf model provisions, s 184)

- (1) A person is (subject to subsection (4)) guilty of an offence if:
- (a) the person is a responsible person and provides information to another

responsible person, and

- (b) the person does so knowing that the information is false or misleading in a material particular.

Maximum penalty: 100 penalty units (in the case of an individual) or 500 penalty units (in the case of a corporation).

- (2) A person is (subject to subsection (4)) guilty of an offence if:

- (a) the person is a responsible person and provides information to another responsible person, and
- (b) the information is false or misleading in a material particular, and
- (c) the person does so recklessly as to whether the information is false or misleading in a material particular.

Maximum penalty: 100 penalty units (in the case of an individual) or 500 penalty units (in the case of a corporation).

- (3) Subsection (1) does not apply if, at the time the person gave the information to another responsible person in written form, the person informed the other responsible person that the information was false or misleading in a material particular and specified in what respect it was false or misleading.

- (4) A person is not guilty of an offence under this section unless it is established that:

- (a) the material particular in which the information is alleged to be false or misleading relates to an ingredient of another Australian applicable road law offence that is or could be committed by the other or any other responsible person (the **affected person**), if the affected person relies or were to rely on the material particular contained in the information, and
- (b) the affected person did not know and could not reasonably be expected to know or ascertain that the information was false or misleading in that particular.

- (5) In this section:

**information** means information in any form, whether written or not.

**Note—**

It is an offence under sections 307B and 307C of the [Crimes Act 1900](#) to give false or misleading information to a person exercising a power, authority or duty under, or in connection with, a law of the State (such as an authorised officer) or to give a document that is false or misleading in compliance or purported compliance with a law of the State.

**119 Authority may provide information to TfNSW and corresponding Authorities** (cf model

provisions, s 188)

- (1) The Authority may provide information to Transport for NSW or a corresponding Authority about:
  - (a) any action taken by the Authority under any applicable road law, or
  - (b) any information obtained under this Act, including any information contained in any records, devices or other things inspected or seized under this Act.
- (2) This section has effect subject to the *Privacy and Personal Information Protection Act 1998*.
- (3) This section neither affects nor is affected by section 168 (Providing evidence to other authorities).

**120 Exemption from liability** (cf Roads Act, s 234)

Neither the Crown nor any other person is liable to the driver of a vehicle, or to any other person, for any loss or damage arising from the exercise or purported exercise in good faith of a power conferred by this Chapter or Part 4.2.

## **Chapter 4 Investigation powers relating to road transport legislation**

### **Part 4.1 Authorised officers**

**121 Authorised officers** (cf model provisions, s 14)

- (1) The Authority may, by instrument in writing, appoint:
  - (a) a specified person to be an authorised officer, or
  - (b) persons of a specified class to be authorised officers.
- (2) An authorised officer may but need not be a member of staff of the Authority or of a public authority.
- (3) Without limiting the above, an authorised officer as defined in a corresponding applicable road law may be appointed as an authorised officer under this section.

**122 Exercise of powers by authorised officers** (cf model provisions, s 15)

- (1) An authorised officer has the powers conferred on authorised officers by the road transport legislation.
- (2) However, the Authority may, by instrument in writing applicable to a specified authorised officer or each authorised officer of a specified class:
  - (a) provide that the officer may not exercise specified powers, or

- (b) provide that the officer may exercise specified powers only, or
  - (c) otherwise restrict the powers that the officer may exercise, including (for example) by limiting the circumstances in which the officer may exercise any powers conferred on the officer.
- (3) In addition, the regulations may identify powers that may only be exercised by authorised officers, or classes of authorised officers, who are specifically empowered by the Authority under subsection (2) (b) to exercise them.

**123 Delegation** (cf model provisions, s 17)

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

**124 Identification cards** (cf model provisions, s 18)

- (1) The Authority may:
  - (a) issue an authorised officer (other than a police officer) with an identification card, or
  - (b) designate a card, issued to an authorised officer (other than a police officer) by another person, body or authority (whether or not of this jurisdiction), as an identification card for the purposes of this Act.
- (2) An identification card issued by the Authority must:
  - (a) contain a photograph of the officer, the name of the Authority and either:
    - (i) the name and signature of the officer, or
    - (ii) a unique number that has been assigned to the officer by the Authority, and
  - (b) identify the officer as an authorised officer.

- (3) The Authority must not designate a card issued to an authorised officer by another person, body or authority as an identification card for the purposes of this Act unless the card:
- (a) contains a photograph of the officer, the name of the other person, body or authority and either:
    - (i) the name and signature of the officer, or
    - (ii) a unique number that has been assigned to the officer by the other person, body or authority, and
  - (b) identifies in some way (however expressed) the officer as an authorised officer under another law or as having official functions under another law.

**125 Production of identification** (cf model provisions, s 19)

- (1) This section applies to powers conferred on authorised officers or police officers by or under an applicable road law, but only where the physical presence of an officer at the scene is necessary for the exercise of the power.
- (2) An authorised officer (other than a police officer) must not exercise a power unless an identification card has been issued to or designated for the officer.
- (3) An authorised officer (other than a police officer) who is exercising or about to exercise a power is required to comply with a request to identify himself or herself, by producing his or her identification card.
- (4) A police officer who is exercising or about to exercise a power is required to comply with a request to identify himself or herself, by either of the following methods (at the officer's choice):
  - (a) producing his or her police identification,
  - (b) stating orally or in writing his or her name and place of duty.
- (5) An officer is required to comply with a requirement under subsection (3) or (4):
  - (a) immediately, or
  - (b) if it is not practicable to comply with the requirement immediately—as soon as practicable afterwards.
- (6) An officer need only identify himself or herself once to a particular person during the course of an incident, even though more than one power is being exercised during the course of the incident.
- (7) In this section:

***incident*** means:



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

**power** means a power under an Australian applicable road law.

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

**126 Return of identification cards** (cf model provisions, s 20)

- (1) A person is guilty of an offence if:
  - (a) the Authority has issued an identification card to the person, and
  - (b) the person was, but has stopped being, an authorised officer, and
  - (c) the Authority has requested the person to return the card to the Authority within a specified period, and
  - (d) the person did not return the card during the period.

Maximum penalty: 20 penalty units.

- (2) Subsection (1) does not apply if the person has a reasonable excuse.
- (3) The onus of proof of reasonable excuse in proceedings for an offence under this section lies on the defendant.

**127 Reciprocal powers of officers** (cf model provisions, s 21)

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

- (4) Anything done or omitted to be done by an authorised officer or police officer of this jurisdiction under subsection (3) (a) is taken to have been done under this Act as well as under the corresponding law.
- (5) The regulations may make provision for or with respect to the exercise of powers under this section.
- (6) Nothing in this section affects the appointment under section 121 (3) (Authorised officers) of persons as authorised officers for the purposes of this Act.

**128 Authority may exercise powers of authorised officers** (cf model provisions, s 22)

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

**129 Amendment or revocation of directions or conditions** (cf model provisions, s 185)

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

## **Part 4.2 Investigation powers for certain laws**

### **Division 1 Preliminary**

**130 Application of Part**

- (1) This Part applies in respect of obligations and functions under the following laws:

- (a) an Australian applicable road law,

**Note—**

**Australian applicable road law** is defined in section 3 (1) to mean an applicable road law or a corresponding applicable road law.

- (b) Part 2AA of the *Road Transport (Vehicle Registration) Act 1997*,
- (c) any other Act or regulation prescribed for the purposes of this Part.

- (2) In this Part, **applicable road law** means a law to which this Part applies.
- (3) Words and expressions used in this Part have the same meanings as they have in Chapter 3.

**131 Meaning of qualified, fit or authorised to drive or run engine** (cf model provisions, s 23)

- (1) For the purposes of this Part, a person is **qualified** to drive a vehicle or combination (or to run its engine) if the person:
  - (a) holds a driver licence of the appropriate class to drive it and the driver licence is not suspended, and
  - (b) is not prevented by or under a law (including, for example, by the conditions of the licence) from driving it at the relevant time.
- (2) For the purposes of this Part, a person is **fit** to drive a vehicle or combination (or to run its engine) if the person:
  - (a) is apparently physically and mentally fit to drive the vehicle or combination, and
  - (b) (without limiting the above) is not apparently affected by:
    - (i) alcohol, or
    - (ii) any drug that affects the person's fitness to drive,or both, and
  - (c) is not at the time found to have a concentration of alcohol in the person's breath or blood that exceeds the amount permitted by an applicable road law.
- (3) For the purposes of this Part, a person is **authorised**:
  - (a) to drive a vehicle or combination if the person is its operator or has the authority of the operator to drive it, or
  - (b) to run the engine of a vehicle or combination if the person is its operator or has the authority of the operator to drive it or to run the engine,regardless of whether or not the person is qualified to drive the vehicle or combination (or run its engine) as mentioned in subsection (1).

**132 Meaning of unattended vehicle or combination and driver of disconnected trailer** (cf model provisions, s 24)

- (1) For the purposes of this Part, a vehicle or a combination is **unattended** if:
  - (a) where the authorised officer concerned:
    - (i) is present at the scene—there is, after inspection and enquiry by the officer that is reasonable in the circumstances, apparently no person in, on or in the vicinity of the vehicle or the combination who appears to be a driver of the vehicle or the combination, or
    - (ii) is not present at the scene but is able to inspect the scene by means of

camera or other remote surveillance system—there is, after inspection by the officer that is reasonable in the circumstances, apparently no person in, on or in the vicinity of the vehicle or the combination who appears to be a driver of the vehicle or the combination, or

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

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

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

(iii) the person is subject to a direction under section 139 (Direction to leave vehicle or combination) in relation to the vehicle or combination.

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

### **133 Meaning of broken down vehicle or combination** (cf model provisions, s 25)

(1) For the purposes of this Part, a vehicle that is a motor vehicle is **broken down** if it is not possible to drive the vehicle because it is disabled through damage, mechanical failure, lack of fuel or any similar reason.

(2) For the purposes of this Part, a vehicle that is a trailer is **broken down** if it is not connected (either directly or by one or more other trailers) to a towing vehicle, whether or not the trailer is also disabled through damage, mechanical power or any similar reason.

(3) For the purposes of this Part, a combination is **broken down** if it is not possible to drive the combination because the combination or a vehicle comprised in the combination is disabled through damage, mechanical failure, lack of fuel or any similar reason.

### **134 Meaning of compliance purposes** (cf model provisions, s 26)

For the purposes of this Part, a power is exercised **for compliance purposes** if the power is exercised:

(a) to find out whether an applicable road law or an approved road transport compliance scheme is being complied with by that or any other person, or

(b) to investigate a breach or suspected breach of an applicable road law or an approved road transport compliance scheme by that or any other person.

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

### **135 Application of Division** (cf model provisions, s 27)

- (1) This Division applies to a vehicle or combination located:
  - (a) on any road, or
  - (b) in or on any public place, or
  - (c) in or on any premises occupied or owned by the Authority or by any other public authority, or
  - (d) in or on any premises where the officer is lawfully present after entry under Division 4.
- (2) This Division applies to a vehicle or combination seen on any road.
- (3) This Division applies to the driver of a vehicle or combination who is apparently in, on or in the vicinity of the vehicle or combination.

### **136 Direction to stop vehicle or combination: to enable exercise of other powers** (cf model provisions, section 28)

- (1) An authorised officer may, for the purpose of or in connection with exercising other powers under an applicable road law, direct:
  - (a) the driver of a vehicle or combination to stop the vehicle or combination, or
  - (b) the driver of a vehicle or combination or any other person not to do any one or more of the following:
    - (i) move the vehicle or combination,
    - (ii) interfere with it or any equipment in or on it,
    - (iii) interfere with its load.
- (2) A direction to stop a vehicle or combination may require that it be stopped without delay, or that it be stopped at the nearest place for it to be safely stopped as indicated by the officer.
- (3) A direction to stop the vehicle or combination, or not to move it, or not to interfere with it or any equipment in or on it or with its load, does not prevent an authorised officer from giving the driver or another person any later inconsistent directions under other provisions of the applicable road laws.
- (4) A direction ceases to be operative to the extent that an authorised officer:
  - (a) gives the driver or other person a later inconsistent direction, or

(b) indicates to the driver or other person that the direction is no longer operative.

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

(a) the person is subject to an operative direction under subsection (1), and

(b) the person engages in conduct that results in a contravention of the direction.

Maximum penalty: 60 penalty units.

(6) In this section:

**stop** a vehicle or combination means to stop the vehicle or combination and keep it stationary.

**137 Direction to move vehicle or combination: to enable exercise of other powers** (cf model provisions, s 29)

(1) An authorised officer may, for the purpose of or in connection with the exercise of other powers under an applicable road law, direct the driver or operator of a vehicle or combination to move it or cause it to be moved to the nearest suitable location that is within the prescribed distance and specified by the officer.

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

(a) the person is subject to a direction under subsection (1), and

(b) the person engages in conduct that results in a contravention of the direction.

Maximum penalty: 60 penalty units (in the case of an individual) and 300 penalty units (in the case of a corporation).

(3) In proceedings for an offence in relation to a contravention of a direction under subsection (1), it is a defence if the person charged establishes that:

(a) it was not possible to move the vehicle or combination concerned because it was broken down, and

(b) the breakdown occurred for a physical reason beyond the driver's or operator's control, and

(c) the breakdown could not be readily rectified in a way that would enable the direction to be complied with within a reasonable time.

(4) In this section:

**prescribed distance** means a distance (in any direction) within a radius of 30 kilometres of:

(a) the location of the vehicle or combination when the direction is given, or

- (b) any point along the forward route of the journey, if the direction is given in the course of a journey of the vehicle or combination.

***suitable location*** means a location that the authorised officer concerned believes on reasonable grounds to be a suitable location having regard to any matters the officer considers relevant in the circumstances.

**138 Direction to move vehicle or combination: where danger or obstruction** (cf model provisions, s 30)

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

Maximum penalty: 60 penalty units (in the case of an individual) and 300 penalty units (in the case of a corporation).

- (4) In proceedings for an offence in relation to the contravention of a direction under subsection (2) (a), it is a defence if the person charged establishes that:
  - (a) it was not possible to move the vehicle or combination concerned because it was broken down, and
  - (b) the breakdown occurred for a physical reason beyond the driver's or operator's control, and
  - (c) the breakdown could not be readily rectified in a way that would enable the direction to be complied with within a reasonable time.

**139 Direction to leave vehicle or combination** (cf model provisions, s 31)

- (1) This section applies where:
  - (a) the driver of a vehicle or combination fails to comply with a direction given by an authorised officer under another provision of this Division, or
  - (b) an authorised officer believes on reasonable grounds that the driver of a vehicle or combination is not qualified, is not fit or is not authorised to drive the vehicle or combination in order to comply with such a direction.
- (2) The officer may direct the driver to do any one or more of the following:
  - (a) to vacate the driver's seat,
  - (b) to leave the vehicle or combination,
  - (c) not to occupy the driver's seat until permitted to do so by an authorised officer,
  - (d) not to enter the vehicle or combination until permitted to do so by an authorised officer.
- (3) The officer may direct any other person to do either or both of the following:
  - (a) to leave the vehicle or combination,
  - (b) not to enter the vehicle or combination until permitted to do so by an authorised officer.
- (4) A person is guilty of an offence if:
  - (a) the person is subject to a direction under subsection (2) or (3), and
  - (b) the person engages in conduct that results in a contravention of the direction.

Maximum penalty: 60 penalty units.

**140 Manner of giving directions under this Division** (cf model provisions, s 32)

- (1) A direction under this Division may be given to a driver or other person 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**

**141 Moving unattended vehicle or combination: to enable exercise of other functions** (cf



model provisions, s 33)

- (1) This section applies where an authorised officer:
  - (a) believes on reasonable grounds that a vehicle or combination is unattended on a road, and
  - (b) is seeking to exercise other functions under an applicable road law, and
  - (c) believes on reasonable grounds that the vehicle or combination should be moved to enable or to facilitate the exercise of those functions.
- (2) The officer may:
  - (a) move the vehicle or combination (by driving or towing it or otherwise), or
  - (b) authorise another person to move it (by driving or towing it or otherwise),to the extent reasonably necessary to enable or to facilitate the exercise of the functions concerned.
- (3) The officer may enter the vehicle or combination, or authorise another person to enter it, for the purpose of moving the vehicle.
- (4) The officer or person authorised by the officer may use reasonable force to do any or all of the following:
  - (a) to open unlocked doors and other unlocked panels and objects,
  - (b) to gain access to the vehicle or combination, or its engine or other mechanical components, to enable the vehicle or combination to be moved,
  - (c) to enable the vehicle or combination to be towed.
- (5) The officer or person authorised by the officer may drive the vehicle or combination only if qualified and fit to drive it.

**142 Moving unattended or broken down vehicle or combination: where danger or obstruction** (cf model provisions, s 34)

- (1) This section applies where an authorised officer believes on reasonable grounds that:
  - (a) a vehicle or combination on a road is unattended or broken down, and
  - (b) the vehicle or combination is causing serious harm, or creating an imminent risk of serious harm, to public safety, the environment or road infrastructure, or is causing or likely to cause an obstruction to traffic.
- (2) The officer may:
  - (a) move the vehicle or combination or any vehicle forming part of the combination

(by driving or towing it or otherwise), or

(b) authorise another person to move it (by driving or towing it or otherwise),  
to the extent reasonably necessary to avoid the danger or obstruction.

(3) The officer may:

(a) enter the vehicle or combination, or authorise another person to enter it, for the purpose of moving the vehicle, or

(b) separate any or all of the vehicles forming part of the combination, or authorise another person to separate them, for the purpose of moving any or all of the vehicles.

(4) The officer may drive the vehicle or combination even though the officer is not qualified to drive it, if the officer believes on reasonable grounds that there is no other person in, on or in the vicinity of the vehicle or combination who is more capable of driving it than the officer and who is fit and willing to drive it.

(5) The person authorised by the officer may drive the vehicle or combination even though the authorised person is not qualified to drive it, if the officer believes on reasonable grounds that there is no other person in, on or in the vicinity of the vehicle or combination who is more capable of driving it than the authorised person and who is fit and willing to drive it.

(6) The officer or person driving a vehicle or combination under the authority of this section is exempt from any other provision of the road transport legislation to the extent that the other provision would require him or her to be licensed or otherwise authorised to drive it.

(7) The officer or person authorised by the officer may use reasonable force to the extent reasonably necessary to avoid the danger or obstruction.

**143 Operator's authorisation not required for driving under this Division** (cf model provisions, s 35)

It is immaterial that the officer or person driving a vehicle or combination under the authority of this Division is not authorised to drive it (as referred to in section 131 (3) (Meaning of qualified, fit or authorised to drive or run engine)).

## **Division 4 Powers of inspection and search**

**Note—**

This Division authorises:

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

**144 Power to inspect vehicle or combination on a road, public place or certain official premises** (cf model provisions, s 36)

(1) **Application of section** This section applies to a vehicle or combination located at a place:

- (a) on any road, or
- (b) in or on any public place, or
- (c) in or on any premises occupied or owned by the Authority or by any other public authority,

whether or not the vehicle or combination is unattended.

(2) **Power to inspect** An authorised officer may inspect a vehicle or combination for compliance purposes.

(3) The officer may enter the vehicle or combination for the purpose of or in connection with conducting the inspection.

(4) **Consent not required** The officer may exercise powers under this section at any time, and without the consent of the driver or other person apparently in charge of the vehicle or combination or any other person.

(5) **What power includes** Without limiting the above, the power to inspect a vehicle or combination under this section includes any or all of the following:

- (a) the power to weigh, test, measure or take photographs of the vehicle or combination or any part of it or its equipment or load,
- (b) the power to check the existence or details of, or take photographs of, placards or other information required by or under an applicable road law or by or under an approved road transport compliance scheme to be displayed in or on the vehicle or combination, including placards or other information relating to its specifications, capabilities or legal entitlements,
- (c) the power to inspect and take copies of or extracts from any records that are located in or on the vehicle or combination and that are required to be carried in or on the vehicle or combination by or under an applicable road law or by or under an approved road transport compliance scheme,
- (d) the power to access or download information that is required to be kept by or under an applicable road law or by or under an approved road transport compliance scheme and that is:

- (i) stored electronically in equipment located in or on the vehicle, or
- (ii) accessible electronically from equipment located in or on the vehicle.

(6) **Use of force not permitted** This section does not authorise the use of force, but the officer may under this section do any or all of the following:

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

**145 Power to search vehicle or combination on a road, public place or certain official premises** (cf model provisions, s 37)

(1) **Application of section** This section applies to a vehicle or combination located at a place:

- (a) on any road, or
- (b) in or on any public place, or
- (c) in or on any premises occupied or owned by the Authority or by any other public authority,

whether or not the vehicle or combination is unattended.

(2) **Power to search** An authorised officer may search a vehicle or combination for compliance purposes, if the officer believes on reasonable grounds that:

- (a) the vehicle or combination has been used, is being used, or is likely to be used, in the commission of an offence under an applicable road law or in the commission of a breach of an approved road transport compliance scheme, or
- (b) the vehicle or combination has been or may have been involved in an incident involving death or personal injury or damage to property.

