



Australian Capital Territory

Road Transport (Mass, Dimensions and Loading) Act 2009

A2009-22

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Australian Capital Territory

Road Transport (Mass, Dimensions and Loading) Act 2009

A2009-22

An Act to provide for regulation of mass, dimensions and loading in relation to vehicles, and for other purposes

The Legislative Assembly for the Australian Capital Territory enacts as follows:

J2005-77

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Chapter 1 Preliminary

Part 1.1 Introduction

1 Name of Act

This Act is the *Road Transport (Mass, Dimensions and Loading) Act 2009*.

Note 1 This Act is part of the road transport legislation. See the *Road Transport (General) Act 1999* for various provisions about the administration and enforcement of the road transport legislation generally.

Note 2 Other road transport legislation includes the following:

- *Road Transport (Alcohol and Drugs) Act 1977*
- *Road Transport (Driver Licensing) Act 1999*
- *Road Transport (General) Act 1999*
- *Road Transport (Public Passenger Services) Act 2001*
- *Road Transport (Safety and Traffic Management) Act 1999*
- *Road Transport (Third-Party Insurance) Act 2008*
- *Road Transport (Vehicle Registration) Act 1999*.

Note 3 A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

2 Commencement

This Act commences on a day fixed by the Minister by written notice.

Note 1 The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

Note 2 A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see Legislation Act, s 77 (1)).

Note 3 If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see Legislation Act, s 79).

3 Dictionary

The dictionary at the end of this Act is part of this Act.

Note 1 The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere.

For example, the signpost definition '*road transport legislation*—see the *Road Transport (General) Act 1999*, section 6.' means that the term 'road transport legislation' is defined in that section and the definition applies to this Act.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

4 Notes

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

Note See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

5 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

Note 1 Criminal Code

The Criminal Code, ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (e.g. *conduct*, *intention*, *recklessness* and *strict liability*).

Note 2 Penalty units

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

6 Objects of Act

- (1) The general objects of this Act are—
 - (a) to improve road transport safety; and
 - (b) to minimise the adverse impact of road transport on roads, road related areas, bridges and other road infrastructure; and
 - (c) to minimise adverse impacts of road transport on the environment; and
 - (d) to minimise adverse impacts of road transport on the community; and
 - (e) to promote effective and efficient observance of requirements of road transport law.
- (2) The particular objects of this Act are—
 - (a) to provide a system that encourages effective and efficient compliance with the requirements of road transport law; and

- (b) to provide a system that, through improved compliance with, and accountability for, requirements of road transport law—
 - (i) promotes improved outcomes for road safety, the environment, road infrastructure and traffic management; and
 - (ii) reduces unfair competitive advantage; and
 - (c) to provide an effective, efficient and equitable scheme for the enforcement of requirements of road transport law; and
 - (d) to recognise a chain of responsibility of parties who have a role in the transport of goods or passengers by road and to make the parties accountable for their acts and omissions; and
 - (e) to provide powers to promote safety in the use of heavy vehicles in road transport.
- (3) It is the Assembly’s intention that the objects of this Act will be achieved in the context of nationally consistent road transport laws, and in particular in the context of nationally consistent compliance and enforcement laws, having regard to regional differences.

Part 1.2 Important concepts

7 Meaning of *heavy vehicle*

(1) In this Act:

heavy vehicle means—

- (a) a motor vehicle, or trailer, with a GVM greater than 4.5t, and includes—
 - (i) a special purpose vehicle with a GVM greater than 4.5t, and
 - (ii) a passenger-carrying vehicle with a GVM greater than 4.5t; and
- (b) a motor vehicle prescribed by regulation.

(2) In this section:

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

special purpose vehicle—

- (a) means a vehicle if the primary purpose for which the vehicle was built, or permanently modified, was not the carriage of goods or passengers; and
- (b) includes a vehicle prescribed by regulation; but
- (c) does not include a vehicle exempted by regulation.

8 **Meaning of *heavy combination***

In this Act:

heavy combination means—

- (a) a combination that includes a heavy vehicle; or
- (b) a combination prescribed by regulation.

9 **Meaning of *driver of vehicle or combination***

(1) In this Act:

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 driving the vehicle or combination as a driver under instruction or under a learner licence, or learner permit, that authorises the person to drive the vehicle or combination.

Note 1 **Driver**, of a vehicle, means the person who is driving the vehicle (see *Road Transport (General) Act 1999*, dict).

Note 2 **Driver**, of a disconnected trailer, for pt 3.1 (Investigation powers)—see s 305.

(2) In this section:

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.

10 **Meaning of *base of driver of vehicle or combination***

(1) In this Act:

base, of a driver of a vehicle or combination, means—

- (a) the place recorded for the time being as the driver's base in the work diary kept by the driver; or

- (b) if no place is recorded as mentioned in paragraph (a)—the garage address of the vehicle or towing vehicle of the combination, as recorded by the road transport authority or a corresponding road transport authority; or
 - (c) if no place is recorded as mentioned in paragraph (a) or (b)—the place from which the driver normally works and receives instructions.
- (2) To remove any doubt, if a driver has 2 or more employers, the driver may have a different base in relation to each employer.
 - (3) To remove any doubt, if a driver is both a self-employed driver and an employed driver, the driver may have 1 base as a self-employed driver and another base as an employed driver.

11 Meaning of *operator* of vehicle or combination

- (1) In this Act:
operator, of a vehicle or combination, means—
 - (a) for a vehicle (including a vehicle in a combination)—the person responsible for controlling or directing the operations of the vehicle; or
 - (b) for a combination—the person responsible for controlling or directing the operations of a towing vehicle in the combination.
- (2) However, a person is not an operator of a vehicle or combination only because the person does any of the following:
 - (a) owns the vehicle or combination;
 - (b) drives the vehicle or combination;
 - (c) maintains or arranges for the maintenance of the vehicle or combination;

- (d) arranges for the registration of the vehicle.

Note Section 403 contains provisions about the liability of registered operators for offences committed by people who are operators of vehicles or combinations.

12 **Meaning of *responsible person* for heavy vehicle or heavy combination**

- (1) In this Act:

responsible person, for a heavy vehicle or heavy combination—

- (a) means anyone with, at a relevant time, a role or responsibilities associated with road transport involving the vehicle or combination; and
- (b) includes a defined person for the vehicle or combination.

- (2) In this section:

defined person means the following:

- (a) an owner of the vehicle or combination or of a vehicle in the combination;
- (b) a driver of the vehicle or combination;
- (c) an operator or registered operator of the vehicle or combination;
- (d) a person in charge, or apparently in charge, of the vehicle or combination;
- (e) a person in charge, or apparently in charge, of—
- (i) the garage address of the vehicle or combination; or

- (ii) the base of the driver or drivers of the vehicle or combination;

Note **Base**, of a driver of a vehicle or combination—see s 10.

- (f) a person appointed under an approved road transport compliance scheme to have monitoring or other responsibilities under the scheme for the vehicle or combination;

Example

a person appointed to have responsibilities for certifying, monitoring or approving vehicles or combinations under the approved road transport compliance scheme

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (g) an operator of an intelligent transport system that applies in relation to the vehicle or combination;
- (h) a person in charge of premises entered, in relation to the vehicle or combination, by a police officer or authorised person under this Act;
- (i) a person who consigns goods for transport by road in the vehicle or combination;
- (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 in the vehicle or combination;
- (k) a person who loads goods or a container on the vehicle or combination for transport by road;
- (l) a person who unloads goods, or a container containing goods, consigned for transport by road on the vehicle or combination;
- (m) a person to whom goods are consigned for transport by road in the vehicle or combination;

- (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 on the vehicle or combination;
- (o) an owner or operator of a weighbridge, or weighing facility, used to weigh the vehicle or combination, or an occupier of premises where the weighbridge or weighing facility is located;
- (p) a responsible entity for a freight container for the vehicle or combination;

Note **Responsible entity**, for a freight container—see s 167.

- (q) a person who controls or directly influences the loading or operation of the vehicle or combination;
- (r) an agent, employer, employee or subcontractor of anyone mentioned in this section.