(3) The officer may form the necessary belief during or after an inspection or independently of an inspection.

(4) The officer may enter the vehicle or combination for the purpose of or in connection with conducting the search.

(5) **Consent not required** The officer may exercise powers under this section at any time, and without the consent of the driver or other person apparently in charge of the vehicle or combination or any other person.

- (6) **What power includes** Without limiting the above, the power to search a vehicle or combination under this section includes any or all of the following:
- (a) the power to search for evidence of an offence under an applicable road law or a breach of an approved road transport compliance scheme,
  - (b) the power to search for and inspect any records, devices or other things that relate to the vehicle or combination or any part of its equipment or load and that are located in or on the vehicle or combination,
  - (c) the power to take copies of or extracts from any or all of the following:
    - (i) any records that are located in or on the vehicle or combination and that are required to be carried in or on the vehicle or combination by or under an applicable road law or by or under an approved road transport compliance scheme,
    - (ii) any transport documentation or journey documentation located in or on the vehicle or combination,
    - (iii) any other records, or any readout or other data obtained from any device or thing, located in or on the vehicle or combination that the officer believes on reasonable grounds provide, or may on further inspection provide, evidence of an offence under an applicable road law or a breach of an approved road transport compliance scheme,
  - (d) any powers that may be exercised during an inspection of a vehicle or combination under section 144 (5) (Power to inspect vehicle or combination on a road, public place or certain official premises).
- (7) The power to search a vehicle or combination under this section does not include a power to search a person.
- (8) **Power of seizure** The officer may seize and remove any records, devices or other things from the vehicle or combination that the officer believes on reasonable grounds provide, or may on further inspection provide, evidence of an offence under an applicable road law or a breach of an approved road transport compliance scheme.
- (9) **Use of force** The officer may use reasonable force in the exercise of functions under this section.

#### **146 Additional vehicle search powers relating to fatigue offences**

- (1) **Application of section** This section applies to a vehicle or combination located at a place:
- (a) on any road, or

(b) in or on any public place, or

(c) in or on any premises occupied or owned by the Authority or by any other public authority,

whether or not the vehicle or combination is unattended.

- (2) **Power to search** An authorised officer may search a vehicle or combination for compliance purposes, if the officer believes on reasonable grounds that there may be in or on the vehicle or combination records, devices or other things that may provide evidence of an offence under a regulation made under section 11B.
- (3) The officer may form the necessary belief during or after an inspection or independently of an inspection.
- (4) The officer may enter the vehicle or combination for the purpose of or in connection with conducting the search.
- (5) **Consent not required** The officer may exercise powers under this section at any time, and without the consent of the driver or other person apparently in charge of the vehicle or combination or any other person.
- (6) **What power includes** Without limiting the above, the power to search a vehicle or combination under this section includes any or all of the following:
- (a) the power to search for evidence of an offence referred to in subsection (2),
  - (b) the power to search for and inspect any records, devices or other things that relate to the vehicle or combination or any part of its equipment or load, or the driving time, work time or rest time of a driver of the vehicle or combination, and that are located in or on the vehicle or combination,
  - (c) the power to take copies of or extracts from any or all of the following:
    - (i) any records that are located in or on the vehicle or combination and that are required to be carried in or on the vehicle or combination by or under an applicable road law or by or under an approved road transport compliance scheme,
    - (ii) any transport documentation or journey documentation located in or on the vehicle or combination,
    - (iii) any other records, or any readout or other data obtained from any device or thing, located in or on the vehicle or combination that the officer believes on reasonable grounds provide, or may on further inspection provide, evidence of an offence referred to in subsection (2),
  - (d) any powers that may be exercised during an inspection of a vehicle or

combination under section 144 (5) (Power to inspect vehicle or combination on a road, public place or certain official premises).

- (7) The power to search a vehicle or combination under this section does not include a power to search a person.
- (8) **Power of seizure** The officer may seize and remove any records, devices or other things from the vehicle or combination that the officer believes on reasonable grounds provide, or may on further inspection provide, evidence of an offence referred to in subsection (2).
- (9) **Use of force** The officer may use reasonable force in the exercise of functions under this section.

**147 Power to inspect premises** (cf model provisions, s 38)

- (1) **Application of section** This section applies to the following premises:
  - (a) any premises at or from which a responsible person carries on business, or that are occupied by a responsible person in connection with such a business, or that are a registered office of a responsible person,
  - (b) the garage address of a vehicle or combination,
  - (c) the base of the driver or drivers of a vehicle or combination,
  - (d) any premises where records required to be kept by or under an applicable road law or by or under an approved road transport compliance scheme are located or where any such records are required to be located.
- (2) **Power to inspect** An authorised officer may inspect premises for compliance purposes.
- (3) The officer may enter the premises for the purpose of conducting the inspection.
- (4) Without limiting the above, the officer may inspect, or enter and inspect, any vehicle or combination at the premises.
- (5) **Consent required, except for business premises during business hours** The inspection may be made:
  - (a) at any time with the consent of the occupier or other person apparently in charge of the premises, or
  - (b) if a business is carried on at the premises—at any time during the usual business operating hours applicable at the premises (whether or not the premises are actually being used for that purpose), and without consent.
- (6) **Unattended premises and residential premises** This section does not authorise, without consent, the entry or inspection of:

- (a) premises that are apparently unattended, unless the officer believes on reasonable grounds that the premises are not unattended, or
- (b) premises that are, or any part of premises that is, used predominantly for residential purposes.

(7) **What power includes** Without limiting the above, the power to inspect premises under this section includes any or all of the following:

- (a) the power to inspect and take copies of or extracts from any records located at the premises and required to be kept by or under an applicable road law or by or under an approved road transport compliance scheme,
- (b) the power to check the existence of and inspect any devices (including weighing, measuring, recording or monitoring devices) required to be installed, used or maintained by or under an applicable road law or by or under an approved road transport compliance scheme, and to inspect and take copies of or extracts from any readout or other data obtained from any such device,
- (c) the power to exercise with respect to a vehicle or combination located at the premises any powers that may be exercised during an inspection of a vehicle or combination under section 144 (5) (Power to inspect vehicle or combination on a road, public place or certain official premises),
- (d) the power to use photocopying equipment on the premises free of charge for the purpose of copying any records or other material.

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

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

**148 Power to search premises** (cf model provisions, s 39)

(1) **Application of section** This section applies to the following premises:

- (a) any premises at or from which a responsible person carries on business, or that are occupied by a responsible person in connection with such a business, or that are a registered office of a responsible person,
- (b) the garage address of a vehicle or combination,
- (c) the base of the driver or drivers of a vehicle or combination,



- (d) any premises where records required to be kept by or under an applicable road law or by or under an approved road transport compliance scheme are located or where any such records are required to be located,
  - (e) any premises where the officer concerned believes on reasonable grounds that:
    - (i) a vehicle or combination is or has been located, or
    - (ii) transport documentation or journey documentation is located.
- (2) **Power to search** An authorised officer may search premises for compliance purposes, if the officer believes on reasonable grounds:
- (a) that there may be at the premises records, devices or other things that may provide evidence of an offence under an applicable road law or of the commission of a breach of an approved road transport compliance scheme, or
  - (b) that:
    - (i) a vehicle or combination has been or may have been involved in an incident involving death or personal injury or damage to property, and
    - (ii) the vehicle or combination is connected with the premises.
- (3) For the purposes of this section, a vehicle or combination is **connected** with the premises if:
- (a) the premises are the garage address of the vehicle or combination, or
  - (b) the vehicle or combination is, or has within the past 72 hours been, located at the premises, or
  - (c) the premises are or may be otherwise connected (directly or indirectly) with the vehicle or combination or any part of its equipment or load.
- (4) The officer may form the necessary belief during or after an inspection or independently of an inspection.
- (5) The officer may enter the premises for the purpose of conducting the search.
- (6) Without limiting the above, the officer may search, or enter and search, any vehicle or combination at the premises.
- (7) **Search warrant or consent required** The search may be conducted:
- (a) at any time under the authority of a search warrant under this Act, or
  - (b) at any time with the consent of the occupier or other person apparently in charge of the premises.

- (8) **Unattended premises and residential premises** This section does not authorise, without a search warrant or consent, the entry or searching of:
- (a) premises that are unattended, unless the officer believes on reasonable grounds that the premises are not unattended, or
  - (b) premises that are, or any part of premises that is, used predominantly for residential purposes.
- (9) **What power includes** Without limiting the above, the power to search premises under this section includes any or all of the following:
- (a) the power to search for evidence of an offence under an applicable road law or a breach of an approved road transport compliance scheme,
  - (b) the power to search for and inspect any records, devices or other things that relate to a vehicle or combination or any part of its equipment or load, or the driving time, work time or rest time of a driver of the vehicle or combination, and that are located at the premises,
  - (c) the power to take copies of or extracts from any or all of the following:
    - (i) any records that are located at the premises and are required to be kept by or under an applicable road law or by or under an approved road transport compliance scheme,
    - (ii) any transport documentation or journey documentation located at the premises,
    - (iii) any other records, or any readout or other data obtained from any device or thing, located at the premises that the officer believes on reasonable grounds provide, or may on further inspection provide, evidence of an offence under an applicable road law or a breach of an approved road transport compliance scheme,
  - (d) the power to use photocopying equipment on the premises free of charge for the purpose of copying any records or other material,
  - (e) the power to exercise with respect to a vehicle or combination located at the premises any powers that may be exercised during a search of a vehicle or combination under section 145 (6) (Power to search vehicle or combination on a road, public place or certain official premises),
  - (f) any powers that may be exercised during an inspection of premises under section 147 (7) (Power to inspect premises).
- (10) The power to search premises under this section does not include a power to search a person.

- (11) **Power of seizure** The officer may seize and remove any records, devices or other things from the premises that the officer believes on reasonable grounds provide, or may on further inspection provide, evidence of an offence under an applicable road law or a breach of an approved road transport compliance scheme.
- (12) **Use of force** The officer may use reasonable force in the exercise of powers under this section.

**149 Residential purposes** (cf model provisions, s 40)

For the purposes of this Division, premises are, or any part of premises is, taken not to be used for residential purposes merely because temporary or casual sleeping or other accommodation is provided there for drivers of vehicles or combinations.

## **Division 5 Other directions**

**150 Direction to produce records, devices or other things** (cf model provisions, s 44)

- (1) An authorised officer may, for compliance purposes, direct any responsible person to produce:
- (a) any records required to be kept by or under an applicable road law, or
  - (b) any records comprising transport documentation or journey documentation in the person's possession or under the person's control, or
  - (c) any records, or any devices or other things that contain or may contain records, in the person's possession or under the person's control relating to or indicating:
    - (i) the use, performance or condition of a vehicle or combination, or
    - (ii) ownership, insurance or registration of a vehicle or combination, or
    - (iii) any load or equipment carried or intended to be carried by a vehicle or combination (including insurance of any such load or equipment), or
  - (d) any records, or any devices or other things that contain or may contain records, in the person's possession or under the person's control demonstrating that a vehicle's garage address recorded in the relevant register is the vehicle's actual garage address.
- (2) The direction must:
- (a) specify:
    - (i) the records, devices or other things, or
    - (ii) the classes of records, devices or other things,that are to be produced, and

(b) state where and to whom the records, devices or other things are to be produced.

**Note—**

Section 156 (Directions to state when to be complied with) deals with the time for compliance.

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

- (a) inspect records, devices or other things that are produced,
- (b) make copies of, or take extracts from, records, devices or other things that are produced,
- (c) seize and remove records, devices or other things that are produced that the officer believes on reasonable grounds may on further inspection provide evidence of an Australian applicable road law offence.

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

- (a) the person is subject to a direction under subsection (1), and
- (b) without reasonable excuse, the person engages in conduct that results in a contravention of the direction.

Maximum penalty: 40 penalty units (in the case of an individual) or 200 penalty units (in the case of a corporation).

(5) The onus of proof of reasonable excuse in proceedings for an offence under this section lies on the defendant.

**151 Direction to give name and other personal details in cases relating to heavy vehicle offences** (cf model provisions, s 42)

(1) If an authorised officer suspects on reasonable grounds that a person whose personal details are unknown to the officer:

- (a) is or may be a responsible person, or
- (b) has committed or is committing or is about to commit an Australian applicable road law offence, or
- (c) may be able to assist in the investigation of an Australian applicable road law offence or a suspected Australian applicable road law offence, or
- (d) is or may be the driver or other person in charge of a heavy vehicle or heavy combination that has been or may have been involved in an incident involving death or personal injury or damage to property,

the officer may direct the person to give the officer then and there any or all of the person's personal details.

(2) A person must not:

- (a) contravene a direction given under this section, or
- (b) give details that the person knows to be false or misleading in a material particular.

Maximum penalty: 20 penalty units.

- (3) It is a defence if the person charged establishes that the officer did not first warn the person that contravention of a direction under this section is an offence.
- (4) In proceedings for an offence of contravening a direction under this section in relation to a failure to state a business address, it is a defence if the person charged establishes that:
- (a) the person did not have a business address, or
  - (b) the person's business address was not connected (directly or indirectly) with road transport involving vehicles or combinations.
- (5) This section does not affect any other provision of this Act or any other law that requires a person to state or provide any personal details.

(6) In this section:

***personal details***, in relation to a person, means:

- (a) the person's full name, and
- (b) the address of where the person is living, and
- (c) the address of where the person usually lives, and
- (d) the person's business address.

**152 Direction to provide information** (cf model provisions, s 45)

- (1) An authorised officer may, for compliance purposes, direct a responsible person to provide information to the officer about a vehicle or combination or any load or equipment carried or intended to be carried by a vehicle or combination.
- (2) Without limiting the above, a direction under subsection (1) may require a responsible person who is associated with a particular vehicle or combination to do any or all of the following:
- (a) to state the name, home address and business address of:
    - (i) other responsible persons of specified types who are associated with the vehicle or combination, and

(ii) if so requested, in the case of a combination, the registered operator of each vehicle in the combination,

(b) to provide information about the current or intended journey of the vehicle or combination, including:

(i) the location of the start or intended start of the journey, and

(ii) the route or intended route of the journey, and

(iii) the location of the destination or intended destination of the journey.

(3) **Offence of contravening direction** A person is guilty of an offence if:

(a) the person is subject to a direction under subsection (1), and

(b) the person engages in conduct that results in a contravention of the direction.

Maximum penalty: 40 penalty units (in the case of an individual) or 200 penalty units (in the case of a corporation).

(4) **Offence of providing false or misleading information** A person is guilty of an offence if:

(a) the person is subject to a direction under subsection (1), and

(b) the person provides any information that is false or misleading in a material particular in purported response to the direction.

Maximum penalty: 100 penalty units (in the case of an individual) or 500 penalty units (in the case of a corporation).

(5) **Defence of no knowledge** In proceedings for an offence of contravening a direction under subsection (1), it is a defence if the defendant establishes that the person did not know and could not be reasonably expected to know or ascertain the required information.

(6) **Defence about business address** In proceedings for an offence of contravening a direction under subsection (1) in relation to a failure to state another person's business address, it is a defence if the defendant establishes that:

(a) the other person did not have a business address, or

(b) the other person's business address was not connected (directly or indirectly) with road transport involving vehicles or combinations.

**153 Direction to provide reasonable assistance for powers of inspection and search** (cf model provisions, s 46)

(1) **Direction to provide assistance** An authorised officer may direct a responsible person to provide assistance to the officer to enable the officer effectively to exercise a power

under:

- (a) section 144 (Power to inspect vehicle or combination on a road, public place or certain official premises), or
- (b) section 145 (Power to search vehicle or combination on a road, public place or certain official premises), or
- (c) section 146 (Additional vehicle search powers relating to fatigue offences), or
- (d) section 147 (Power to inspect premises), or
- (e) section 148 (Power to search premises).

(2) **Assistance that may be sought** Without limiting the above, the assistance may include helping the officer to do any or all of the following:

- (a) to find and gain access to any records or information relating to a vehicle or combination, or the driving time, work time or resting time of a driver of the vehicle or combination, including but not limited to:
  - (i) records and information required to be kept in or on a vehicle or combination (including records and information indicating its performance, specifications, capabilities or legal entitlements), or
  - (ii) records and information (including records and information relating to its performance, specifications, capabilities or legal entitlements) in a useable form for the purpose of ascertaining its compliance with requirements imposed by or under an applicable road law,
- (b) to find and gain access to electronically stored information,
- (c) to weigh or measure:
  - (i) the whole or any part of a vehicle or combination, including an axle or axle group, or
  - (ii) the whole or any part of its equipment or load,
- (d) to operate equipment or facilities for a purpose relevant to the power being or proposed to be exercised,
- (e) to provide access free of charge to photocopying equipment for the purpose of copying any records or other material.

(3) This section authorises the giving of a direction to run the engine of a vehicle or combination, but not otherwise to drive the vehicle or combination.

(4) **Circumstances in which direction can be given** A direction:

- (a) can only be given in relation to a power under section 144, 145, 146, 147 or 148 (the **principal power**) while the principal power can lawfully be exercised, and
- (b) ceases to be operative if the principal power ceases to be exercisable.

**Note—**

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

**(5) Offence of contravening direction** A person is guilty of an offence if:

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

Maximum penalty: 60 penalty units (in the case of an individual) or 300 penalty units (in the case of a corporation).

**(6) Unreasonable and other directions** Subsection (5) does not apply if:

- (a) the direction is unreasonable, or
- (b) without limiting the above, the direction or its subject-matter is outside the scope of the business or other activities of the person.

**(7)** The onus of proof of a matter set out in subsection (6) lies on the defendant in proceedings for an offence under this section.

**(8) Circumstances when officer or other person may run engine** If the responsible person to whom a direction to run the engine of a vehicle or combination is given under this section fails to comply with the direction or no responsible person is available or willing to do so, the officer may:

- (a) enter the vehicle or combination and run its engine, or
- (b) authorise any other person to do so.

**154 Provisions relating to running engine** (cf model provisions, s 47)

**(1)** This section applies to a person (in this section called the **authorised person**) who is:

- (a) a responsible person to whom a direction is given under section 153 to run the engine of a vehicle or combination, or
- (b) an officer authorised by section 153 (8) to run the engine of a vehicle or combination, or
- (c) a person authorised by an officer under section 153 (8) to run the engine of a



vehicle or combination.

- (2) The authorised person may run the engine even though the person is not qualified to drive the vehicle or combination, if the officer believes on reasonable grounds that there is no other person in, on or in the vicinity of the vehicle or combination who is more capable of running the engine than the authorised person and who is fit and willing to run the engine.
- (3) The authorised person may use reasonable force in complying with the direction to run the engine or when acting under the authority of section 153 (8) to run the engine.
- (4) It is immaterial that the authorised person is not authorised to run the engine.
- (5) The authorised person is, in complying with the direction to run the engine or when acting under the authority of section 153 (8) to run the engine, exempt from any other provision of the road transport legislation to the extent that the provision would require him or her to be licensed or otherwise authorised to do so.

**154A Directions relating to driver fatigue**

- (1) An authorised officer may exercise powers under this section if the officer believes on reasonable grounds that a driver has committed a fatigue-related offence and:
  - (a) that the driver is impaired by fatigue that may have been caused by the occurrence of the offence, or
  - (b) that the commission of the offence occurred sufficiently recently that there is a risk that the driver may be impaired by fatigue.
- (2) The authorised officer may do any of the following:
  - (a) direct the driver to take rest immediately, or to take additional rest at the driver's next required rest break,
  - (b) direct the driver to work reduced hours in the next relevant period to compensate for excess hours worked,
  - (c) direct the driver to take the next night rest time,
  - (d) direct the driver not to work for a specified period of time,
  - (e) if the officer has observed the driver driving in a way that the officer believes, on reasonable grounds, is dangerous, direct the driver to stop driving immediately, and authorise a qualified person to move the vehicle to a suitable rest place,
  - (f) if the driver fails to produce a specified record or document required to be kept in relation to fatigue management or the officer believes on reasonable grounds that any such record or document produced cannot be relied on, direct the driver not to

work for a 24-hour period.

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

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

Maximum penalty: 60 penalty units.

(4) In this section:

***fatigue-related offence*** means an offence under regulations made under section 11B, being an offence prescribed by the regulations for the purposes of this section.

**155 Manner of giving directions under this Division** (cf model provisions, s 48)

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

**156 Directions to state when to be complied with** (cf model provisions, s 49)

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

## **Division 6 Search warrants**

**157 Warrants** (cf model provisions, s 50)

- (1) This section applies where an authorised officer believes on reasonable grounds that:
  - (a) there may be at particular premises, then or within the next 72 hours, records, devices or other things that may provide evidence of an offence under an applicable road law, or
  - (b) a vehicle or combination has been or may have been involved in an incident involving death or personal injury or damage to property and:
    - (i) the vehicle or combination is or has been located at particular premises, or
    - (ii) particular premises are or may be otherwise connected (directly or indirectly) with the vehicle or combination or any part of its equipment or load.
- (2) The officer may apply to an authorised officer within the meaning of the [Law Enforcement \(Powers and Responsibilities\) Act 2002](#) for a search warrant authorising

the officer to exercise a power to enter and search the premises under section 148 (Power to search premises).

- (3) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to a search warrant issued under this section.
- (4) In this section, **premises** has the same meaning as it has in the *Law Enforcement (Powers and Responsibilities) Act 2002*.

## **Division 7 Other provisions regarding inspections and searches**

### **158 Use of assistants and equipment** (cf model provisions, s 51)

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

### **159 Use of equipment to examine or process things** (cf model provisions, s 52)

- (1) Without limiting section 158, an authorised officer exercising a power under this Part may bring to, or on to, a vehicle, combination or premises any equipment reasonably necessary for the examination or processing of things found in, on or at the vehicle, combination or premises in order to determine whether they are things that may be seized.
- (2) If:
  - (a) it is not practicable to examine or process the things at the vehicle, combination or premises, or
  - (b) the occupier of the vehicle, combination or premises consents in writing,the things may be moved to another place so that the examination or processing can be carried out in order to determine whether they are things that may be seized.
- (3) The officer, or a person assisting the officer, may operate equipment already in, on or at the vehicle, combination or premises to carry out the examination or processing of a thing found in, on or at the vehicle, combination or premises in order to determine whether it is a thing that may be seized, if the officer or person assisting believes on reasonable grounds that:
  - (a) the equipment is suitable for the examination or the processing, and

- (b) the examination or processing can be carried out without damage to the equipment or the thing.

**160 Use or seizure of electronic equipment** (cf model provisions, s 53)

(1) If:

- (a) a thing found in, on or at a vehicle, combination or premises is, or includes, a disk, tape or other device for the storage of information, and
- (b) equipment in, on or at the vehicle, combination or premises may be used with the disk, tape or other storage device, and
- (c) the authorised officer concerned believes on reasonable grounds that the information stored on the disk, tape or other storage device is relevant to determine whether a relevant applicable road law or approved road transport compliance scheme has been contravened,

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

- (2) If the officer or a person assisting the officer finds that a disk, tape or other storage device in, on or at the vehicle, combination or premises contains information of a kind referred to in subsection (1) (c), he or she may:
  - (a) put the information in documentary form and seize the documents so produced, or
  - (b) copy the information to another disk, tape or other storage device and remove that storage device from the vehicle, combination or premises, or
  - (c) if it is not practicable to put the information in documentary form or to copy the information, seize the disk, tape or other storage device and the equipment that enables the information to be accessed.
- (3) An officer or a person assisting an officer must not operate or seize equipment for the purpose mentioned in this section unless the officer or person assisting believes on reasonable grounds that the operation or seizure of the equipment can be carried out without damage to the equipment.

## **Division 8 Other provisions regarding seizure**

**161 Receipt for and access to seized material** (cf model provisions, s 54)

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

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

reasonable access to it.

**162 Embargo notices** (cf model provisions, s 55)

- (1) This section applies where:
  - (a) an authorised officer is authorised to seize any record, device or other thing under this Part, and
  - (b) the record, device or other thing cannot, or cannot readily, be physically seized and removed.
- (2) The officer may issue an embargo notice under this section.
- (3) An **embargo notice** is a notice forbidding the movement, sale, leasing, transfer, deletion of information from or other dealing with the record, device or other thing, or any part of it, without the written consent of the officer, the Authority or the Commissioner of Police.
- (4) The embargo notice:
  - (a) must be in the form, or contain the particulars, required by the regulations, and
  - (b) must list the activities that it forbids, and
  - (c) must set out a copy of subsection (8).
- (5) The officer may issue the notice:
  - (a) by causing a copy of the notice to be served on the occupier of the vehicle, combination or premises concerned, or
  - (b) if that person cannot be located after all reasonable steps have been taken to do so, by affixing a copy of the notice to the record, device or other thing in a prominent position.
- (6) A person is guilty of an offence if:
  - (a) the person knows that an embargo notice relates to a record, device or other thing, and
  - (b) the person:
    - (i) does anything that is forbidden by the notice under this section, or
    - (ii) instructs any other person to do anything that is forbidden by the notice under this section or to do anything that the person is forbidden to do by the notice.
- (7) It is a defence to a prosecution for an offence against subsection (6) to establish that the defendant:

- (a) moved the record, device or other thing, or part of it, for the purpose of protecting or preserving it, or
  - (b) notified the officer who issued the notice of the move, and of the new location of the record, device or other thing or part of it, within 48 hours after the move.
- (8) A person is guilty of an offence if:
- (a) an embargo notice has been served on the person, and
  - (b) the person fails to take reasonable steps to prevent any other person from doing anything forbidden by the notice.
- (9) Despite anything in any other Act, a sale, lease or transfer or other dealing with a record, device or other thing, or part of it, in contravention of this section is void.

Maximum penalty (subsections (6) and (8)): 80 penalty units (in the case of an individual) or 400 penalty units (in the case of a corporation).

## **Division 9 Miscellaneous**

### **163 Power to use force against persons to be exercised only by police officers** (cf model provisions, s 56)

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

### **164 Consent** (cf model provisions, s 57)

- (1) Before obtaining the consent of a person for the purposes of a provision of this Part, the authorised officer must inform the person that he or she may refuse to give consent.
- (2) An entry by or the exercise of any other power under this Part by an authorised officer by virtue of the consent of a person is not lawful unless the person voluntarily consented to the entry.
- (3) Consent may be withdrawn after it has been given, and the power concerned must no longer be exercised by virtue of the consent.

### **165 Directions may be given under more than one provision** (cf model provisions, s 58)

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

- (b) directions under one or more other provisions of this Part,
- or both.

**166 Restoring vehicle, combination or premises to original condition after action taken** (cf model provisions, s 59)

If:

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

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

**167 Protection from incrimination**

- (1) **Self-incrimination not an excuse** A person is not excused from a requirement to comply with a direction under this Part on the ground that complying with the requirement might incriminate the person or make the person liable to a penalty.
- (2) **Statement, information or answer not admissible if objection made** However, any statement made or any information or answer given or furnished by a natural person in compliance with a direction under this Part is not admissible in evidence against the person in criminal proceedings (except proceedings for an offence under this Part) if:
  - (a) the person objected at the time to doing so on the ground that it might incriminate the person, or
  - (b) the person was not warned on that occasion that the person may object to making the statement or giving or furnishing the information or answer on the ground that it might incriminate the person.
- (3) **Documents admissible** Any document produced by a person in compliance with a direction under this Part is not inadmissible in evidence against the person in criminal proceedings on the ground that the document might incriminate the person.
- (4) **Further information** Further information obtained as a result of a document produced, a statement made or information or answer given or furnished in compliance with a direction under this Part is not inadmissible on the ground:
  - (a) that the document, statement, information or answer had to be produced, made, given or furnished, or
  - (b) that the document, statement, information or answer might incriminate the

person.

**168 Providing evidence to other authorities** (cf model provisions, s 61)

- (1) Any records, devices or other things seized under this Part, or any information obtained under this Part, may, for the purposes of law enforcement, be given to any public authority of any jurisdiction (including any corresponding Authority) considered appropriate by the Authority or the Commissioner of Police, but only after consultation with the public authority concerned.
- (2) This section has effect subject to the [Privacy and Personal Information Protection Act 1998](#).

**169 Obstructing or hindering authorised officers** (cf model provisions, s 62)

- (1) A person is guilty of an offence if:
  - (a) an authorised officer is exercising a power under this Act, and
  - (b) the person obstructs or hinders the officer in the exercise of the power.

Maximum penalty: 80 penalty units (in the case of an individual) or 400 penalty units (in the case of a corporation).

- (2) However, an offence is not committed under this section in relation to a power under Division 4 (Powers of inspection and search) unless it is established that the power:
  - (a) was being exercised lawfully, and
  - (b) without limiting paragraph (a), was:
    - (i) exercisable without consent, or
    - (ii) being exercised under the authority of a warrant.

- (3) The onus of proof of a matter set out in subsection (2) lies on the prosecution in proceedings for an offence under this section.

**170 Impersonating authorised officers** (cf model provisions, s 63)

A person is guilty of an offence if the person impersonates an authorised officer.

Maximum penalty: 100 penalty units (in the case of an individual) or 500 penalty units (in the case of a corporation).

## **Part 4.3 Identity powers**

**171 Authorised officer may require production of driver licence and name and address from driver or rider** (cf former Act, s 19)

- (1) An authorised officer may, in the execution of his or her functions under the road



transport legislation, require the driver or rider of a vehicle or horse to do any or all of the following:

- (a) produce his or her driver licence (in the case of the driver of a motor vehicle),
- (b) state his or her name,
- (c) state his or her home address.

(2) A person must not:

- (a) refuse to comply with a requirement of an authorised officer under subsection (1),  
or
- (b) state a false name or home address.

Maximum penalty: 20 penalty units.

(3) In subsection (1), a reference to a driver of a vehicle (in the case of a motor vehicle) includes, where the driver is the holder of a learner licence and the motor vehicle is not a motor cycle, a reference to a holder of a driver licence occupying the seat in or on the motor vehicle next to the driver.

**172 Authorised officer may require production of driver licence and name and address from certain passengers** (cf former Act, s 20)

(1) A person occupying the seat in or on a motor vehicle (other than a motor cycle) next to a driver who holds a learner licence must, when required to do so by an authorised officer, produce the person's driver licence and state the person's name and home address.

Maximum penalty: 20 penalty units.

(2) A person accompanying another person who is attending a motor registry for the purpose of undergoing any test or examination required by the road transport legislation must, on request, produce his or her driver licence and state his or her name and home address if:

- (a) the request is made by an authorised officer, and
- (b) the person making the request believes on reasonable grounds that the person accompanying the person who is to undergo the test or examination has been giving driving instruction to that person.

Maximum penalty: 20 penalty units.

(3) In this section:

**motor registry** means a place at which registration of a vehicle can be effected by or on behalf of the Authority.

**173 Authorised officer may require responsible person for vehicle and others to disclose identity of driver who commits offence** (cf former Act, s 21)

- (1) If the driver of a motor vehicle is alleged to have committed an offence under the road transport legislation:
  - (a) the responsible person for the vehicle, or the person having the custody of the vehicle, must, when required to do so by an authorised officer, immediately give information (which must, if so required, be given in the form of a written statement signed by the responsible person) as to the name and home address of the driver, and
  - (b) any other person must, if required to do so by an authorised officer, give any information that it is in the person's power to give and that may lead to the identification of the driver.

Maximum penalty: 20 penalty units.

- (2) It is a defence to a prosecution for an offence under subsection (1) (a) if the defendant proves to the satisfaction of the court that he or she did not know and could not with reasonable diligence have ascertained the driver's name and home address.
- (3) A written statement purporting to be given under subsection (1) (a) and to contain particulars of the name and home address of the driver of a motor vehicle at the time of commission of an alleged offence under the road transport legislation that is produced in any court in proceedings against the person named in the statement as the driver for such an offence is evidence without proof of signature that the person was the driver of the vehicle at the time of the alleged offence if the person does not appear before the court.
- (4) In this section, **responsible person** has the same meaning as it has in Chapter 3.

**174 Production of driver licence to court** (cf former Act, s 22)

- (1) A person who is the holder of a driver licence and who is charged with a breach of the road transport legislation must produce his or her driver licence to the court at the hearing of the charge.
- (2) A person must not, without reasonable excuse, fail to comply with subsection (1).

Maximum penalty: 20 penalty units.

**175 Unauthorised demand for production of driver licence** (cf former Act, s 23)

- (1) A person must not (knowing that he or she is not by law authorised to require its production) demand production by another person of that other person's driver licence.

Maximum penalty: 20 penalty units.

- (2) For the purposes of this section, the making of a statement that could reasonably be understood, by the person to whom the statement is made, as indicating that that person is being required to produce his or her driver licence is taken to be a demand for its production.
- (3) Nothing in this section prohibits a request for production of a driver licence as a means of evidencing the identity or age of a person:
  - (a) in connection with the supply of any goods or services, or
  - (b) in connection with the conferring of any right, title or benefit, or
  - (c) in other circumstances,where it is reasonable for the person making the request to require evidence of the other person's identity or age.

## **Chapter 5 Enforcement of road transport legislation**

### **Part 5.1 Liability for offences**

#### **176 Multiple offenders** (cf model provisions, s 147)

- (1) This section applies where a provision of the road transport legislation provides (expressly or impliedly) that each of 2 or more persons is liable for an applicable road law offence.
- (2) Proceedings may be taken against all or any of the persons.
- (3) Proceedings may be taken against any of the persons:
  - (a) regardless of whether or not proceedings have been commenced against any of the other persons, and
  - (b) if proceedings have been commenced against any of the other persons—regardless of whether or not the proceedings have been concluded, and
  - (c) if proceedings have been concluded against any of the other persons—regardless of the outcome of the proceedings.
- (4) This section has effect subject to section 177 and to any express provisions of the road transport legislation.

#### **177 Double jeopardy** (cf model provisions, s 148)

- (1) A person may be punished only once in relation to the same failure to comply with a particular provision of the road transport legislation, even if the person is liable in more than one capacity.

- (2) Despite subsection (1), a person may be punished for more than one breach of a requirement where the breaches relate to different parts of the same vehicle or combination.

**178 Liability of directors, partners, employers and others for offences by bodies corporate, partnerships, associations and employees** (cf model provisions, s 149)

- (1) If a body corporate commits an offence under the road transport legislation, each director of the body corporate, and each person concerned in the management of the body corporate, is taken to have committed the offence and is punishable accordingly.
- (2) If a person who is a partner in a partnership commits an offence under an applicable road law in the course of the activities of the partnership, each other person who is a partner in the partnership, and each other person concerned in the management of the partnership, is taken to have committed the offence and is punishable accordingly.
- (3) If a person who is concerned in the management of an unincorporated association commits an applicable road law offence in the course of the activities of the unincorporated association, each other person concerned in the management of the unincorporated association is taken to have committed the offence and is punishable accordingly.
- (4) If an employee commits an applicable road law offence, the employer is taken to have committed the offence and is punishable accordingly.
- (4A) Subsections (1), (2), (3) and (4) do not apply in respect of an offence under a provision of a regulation made under the road transport legislation that is declared by such a regulation to be an excluded provision for the purposes of this section.
- (5) This section does not affect the liability of the person who actually committed the offence.
- (6) A person may be proceeded against and found guilty of an offence arising under this section whether or not the body corporate or other person who actually committed the offence has been proceeded against or been found guilty of the offence.
- (7) It is a defence to a prosecution for an offence arising under subsection (1) if the defendant establishes that:
- (a) the defendant was not in a position to influence the conduct of the body corporate in relation to the actual offence, or
  - (b) the defendant, being in such a position, took reasonable precautions and exercised due diligence to prevent the commission of the actual offence.
- (8) It is a defence to a prosecution for an offence arising under subsection (2) or (3) if the defendant establishes that:

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

**179 Liability of responsible person for vehicle for designated offences** (cf former Act, s 43)

- (1) **Responsible person for vehicle taken to have committed designated offences** If a designated offence occurs in relation to any registrable vehicle, the person who at the time of the occurrence of the offence is the responsible person for the vehicle is taken to be guilty of an offence under the provision concerned in all respects as if the responsible person were the actual offender guilty of the designated offence unless:
- (a) in any case where the offence is dealt with under Part 5.3—the person satisfies the authorised officer under section 183 that:
    - (i) the vehicle was at the relevant time a stolen vehicle or a vehicle illegally taken or used, or
    - (ii) the actual offender would have a defence to any prosecution for the designated offence brought against the offender, or
  - (b) in any other case—the person satisfies the court hearing the proceedings for the offence that:
    - (i) the vehicle was at the relevant time a stolen vehicle or a vehicle illegally taken or used, or
    - (ii) the actual offender would have a defence to any prosecution for the designated offence brought against the offender.
- (1A) **Maximum penalty payable by corporation that is taken to be guilty of certain camera recorded offences** If a corporation is taken to be guilty of a camera recorded offence (other than an unauthorised vehicle use offence) by the operation of subsection (1), the maximum monetary penalty that a court may impose on the corporation for the offence is taken to be 5 times the maximum monetary penalty for the offence for which the actual offender (as a natural person) would be liable.
- (2) **Liability of actual offender unaffected** Nothing in this section affects the liability of the

actual offender. However, if a penalty has been imposed on or recovered from any person in relation to any designated offence, no further penalty may be imposed on or recovered from any other person in relation to the offence.

- (3) **When responsible person not liable for parking offence** Despite subsection (1), the responsible person for a vehicle is not guilty of a parking offence by the operation of that subsection if:
- (a) in any case where such an offence is dealt with under Part 5.3—the responsible person:
    - (i) within 21 days after service on the responsible person of a penalty notice alleging that the responsible person has been guilty of such offence, supplies by relevant nomination document to the authorised officer under section 183 the name and address of the person who was in charge of the vehicle at all relevant times relating to the parking offence concerned, or
    - (ii) satisfies the authorised officer that the responsible person did not know and could not with reasonable diligence have ascertained the name and address, or
  - (b) in any other case—the responsible person:
    - (i) within 21 days after service on the responsible person of a court attendance notice in respect of the offence, supplies by statutory declaration to the informant the name and address of the person who was in charge of the vehicle at all relevant times relating to the parking offence concerned, or
    - (ii) satisfies the court hearing the proceedings for the offence that the responsible person did not know and could not with reasonable diligence have ascertained the name and address.
- (4) **Duty to inform if person not driver of vehicle committing camera recorded offence** A person who:
- (a) is served with a penalty notice or a court attendance notice in respect of a camera recorded offence, and
  - (b) was not the driver of the vehicle to which the offence relates at the time the offence occurred,
- must, within 21 days after service of the notice, supply by relevant nomination document to the authorised officer under section 183 (in the case of a penalty notice) or the prosecutor (in the case of a court attendance notice) the name and address of the person who was in charge of the vehicle at the time the offence occurred.
- (5) For the purposes of subsections (3) and (4), it is presumed that a penalty notice served on a person by post is served on the person 7 days after it is posted, unless

the person establishes that it was not received by the person, or was not received by the person within the 7-day period.

- (6) **Offence—failure to comply with subsection (4)** A person must comply with subsection (4) unless the person satisfies:
- (a) in the case of a penalty notice—the authorised officer, or
  - (b) in the case of a court attendance notice—the court dealing with the camera recorded offence, or
  - (c) in either case—the court dealing with the offence of failing to comply with subsection (4),

that he or she did not know and could not with reasonable diligence have ascertained that name and address.

Maximum penalty:

- (a) if the offence relates to a vehicle registered otherwise than in the name of a natural person—100 penalty units, or
  - (b) in any other case—50 penalty units.
- (7) **Offence—false nomination of person in charge of vehicle** A person must not, in a relevant nomination document supplied under subsection (4), falsely nominate another person as the person who was in charge of the vehicle at the time the offence occurred.

Maximum penalty:

- (a) if the offence relates to a vehicle registered otherwise than in the name of a natural person—100 penalty units, or
  - (b) in any other case—50 penalty units.
- (7A) A court or authorised officer may have regard to a statutory declaration that is provided by a person in deciding, for the purposes of subsection (3), (4) or (7), whether the person did not know and could not with reasonable diligence have ascertained the name and address of the person in charge of a vehicle.

(7B) If a statutory declaration is provided by a person under subsection (7A), it must include the matters (if any) prescribed by the regulations.

- (8) **When responsible person for vehicle not liable for camera recorded offence** A person who is served with a penalty notice or a court attendance notice in respect of a camera recorded offence is not guilty of that offence by operation of this section if the person:
- (a) complies with subsection (4) in relation to the offence, or
  - (b) satisfies the authorised officer (in the case of a penalty notice) or the court (in the

case of a court attendance notice) that he or she did not know and could not with reasonable diligence have ascertained the name and address of the person who was in charge of the vehicle at the time the offence occurred.

- (8A) **Nominations by corporations** The Authority may approve one or more documents (**approved nomination documents**) for use by corporations when nominating other persons under this section as persons in charge of vehicles for which the corporations are the responsible persons.
- (8B) Without limiting subsection (8A), the Authority may approve documents under that subsection:
- (a) to be provided in printed or electronic form (or both), and
  - (b) to be used in relation to more than one designated offence involving one or more vehicles for which a corporation is the responsible person.
- (8C) If a corporation that is the responsible person for a vehicle supplies an approved nomination document to an authorised officer for the purpose of subsection (3) or (4) instead of a statutory declaration, an authorised officer may, by written notice served on the corporation (a **verification notice**), require it to supply a statutory declaration for use in court proceedings that verifies such of the nominations contained in the approved nomination document as are specified in the verification notice.
- (8D) A corporation served with a verification notice must supply the required statutory declaration within the period specified in the notice (being a period of not less than 7 days after the date of service).
- Maximum penalty: 100 penalty units.
- (9) **Statutory declaration is admissible and is prima facie evidence** A statutory declaration supplied for the purposes of subsection (3), (4), (7A) or (8C), if produced in any proceedings against the person named in the declaration and in respect of the designated offence concerned, is admissible and is prima facie evidence:
- (a) in the case of a statutory declaration relating to a parking offence—that the person was in charge of the vehicle at all relevant times relating to the parking offence, or
  - (b) in the case of a statutory declaration relating to a camera recorded offence—that the person was the driver of the vehicle at the time the offence occurred.
- (10) **Statutory declaration to relate to one designated offence** A statutory declaration that relates to more than one designated offence does not constitute a statutory declaration under, or for the purposes of, subsection (3), (4) or (8C).