13 **Meaning of *consignor* of goods**

In this Act:

consignor, of goods, means—

- (a) a person who, with the person's authority, is named or otherwise identified as the consignor of the goods in the transport documentation for the transport of the goods by road; or
- (b) if no-one is named or otherwise identified as mentioned in paragraph (a)—
 - (i) a person who 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) a person who has possession of, or control over, the goods immediately before the goods are transported by road; or

- (iii) if the goods are loaded on a vehicle for transport by road at a place for the storage or temporary holding of goods in bulk that is unattended during the loading (except by a driver of the vehicle, a trainee driver or anyone necessary for the normal operation of the vehicle)—a person who loads the goods; or
- (c) if no-one can be identified as the consignor under paragraph (b) and the goods are imported into Australia—a person who imports the goods.

14 **Meaning of *consignee* of goods**

In this Act:

consignee, of goods—

- (a) means a person who—
 - (i) 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
 - (ii) actually receives the goods after completion of their transport by road; but
- (b) does not include a person who only unloads the goods.

15 **Meaning of *freight container***

In this Act:

freight container—

- (a) means—
 - (i) 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 1 or more modes of transport; or
 - (ii) a re-usable container of the same or a similar design and construction to a container mentioned in subparagraph (i) though of different dimensions; and
- (b) includes a container prescribed by regulation; but
- (c) does not include anything exempted by regulation.

16 **Meaning of *package of goods* and *packer***

(1) In this Act:

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

packer, of goods for transport by road, 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).

(2) In this section:

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

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 (other than a freight container) for transport; or
- (c) secured together in a sling for transport.

17 **Meaning of loader of goods**

In this Act:

loader, of goods, 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 paragraph (a) or (b), loads a freight container already in 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).

18 Meaning of *transport documentation*

In this Act:

transport documentation means—

- (a) any contractual documentation directly or indirectly associated with—
 - (i) a transaction for the actual or proposed transport of goods or passengers by road, or any previous transport of the goods or passengers by any method; or
 - (ii) goods or passengers themselves as 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 given, in relation to the contractual documentation or with the transaction.

Note Transport documentation may be recorded, produced, given, etc in electronic form (see *Electronic Transactions Act 2001*).

Examples—transport documentation

any of the following if it relates to the goods or passengers

- an invoice
- a vendor declaration
- a delivery order
- a consignment note
- a load manifest
- an export receival advice
- a bill of lading
- a contract of carriage
- a sea carriage document

- a container weight declaration

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

19 Meaning of *journey documentation*

- (1) In this Act:

journey documentation means documentation that—

- (a) is not transport documentation; and
- (b) is directly or indirectly associated with—
 - (i) the actual or proposed physical transport of goods or passengers by road, or any previous transport of the goods or passengers by any method; or
 - (ii) goods or passengers themselves as far as the documentation is relevant to their actual or proposed physical transport.

- (2) To avoid any doubt, it does not matter whether the documentation relates to a particular journey or to journeys generally.

Note Journey documentation may be recorded, produced, given, etc in electronic form (see *Electronic Transactions Act 2001*).

Examples—journey documentation

- 1 records kept, used or obtained by a responsible person for a heavy vehicle or heavy combination in relation to the transport of goods or passengers in the vehicle or combination
- 2 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
- 3 a subcontractor's payment advice relating to the goods or passengers or the transport of the goods or passengers

- 4 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 work diary entry, a fuel docket or receipt, a food receipt, a tollway receipt, pay records and mobile or other phone records
- 5 information reported through the use of an intelligent transport system
- 6 driver manuals and instruction sheets
- 7 advice in any form from check weighing performed before, during or after a journey

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

Part 1.3 Authorised people

Note Authorised people are appointed and issued with identity cards under the *Road Transport (General) Act 1999*, s 19 and s 20.

20 Reciprocal powers agreements

- (1) This section has effect in relation to another jurisdiction if the corresponding law of the other jurisdiction contains provisions corresponding to this section.
- (2) The Minister may enter into an agreement (a *reciprocal powers agreement*) with a Minister of the other jurisdiction—
 - (a) for section 21; and
 - (b) to amend or revoke the agreement.
- (3) A reciprocal powers agreement is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

21 Reciprocal powers agreements—functions

- (1) To the extent anticipated by a reciprocal powers agreement with another jurisdiction—
 - (a) ACT authorised people and ACT police officers may, in the ACT or the other jurisdiction, exercise functions given respectively to authorised people (however described) or police officers of the other jurisdiction under the corresponding law of the other jurisdiction; and
 - (b) authorised people (however described) and police officers of the other jurisdiction may, in the ACT or the other jurisdiction, exercise functions given respectively to authorised people and police officers under this Act.

- (2) Anything done or omitted to be done by an ACT police officer or an ACT authorised person under subsection (1) (a) is taken to have been done under this Act as well as under the corresponding law.
- (3) A regulation may make provision for the exercise of functions under this section.
- (4) Nothing in this section affects the road transport authority's power under the *Road Transport (General) Act 1999*, section 19 (Authorised persons) to appoint an authorised person (however described) under a law of another jurisdiction as an authorised person for this Act.

22 Road transport authority may designate other jurisdiction card as identity card

- (1) The road transport authority may designate a card issued to an authorised person under a corresponding heavy vehicle road law by a corresponding road transport authority as an identity card for this Act.

Note 1 A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

Note 2 Identity cards for this Act are issued under the *Road Transport (General) Act 1999*, s 20.

- (2) However, the road transport authority must not designate an authorised person's card under subsection (1) unless the card—
 - (a) identifies the person as an authorised person (however described) under a corresponding heavy vehicle road law; and
 - (b) shows the things mentioned in the *Road Transport (General) Act 1999*, section 20 (1) (a) and (b) (Identity cards).
- (3) The designation of a card is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

- (4) To remove any doubt, a designated card for an authorised person is taken to be an identity card for the *Road Transport (General) Act 1999*, section 21 (Power not to be exercised before identity card shown) in relation to an exercise of a power under this Act.

23 Road transport authority may exercise functions of police officers and authorised people

- (1) The road transport authority may exercise any function given under a heavy vehicle road law to a police officer or authorised person, other than a function that requires the physical presence of a police officer or authorised person.

Note **Function** includes authority, duty or power (see Legislation Act, dict).

- (2) To remove any doubt, in this Act (except this part) references to a ***police officer*** or ***authorised person*** include references to the road transport authority.

Chapter 2 **Mass, dimensions and loading requirements for vehicles**

Part 2.1 **Definitions—ch 2**

100 **Definitions—ch 2**

In this chapter:

dimension requirement—see section 102.

formal warning—see section 200.

loading requirement—see section 103.

lower limit, for a breach of a mass, dimension or loading requirement, means a lower limit under subdivision 2.2.2.2 (Lower limits for breaches).

mass requirement—see section 101.

minor risk breach, of a mass, dimension or loading requirement—see section 109.

prohibition order—see section 210.

severe risk breach, of a mass, dimension or loading requirement—see section 111.

substantial risk breach, of a mass, dimension or loading requirement—see section 110.

supervisory intervention order—see section 206.

101 Meaning of *mass requirement*—ch 2

(1) In this chapter:

mass requirement—

- (a) means a requirement of an Australian heavy vehicle 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
- (b) includes a defined requirement.

(2) For this section, each of the following is a *defined requirement*:

- (a) a requirement of an Australian heavy vehicle road law about mass limits relating to—
 - (i) the tare mass of a vehicle or combination; or
 - (ii) the gross vehicle mass of a vehicle or combination; or
 - (iii) the mass of the load in a vehicle or combination; or
 - (iv) the mass on a tyre, an axle or an axle group of the vehicle or combination;
- (b) a requirement of an Australian heavy vehicle road law about mass limits relating to axle spacing;
- (c) mass limits set out on signs erected or displayed under an Australian heavy vehicle road law.

Example—sign displayed under Australian heavy vehicle road law

a sign-posted bridge limit

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(3) In this section:

tare mass, for a motor vehicle—see the *Road Transport (Vehicle Registration) Regulation 2000*, dictionary.