**Note—**



The Authority may approve a nomination document under subsection (8A) for use by a corporation instead of a statutory declaration that relates to more than one designated offence involving one or more vehicles for which the corporation is the responsible person. See subsection (8B).

**(10A) Average speed detected offences** The following provisions apply in relation to a penalty notice or court attendance notice for an average speed detected offence involving a heavy vehicle travelling between detection points:

- (a) a reference in any other provision of this section to the time of the occurrence of an offence is taken to be a reference to the period during which the heavy vehicle travelled between the detection points,
- (b) the actual offender for the purposes of this section is taken to be each driver of the heavy vehicle between the detection points,
- (c) any obligation under this section of the responsible person for the heavy vehicle to supply the name and address of the person who was in charge of the vehicle at the time the offence occurred is taken to be an obligation to provide the names and addresses of each of the persons who were in charge of the heavy vehicle between the detection points,
- (d) subsection (2) does not operate to prevent a penalty being imposed on or recovered from each of the drivers of the heavy vehicle between the detection points.

**Note—**

Section 43A of the *Road Transport (Safety and Traffic Management) Act 1999* allows the average speed of a heavy vehicle calculated from the time taken to travel between different detection points to be used as evidence of the actual speed at which the vehicle travelled. Section 43A (2) (b) of that Act (when read with section 43A (3)) provides that if there is more than one driver of the vehicle between the detection points, each driver is taken to have driven the heavy vehicle at the average speed of the vehicle except for any particular driver who can establish any exculpatory ground prescribed by the regulations.

**(10B) Provision of further identity information** An authorised officer or prosecutor to whom a relevant nomination document is supplied for the purpose of subsection (3) or (4) may, by written notice served on the nomination information provider, require the provider to do one or both of the following:

- (a) provide such relevant identity information that is in the provider's power to provide (including, if so required, by means of a written statement signed by the provider), as may be specified in the notice, within the period specified in the notice,
- (b) appear before the authorised officer or prosecutor at a specified time and place and provide (either orally or in writing) such relevant identity information that is in the provider's power to provide as may be specified in the notice.

**(10C)** The period or time specified in a notice under subsection (10B) for information to

be provided, or an appearance to be made, must be no earlier than 7 days after the date of service of the notice.

(10D) A person served with a notice under subsection (10B) must not, without lawful or reasonable excuse, refuse or fail to comply with the notice.

Maximum penalty: 20 penalty units.

(11) **Section does not derogate from any other law** The provisions of this section are in addition to and not in derogation of any other provisions of this or any other Act.

(12) **Definitions** In this section:

**average speed detected offence** means a speeding offence involving a heavy vehicle in respect of which the penalty notice or the court attendance notice indicates that the average speed of the vehicle was calculated from information recorded by approved average speed detection devices (within the meaning of the *Road Transport (Safety and Traffic Management) Act 1999*).

**camera recorded offence** means:

- (a) a public transport lane offence as defined in section 57B of the *Road Transport (Safety and Traffic Management) Act 1999* in respect of which the penalty notice or the court attendance notice indicates that the offence was detected by an approved traffic lane camera device (within the meaning of that Act), or
- (b) a traffic light offence as defined in section 57 of the *Road Transport (Safety and Traffic Management) Act 1999* in respect of which the penalty notice or the court attendance notice indicates that the offence was detected by an approved camera detection device (within the meaning of that Act), or
- (c) a speeding offence in respect of which the penalty notice or the court attendance notice indicates that the offence was detected by an approved speed measuring device and recorded by an approved camera recording device (within the meaning of the *Road Transport (Safety and Traffic Management) Act 1999*), or
- (d) a speeding offence in respect of which:
  - (i) the penalty notice or the court attendance notice indicates that the offence was detected by an approved speed measuring device within the meaning of the *Road Transport (Safety and Traffic Management) Act 1999*, and
  - (ii) the number plate of the vehicle concerned was recorded by a police officer using photographic or video equipment approved by the Commissioner of Police for the purposes of this paragraph, or
- (e) an average speed detected offence, or

- (f) an unauthorised vehicle use offence in respect of which the penalty notice or the court attendance notice indicates that the offence was detected by an approved camera device (within the meaning of section 22C of the *Road Transport (Vehicle Registration) Act 1997*).

**court attendance notice** means:

- (a) in relation to proceedings for an offence commenced in the Local Court—a court attendance notice within the meaning of the *Criminal Procedure Act 1986* issued in respect of the person alleged to have committed the offence, and
- (b) in relation to proceedings for an offence commenced in the Supreme Court in its summary jurisdiction—an application for an order under section 246 of the *Criminal Procedure Act 1986* in respect of the person alleged to have committed the offence.

**designated offence** means:

- (a) a camera recorded offence, or
- (b) a parking offence.

**detection points**, in relation to an average speed detected offence, has the same meaning as **detection points** has in section 43A of the *Road Transport (Safety and Traffic Management) Act 1999*.

**nomination information provider**, in relation to a relevant nomination document, means:

- (a) in the case of a document supplied by a responsible person for the vehicle concerned who is a natural person—the person who supplies the document, or
- (b) in the case of a document supplied by a responsible person for the vehicle concerned that is a corporation—a person who prepares or supplies the document on behalf of the corporation.

**parking offence** means any offence of standing or parking a motor vehicle or trailer or of causing or permitting a motor vehicle or trailer to stand, wait or be parked in contravention of any regulation made under the *Road Transport (Safety and Traffic Management) Act 1999*.

**prosecutor** has the same meaning as it has in the *Criminal Procedure Act 1986*.

**relevant identity information** means any information that may assist in confirming or establishing the identity of the person driving or in charge of a vehicle when a designated offence to which a relevant nomination document relates was committed.

**relevant nomination document** means:

- (a) in the case of a responsible person that is a corporation served with a penalty notice in relation to a designated offence:
  - (i) an approved nomination document under subsection (8A), or
  - (ii) a statutory declaration, or
- (b) in the case of a responsible person that is a corporation served with a court attendance notice in relation to a designated offence—a statutory declaration, or
- (c) in the case of a responsible person for a vehicle who is a natural person—a statutory declaration.

**unauthorised vehicle use offence** means an unauthorised vehicle use offence (within the meaning of section 22C of the *Road Transport (Vehicle Registration) Act 1997*), but does not include an offence where it is alleged that the offender merely caused, permitted or otherwise allowed a vehicle to be driven or used.

## Part 5.2 Proceedings for offences

### 180 Proceedings for offences (cf former Act, s 47)

- (1) Proceedings for an offence against the road transport legislation are to be dealt with summarily before the Local Court or the Supreme Court in its summary jurisdiction.
- (2) The maximum monetary penalty that may be imposed by the Local Court for an offence under a provision of this Act is:
  - (a) in the case of an offence under Chapter 3 or under a regulation made under section 11B or 11C—500 penalty units or the maximum monetary penalty provided for the offence, whichever is less, or
  - (b) in any other case—100 penalty units or the maximum monetary penalty provided for the offence, whichever is less.

### 181 Period within which proceedings for operator onus offences may be commenced (cf former Act, s 47)

- (1) Despite any other Act, proceedings for an operator onus offence may be commenced within 1 year after the date of the alleged commission of the offence.
- (2) In this section:

**operator onus offence** means a designated offence within the meaning of section 179 or an offence under section 179 (7).

### 182 Period within which proceedings for certain mass, dimension and load offences may be commenced (cf model provisions, s 128)

- (1) This section applies to applicable road law offences, other than:

- (a) offences prescribed by the regulations for the purposes of this section, and
  - (b) offences in respect of which proceedings may only be commenced within a period of less than 2 years after their alleged commission.
- (2) Despite any other Act, proceedings for an applicable road law offence to which this section applies may be commenced within:
- (a) the period of 2 years after the commission of the alleged offence, or
  - (b) a further period of 1 year commencing on the day on which the Authority or an authorised officer first obtained evidence of the commission of the alleged offence considered reasonably sufficient by the Authority or officer to warrant commencing proceedings.
- (3) For the purposes of subsection (2), a certificate purporting to have been issued by the Authority or an authorised officer as to the date when the Authority or an officer first obtained evidence considered reasonably sufficient by the Authority or officer to warrant commencing proceedings is admissible in any proceedings and is prima facie evidence of the matters stated.

## Part 5.3 Penalty notices

### 183 Penalty notices for certain offences (cf former Act, s 15)

- (1) A police officer or other authorised officer may serve a penalty notice on a person if it appears to the officer that the person has committed any of the following offences:
- (a) an offence under a provision of the road transport legislation (including an offence by virtue of the operation of section 179 of this Act) that is prescribed by the regulations as a penalty notice offence,
  - (b) an offence under the *Driving Instructors Act 1992* or any regulation made under that Act that is prescribed by the regulations as a penalty notice offence,
  - (c) an offence under section 650 (1) or (4) of the *Local Government Act 1993* (including an offence by virtue of the operation of section 651 of that Act),
  - (d) an offence under the *Motor Accidents Compensation Act 1999* or the regulations made under that Act that is prescribed by the regulations as a penalty notice offence,
  - (e) an offence under the *Passenger Transport Act 1990* or any regulation made under that Act that is prescribed by the regulations as a penalty notice offence,
  - (f) an offence under the *Recreation Vehicles Act 1983* or any regulation made under that Act that is prescribed by the regulations as a penalty notice offence,

- (g) an offence under the *Roads Act 1993* or any regulation made under that Act (including an offence by virtue of the operation of section 244 of that Act) that is prescribed by the regulations as a penalty notice offence.
- (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person can pay, within the time and to the person specified in the notice, the amount of penalty prescribed by the regulations for the offence if dealt with under this Part.
- (3) The regulations may:
- (a) prescribe an offence for the purposes of this section:
    - (i) by specifying the offence, or
    - (ii) by referring to the provision creating the offence, or
    - (iii) by providing that all offences under a specified Act, Part of an Act, or Division of a Part of an Act, or under specified regulations (being an Act, a Part or a Division or regulations referred to in subsection (1)) are prescribed as penalty notice offences, or
    - (iv) by providing that all offences under any such Act, Part, Division or regulations (other than such of those offences as are specified in the regulations) are prescribed as penalty notice offences, and
  - (b) prescribe the amount of penalty payable for the offence if dealt with under this section, and
  - (c) prescribe different amounts of penalties for different offences or classes of offences, and
  - (d) prescribe different amounts of penalties for the same kind of offence or class of offence committed in specified circumstances.
- (4) An offence in respect of which a penalty of imprisonment may be imposed under the road transport legislation (except an offence against section 25 (2) of the *Road Transport (Driver Licensing) Act 1998*) or the *Motor Accidents Act 1988* cannot be prescribed by the regulations as a penalty notice offence.
- (5) The amount of a penalty prescribed under this section for an offence is not to exceed the maximum amount of penalty that could be imposed for the offence by a court.

**184 Service of penalty notices** (cf former Act, s 16)

- (1) A penalty notice may be served personally or by post.
- (2) A penalty notice that relates to an offence of which the responsible person for a vehicle is guilty by virtue of section 179 or the owner is guilty by virtue of section 651

of the *Local Government Act 1993* may:

- (a) be served personally or by post, or
- (b) be addressed to the responsible person or owner without naming the responsible person for the vehicle or owner or stating his or her address and may be served by leaving it on or attaching it to the vehicle.

**185 Payment of penalty notices** (cf former Act, s 17)

- (1) If the amount of penalty prescribed for an alleged offence is paid under this Part, no person is liable to any further proceedings for the alleged offence.
- (2) Subsection (1) does not affect any power of the Authority under section 199.
- (3) Payment under this section is not to be regarded as an admission of liability for the purpose of, and does not in any way affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.

**186 Effect of Part on other kinds of proceedings** (cf former Act, s 18)

This Part does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.

## **Part 5.4 Sanctions relating to licences**

### **Division 1 Licence disqualification**

**187 Court may impose penalty and disqualify driver on conviction** (cf former Act, s 24)

- (1) Subject to section 188 of this Act, section 40 of the *Road Transport (Safety and Traffic Management) Act 1999* and sections 25 and 25A of the *Road Transport (Driver Licensing) Act 1998*, a court that convicts a person of an offence under the road transport legislation may, at the time of the conviction, order the disqualification of the person from holding a driver licence for such period as the court specifies.
- (2) If the court makes an order disqualifying the person, the person is disqualified from holding a driver licence for the period specified by the court.
- (3) Any disqualification under this section is in addition to any penalty imposed for the offence.
- (4) The regulations may:
  - (a) provide that any driver licence held by a person (or class of persons) who has been convicted of the offence of driving a motor vehicle on a road at a speed which is dangerous to the public under the *Road Transport (Safety and Traffic Management) Act 1999* or of any other prescribed speeding offence is subject to a speed inhibitor condition, and

- (b) provide a penalty for any breach of any such condition, and
  - (c) prescribe any matter necessary or convenient to be prescribed in relation to devices referred to in the definition of **speed inhibitor condition** in subsection (7).
- (5) The court is to cause particulars of each conviction or order under the road transport legislation to be forwarded to the Authority.
- (6) Section 10 of the *Crimes (Sentencing Procedure) Act 1999* does not apply if a person is charged before a court with any of the following offences if, at the time of or during the period of 5 years immediately before the court's determination in respect of the charge, that section, or section 556A of the *Crimes Act 1900*, is or has been applied to or in respect of the person in respect of a charge for another offence (whether of the same or a different kind) of the class referred to in this subsection:
- (a) an offence under section 42 of the *Road Transport (Safety and Traffic Management) Act 1999* of driving negligently (being driving occasioning death or grievous bodily harm),
  - (b) an offence under section 42 of the *Road Transport (Safety and Traffic Management) Act 1999* of driving a motor vehicle on a road furiously or recklessly or at a speed or in a manner which is dangerous to the public,
  - (c) an offence under section 9, 11B, 12 (1), 15 (4), 16, 18D (2), 18E (9), 18G (1), 24D (1), 43 or 70 of the *Road Transport (Safety and Traffic Management) Act 1999*,
  - (c1) an offence under section 52AB of the *Crimes Act 1900*,
  - (d) a severe risk breach of a mass, dimension or load restraint requirement within the meaning of Part 3.3,
  - (e) an offence of aiding, abetting, counselling or procuring the commission of any such offence,
  - (f) an offence referred to in section 10 (5) of the *Traffic Act 1909* as in force immediately before its repeal that was committed before that repeal.
- (7) In this section:
- road transport legislation** does not include the following:
- (a) the *Motor Vehicles Taxation Act 1988* or regulations made under that Act,
  - (b) Part 2A of the *Road Transport (Vehicle Registration) Act 1997* or regulations made for the purposes of that Part (within the meaning of that Part).

**speed inhibitor condition** means a condition limiting a driver licence to the driving of a motor vehicle to which is affixed a sealed device that prevents the engine from



propelling the vehicle at a speed in excess of 60 km/h.

**188 Disqualification for certain major offences** (cf former Act, s 25)

(1) **Definitions** In this section:

**automatic disqualification** means a disqualification under this section from holding a driver licence without specific order of a court.

**convicted person** means:

- (a) a person who is, in respect of the death of or bodily harm to another person caused by or arising out of the use of a motor vehicle driven by the person at the time of the occurrence out of which the death of or harm to the other person arose, convicted of:
  - (i) the crime of murder or manslaughter, or
  - (ii) an offence under section 33, 35, 53 or 54 or any other provision of the *Crimes Act 1900*, or
- (b) a person who is convicted of an offence under section 51A, 51B or 52AB of the *Crimes Act 1900*, or
- (c) a person who is convicted of an offence under any of the following provisions:
  - (i) section 42 of the *Road Transport (Safety and Traffic Management) Act 1999* of driving a motor vehicle on a road furiously or recklessly or at a speed or in a manner which is dangerous to the public,
  - (ii) section 42 of the *Road Transport (Safety and Traffic Management) Act 1999* of driving a motor vehicle negligently (being driving occasioning death or grievous bodily harm),
  - (iii) section 43 of the *Road Transport (Safety and Traffic Management) Act 1999*,
  - (iv) section 9 (1A), (1), (2) (a) or (b), (3) (a) or (b), (4) (a) or (b) or section 15 (4) or 16 of the *Road Transport (Safety and Traffic Management) Act 1999*,
  - (v) section 22 (2) of the *Road Transport (Safety and Traffic Management) Act 1999*,
  - (vi) section 12 (1) (a) or (b) of the *Road Transport (Safety and Traffic Management) Act 1999*,
  - (vii) section 29 (2) of the *Road Transport (Safety and Traffic Management) Act 1999*,
  - (viii) section 70 of the *Road Transport (Safety and Traffic Management) Act 1999*,

(ix) section 11B, 18D (2), 18E (9), 18G (1) or 24D (1) of the *Road Transport (Safety and Traffic Management) Act 1999*, or

(d) a person who is convicted of aiding, abetting, counselling or procuring the commission of, or being an accessory before the fact to, any such crime or offence.

**conviction** means the conviction in respect of which a person is a convicted person.

**ordered disqualification** means disqualification under this section from holding a driver licence that is ordered by a court.

- (2) **Disqualification if no previous major offence** If, at the time of the conviction of the convicted person or during the period of 5 years before the conviction (whether that period commenced before or commences after the commencement of this section), the convicted person is not or has not been convicted of any other major offence (whether of the same or a different kind):
- (a) where the conviction is for an offence under section 9 (1A), (1) or (2) or 11B (1) or (3) of the *Road Transport (Safety and Traffic Management) Act 1999*:
- (i) the person is automatically disqualified for 6 months from holding a driver licence, or
  - (ii) if the court that convicts the person thinks fit to order a shorter period (but not shorter than 3 months) of disqualification—the person is disqualified from holding a driver licence for such shorter period as may be specified in the order, or
- (b) where the conviction is for an offence under section 9 (3) or 12 (1) of the *Road Transport (Safety and Traffic Management) Act 1999*:
- (i) the person is automatically disqualified for 12 months from holding a driver licence, or
  - (ii) if the court that convicts the person thinks fit to order a shorter period (but not shorter than 6 months) or longer period of disqualification—the person is disqualified from holding a driver licence for such period as may be specified in the order, or
- (c) where the conviction is for an offence under section 18D (2), 18E (9), 18G (1), 24D (1) or 29 (2) of the *Road Transport (Safety and Traffic Management) Act 1999*:
- (i) the person is automatically disqualified for 3 years from holding a driver licence, or
  - (ii) if the court that convicts the person thinks fit to order a shorter period (but not shorter than 6 months) or longer period of disqualification—the person is

disqualified from holding a driver licence for such period as may be specified in the order, or

(d) where the conviction is for any other offence:

- (i) the person is automatically disqualified for a period of 3 years from holding a driver licence, or
- (ii) if the court that convicts the person thinks fit to order a shorter period (but not shorter than 12 months) or longer period of disqualification—the person is disqualified from holding a driver licence for such period as may be specified in the order.

**(3) Disqualification if previous major offence** If, at the time of the conviction of the convicted person or during the period of 5 years before the conviction (whether that period commenced before or commences after the commencement of this section), the convicted person is or has been convicted of one or more other major offences (whether of the same or a different kind):

(a) where the conviction is for an offence under section 9 (1A), (1) or (2) or 11B (1) or (3) of the *Road Transport (Safety and Traffic Management) Act 1999*:

- (i) the person is automatically disqualified for 12 months from holding a driver licence, or
- (ii) if the court that convicts the person thinks fit to order a shorter period (but not shorter than 6 months) or longer period of disqualification—the person is disqualified from holding a driver licence for such period as may be specified in the order, or

(b) where the conviction is for an offence under section 9 (3) or 12 (1) of the *Road Transport (Safety and Traffic Management) Act 1999*:

- (i) the person is automatically disqualified for 3 years from holding a driver licence, or
- (ii) if the court that convicts the person thinks fit to order a shorter period (but not shorter than 12 months) or longer period of disqualification—the person is disqualified from holding a driver licence for such period as may be specified in the order, or

(c) where the conviction is for an offence under section 18D (2), 18E (9), 18G (1), 24D (1) or 29 (2) of the *Road Transport (Safety and Traffic Management) Act 1999*:

- (i) the person is automatically disqualified for 5 years from holding a driver licence, or
- (ii) if the court that convicts the person thinks fit to order a shorter period (but not

shorter than 12 months) or longer period of disqualification—the person is disqualified from holding a driver licence for such period as may be specified in the order, or

(d) where the conviction is for any other offence:

(i) the person is automatically disqualified for 5 years from holding a driver licence, or

(ii) if the court that convicts the person thinks fit to order a shorter period (but not shorter than 2 years) or longer period of disqualification—the person is disqualified from holding a driver licence for such period as may be specified in the order.