102 Meaning of *dimension requirement*—ch 2

In this chapter:

dimension requirement means a requirement of an Australian heavy vehicle road law that relates to the dimensions of—

- (a) a vehicle or combination; or
- (b) a load; or
- (c) a component of a vehicle or combination.

Examples

- 1 the dimensions of a vehicle or combination, disregarding its load (if any)
- 2 the dimensions of a vehicle or combination including its load
- 3 the dimensions of the load in a vehicle or combination
- 4 the internal measurements of a vehicle or combination, including, for example, the distance between—
 - (a) components of a vehicle or combination; or
 - (b) vehicles in a combination; or
 - (c) a vehicle in a combination and a component of another vehicle in the combination

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

103 Meaning of *loading requirement*—ch 2

In this chapter:

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

Part 2.2 Mass, dimensions and loading requirements for heavy vehicles and heavy combinations

Division 2.2.1 Preliminary

104 Purpose and operation—pt 2.2

- (1) The main purpose of this part is to make provision for compliance with, and enforcement of, Australian heavy vehicle road laws in circumstances in which a load is, or may be, a factor in a breach or suspected breach of a mass, dimension or loading requirement.
- (2) This part does not limit the operation of other provisions of this Act, or any other road transport legislation, in relation to a breach or suspected breach of a mass, dimension or loading requirement.

Note A laden heavy vehicle or heavy combination could also be subject to other compliance and enforcement provisions under the road transport legislation because the vehicle or combination might fail to comply with legislative provisions about mass or dimensions even if the load is disregarded.

105 Meaning of *imminent* loss or shifting of load—pt 2.2

For this part:

imminent—the loss or shifting of a load in a vehicle or combination is *imminent* if it is likely to happen 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 factor.

106 Deciding whether breach involves appreciable risk of harm

For this part, in deciding whether a breach of a mass, dimension or loading requirement involves an appreciable risk of harm to public safety, the environment, road infrastructure or public amenity, regard must 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 factor.

107 Movement of people not shifting or loss of load

For this part, the disembarkation of people from, or the movement of people on, a vehicle or combination does not constitute a loss or shifting of the load of the vehicle or combination.

Division 2.2.2 Categorisation of breaches

Subdivision 2.2.2.1 Categories of breaches

108 Categories generally

For this Act, breaches of mass, dimension or loading requirements are categorised as follows:

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

109 **Meaning of *minor risk breach*—ch 2**

(1) In this chapter:

minor risk breach, of a mass, dimension or loading requirement means any of the following:

- (a) a minor risk breach—mass requirement;
- (b) a minor risk breach—dimension requirement;
- (c) a minor risk breach—loading requirement.

(2) In this section:

minor risk breach—dimension requirement—

- (a) means a breach of a dimension requirement if the subject matter of the breach is smaller than the lower limit for a substantial risk breach of the dimension requirement; and
- (b) includes a breach that is taken to be a minor risk breach under section 121 (Requirement breaches relating to dangerous projections—categorisation).

Note 1 The lower limit for a substantial risk breach of a dimension requirement is dealt with in s 113, s 114, s 115 and s 116.

Note 2 However, in some circumstances a minor risk breach is taken to be a substantial risk breach (see s 117, s 118 and s 119).

Note 3 A breach of an Australian heavy vehicle road law about a load projecting dangerously may also be a minor risk breach of a dimension requirement (see s 121).

minor risk breach—loading requirement, for a load, means a breach of a loading requirement if loss or shifting of the load—

- (a) has not happened and is not imminent; and

- (b) would not involve (if it were to happen) an appreciable risk of harm to public safety, the environment, road infrastructure or public amenity.

Note 1 For whether the loss or shifting of the load in a vehicle or combination is *imminent*—see s 105.

Note 2 Whether a breach of a mass, dimension or loading requirement involves an appreciable risk of harm is dealt with in s 106.

minor risk breach—mass requirement means a breach of a mass requirement if the subject matter of the breach has less mass than the lower limit for a substantial risk breach of the mass requirement.

Note The lower limit for a substantial risk breach of a mass requirement is dealt with in s 112.

110 Meaning of *substantial risk breach*—ch 2

- (1) In this chapter:

substantial risk breach, of a mass, dimension or loading requirement means any of the following:

- (a) a substantial risk breach—mass requirement;
- (b) a substantial risk breach—dimension requirement;
- (c) a substantial risk breach—loading requirement.

- (2) In this section:

substantial risk breach—dimension requirement—

- (a) means a breach of a dimension requirement if the subject matter of the breach—
 - (i) is equal to or larger than the lower limit for a substantial risk breach of the dimension requirement; and

- (ii) is smaller than the lower limit for a severe risk breach of the dimension requirement; and
- (b) includes a breach that is taken to be a substantial risk breach under section 121 (Requirement breaches relating to dangerous projections—categorisation).

Note 1 The lower limit for a substantial risk breach, and a severe risk breach, of a dimension requirement is dealt with in s 113, s 114, s 115 and s 116.

Note 2 However, in some circumstances a substantial risk breach is taken to be a severe risk breach (see s 117, s 118 and s 119).

Note 3 A breach of an Australian heavy vehicle road law about a load projecting dangerously may also be a substantial risk breach of a dimension requirement (see s 121).

substantial risk breach—loading requirement, for a load, means a breach of a loading requirement if—

- (a) loss or shifting of the load—
 - (i) has already happened or is imminent; but
 - (ii) does not involve an appreciable risk of harm to public safety, the environment, road infrastructure or public amenity; or
- (b) loss or shifting of the load—
 - (i) has not happened and is not imminent; but
 - (ii) would involve (if it were to happen) an appreciable risk of harm to public safety, the environment, road infrastructure or public amenity.

Note 1 For whether the loss or shifting of the load in a vehicle or combination is ***imminent***—see s 105.

Note 2 Whether a breach of a mass, dimension or loading requirement involves an appreciable risk of harm is dealt with in s 106.

substantial risk breach—mass requirement means a breach of a mass requirement if the subject matter of the breach has a mass—

- (a) equal to or more than the lower limit for a substantial risk breach of the mass requirement; and
- (b) less than the lower limit for a severe risk breach of the mass requirement.

Note The lower limit for a substantial risk breach of a mass requirement is dealt with in s 112 (1). The lower limit for a severe risk breach of a mass requirement is dealt with in s 112 (2).

111 Meaning of *severe risk breach*—ch 2

- (1) In this chapter:

severe risk breach, of a mass, dimension or loading requirement means any of the following:

- (a) a severe risk breach—mass requirement;
- (b) a severe risk breach—dimension requirement;
- (c) a severe risk breach—loading requirement.

- (2) In this section:

severe risk breach—dimension requirement means a breach of a dimension requirement if the subject matter of the breach is equal to or larger than the lower limit for a severe risk breach of the dimension requirement.

Note The lower limit for a severe risk breach of a dimension requirement is dealt with in s 113, s 114, s 115 and s 116.

severe risk breach—loading requirement, for a load, means a breach of a loading requirement if loss or shifting of the load—

- (a) has already happened or is imminent; and

(b) involves an appreciable risk of harm to public safety, the environment, road infrastructure or public amenity.

Note 1 For whether the loss or shifting of the load in a vehicle or combination is *imminent*—see s 105.

Note 2 Whether a breach of a mass, dimension or loading requirement involves an appreciable risk of harm is dealt with in s 106.

severe risk breach—mass requirement means a breach of a mass requirement if the subject matter of the breach has a mass equal to or more than the lower limit for a severe risk breach of the mass requirement.

Note The lower limit for a severe risk breach of a mass requirement is dealt with in s 112 (2).

Subdivision 2.2.2.2 Lower limits for breaches

112 Lower limits—breach of mass requirements

- (1) The lower limit for a substantial risk breach of a mass requirement is—
- (a) for a mass requirement that relates to the gross mass of a heavy vehicle or heavy combination—the greater of the following:
 - (i) 105% of the maximum permissible mass under the mass requirement, rounded up to the nearest 0.1t;
 - (ii) 0.5t; or
 - (b) in any other case—105% of the maximum permissible mass under the mass requirement, rounded up to the nearest 0.1t.