**(4) Calculation of disqualification periods in case of multiple offences** If 2 or more convictions of a person are made, whether or not at the same time, for crimes or offences arising out of a single incident involving the use of a motor vehicle or trailer, the following provisions apply:

(a) for the purpose of ascertaining which of subsections (2) and (3) should apply in relation to any such conviction:

(i) the other of those convictions are to be disregarded, and

(ii) subsection (2) or (3) (as the case may require) is, accordingly, to be the applicable subsection, and

(b) the maximum period of automatic disqualification in respect of all those crimes or offences is to be:

(i) if subsection (2) is applicable—3 years, or

(ii) if subsection (3) is applicable—5 years, and

(c) any minimum period of ordered disqualification is, in respect of those crimes or offences, to be disregarded to the extent that the total period of ordered and (where relevant) automatic disqualification would exceed:

(i) where subsection (2) is applicable—12 months, or

(ii) where subsection (3) is applicable—2 years.

However, nothing in paragraph (c) prevents the court, if it thinks fit, from making any order it could have made if that paragraph had not been enacted.

**(5) Disqualification in addition to any other penalty** Any disqualification under this section is in addition to any penalty imposed for the offence.

**(6) Relationship to Division 2** This section has effect subject to the provisions of Division 2.

**188A Bringing forward of consecutive disqualification periods to avoid orphan periods**

- (1) This section applies to a licence disqualification (an **orphan licence disqualification**) imposed on a person if:
  - (a) the licence disqualification is to be completed consecutively with another licence disqualification (the **primary licence disqualification**) for the person, and
  - (b) the primary licence disqualification ends prematurely because it is annulled, quashed or set aside, or is varied to shorten its period, before the date for its completion (whether or not the disqualification has already commenced), and
  - (c) the premature ending of the primary licence disqualification results in a period (the **disqualification orphan period**) during which the person would, but for this section, not be disqualified from holding a driver licence before the consecutive licence disqualification commences.
- (2) An orphan licence disqualification is taken by operation of this section (and without the need for a further order of a court):
  - (a) to commence at the beginning of what would otherwise have been the disqualification orphan period, and
  - (b) to be completed after the expiry of a period that is equivalent in length to the period that the licence disqualification would have been in force if it had commenced and ended as intended.

**Note—**

Section 25A (1A) of the [Road Transport \(Driver Licensing\) Act 1998](#) provides that the driver of a motor vehicle who drives the vehicle during a period of licence disqualification the commencement and completion dates of which have been altered by operation of this section is not guilty of driving while disqualified unless the Authority has previously given written notice of the altered dates to the driver. However, the operation of this section in other contexts (such as when a person seeks to apply for a driver licence) is not affected.

- (3) If the operation of this section in bringing forward the commencement of an orphan licence disqualification would result in:
  - (a) any other licence disqualifications intended to be completed consecutively with any different licence disqualifications (whether or not the orphan licence disqualification) not having effect consecutively, or
  - (b) any other licence disqualifications intended to be wholly or partly completed concurrently with any different licence disqualifications (whether or not the orphan licence disqualification) not having effect concurrently,the commencement and completion dates for each of those other licence disqualifications are also brought forward by operation of this section (and without the

need for a further order of a court) to the extent necessary to ensure that they continue to have effect consecutively or concurrently, as the case may be.

- (4) If the primary licence disqualification is reinstated by a court (whether on appeal or otherwise) after this section operates to bring forward the commencement of the orphan licence disqualification, the balance of the reinstated primary licence disqualification remaining to be completed is, unless the court orders otherwise, to be completed:
  - (a) if only the commencement of the orphan licence disqualification is brought forward by operation of this section—immediately after the completion of that disqualification, or
  - (b) if the commencement of more than one consecutive licence disqualification is brought forward by operation of this section—immediately after the last of the consecutive licence disqualifications is completed.
- (5) For the purposes of this section, a licence disqualification is consecutive with another licence disqualification if it is to commence:
  - (a) when the other licence disqualification is completed, or
  - (b) on a date that coincides with the anticipated date for the completion of the other licence disqualification.
- (6) Nothing in this section limits any power that a court has:
  - (a) to make an order for licence disqualification (whether or not to be completed concurrently or consecutively with any other licence disqualification), or
  - (b) to annul, quash, set aside or vary a licence disqualification.
- (7) This section has effect despite anything to the contrary in:
  - (a) the road transport legislation or any other Act or statutory rule, and
  - (b) any order of a court that imposes a licence disqualification (or a period for a licence disqualification) to which this section applies.
- (8) In this section:

***licence disqualification*** means the disqualification of a person under the road transport legislation from holding a driver licence as a consequence of the person being convicted of an offence by a court (whether or not the disqualification is imposed by an order of a court).

**189 Effect of disqualification** (cf former Act, s 26)

- (1) If, as a consequence of being convicted of an offence by a court, a person is

disqualified under the road transport legislation (whether or not by an order of the court) from holding a driver licence, the disqualification operates to cancel, permanently, any driver licence held by the person at the time of his or her disqualification.

- (2) A disqualification to hold an Australian driver licence held under a law in force in another State or internal Territory by a person who holds a driver licence issued in this State is, for the purposes of subsection (1), to be treated as if it were a disqualification to hold the driver licence issued in this State.
- (3) A person who is so disqualified must:
- (a) if present at the court (being a court in this State) and in possession of his or her driver licence—surrender the licence to the court immediately after being convicted, or
  - (b) if present at the court (being a court in this State) but not in possession of the licence or if not present at the court—surrender the licence to the Authority as soon as practicable after being convicted, or
  - (c) if the person is to be treated under subsection (2) as having been disqualified from holding a driver licence issued in this State—surrender the licence to the Authority as soon as practicable after being disqualified from holding the Australian driver licence referred to in that subsection.

Maximum penalty: 20 penalty units.

- (4) Subject to the provisions of Division 2, a person who is disqualified from holding a driver licence cannot obtain another driver licence during the period of disqualification.
- (5) If a driver licence is surrendered to the court, the licence is to be delivered to the Authority.
- (6) Any period for which a stay of execution is in force under section 63 of the *Crimes (Local Courts Appeal and Review) Act 2001* is not to be taken into account when calculating the length of a period of disqualification under this Division.

## **Division 2 Use of interlock devices as alternative to disqualification**

### **190 Definitions** (cf former Act, s 25A)

In this Division:

**alcohol-related major offence** means any of the following offences:

- (a) an offence under section 9 (1A) of the *Road Transport (Safety and Traffic Management) Act 1999*,

- (b) an offence under section 9 (1) (a) or (b) of the *Road Transport (Safety and Traffic Management) Act 1999*,
- (c) an offence under section 9 (2) (a) or (b) of the *Road Transport (Safety and Traffic Management) Act 1999*,
- (d) an offence under section 9 (3) (a) or (b) of the *Road Transport (Safety and Traffic Management) Act 1999*,
- (e) an offence under section 9 (4) (a) or (b) of the *Road Transport (Safety and Traffic Management) Act 1999*,
- (f) an offence under section 12 (1) (a) or (b) of the *Road Transport (Safety and Traffic Management) Act 1999* where the offence involved driving under the influence of alcohol,
- (g) an offence under section 15 (4) of the *Road Transport (Safety and Traffic Management) Act 1999*.

**disqualification compliance period**, in relation to a person, means the disqualification compliance period applying to the person under section 193 (a).

**disqualification period**, in relation to a person, means the disqualification period applying to the person for the purposes of section 192.

**disqualification suspension order**, in relation to a person, means an order made under section 192 that, subject to certain conditions, may operate to suspend a disqualification under section 188 of the person from holding a driver licence.

**interlock driver licence** means a conditional licence issued under the *Road Transport (Driver Licensing) Act 1998* that restricts the holder of the licence to driving a motor vehicle fitted with an approved interlock device (within the meaning of Part 2A of that Act).

**interlock participation period**, in relation to a person, means the period during which the person must participate in an interlock program for the purposes of a disqualification suspension order.

**191 Division does not apply to habitual traffic offenders** (cf former Act, s 25B)

This Division does not apply in respect of a person convicted of an alcohol-related major offence who is declared to be an habitual traffic offender by operation of section 199 (whether or not as a result of the conviction).

**192 Disqualification period may be suspended for participation in interlock program** (cf former Act, s 25C)

If a court convicts a person of an alcohol-related major offence and the person is



disqualified from holding a driver licence by or under section 188 (2) or (3) for a period (the **disqualification period**), the court may order that the disqualification of the person be suspended if the person participates in an interlock program for:

- (a) the minimum interlock participation period specified in column 2 of the Table to this section set out opposite the category of offender specified in column 1 of that Table to which the person belongs, or
- (b) such greater interlock participation period as the court may order.

**Table**

| Column 1   | Column 2                               | Column 3                           |
|--|--|------------------------------------|
| Category of offender   | Minimum interlock participation period | Disqualification compliance period |
| <p>1 A person convicted of an offence under section 9 (3) (a) or (b), (4) (a) or (b), 12 (1) (a) or (b) or 15 (4) of the <i>Road Transport (Safety and Traffic Management) Act 1999</i> who, at the time of the conviction or during the period of 5 years before the conviction, is not or has not been convicted of any other alcohol-related major offence (whether of the same or a different kind).</p> | 24 months                              | 6 months                           |
| <p>2 A person convicted of an offence under section 9 (4) (a) or (b), 12 (1) (a) or (b) or 15 (4) of the <i>Road Transport (Safety and Traffic Management) Act 1999</i> who, at the time of the conviction or during the period of 5 years before the conviction, is or has been convicted of any other alcohol-related major offence (whether of the same or a different kind).</p>                         | 48 months                              | 12 months                          |

|   |   |           |          |
|---|---|-----------|----------|
| 3 | <p>A person convicted of an offence under section 9 (3) (a) or (b) of the <i>Road Transport (Safety and Traffic Management) Act 1999</i> who, at the time of the conviction or during the period of 5 years before the conviction, is or has been convicted of any other alcohol-related major offence (whether of the same or a different kind).</p>                         | 24 months | 6 months |
| 4 | <p>A person convicted of an offence under section 9 (1A), (1) (a) or (b) or (2) (a) or (b) of the <i>Road Transport (Safety and Traffic Management) Act 1999</i> who, at the time of the conviction or during the period of 5 years before the conviction, is or has been convicted of any other alcohol-related major offence (whether of the same or a different kind).</p> | 12 months | 3 months |

**193 When person may participate in interlock program** (cf former Act s 25D)

A person in respect of whom a disqualification suspension order is made is entitled to participate in an interlock program only if:

- (a) the disqualification compliance period specified in column 3 of the Table to section 192 set out opposite the category of offender specified in column 1 of that Table to which the person belongs has expired, and
- (b) the person is issued with an interlock driver licence by the Authority under the *Road Transport (Driver Licensing) Act 1998*.

**194 Entitlement to apply for interlock driver licence** (cf former Act, s 25E)

- (1) A convicted person in respect of whom a disqualification suspension order is made is entitled to apply for an interlock driver licence despite his or her disqualification:
  - (a) if the application is made before the expiry of the disqualification compliance period applicable to the person—no earlier than 28 days before the expiry of that period, or
  - (b) at any time after the expiry of the disqualification compliance period but before the expiry of the disqualification period.
- (2) However, nothing in this Division confers a right on a person in respect of whom a disqualification suspension order is made to be issued with an interlock driver licence.

**195 When disqualification suspension order has effect** (cf former Act, s 25F)

- (1) **When order operates to suspend disqualification** A disqualification suspension order operates to suspend a disqualification while the person in respect of whom the order was made participates in an interlock program.
- (2) **Early termination of order** A disqualification suspension order ceases to have effect before the expiry of the interlock participation period if the person ceases to participate in an interlock program.
- (3) **Effect of early termination of order** If a disqualification suspension order ceases to have effect before the expiry of the interlock participation period, the person to whom the order relates is disqualified from holding a driver licence for the period equal to the difference between:
  - (a) the disqualification period originally applicable to the person, and
  - (b) the period of disqualification that had already been completed immediately before the disqualification suspension order operated to suspend the original disqualification.
- (4) **Effect of suspension of interlock driver licence on order** If the interlock driver licence of a person in respect of whom a disqualification suspension order is made is suspended during the interlock participation period:
  - (a) the order does not cease to have effect only because the driver licence is suspended, and
  - (b) the period of suspension is to be added to the interlock participation period applicable to the person for the purposes of determining when the interlock participation period expires.

**196 Participation in an interlock program** (cf former Act, s 25G)

- (1) **Commencement of participation in interlock program and interlock participation period** A person in respect of whom a disqualification suspension order is made commences to participate in an interlock program on the date on which the person is issued with an interlock driver licence. The interlock participation period applicable to the person also commences on that date.
- (2) **Early cessation of participation** A person in respect of whom a disqualification suspension order is made ceases to participate in an interlock program if and when:
  - (a) the person is convicted by a court of a major offence during the interlock participation period and the court does not order that the disqualification suspension order continue in effect despite the conviction, or
  - (b) the person ceases to hold an interlock driver licence before the expiry of the

interlock participation period (whether by reason of cancellation of the licence or otherwise).

**197 Effect of successful participation in interlock program** (cf former Act, s 25H)

If a disqualification suspension order does not cease to have effect before the expiry of the interlock participation period:

- (a) the order ceases to have effect on the expiry of that period, and
- (b) the disqualification period in respect of which the order was originally made is taken to have expired on the expiry of the interlock participation period.

**Division 3 Habitual traffic offenders**

**198 Relevant offences** (cf former Act, s 27)

(1) In this Division, a **relevant offence** means:

- (a) any of the following offences committed after the commencement of this Division of which a person has been convicted by a court in this State:
  - (i) a major offence,
  - (ii) a prescribed speeding offence,
  - (iii) an offence under section 25 (3) of the *Road Transport (Driver Licensing) Act 1998*,
  - (iv) an offence under section 25A (1), (2) or (3) of the *Road Transport (Driver Licensing) Act 1998*, or
- (b) an offence committed after the commencement of this Division of which a person has been convicted by a court in another State or Territory that would be an offence of the kind referred to in paragraph (a) if it had been committed in this State, or
- (c) a relevant offence within the meaning of section 10EA of the *Traffic Act 1909* as in force immediately before its repeal.

(2) A relevant offence includes an offence of the kind referred to in subsection (1) (a) in respect of which the charge is found proven, or a person is found guilty, (but without proceeding to a conviction) under section 10 of the *Crimes (Sentencing Procedure) Act 1999*, or section 556A of the *Crimes Act 1900*, if the offence would, if it were a relevant offence, give rise to the declaration of the person under this Division as an habitual traffic offender. In that case, a reference in this Division to the conviction of the person for a relevant offence includes a reference to the making of an order with respect to the person.

**199 Declaration of persons as habitual traffic offenders** (cf former Act, s 28)

A person is, by this section, declared to be an habitual traffic offender if:

- (a) a court in this State convicts the person of a relevant offence, and
- (b) the person has, in the period of 5 years before the conviction, also been convicted of at least 2 other relevant offences committed on different occasions.

**200 Warning to be given to persons liable to be declared habitual traffic offenders** (cf former Act, s 29)

- (1) The Authority is required to give written warnings to the holders of driver licences who are liable to be declared to be habitual traffic offenders if they are convicted of another relevant offence.
- (2) The declaration of an habitual traffic offender is not invalid merely because of a failure to give the warning, but any such failure may be taken into account by a court when determining whether a declaration should be quashed.

**201 Period of disqualification of habitual traffic offender** (cf former Act, s 30)

- (1) If a person is declared by section 199 to be an habitual traffic offender, the person is disqualified by the declaration (and without any specific order of a court) for a period of 5 years from holding a driver licence, except as provided by this Division.
- (2) If the court that convicts the person of the offence giving rise to the declaration thinks fit, the court may order a longer period of disqualification (including disqualification for life).
- (3) If the court that convicts the person of the offence giving rise to the declaration determines that a 5-year disqualification is a disproportionate and unjust consequence having regard to the total driving record of the person and the special circumstances of the case, the court may order a shorter period of disqualification (but not shorter than 2 years).
- (4) If a court orders a shorter or longer period of disqualification, the court must state its reasons for doing so.
- (5) A declaration of an habitual traffic offender ceases to be in force when the period of disqualification imposed by the declaration is completed.
- (6) The period of any disqualification under this Division does not commence until all other disqualifications, and all other periods of licence cancellation or suspension, imposed on the person by or under this or any other Act have been completed.

**Note—**

Section 188A brings forward a licence disqualification of a person that is to commence on the completion of a previous licence disqualification in circumstances where the previous licence disqualification ends

prematurely resulting in the person ceasing to be disqualified for a period before the new licence disqualification commences.

- (7) Further declarations have effect under this Division even though they occur while an existing declaration is in force, and the consequent periods of disqualification do not commence until all existing disqualifications under this Division have been completed. It does not matter that some of the relevant offences giving rise to a further declaration also gave rise to an earlier declaration.
- (8) If, while an existing disqualification under this Division is in force, the person is disqualified by a court or automatically under another provision of this or any other Act, that further disqualification does not commence until all existing disqualifications under this Division have been completed.
- (9) Any period for which a stay of execution is in force under section 63 of the *Crimes (Local Courts Appeal and Review) Act 2001* is not to be taken into account when calculating the length of a period of disqualification under this Division.

## **202 Quashing of declaration and bar against appeals** (cf former Act, s 31)

- (1) The declaration of a person as an habitual traffic offender by section 199 may be quashed by a court that convicts the person of a relevant offence (at the time of the conviction or at a later time) if it determines that the disqualification imposed by the declaration is a disproportionate and unjust consequence having regard to the total driving record of the person and the special circumstances of the case.
- (2) If a court quashes a declaration under this section, the court must state its reasons for doing so.
- (3) However, a declaration or disqualification under this Division cannot be appealed to any court whether under this or any other Act.
- (4) For the avoidance of doubt, the quashing of a declaration under this section:
  - (a) operates to set aside the disqualification imposed by the declaration on and from the day on which the court makes the order that quashes the declaration, and
  - (b) if the disqualification period has already commenced when the declaration is quashed—does not operate to invalidate or otherwise affect the operation of the disqualification in its application to the habitual traffic offender at any time before the day on which the declaration is quashed.

## **203 Disqualification in addition to any other penalty** (cf former Act, s 32)

A disqualification under this Division is in addition to any penalty imposed for the offence giving rise to the declaration.

## Division 4 Suspension of licences and visiting driver privileges

### 204A Definitions

In this Division:

***grievous bodily harm*** has the same meaning as it has in the *Crimes Act 1900*.

***learner licence*** has the same meaning as it has in section 8 of the *Road Transport (Safety and Traffic Management) Act 1999*.

***provisional licence*** has the same meaning as it has in section 8 of the *Road Transport (Safety and Traffic Management) Act 1999*.

### 204 Suspension of licence by Commissioner of Police (cf former Act, s 33)

- (1) The Commissioner of Police may suspend a driver licence of any driver, for a period not exceeding 14 days, who:
  - (a) is in the Commissioner's opinion an incompetent, reckless or careless driver, or
  - (b) is found under the influence of liquor.
- (2) The Commissioner of Police must immediately:
  - (a) notify the Authority that the Commissioner has suspended the licence and the grounds for the suspension, and
  - (b) report to the Authority whether in the Commissioner's opinion a further suspension or the cancellation of the licence is warranted or is desirable in the interest of public safety.
- (3) A driver licence that is suspended under this section is to be surrendered by the holder and forwarded to the Authority with the notification of the suspension.

### 205 Immediate suspension of licence in certain circumstances (cf former Act, s 34)

- (1) If a person is charged by a police officer with:
  - (a) an offence involving the death of, or grievous bodily harm to, another person caused by the use of a motor vehicle, being an offence that comprises:
    - (i) the crime of murder or manslaughter, or
    - (ii) an offence under section 33, 35 (1) (b), 52A or 54 of the *Crimes Act 1900*, or
  - (b) an offence under section 9 (3) or (4), 15 (4), 16, 22 (2), 40 or 41 (2) of the *Road Transport (Safety and Traffic Management) Act 1999*,

the same or another police officer may, at any time within 48 hours after the person has been charged, give the person a suspension notice.

- (1A) If it appears to a police officer that a person has committed an offence under the *Road Transport (Safety and Traffic Management) Act 1999* (other than a camera recorded offence within the meaning of section 179 of this Act) of:
- (a) exceeding a speed limit prescribed under that Act by more than 45 kilometres per hour, or
  - (b) exceeding a speed limit prescribed under that Act by more than 30 kilometres per hour but not more than 45 kilometres per hour, as the holder of a learner licence or provisional licence for the class of vehicle being driven,
- the same or another police officer may, at any time within 48 hours of:
- (c) the person being served with a penalty notice for the offence, or
  - (d) the person being charged with the offence,
- give the person a suspension notice.
- (1B) If it appears to a police officer that a person has committed an offence under the regulations under the *Road Transport (Driver Licensing) Act 1998* of being the holder of a learner licence driving unaccompanied by a supervising driver, the same or another police officer may, at any time within 48 hours of:
- (a) the person being served with a penalty notice for the offence, or
  - (b) the person being charged with the offence,
- give the person a suspension notice.
- (2) For the purposes of this section, a **suspension notice** is a notice, in a form approved by the Authority:
- (a) if the person is charged with an offence referred to in subsection (1) , (1A) or (1B)—informing the person that any driver licence held by the person is suspended from a date specified in the notice, or (if the notice so specifies) immediately on receipt of the notice, until the charge is heard and determined by a court (or until the charge is withdrawn), and
  - (b) if the person is served with a penalty notice for an offence referred to in subsection (1A) or (1B)—informing the person that any driver licence held by the person is suspended from a date specified in the notice, or (if the notice so specifies) immediately on receipt of the notice, until whichever of the following happens first:
    - (i) a period of 6 months (in the case of an offence referred to in subsection (1A) (a)) or 3 months (in the case of an offence referred to in subsection (1A) (b) or (1B)) elapses after the date on which the offence is alleged to have been committed,



- (ii) if the person elects to have the matter determined by a court in accordance with Part 3 of the *Fines Act 1996*—the matter is heard and determined by a court or a decision is made not to take or continue proceedings against the person,
  - (iii) a decision is made not to enforce the penalty notice, and
- (c) informing the person of the right of appeal under section 242, and
- (d) requiring the person:
  - (i) to surrender any such licence, by a date specified in the notice, to a police officer, or
  - (ii) if the notice so specifies—to surrender any such licence in the person's possession immediately to the police officer who gave the person the notice.
- (3) Any driver licence held by a person to whom a suspension notice is given is suspended in accordance with the terms of the notice.
- (4) Particulars of each suspension notice given under this section are to be forwarded to the Authority immediately after the notice is given.
- (5) A person who is given a suspension notice must surrender his or her driver licence in compliance with the notice.

Maximum penalty: 20 penalty units.
- (6) If, on the determination of the charge by a court, the person is disqualified from holding or obtaining a licence for a specified time:
  - (a) the court must take into account the period of suspension under this section when deciding whether to make any order under section 188, and
  - (b) to the extent (if any) that the court so orders, a suspension under this section may be regarded as satisfying all or part of any mandatory minimum period of disqualification required by that section to be imposed when the charge is proved.
- (7) For the purposes of this section:
  - (a) a person is charged with an offence when particulars of the offence are notified in writing to the person by a police officer, and
  - (b) a charge is withdrawn when the person charged is notified in writing of that fact by a police officer or when it is withdrawn before the court, and
  - (c) a charge is determined by a court when the offence is proved or the court attendance notice is dismissed, and

- (d) a decision is made not to take or continue proceedings against a person when the person is notified in writing of that fact by a police officer or when the proceedings are discharged by the court, and
- (e) a decision is made not to enforce a penalty notice in relation to a person when the person is notified in writing of that fact by:
  - (i) a police officer, or
  - (ii) an appropriate officer for the penalty notice within the meaning of Part 3 of the *Fines Act 1996*, or
  - (iii) a member of staff of the State Debt Recovery Office.

(8) (Repealed)

**206 Suspension of driving privileges of visiting driver** (cf former Act, s 35)

(1) In this section:

**authorised visiting driver** means a person:

- (a) who is not the holder of a driver licence issued in New South Wales, and
- (b) who, being the holder of a licence or permit issued in a place outside New South Wales, has the benefit of any provision of the road transport legislation conferring on the person authority to drive in New South Wales.

**suspension notice**, in relation to an authorised visiting driver who is charged with an offence referred in subsection (2), (2A) or (2B), or served with a penalty notice for an offence referred to in subsection (2A) or (2B), means a notice, in a form approved by the Authority:

- (a) if the driver is charged with an offence referred to in subsection (2), (2A) or (2B)—informing the driver that the driver’s authority to drive in New South Wales is suspended from a date specified in the notice, or (if the notice so specifies) immediately on receipt of the notice, until the charge is heard and determined by a court (or until the charge is withdrawn), and
- (b) if the driver is served with a penalty notice for an offence referred to in subsection (2A) or (2B)—informing the driver that the driver’s authority to drive in New South Wales is suspended from a date specified in the notice, or (if the notice so specifies) immediately on receipt of the notice, until whichever of the following happens first:
  - (i) a period of 6 months (in the case of an offence referred to in subsection (2A) (a)) or 3 months (in the case of an offence referred to in subsection (2A) (b) or (2B)) elapses after the date on which the offence is alleged to have been committed,

(ii) if the driver elects to have the matter determined by a court in accordance with Part 3 of the *Fines Act 1996*—the matter is heard and determined by a court or a decision is made not to take or continue proceedings against the driver,

(iii) a decision is made not to enforce the penalty notice, and

(c) informing the driver of the right of appeal under section 242.

(2) If an authorised visiting driver is charged by a police officer with:

(a) an offence involving the death of, or grievous bodily harm to, another person caused by the use of a motor vehicle, being an offence that comprises:

(i) the crime of murder or manslaughter, or

(ii) an offence under section 33, 35 (1) (b), 52A or 54 of the *Crimes Act 1900*, or

(b) an offence under section 9 (3) or (4), 15 (4), 16, 22 (2), 40 or 41 (2) of the *Road Transport (Safety and Traffic Management) Act 1999*,

the same or another police officer may, at any time within 48 hours after the authorised visiting driver has been charged, give the authorised visiting driver a suspension notice.

(2A) If it appears to a police officer that an authorised visiting driver has committed an offence under the *Road Transport (Safety and Traffic Management) Act 1999* (other than a camera recorded offence within the meaning of section 179 of this Act) of:

(a) exceeding a speed limit prescribed under that Act by more than 45 kilometres per hour, or

(b) exceeding a speed limit prescribed under that Act by more than 30 kilometres per hour but not more than 45 kilometres per hour, as the holder of a learner licence or provisional licence for the class of vehicle being driven,

the same or another police officer may, at any time within 48 hours of:

(c) the authorised visiting driver being served with a penalty notice for the offence, or

(d) the authorised visiting driver being charged with the offence,

give the authorised visiting driver a suspension notice.

(2B) If it appears to a police officer that an authorised visiting driver has committed an offence under the regulations under the *Road Transport (Driver Licensing) Act 1998* of being the holder of a learner licence driving unaccompanied by a supervising driver, the same or another police officer may, at any time within 48 hours of:

(a) the authorised visiting driver being served with a penalty notice for the offence, or

- (b) the authorised visiting driver being charged with the offence,  
give the authorised visiting driver a suspension notice.
- (3) Any authority of a person to whom a suspension notice is given to drive in New South Wales is suspended in accordance with the terms of the notice.
- (4) Particulars of each suspension notice given under this section are to be forwarded to the Authority immediately after the notice is given.
- (5) For the purposes of this section:
- (a) a person is charged with an offence when particulars of the offence are notified in writing to the person by a police officer, and
  - (b) a charge is withdrawn when the person charged is notified in writing of that fact by a police officer or when it is withdrawn before the court, and
  - (c) a charge is determined by a court when the offence is proved or the court attendance notice is dismissed, and
  - (d) a decision is made not to take or continue proceedings against a person when the person is notified in writing of that fact by a police officer or the proceedings are discharged by the court, and
  - (e) a decision is made not to enforce a penalty notice in relation to a person when the person is notified in writing of that fact by:
    - (i) a police officer, or
    - (ii) an appropriate officer for the penalty notice within the meaning of Part 3 of the [Fines Act 1996](#), or
    - (iii) a member of staff of the State Debt Recovery Office.

## **Division 5 Downgrading of licences**

### **207 Downgrading of driver licences** (cf former Act, s 36)

- (1) If a driver licence is cancelled as a special measure and the offence or offences (or alleged offence or offences) that gave rise to the cancellation arose wholly or mainly out of the use of a motor vehicle or trailer of a class prescribed for the purposes of this section, the Authority may issue the former licensee with another driver licence in substitution for the cancelled driver licence that does not authorise the driving of motor vehicles or trailers of that class.
- (2) For the purposes of this section, a driver licence is cancelled as a special measure if it is cancelled by:

- (a) the operation of the road transport legislation as a result of the imposition on the licensee of a period of disqualification from holding a driver licence, or
- (b) the Authority under the *Road Transport (Driver Licensing) Act 1998* because of:
  - (i) the licensee's driving record of offences or alleged offences, or
  - (ii) an alleged speeding offence referred to in section 33 of the *Road Transport (Driver Licensing) Act 1998*.
- (3) The regulations may make provision for or with respect to the exercise by the Authority of its power under this section.
- (4) Nothing in this section:
  - (a) limits any discretion of the Authority under the road transport legislation to decline to issue a driver licence to a person or cancel a driver licence, or
  - (b) permits the issue of any driver licence to a person who for the time being is disqualified from holding one.

## **Part 5.5 Other sanctions**

### **Division 1 Compensation orders**

#### **208 Court may order compensation for damages and other losses** (cf former Act, s 37)

A court that convicts a person of an offence under the road transport legislation may order any person to pay such an amount as compensation for loss of time or expense incurred in consequence of the offence of which the defendant was convicted as the court thinks fit.

#### **209 Compensation for loss of time** (cf former Act, s 38)

- (1) If proceedings are commenced by any person (other than a police officer or the Authority) for any offence under the road transport legislation and the proceedings are dismissed or withdrawn, the court concerned may, if it thinks fit, order that the person bringing the proceedings pay to the defendant, in addition to any costs, such compensation for loss of time or otherwise as seems reasonable.
- (2) Subsection (1) extends to a court hearing an appeal in any such proceedings.

#### **210 Compensation orders for damage to road infrastructure** (cf model provisions, s 140)

- (1) A court that finds a person guilty of an applicable road law offence may make an order (a **roads compensation order**) requiring the offender to pay a roads authority such amount by way of compensation as the court thinks fit for damage to any road infrastructure that the roads authority has incurred or is likely to incur in consequence of the offence.

- (2) A roads compensation order may be made on the application of the prosecutor, the roads authority or the Authority.
- (3) A roads compensation order may only be made in favour of a roads authority.
- (4) The court may make a roads compensation order where it is satisfied on the balance of probabilities that the commission of the offence caused or contributed to the damage.
- (5) The court may make a roads compensation order when it finds the offender guilty of the offence or at any time afterwards, but not later than the period within which a prosecution for the offence could have been commenced.

**211 Assessment of compensation** (cf model provisions, s 141)

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

**212 Service of certificates** (cf model provisions, s 142)

- (1) If a roads authority proposes to use a certificate referred to in section 211 in proceedings, the roads authority must serve a copy of the certificate on the defendant at least 28 working days before the day on which the matter is set down for hearing.
- (2) Any such certificate cannot be used in the proceedings unless a copy of the certificate has been served in accordance with this section.
- (3) A defendant who wishes to challenge a statement in any such certificate must serve a

notice in writing on the roads authority at least 14 working days before the day on which the matter is set down for hearing.

- (4) The notice of intention must specify the matters in the certificate that are intended to be challenged.
- (5) If the defendant is intending to challenge the accuracy of any measurement, analysis or reading in the certificate, the defendant must specify the reason why the defendant alleges that it is inaccurate and must specify the measurement, analysis or reading that the defendant considers to be correct.
- (6) The defendant cannot challenge any matter in the certificate if the requirements of this section have not been complied with in relation to the certificate, unless the court gives leave to do so in the interests of justice.

**213 Limits on amount of compensation** (cf model provisions, s 143)

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

**214 Costs** (cf model provisions, s 144)

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

**215 Enforcement of compensation order and costs** (cf model provisions, s 145)

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

**216 Relationship with orders or awards of other courts and tribunals** (cf model provisions, s

146)

- (1) A compensation order under this Division may not be made if another court or tribunal has awarded compensatory damages or compensation in civil proceedings in respect of the damage based on the same or similar facts, and if a court purports to make an order under this Division in those circumstances:
  - (a) the order is void to the extent that it covers the same matters as those covered by the other award, and
  - (b) any payments made under the order to the extent to which it is void must be repaid by the roads authority.
- (2) The making of a compensation order under this Division does not prevent another court or tribunal from afterwards awarding damages or compensation in civil proceedings in respect of the damage based on the same or similar facts, but the court or tribunal must take the order into account when awarding damages or compensation.
- (3) Nothing in this Division affects or limits any liability to pay compensation under section 102 of the *Roads Act 1993*, except as provided by this section.

## **Division 2 Detention, wheel clamping, impounding and forfeiture of vehicles**

### **217 Definitions**

In this Division:

**clamp**, in relation to a motor vehicle, means immobilise the motor vehicle by means of wheel clamps or by means of any other device prescribed by the regulations.

**clamping agent** means the following:

- (a) the Commissioner,
- (b) a person or body appointed as a clamping agent under section 219C.

**Note—**

The Commissioner may delegate all or any of the functions conferred on the Commissioner under this Division on a police officer or police officers of a specified class—see section 123 (2) of this Act. Also see section 31 of the *Police Act 1990*.

**Commissioner** means the Commissioner of Police.

**crash test** means a test to measure the effect of the impact of a motor vehicle that collides with another vehicle or other object, or a pedestrian, that is conducted by a person or body designated by the Authority.



**registered interest**, in relation to a motor vehicle, means a security interest in the vehicle with respect to which a financing statement (within the meaning of the *Personal Property Securities Act 2009* of the Commonwealth) has been registered under that Act.

**suspension warning notice** is defined in section 219B.

**218 Removal or production of vehicles used for certain offences for clamping, impounding or forfeiture** (cf former Act, s 39)

(1) A police officer who reasonably believes that a motor vehicle:

- (a) is being or has (on that day or during the past 10 days) been operated on a road so as to commit an offence under section 40 or 41 (2) of the *Road Transport (Safety and Traffic Management) Act 1999*, or
- (b) is the subject of a period of clamping or impounding, or the subject of forfeiture, under section 219 or 219A,

may take any one or more of the actions specified in subsection (1A).

(1A) The police officer may do any one or more of the following:

- (a) clamp the motor vehicle (if the police officer is a clamping agent) or cause the vehicle to be clamped by a clamping agent,
- (b) seize and take charge of the motor vehicle and cause it to be removed to a place determined by the Commissioner,
- (c) immediately, or as soon as practicable afterwards, give the driver, and (if the driver is not the registered operator of the motor vehicle) the registered operator, a notice requiring the driver or registered operator to remove or cause the vehicle to be removed to, or produce or cause the motor vehicle to be produced at, a place, on a date (not being later than 10 days after the notice is given) and within a time period, specified in the notice (a **production notice**).

(1B) A production notice may be given personally or by post and must state the ground on which it is being given.

(1C) A motor vehicle may be clamped under subsection (1A) at:

- (a) a road or public place, or
- (b) any place under the control of or used for the purposes of clamping motor vehicles by a clamping agent, or
- (c) the home address of the driver or registered operator.

**Note—**

**Home address** is defined in section 3.

- (1D) Subsection (1C) (c) does not confer power to enter any place that could not otherwise lawfully be entered.
- (2) A motor vehicle may be seized under subsection (1A) from:
- (a) a road or public place, or
  - (b) any other place, with the consent of the owner or occupier of the place or under the authority of a search warrant issued under section 228.
- (3) For the purpose of exercising the powers conferred by subsection (1A), a police officer may cause any locking device or other feature of the motor vehicle concerned that is impeding the exercise of those powers to be removed, dismantled or neutralised and may, if the driver or any other person will not surrender the keys to the vehicle, start the vehicle by other means.
- (4) Any motor vehicle removed to, or produced at, a place in accordance with subsection (1A) may, subject to the regulations, be impounded at that place or may be moved to and impounded at any other place determined by the Commissioner.
- (5) A motor vehicle that may be removed under subsection (1A) or (4):
- (a) may be moved by its being driven, whether or not under power, or by its being towed or pushed, or in any other manner whatever, and
  - (b) may be moved by one or more police officers or, at the direction of a police officer, by persons engaged by the Commissioner, and may be impounded at premises under the control of the Commissioner or of another authority or person.
- (6) The regulations may make provision for or with respect to requiring the responsible person for or driver of a motor vehicle to pay a fee in relation to the clamping or movement of the vehicle under this section. The whole or any part of the fee that is unpaid may be recovered from the responsible person or driver of the motor vehicle by the Commissioner as a debt due to the Crown in any court of competent jurisdiction. A certificate in writing given by a police officer as to the fact and cost of clamping or movement is evidence of those matters.
- (7) A driver or registered operator of a motor vehicle is guilty of an offence if:
- (a) the driver or registered operator is given a production notice in relation to the motor vehicle, and
  - (b) without reasonable excuse, the driver or registered operator fails to remove the motor vehicle to or produce it at, or cause it to be removed to or produced at, the place, on the date and within the time period, specified in the notice.

Maximum penalty: 20 penalty units.

- (8) The Authority may suspend the registration of a registrable vehicle for a period not exceeding 3 months if the registered operator of the vehicle:
- (a) is found guilty of an offence under subsection (7), or
  - (b) pays the whole or part of the amount specified in a penalty notice issued in respect of an offence under subsection (7), or in any process subsequent to such a penalty notice, as the amount that is payable in order to dispose of the alleged offence without having it dealt with by a court, or
  - (c) has not paid the amount so specified, has not elected to have the matter dealt with by a court and the time for electing to have the matter so dealt with has elapsed.

**Note—**

Under this subsection, the Authority may suspend the registration of a vehicle even if the court does not proceed to conviction after finding the driver or registered operator guilty and makes an order under section 10 of the *Crimes (Sentencing Procedure) Act 1999*.

- (9) Any suspension under subsection (8) is in addition to any penalty imposed by a court or prescribed by regulations under section 183 for the offence.
- (10) The disposal of the motor vehicle within the period of 10 days after a production notice is given does not affect the requirement to produce the motor vehicle in accordance with the notice, except as provided by subsection (11).
- (11) A production notice ceases to have effect in relation to a motor vehicle:
- (a) if it is withdrawn by the Commissioner by notice in writing given to the registered operator of the motor vehicle, or
  - (b) if, after the notice is given, registration of the motor vehicle is transferred in good faith to another registered operator who, at the time of the transfer, had no notice of, or could not reasonably be expected to be aware that, the production notice had been given.

**219 Impounding, clamping or forfeiture of vehicles on finding of guilt of driver who is a registered operator of the vehicle** (cf former Act, s 40)

- (1) In this section:

**offending operator** means an offender who, at the time of an offence in connection with which a motor vehicle was used, was both the driver, and a registered operator, of the motor vehicle.

- (2) A motor vehicle used in connection with an offence under section 40 or 41 (2) of the *Road Transport (Safety and Traffic Management) Act 1999* that is the first offence by the offending operator under the provision concerned is, by the finding of guilt by the

court, liable to be impounded for a period of 3 months unless the court otherwise directs under subsection (3) or (5).

- (3) The court may (if appropriate in view of any restrictions imposed under section 219C (4)), by order, direct that instead of being impounded the motor vehicle be clamped by a clamping agent at an appropriate place for a period of 3 months at a place specified in the order.
- (4) A motor vehicle used in connection with an offence under section 40 or 41 (2) of the *Road Transport (Safety and Traffic Management) Act 1999* that is a second or subsequent offence by the offending operator under the provision concerned is, by the finding of guilt by the court, forfeited to the Crown unless the court otherwise directs under subsection (5).

**Note—**

A forfeited motor vehicle may be crash tested—see section 227 (5).

- (5) The court may by order direct that a period of clamping or impounding imposed by this section be reduced or dispensed with, or that a forfeiture imposed by or under this section be commuted to a period of clamping or impounding specified in the order, if the court is satisfied that the clamping or impounding of the motor vehicle will cause extreme hardship to the offending operator or any other person.
- (6) For the purposes of subsection (5), difficulty in carrying out employment (whether paid or unpaid) or in travelling to a place of employment or business or to any place for the purposes of education, training or study does not constitute extreme hardship.
- (7) The period for which a motor vehicle was clamped or impounded under section 218 is to be reckoned as counting towards a period of clamping or impounding imposed by or under this section.
- (8) Any impounding, clamping or forfeiture under this section is in addition to any other penalty that may be imposed for the offence concerned, but for the purposes of any rights of appeal against a penalty so imposed by the court finding the offence to be proven, the impounding, clamping or forfeiture is taken to be, or to be part of, that penalty.

**219A Impounding, clamping or forfeiture of vehicles on finding of guilt of driver who is not the registered operator of the vehicle**

- (1) In this section:

**offending driver** means an offender who, at the time of the offence, was the driver of a motor vehicle but was not a registered operator of the vehicle.

- (2) As soon as reasonably practicable after a motor vehicle is used for the first time in connection with an offence for which an offending driver is found guilty under section 40 or 41 (2) of the *Road Transport (Safety and Traffic Management) Act 1999*, the

Authority is to give the registered operator of the motor vehicle a suspension warning notice in accordance with section 219B.

- (3) If a registered operator of a motor vehicle who was given a suspension warning notice is the registered operator of the same or another motor vehicle that is used in connection with a second offence under section 40 or 41 (2) of the *Road Transport (Safety and Traffic Management) Act 1999* for which an offending driver is found guilty during the period of 5 years after the suspension warning notice was given to the registered operator:
  - (a) the Authority may suspend the registration of the motor vehicle used in connection with the second offence for a period not exceeding 3 months, or
  - (b) if the motor vehicle is unregistered, registration of the vehicle is suspended or the expiry date of the registration is within 28 days after a person is found guilty of the offence concerned, the Commissioner is to cause the vehicle to be clamped by a clamping agent at an appropriate place or impounded for a period of 3 months.
- (4) If the registered operator of a motor vehicle who was given a suspension warning notice is the registered operator of the same or another motor vehicle used in connection with an offence under section 40 or 41 (2) of the *Road Transport (Safety and Traffic Management) Act 1999* that is a third or subsequent offence under either of those provisions for which an offending driver is found guilty in the period of 5 years after the suspension warning notice was given, the motor vehicle used in connection with the third or subsequent offence is, by the finding of guilt by the court, forfeited to the Crown, unless the court otherwise directs under subsection (5).

**Note—**

A forfeited motor vehicle may be crash tested—see section 227 (5).

- (5) The court may by order direct that a forfeiture imposed by this section be dispensed with or commuted to a period of clamping or impounding specified in the order if the court is satisfied that the forfeiture of the motor vehicle will cause extreme hardship to the offending driver or any other person.
- (6) The period for which a motor vehicle was clamped or impounded under section 218 is to be reckoned as counting towards a period of clamping or impounding imposed by or under this section.
- (7) Subsections (2), (3) and (4) do not operate in respect of a motor vehicle if the Authority, Commissioner or court (as the case requires) is satisfied that the vehicle was at the relevant time a stolen vehicle or a vehicle illegally taken or used.
- (8) Subsections (3) and (4) operate in respect of a motor vehicle used in connection with an offence under section 40 or 41 (2) of the *Road Transport (Safety and Traffic Management) Act 1999* even if, at the time of the offence, there is more than one registered operator for that motor vehicle and one or more of those registered

operators were not given the suspension warning notice concerned.

- (9) If the registration of a motor vehicle expires during a period of suspension under this section, the registration is taken to be suspended during the unexpired portion of the suspension period for the purposes of any offence provision under any law in relation to operating a motor vehicle while its registration is suspended.

### **219B Suspension warning notices**

- (1) A **suspension warning notice** is a written notice warning a registered operator of a motor vehicle that was used in connection with an offence under either of the provisions referred to in section 219A (2) that, if the registered operator is the registered operator of the same or another motor vehicle that is used in connection with any further offence under either of those provisions, the Authority may suspend registration of the motor vehicle used in connection with the further offence, or the Commissioner may take other action, under section 219A (3) in respect of the motor vehicle.
- (2) A suspension warning notice has effect for a period of 5 years after it is given, unless it sooner ceases to have effect under this Division.
- (3) A suspension warning notice ceases to have effect if it is withdrawn by the Authority by notice in writing given to the registered operator concerned.
- (4) The Authority must withdraw a suspension warning notice if it is satisfied that at the time the motor vehicle was used in connection with the offence concerned it was a stolen vehicle or a vehicle illegally taken or used.

### **219C Clamping agents**

- (1) The Commissioner may, by instrument in writing, appoint a person (other than a police officer) or body to be a clamping agent for the purposes of this Division.

**Note—**

The Commissioner is also a clamping agent.

- (2) A clamping agent has the functions conferred on clamping agents by or under this Division.
- (3) The functions of a clamping agent may be exercised by any employee or agent of the clamping agent authorised to do so by the clamping agent.
- (4) The Commissioner may, by instrument in writing, restrict the functions that a clamping agent may exercise, including (for example) by limiting the places, or manner or circumstances, in which the clamping agent may exercise any functions conferred.

**Note—**

The Commissioner may, for example, limit the power to clamp to a specified part of NSW or for a specified period only.

### **219D Identification of clamping agents**

- (1) The Commissioner may issue a clamping agent appointed under section 219C, or an employee or agent of a clamping agent authorised to exercise the functions of the clamping agent, with an identification card.
- (2) The identification card must:
  - (a) contain a photograph of the person to whom it is issued and the person's name and signature, and
  - (b) identify the person as a clamping agent.
- (3) A clamping agent (other than a police officer in uniform) who is exercising or about to exercise a function with respect to the clamping of a motor vehicle is required to comply with a request to identify himself or herself by producing his or her identification card.

### **219E Return of identification cards**

- (1) A person is guilty of an offence if:
  - (a) the Commissioner has issued an identification card to the person, and
  - (b) the person was, but has stopped being, a clamping agent or an employee or agent of a clamping agent, and
  - (c) the Commissioner has requested the person to return the card to the Commissioner within a specified period, and
  - (d) the person does not return the card during the period.

Maximum penalty: 20 penalty units.

- (2) Subsection (1) does not apply if the person has a reasonable excuse.
- (3) The onus of proof of reasonable excuse in proceedings for an offence under this section lies on the defendant.

### **219F Fees for clamping of motor vehicles**

- (1) If a court directs that a motor vehicle be clamped under section 219, the offending operator must pay the Commissioner, or a clamping agent nominated by the Commissioner for the purposes of this subsection, a fee determined in accordance with the regulations with respect to the clamping of the vehicle.
- (2) If the Commissioner causes a motor vehicle to be clamped under section 219A, the

registered operator must pay the Commissioner, or a clamping agent nominated by the Commissioner for the purposes of this subsection, a fee determined in accordance with the regulations for the clamping of the vehicle.

- (3) If the whole or any part of the fee is not paid, the court may, on application by the Commissioner or the clamping agent nominated by the Commissioner concerned, order that the motor vehicle be impounded for a period of 3 months or be forfeited to the Crown.

**Note—**

An impounded or forfeited motor vehicle may be sold under section 227.

**219G Offence relating to wheel clamping**

- (1) A person must not, except in accordance with this Division, tamper with, modify or remove a wheel clamp or any other device used to immobilise a motor vehicle during a period of clamping imposed under this Division.

Maximum penalty: 20 penalty units.

- (2) It is a defence to a prosecution under subsection (1) if the defendant establishes that the wheel clamp or other device was tampered with, modified or removed:
- (a) from a motor vehicle that was obstructing access to any property and that it was necessary to move the motor vehicle to protect any person or property from a risk of imminent harm, or
- (b) to protect the motor vehicle from a risk of imminent harm.

**Note—**

For example, if an immobilised motor vehicle is located outside a burning house, emergency service personnel may move it if necessary to gain access to the property or to ensure the safety of the vehicle.

**220 Registered operator and interested persons to be notified**

- (1) The Commissioner is to give notice of:
- (a) the clamping or impounding of a motor vehicle under section 218, or
- (b) the clamping or impounding, or continued or further clamping or impounding, or forfeiture, of a motor vehicle under section 219,
- to the registered operator of the motor vehicle and to the holder of any registered interest in the motor vehicle.
- (1A) The Commissioner is to give the holder of any registered interest in a motor vehicle notice of:
- (a) the giving of a production notice in relation to the motor vehicle under section



218, and

(b) the clamping or impounding, or continued or further clamping or impounding, or forfeiture of a motor vehicle under section 219A.

- (2) The notice may be given personally or by post, and must be given within 14 days after the occurrence the subject of the notice.
- (3) The notice is to state the offence for which the motor vehicle is clamped or impounded or has been forfeited.

**221 Retention of motor vehicle impounded, and period of clamping, under section 218**

- (1) The Commissioner is to retain a motor vehicle impounded under section 218 until such time as the offence for which it was impounded is dealt with by a court or by the offender under Part 5.3, unless it is sooner released under this Division or in accordance with the regulations.
- (1A) A motor vehicle clamped under section 218 is to remain clamped until the offence for which it was clamped is dealt with by a court or by the offender under Part 5.3, unless it is sooner released under this Division or in accordance with the regulations.
- (2) A motor vehicle that is retained or clamped in accordance with this section until an offence is dealt with is thereafter to be dealt with as required by or under section 219.
- (3) This section does not apply in the case of a motor vehicle impounded or clamped in the circumstances referred to in section 218 (1) (b), except as prescribed by the regulations.

**222 Retention of motor vehicle impounded or forfeited under section 219**

- (1) A motor vehicle impounded under section 219 is to be retained by the Commissioner for the time required by or under that section, unless it is sooner released under this Division.
- (2) A motor vehicle forfeited under section 219 is to be retained by the Commissioner until further directed by the Minister, unless it is sooner released under this Division.

**223 Release of impounded vehicle or removal of clamps**

- (1) Subject to section 219G (2), the clamping agent responsible for the clamping of a motor vehicle must remove the clamps from the motor vehicle at the end of the period of clamping imposed under this Division and, if the vehicle is clamped at a place under the control of or used for the purpose of clamping motor vehicles by the clamping agent, make the motor vehicle available for collection by a person entitled to possession of it as soon as the clamps are removed.
- (2) The regulations may prescribe the fees (if any) payable in respect of storage of an

impounded vehicle.

- (3) It is the duty of the Commissioner to endeavour to cause any impounded motor vehicle to be available for collection by a person entitled to its possession as soon as the person is entitled to it.
- (4) An applicant to whom a motor vehicle is released under this section must in writing acknowledge receipt of the vehicle from the custody of the Commissioner.
- (5) The Commissioner may remit the whole or any part of the prescribed fees for storage of a motor vehicle.

#### **224 Release of motor vehicle on application to Local Court**

- (1) A person may apply to the Local Court for an order for the release of an impounded motor vehicle into the person's custody or for the removal of clamps from a motor vehicle.
- (2) An application under this section stays any order or direction for forfeiture or disposal of the motor vehicle.
- (3) In determining whether to make an order under this section the Local Court is entitled to have regard to the following:
  - (a) the safety of the public and the public interest in preventing the use of a motor vehicle that the Court considers is reasonably likely in all the circumstances to be used for further dangerous driving offences,
  - (b) any alleged extreme hardship or other circumstances of the case.
- (4) Despite subsection (3), the Local Court is not to have regard to any alleged extreme hardship arising from the difficulty of carrying out employment (whether paid or unpaid) or of travelling to a place of employment or business or to any place for the purposes of education, training or study if the application relates to release of a motor vehicle that was clamped or impounded under section 219.
- (4A) The Local Court may order the release of a motor vehicle that was impounded, or the removal of clamps from a motor vehicle that was clamped, under section 219A if it is satisfied:
  - (a) that the registered operator did not consent to the driver concerned using the vehicle, and
  - (b) the registered operator had taken all reasonable steps to prevent any person using the vehicle without the consent of the registered operator.
- (5) Subsection (4) applies even though the Commissioner may have refused an application under section 223, and the Local Court may order or refuse to order the

release of an impounded motor vehicle as justice requires.

- (6) An applicant to whom a motor vehicle is released by order of the Local Court must in writing acknowledge receipt of the motor vehicle from the custody of the Commissioner.
- (7) The Local Court may determine whether or not the prescribed fees for storage of the motor vehicle by the Commissioner, or some of those fees, are payable by the applicant to the Commissioner.

## **225 Safe keeping of motor vehicles**

- (1) The Commissioner has (in the Commissioner's official capacity) a duty to take all reasonable steps to secure an impounded motor vehicle against theft or damage (otherwise than by crash testing under this Division) while impounded.
- (2) Subsection (1) does not apply in the case of theft or damage to a motor vehicle that is clamped under this Division. However, the Commissioner (and any clamping agent) must ensure that all reasonable steps are taken to ensure as little damage as possible is caused to the vehicle by the installation or removal of clamps.

### **225A Protection from liability with respect to clamping, impounding and crash testing**

No action lies against the Crown, the Minister, the Commissioner, Transport for NSW, the Authority, any police officer or any clamping agent for any damage to, or theft of, a motor vehicle caused by, or arising from clamping, impounding or crash testing a motor vehicle in accordance with this Division.

## **226 Failure to prosecute**

- (1) No action lies against the Crown, the Minister, the Commissioner or any police officer in respect of the seizure or impounding, under section 218, of a motor vehicle for an alleged offence for which no proceedings or process are taken or issued.
- (2) This section does not protect a police officer from liability in respect of the seizure, otherwise than in good faith, of a motor vehicle.

## **227 Disposal and crash testing of vehicles**

- (1) The Commissioner may cause an impounded or forfeited motor vehicle to be offered for sale in the circumstances prescribed by the regulations. The sale is to be by public auction or public tender.
- (2) The motor vehicle may be disposed of otherwise than by sale if the Commissioner believes on reasonable grounds that the vehicle has no monetary value or that the proceeds of the sale would be unlikely to exceed the costs of sale.
- (3) If the motor vehicle offered for sale is not sold, the Commissioner may dispose of the

motor vehicle otherwise than by sale.

- (4) The regulations may make provision for or with respect to the disposal of the proceeds of any such sale, including provisions for or with respect to entitling persons to seek to be paid any such proceeds.
- (5) At the request of the Authority, the Commissioner may dispose of a motor vehicle that is the subject of forfeiture under section 219 (4) or 219A (4) by releasing it to the Authority to be used for the purposes of crash testing and any educational program for drivers of motor vehicles established by the Authority.
- (6) The Authority may cause any motor vehicle released to it to be used for the purposes of crash testing and any educational program for drivers of motor vehicles established by the Authority.

**228 Search warrants** (cf former Act, s 41)

- (1) A police officer may apply to an authorised officer for a search warrant if the police officer has reasonable grounds for believing that there is or, within 72 hours, will be on any premises a motor vehicle that has been operated as referred to in section 218.
- (2) An authorised officer to whom such an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising a police officer named in the warrant:
  - (a) to enter the premises, and
  - (b) to search the premises for such a motor vehicle, and
  - (c) to seize such a motor vehicle, and otherwise deal with it, in accordance with section 218.
- (3) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to a search warrant issued under this section.
- (4) In this section, **authorised officer** and **premises** have the same meanings as they have in the *Law Enforcement (Powers and Responsibilities) Act 2002*.

## Part 5.6 Evidential provisions

### 229 Application of Part

This Part applies to proceedings for an offence under the road transport legislation.

### 230 Certificate evidence

 (cf model provisions, s 163, former Act, s 46)

- (1) A statement in a certificate purporting to have been issued by an Australian Authority, an Australian authorised officer or an Australian police officer that, at a specified time or during a specified period:

- (a) a specified vehicle or combination was or was not a heavy vehicle or heavy combination, or
- (b) a specified vehicle or combination was or was not of a particular class of heavy vehicle or heavy combination, or
- (c) a specified person was or was not the registered operator of a heavy vehicle, or
- (d) a specified person was or was not a member of or participant in an approved road transport compliance scheme, or
- (e) a specified location was or was not, or was or was not part of, a road or road-related area, or
- (f) without limiting paragraph (e), a specified area was the subject of a declaration referred to in section 15 (Power to include or exclude areas in road transport legislation) or was not the subject of a declaration under section 16 (Power to exclude vehicles, persons or animals from road transport legislation), or both, or
- (g) a specified location was or was not subject to a specified prohibition, restriction or other requirement regarding the operation or use of vehicles or specified classes of vehicles (including, for example, a temporary restriction on load limits during wet weather), or
- (h) a specified vehicle was or was not registered under an Australian applicable road law, or
- (i) a specified vehicle was or was not insured to cover third party personal injury or death either generally or during a specified period or in a specified situation or specified circumstances, or
- (j) any specified specifications, capabilities or legal entitlements or other information relating to a specified vehicle or combination (or a specified component of a specified vehicle or combination) were or were not recorded in an Australian Authority's records (including a register kept by the Australian Authority), or were or were not displayed on the vehicle or combination in accordance with an Australian applicable road law, or
- (k) (Repealed)
- (l) a specified person was or was not the holder of a driver licence that was of a specified class, or that was subject to specified conditions, or
- (m) a specified person is or was disqualified from holding a driver licence or an Australian driver licence or other authority to drive a motor vehicle and the circumstances of any such disqualification, or
- (n) a specified person has incurred specified demerit points, or

- (o) a specified person was or was not the holder of a driver licence that was of a specified class, or that was subject to specified conditions, and that authorised the person to drive a vehicle or combination or a vehicle or combination of a specified class, or
- (p) a specified person was or was not the holder of a driver licence that authorised the person to drive a vehicle or combination of a specified class either generally or at a specified time or during a specified period or on a specified route or in a specified area or subject to specified conditions, or
- (q) a specified person was or was not the holder of a permit under an Australian applicable road law to drive or operate a specified vehicle or combination or a vehicle or combination of a specified class either generally or subject to specified conditions, or
- (r) a specified penalty, fee or charge was or was not, or is or is not, payable under the road transport legislation or an Australian applicable road law by a specified person, or
- (s) a specified penalty notice under the road transport legislation or a specified infringement notice under an Australian applicable road law was served on a specified person in a specified way on a specified date, or
- (t) a specified penalty notice under the road transport legislation or a specified infringement notice under an Australian applicable road law was served in relation to a specified vehicle or combination, or
- (u) a specified penalty notice under the road transport legislation or a specified infringement notice under an Australian applicable road law has or has not been withdrawn or amended, or
- (v) a specified penalty notice under the road transport legislation or a specified infringement notice under an Australian applicable road law has been amended in a specified way on a specified date, or
- (w) a specified person has or has not paid an infringement penalty under an Australian applicable road law, or
- (x) a specified person had or had not notified the Australian Authority:
  - (i) of any change of address or of a specified change of address, or
  - (ii) that the person suffered from any prescribed medical condition or from any specified prescribed medical condition, or
- (y) a specified person, vehicle or combination was or was not subject to a specified registration, licence, permit, authorisation, approval, exemption or notice under

the road transport legislation or an Australian applicable road law, or

- (z) a specified registration, licence, permit, authorisation, approval, exemption or notice was or was not varied, suspended, cancelled or revoked under the road transport legislation or an Australian applicable road law, or
- (aa) a specified person, vehicle or combination had or did not have specified legal entitlements, or
- (ab) a specified document was or was not lodged, or a specified fee was or was not paid, by a specified person, or
- (ac) a specified person was or was not an authorised officer under the road transport legislation or an Australian applicable road law, or
- (ad) a specified identification card was an identification card issued or designated by the Australian Authority and was or was not current, or
- (ae) a specified authorised officer was authorised to exercise a specified power, and:
  - (i) was not restricted by an Australian Authority in the exercise of the power, or
  - (ii) was not restricted in a specified way in the exercise of the power, or
- (af) a specified person or body was an Australian Authority, or
- (ag) a specified person was an approved officer under Division 2 of Part 3.5, or
- (ah) specified terms and conditions were the terms and conditions on which a specified person was an approved officer under Division 2 of Part 3.5, or
- (ai) a specified road, or a specified part of the road, was a declared route within the meaning of Part 3.6, or
- (aj) a specified area was a declared zone within the meaning of Part 3.6, or
- (ak) a specified vehicle or combination (or specified component of a specified vehicle or combination) was weighed by or in the presence of a specified authorised officer on a specified weighbridge or weighing facility or by the use of a specified weighing device and that a specified mass was the mass of the vehicle or combination (or component),

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

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

- (3) Subsection (2) extends to any matter that appears in a towing authorisation within the meaning of the *Tow Truck Industry Act 1998*.

**231 Proof of appointments and signatures unnecessary** (cf model provisions, s 168)

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

**office holder** means:

- (a) the Chief Executive of the Authority, or
- (b) the chief executive of any other Australian Authority, or
- (c) the Commissioner of Police, or
- (d) the head of the police force or police service of any other jurisdiction, or
- (e) an authorised officer (other than a police officer), or
- (f) any other Australian authorised officer, or
- (g) a police officer, or
- (h) any other Australian police officer.

**232 Vicarious responsibility** (cf model provisions, s 161)

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



- (a) that the conduct was engaged in by an employee or agent of the employer within the scope of his or her actual or apparent authority, and
  - (b) that the employee or agent had the relevant state of mind.
- (4) For the purposes of a prosecution for an offence, conduct engaged in on behalf of a person other than a body corporate (the **employer**) by an employee or agent of the employer within the scope of his or her actual or apparent authority is taken to have been engaged in also by the employer, unless the employer establishes that the employer took reasonable precautions and exercised due diligence to avoid the conduct.
- (5) In this section:

**director** of a body corporate includes a constituent member of a body corporate incorporated for a public purpose by a law of any jurisdiction.

**state of mind** of a person includes:

- (a) the knowledge, intention, opinion, belief or purpose of the person, and
- (b) the person's reasons for the intention, opinion, belief or purpose.

**233 Averments** (cf model provisions, s 162)

- (1) In proceedings for an offence, a statement or allegation in a complaint or charge made by the person bringing the proceedings that, at a specified time or during a specified period:
- (a) a specified vehicle or combination was a heavy vehicle or heavy combination, or
  - (b) a specified vehicle or combination was of a particular class of heavy vehicle or heavy combination, or
  - (c) a specified person was the registered operator of a heavy vehicle, or
  - (d) a specified person was a member of or participant in an approved road transport compliance scheme, or
  - (e) a specified location was, or was part of, a road, or
  - (f) without limiting paragraph (e), a specified area was the subject of a declaration referred to in section 15 or was not the subject of a declaration under section 16, or both, or
  - (g) a specified location was subject to a specified prohibition, restriction or other requirement regarding the operation or use of vehicles or specified classes of vehicles (including, for example, a temporary restriction on load limits during wet weather),

is prima facie evidence of that matter.

- (2) In a prosecution for an offence, a statement or allegation in a court attendance notice made by the person bringing the proceedings that the offence was committed in a specified place, at a specified time, on a specified date or during a specified period is prima facie evidence of that matter.

**234 Evidence regarding measuring and weighing** (cf Roads Act, s 248 (3))

A statement in a certificate issued by a trade measurement inspector within the meaning of the *National Measurement Act 1960* of the Commonwealth, or by the holder of a servicing licence within the meaning of that Act, that on a date specified in the certificate a specified measuring device was tested and was found to measure accurately (or accurately within specified tolerances):

- (a) is admissible in any legal proceedings, and
- (b) is evidence of the fact that the device measured accurately (or accurately within those tolerances) at all times within the period of 12 months after that date.

**235 Evidence regarding weighing** (cf model provisions, s 165)

Evidence of a record made by:

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

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

**236 Evidence regarding manufacturer's ratings** (cf model provisions, s 166)

- (1) Evidence of a written statement purporting to be made by the manufacturer of a vehicle or component of a vehicle regarding the mass rating of the vehicle or component determined by the manufacturer is admissible in any proceedings and is prima facie evidence:
  - (a) of the mass rating, and
  - (b) of any conditions to which the rating is subject included in the statement, and
  - (c) that the statement was made by the manufacturer of the vehicle or component.
- (2) Evidence of a written statement purporting to be made by the manufacturer of load restraint equipment designed for use on a vehicle or combination (or a component of a vehicle or combination) regarding the strength or performance rating of the

equipment determined by the manufacturer is admissible in any proceedings and is prima facie evidence:

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

**237 Evidence not affected by nature of vehicle or combination** (cf model provisions, s 167)

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

**238 Transport documentation and journey documentation** (cf model provisions, s 169)

- (1) Transport documentation or journey documentation is admissible in any proceedings under or for the purposes of an applicable road law within the meaning of Part 4.2 and is prima facie evidence of:
  - (a) the identity and status of the parties to the transaction to which it relates, and
  - (b) the destination or intended destination of the load to which it relates.
- (2) The reference in subsection (1) to the **status** of the parties includes a reference to their status as responsible persons (within the meaning of Chapter 3) in relation to the transaction.

## Chapter 6 Miscellaneous

### Part 6.1 General

**239 Service of documents on persons generally** (cf former Act, s 44)

- (1) Any document that is authorised or required by or under the road transport legislation to be given to or served on any person (other than a corporation) may be given or served:
  - (a) personally, or
  - (b) by means of a letter addressed to the person and sent by post to the person's business or home address, or
  - (c) by means of a letter addressed to the person and left at the person's business or home address with a person who appears to be of or above the age of 16 years and to reside at that address.

- (2) Any document that is authorised or required by or under the road transport legislation to be given to or served on any person (being a corporation) may be given or served:
  - (a) by means of a letter addressed to the corporation and sent by post to the address of any of its registered offices, or
  - (b) by means of a letter addressed to the corporation and left at the address of any of the corporation's registered offices with a person who appears to be of or above the age of 16 years and to be employed at that address.
- (3) Despite subsections (1) and (2), the regulations may:
  - (a) provide for additional means of giving or serving documents, or
  - (b) provide that a document of a class specified by the regulations be given or served only in the manner prescribed by the regulations, or
  - (c) provide for the date on which service of a document is taken to have been effected.
- (4) This section does not apply to a penalty notice to which section 184 applies.

**240 Lodgment of documents with Authority** (cf former Act, s 45)

- (1) If provision is made by or under the road transport legislation for the lodging of a notice or other document with the Authority, it is sufficient if the notice or other document is sent by post to, or lodged at, an office of the Authority.
- (2) Despite subsection (1), the regulations may:
  - (a) provide for additional means of lodging a notice or other document with the Authority, or
  - (b) provide that a notice or other document of a class specified by the regulations be lodged with the Authority only in the manner prescribed by the regulations, or
  - (c) provide for the date on which lodgment of a notice or other document is taken to have been effected.
- (3) In this section, **lodgment** of a notice or other document includes the giving of a notice or other document.

**241 Review by Administrative Decisions Tribunal of certain decisions made under road transport legislation** (cf former Act, s 48)

- (1) A person aggrieved by any of the following decisions made in relation to the person may apply to the Administrative Decisions Tribunal for a review of the decision:
  - (a) a decision of the Commissioner of Police under section 40 (2) of the *Road Transport (Safety and Traffic Management) Act 1999* refusing to grant an approval

under that subsection or imposing any condition on any such approval,

(b) any other decision under the road transport legislation that belongs to a class of decisions prescribed by the regulations for the purposes of this subsection.

(2) Despite subsection (1), a regulation referred to in subsection (1) (b) prescribing a class of decisions may limit the class of persons who may make an application for a review of a decision referred to in the subsection.

(3) A regulation referred to in subsection (1) (b) prescribing a class of decisions cannot be made without the concurrence of the Minister administering the *Administrative Decisions Tribunal Act 1997*.

**242 Alternate appeal rights to Local Court** (cf former Act, Sch 2, cl 24)

(1) The regulations may make provision for or with respect to appeals against:

(a) a decision of a police officer under section 205 to suspend the person's driver licence, and

(b) a decision by a police officer under section 206 to suspend the person's authority to drive in New South Wales, and

(c) applications for orders of the kind referred to in section 224 for the release of an impounded vehicle, and

(d) any decision (or class of decisions) under the road transport legislation instead of a review of any such decision or class of decisions by the Administrative Decisions Tribunal.

(2) In particular, and without limiting subsection (1), the regulations may:

(a) provide that section 241 does not apply to a decision or decisions, and

(b) provide for the manner of notification of specified decisions by the Authority or any other person to persons affected by the decisions, and

(c) confer jurisdiction on the Local Court in respect of the following:

(i) to hear and determine appeals against specified decisions, or classes of decisions, under the road transport legislation,

(ii) to hear and determine applications for orders for the release of an impounded vehicle, and

(d) set out the actions that may be taken by the Local Court or must be taken by the Authority or any other person after the determination of an appeal or an application.

- (3) A regulation referred to in subsection (1) may provide that a decision of the Local Court is final and not subject to any appeal or review by another court or body.
- (4) In determining an appeal against a decision referred to in subsection (1) (a) or (b), the Local Court:
  - (a) is not to vary or set aside a decision to suspend a driver licence or authority to drive unless it is satisfied that there are exceptional circumstances justifying a lifting or variation of the suspension, and
  - (b) is not, for the purposes of any such application, to take into account the circumstances of the offence with which the person making the application is charged, unless the regulations provide to the contrary.
- (5) An appeal in respect of a decision referred to in subsection (1) (a) or (b) must be made before the charge that occasioned the suspension has been heard and determined by a court or withdrawn.

**243 Indemnity from personal liability for honest and good faith carrying out of duties** (cf former Act, s 49)

- (1) An individual does not incur civil liability for an act or omission done honestly and in good faith in the course of his or her duties under the road transport legislation.
- (2) A liability that would, apart from subsection (1), attach to an individual because of an act or omission done honestly and in good faith in the course of his or her duties attaches instead:
  - (a) if it is an act or omission of a police officer, to the Crown, or
  - (b) if it is an act or omission of a person acting for the Authority, to the Authority.
- (3) An individual does not incur civil or criminal liability for carrying out a test or examination in accordance with the regulations made under the *Road Transport (Driver Licensing) Act 1998* and expressing to the Authority in good faith an opinion formed as a result of having carried out the test or examination.
- (4) An individual does not incur civil or criminal liability for reporting to the Authority, in good faith, information that discloses or suggests that:
  - (a) another person is or may be unfit to drive, or
  - (b) it may be dangerous to allow another person to hold, to be issued or to have renewed, a driver licence or a variation of a driver licence.

**244 Unpaid charges and fees** (cf former Act, s 73)

Except as provided by section 218 (6), any amount of unpaid charges or fees payable under this Act is a debt due to the Authority and may be recovered in a court of

competent jurisdiction.

#### **244A Application of work health and safety legislation**

- (1) The provisions of an applicable road law do not preclude, or otherwise affect, the operation of the work health and safety legislation.
- (2) If the effect of complying with a requirement of an applicable road law would be to cause a person to contravene a provision of the work health and safety legislation, the person is not required to comply with the requirement of the applicable road law.
- (3) Where an act or omission constitutes an offence under an applicable road law and:
  - (a) under the work health and safety legislation, or
  - (b) under the *Dangerous Goods (Road and Rail Transport) Act 2008*,the offender is not liable to be punished twice in relation to the offence.
- (4) In this section:

**work health and safety legislation** means the following Acts and any regulations made under those Acts:

- (a) the *Work Health and Safety Act 2011*,
- (b) the *Coal Mine Health and Safety Act 2002*,
- (c) the *Mine Health and Safety Act 2004*.

#### **245 Savings, transitional and other provisions** (cf former Act, s 74)

Schedule 1 has effect.

#### **246 Repeals**

- (1) Each Act specified in Schedule 2 is repealed.
- (2) Different days may be appointed for the commencement of subsection (1) for the purpose of repealing, on different days, different provisions of an Act specified in Schedule 2.

#### **247 (Repealed)**

#### **248 Review of Act** (cf former Act, s 75)

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from

the date of assent to this Act.

- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

## **Part 6.2 Miscellaneous provisions concerning vehicles and roads**

### **Division 1 Unauthorised use of vehicles**

#### **249 Motor vehicles or trailers not to be used without consent of owner** (cf former Act, s 52)

- (1) A person must not use any motor vehicle or trailer without first obtaining the consent of the owner.

Maximum penalty: 20 penalty units.

- (2) This section does not apply to a police officer in the execution of his or her duty under the road transport legislation.

#### **250 Procuring or hire of motor vehicle or trailer by fraud or misrepresentation** (cf former Act, s 53)

- (1) A person must not procure the use or hire of any motor vehicle or trailer by fraud or misrepresentation.

Maximum penalty: 20 penalty units.

- (2) A person must not aid or abet a person to procure the use or hire of any motor vehicle or trailer by fraud or misrepresentation.

Maximum penalty: 20 penalty units.

### **Divisions 2, 3**

#### **251-267 (Repealed)**

### **Schedule 1 Savings, transitional and other provisions**

(Section 245)

## **Part 1 General**

### **1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

this Act

*Road Transport (General) Amendment (Intelligent Access Program) Act 2006*



*Road Transport Legislation Amendment (Evidence) Act 2006*

*Road Transport (General) Amendment (Heavy Vehicle User Charges) Act 2007*

*Road Transport Legislation Amendment (Car Hoons) Act 2008*, to the extent that it amends this Act

*Road Transport Legislation Amendment Act 2008*

*Road Transport (General) Amendment (Consecutive Disqualification Periods) Act 2009*

*Road Transport Legislation Amendment (Miscellaneous Provisions) Act 2009*, to the extent that it amends this Act

*Road Transport Legislation Amendment (Offender Nomination) Act 2012*

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

## **Part 2 Provisions consequent on enactment of this Act**

### **2 Definitions**

In this Part:

**corresponding provision** of the former Act or repealed heavy vehicles provisions means a provision of the former Act or repealed heavy vehicles provisions that substantially corresponds to a provision of this Act.

**former Act** means the *Road Transport (General) Act 1999*.

**new provision** means a provision of this Act that substantially corresponds to a corresponding provision of the former Act or repealed heavy vehicles provisions.

**repealed heavy vehicles provisions** means Division 4 of Part 7 and Division 2 of Part 14 of the *Roads Act 1993* and any regulations made under those provisions or under section 264A of that Act.

### 3 General savings

- (1) If anything of a kind required or permitted to be done by or under a new provision was done or taken to be done by or under a corresponding provision of the former Act or the repealed heavy vehicles provisions and still had effect immediately before the commencement of the new provision, the thing continues in effect on and after that commencement as if:
  - (a) this Act had been in force when it was done, and
  - (b) it had been done by or under this Act.
- (2) If subclause (1) applies in relation to the execution, lodgment, issue or publication of a written instrument, any reference in the instrument to a corresponding provision of the former Act or the repealed heavy vehicles provisions is, for the purposes of that subclause, to be read as a reference to the new provision.
- (3) Without limiting subclauses (1) and (2), if a corresponding provision of the former Act or the repealed heavy vehicles provisions would, but for its repeal by this Act, have applied in relation to anything done or being done or in existence before the commencement of the relevant new provision, the new provision applies in relation to that thing, and so applies with any necessary adaptations.
- (4) This clause has effect subject to this Schedule and any regulations made under this Schedule.

**Note—**

Section 30 of the [Interpretation Act 1987](#) also contains applicable general savings, including saving any right, privilege, obligation or liability incurred under the repealed provisions and also saving the operation of any savings and transitional provision contained in the repealed provisions.

### 4 Saving of regulations

- (1) The following regulations under the former Act as in force immediately before the repeal of that Act are taken to be regulations made under this Act:

[Road Transport \(General\) Regulation 1999](#)

[Road Transport \(General\) \(Penalty Notice Offences\) Regulation 2002](#)

- (2) The [Road Transport \(Mass, Loading and Access\) Regulation 1996](#), as in force immediately before the repeal of section 264A of the [Roads Act 1993](#), is taken to be a regulation made under this Act.

### 5 Previous savings continue to have effect

Except as provided by the regulations, the repeal of the former Act does not affect the operation of the following:

- (a) any provision of Schedule 2 to that Act to the extent that it applies to matters done or taken to be done under the *Road Transport (Safety and Traffic Management) Act 1999*,
  - (b) any provision of that Schedule to the extent that it continues the operation of a repealed Act or any regulation, declaration or order made under any such Act,
- and any such provision continues to have effect.

## **6 Habitual traffic offenders**

Division 3 of Part 5.4 applies in respect of a conviction for any offence committed before the commencement of that Division for which a declaration could be made under section 28 of the former Act immediately before the repeal of that section.

## **7 (Repealed)**

## **8 Effect of this Part**

Nothing in this Part prevents the amendment or revocation of any delegation, order, authorisation, approval or declaration made under the former Act or the repealed heavy vehicles provisions.

## **Part 3 Provisions consequent on enactment of *Road Transport Legislation Amendment (Evidence) Act 2006***

### **9 Definition**

In this Part, **amending Act** means the *Road Transport Legislation Amendment (Evidence) Act 2006*.

### **10 Amendments not to apply to proceedings instituted before commencement of amendments**

- (1) An amendment made to this Act by the amending Act does not apply to proceedings for an offence that were instituted before the commencement of the amendment.
- (2) An amendment made to this Act by the amending Act applies to proceedings for an offence that are instituted on or after the commencement of the amendment even if the proceedings involve an offence that was committed before that commencement.

## **Part 5 Provisions consequent on enactment of *Road Transport (General) Amendment (Heavy Vehicle User Charges) Act 2007***

### **12 Existing excess weight permits**

An excess weight permit that was in force immediately before the substitution of section 27 by the *Road Transport (General) Amendment (Heavy Vehicle User Charges) Act 2007* continues in force for the period for which it would have been in force if that section had

not been substituted and is taken to be an excess permit granted under the section as so substituted.

## **Part 6 Provisions consequent on enactment of Road Transport Legislation Amendment (Car Hoons) Act 2008**

### **13 Definition**

In this Part:

**amending Act** means the *Road Transport Legislation Amendment (Car Hoons) Act 2008*.

### **14 Impounding, forfeiture, clamping and other penalties for certain speeding and other dangerous driving offences**

- (1) An amendment made to section 218 by the amending Act does not apply to or in respect of a motor vehicle seized under section 218 as in force immediately before the commencement of the amendment.
- (2) Sections 219 and 219A, as substituted and inserted, respectively, by the amending Act, apply to and in respect of a motor vehicle used in connection with an offence under section 40 or 41 (2) of the *Road Transport (Safety and Traffic Management) Act 1999* that is committed on or after the insertion of those sections.
- (3) However, if a motor vehicle was used in connection with an offence under section 40 or 41 (2) of the *Road Transport (Safety and Traffic Management) Act 1999* for which a person was found guilty before the substitution of section 219, that finding may be taken into account in deciding whether the motor vehicle has been used in connection with a second or subsequent such offence for the purposes of determining any penalty that may be imposed by a court or the Authority under section 219.

## **Part 7 Provisions consequent on enactment of Road Transport Legislation Amendment Act 2008**

### **15 Definition**

In this Part, **Amending Act** means the *Road Transport Legislation Amendment Act 2008*.

### **16 Application of amendments**

Sections 205 and 206, as amended by Schedule 3 to the Amending Act, do not apply in relation to an alleged offence referred to in section 205 (1A) (b) or (1B), or 206 (2A) (b) or (2B) (as so amended) that occurred before those sections were so amended.

### **17 Existing suspensions**

A suspension given by a police officer under section 205 or 206 and in force immediately before the amendment of those sections by Schedule 3 to the Amending Act is taken to be

a suspension given by the police officer under section 205 or 206, respectively, as amended by the Amending Act.

## **Part 8 Provisions consequent on enactment of Road Transport (General) Amendment (Consecutive Disqualification Periods) Act 2009**

### **18 Application of section 188A to certain existing licence disqualifications**

- (1) Section 188A (as inserted by the amending Act) extends to a licence disqualification (an **existing licence disqualification**) that:
  - (a) was imposed before the relevant day, and
  - (b) had commenced (or had not yet commenced) immediately before the relevant day.
- (2) If a disqualification orphan period in relation to an existing licence disqualification was already in existence immediately before the relevant day, section 188A (as inserted by the amending Act) applies in relation to that licence disqualification as if the disqualification orphan period for the purposes of that section had come into existence on the relevant day.
- (3) In this clause:

**amending Act** means the *Road Transport (General) Amendment (Consecutive Disqualification Periods) Act 2009*.

**disqualification orphan period** and **licence disqualification** have the same meaning as they have in section 188A (as inserted by the amending Act).

**relevant day** means the day on which the amending Act commences.

## **Part 9 Provisions consequent on enactment of Road Transport Legislation Amendment (Miscellaneous Provisions) Act 2009**

### **19 Definition**

In this Part:

**amending Act** means the *Road Transport Legislation Amendment (Miscellaneous Provisions) Act 2009*.

### **20 Confirmation of meaning of “registered operator” and “registration”**

- (1) It is declared that:
  - (a) any reference in this Act to a registered operator of a vehicle has, on and from 30 September 2005, included a reference to a person recorded in an Australian

registrable vehicles register as the person responsible for the vehicle, and

- (b) any reference in this Act to the registration of a vehicle has, on and from 30 September 2005, included a reference to the registration of a vehicle in an Australian registrable vehicles register.

**Note—**

This Act (other than Schedule 3.33 [1]–[3] and [15]–[19] as originally enacted) commenced on 30 September 2005.

- (2) Accordingly, any enforcement action taken under this Act or any related legislation on and from 30 September 2005 that would have been validly taken had subclause (1) been in force when it was taken is (to the extent of any invalidity) taken to be, and always to have been, valid.

- (3) In this clause:

**enforcement action** means:

- (a) any action taken in relation to a person by reason of the person being a registered operator of, or responsible person for, a vehicle within the meaning of this Act (including the issuing of a penalty notice or the commencement of proceedings for a contravention of a provision of an Act or statutory rule), and
- (b) any action taken in relation to a person or vehicle by reason of the registration of a vehicle within the meaning of this Act (including the issuing of a penalty notice or the commencement of proceedings for a contravention of a provision of an Act or statutory rule).

**related legislation** means:

- (a) the *Fines Act 1996*, and
- (b) any other Act or statutory rule (or a provision of any other Act or statutory rule) that imposes any obligation or liability, or that confers or imposes a function, on a person by reference to:
- (i) the person or another person being a registered operator of, or responsible person for, a vehicle within the meaning of this Act, or
- (ii) the registration of a vehicle (being registration of a vehicle within the meaning of this Act).

## **21 Effect of quashing of habitual traffic offender declaration**

Section 202 (4) (as inserted by the amending Act) extends to any declaration of a habitual traffic offender that is in force under Division 3 of Part 5.4 immediately before the commencement of that subsection.

## **Part 11 Provisions consequent on enactment of Road Transport Legislation Amendment (Offender Nomination) Act 2012**

### **26 Definitions**

In this Part:

**amending Act** means the *Road Transport Legislation Amendment (Offender Nomination) Act 2012*.

**assent day** means the day that is the date of assent to the amending Act.

### **27 Application of certain amendments to section 179**

- (1) Section 179 (1A) (as inserted by the amending Act) applies in relation to camera recorded offences committed on or after the assent day.
- (2) Section 179 (5) (as amended by the amending Act) applies in relation to penalty notices issued on or after the assent day.
- (3) Section 179 (10) (as amended by the amending Act) applies in relation to designated offences committed (or alleged to have been committed) on or after the day on which the amendment to that subsection commences.
- (4) Section 179 (10B)–(10D) (as inserted by the amending Act) extend to a designated offence committed (or alleged to have been committed) before the assent day, but only if a relevant nomination document for the offence had not been supplied before that day.

### **Schedule 2 Repeals**

(Section 246)

*Road Transport (General) Act 1999 No 18*

*Road Transport (General) Amendment (Licence Suspension) Act 2004 No 59*

*Road Transport (General) Amendment (Operator Onus Offences) Act 2002 No 11*

### **Schedule 3 (Repealed)**