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

- (2) The lower limit for a severe risk breach of a mass requirement is 120% of the maximum permissible mass under the mass requirement, rounded up to the nearest 0.1t.

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

- (3) In this section:

legislatively specified mass limit means a mass limit in a heavy vehicle road law or another territory law.

mass requirement means a mass requirement for a heavy vehicle or heavy combination, or any component of a heavy vehicle or heavy combination, or any load in a heavy vehicle or heavy combination, that is imposed by reference to—

- (a) a legislatively specified mass limit; or
- (b) a manufacturer's mass rating; or
- (c) the lower of—
 - (i) a legislatively specified mass limit; and
 - (ii) a manufacturer's mass rating.

Note A regulation may prescribe a lower limit that is higher (see s 120).

113 Lower limits—breach of dimension requirements—load projection

- (1) The lower limit for a substantial risk breach of a projection requirement is 40mm over the maximum permissible dimension limit under the projection requirement.

Note A regulation may prescribe a lower limit that is higher (see s 120).

- (2) The lower limit for a severe risk breach of a projection requirement is 80mm over the maximum permissible dimension limit under the projection requirement.

Note A regulation may prescribe a lower limit that is higher (see s 120).

(3) Nothing in this section affects a person's liability for a breach of an overall width requirement under section 114.

(4) In this section:

projection requirement means a dimension requirement imposed by reference to the length of a projection of a load from either side of a heavy vehicle or heavy combination.

Example

a dimension requirement that a load in a heavy vehicle must not project more than 150mm from the outermost part of either side of the heavy vehicle

Note 1 In some circumstances a minor risk breach is taken to be a substantial risk breach and a substantial risk breach is taken to be a severe risk breach (see s 117 and s 119).

Note 2 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

114 Lower limits—breach of dimension requirements—overall width

(1) The lower limit for a substantial risk breach of an overall width requirement is 40mm measured from a side of the heavy vehicle or heavy combination.

Note A regulation may prescribe a lower limit that is higher (see s 120).

(2) The lower limit for a severe risk breach of an overall width requirement is 80mm measured from a side of the heavy vehicle or heavy combination.

Note A regulation may prescribe a lower limit that is higher (see s 120).

- (3) A breach of an overall width requirement is categorised by reference to the length of the projection of the load from a side of the heavy vehicle or heavy combination.

Example

A load projects 50mm from the side of a heavy combination, so the 50mm is used to determine that, under s (3), the breach is a substantial risk breach.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (4) If the load projects from both sides and the length of the projection from 1 side is more than the length of the projection from the other side, the breach must be categorised by reference to the longer projection.
- (5) Nothing in this section affects a person's liability for a breach of a projection requirement under section 113.
- (6) In this section:

overall width requirement means a dimension requirement imposed by reference to the overall width of a heavy vehicle, or heavy combination, together with its load if the load is a factor in working out the overall width.

Example

a dimension requirement that a heavy vehicle (and its load) must not be over 2.5m wide

Note In some circumstances a minor risk breach is taken to be a substantial risk breach and a substantial risk breach is taken to be a severe risk breach (see s 117 and s 119).

115 Lower limits—breach of dimension requirements—height

- (1) The lower limit for a substantial risk breach of a height requirement is 150mm over the maximum permissible height limit under the height requirement.

Note A regulation may prescribe a lower limit that is higher (see s 120).

- (2) The lower limit for a severe risk breach of a height requirement is 300mm over the maximum permissible height limit under the height requirement.

Note A regulation may prescribe a lower limit that is higher (see s 120).

- (3) In this section:

height requirement means a dimension requirement imposed by reference to the overall height of a heavy vehicle, or heavy combination, together with a load, if the load is a factor in working out the overall height.

Note In some circumstances a minor risk breach is taken to be a substantial risk breach and a substantial risk breach is taken to be a severe risk breach (see s 119).

116 Lower limits—breach of dimension requirements—length

- (1) The lower limit for a substantial risk breach of a length requirement is 0.35m over the maximum permissible dimension limit under the length requirement.

- (2) The lower limit for a severe risk breach of a length requirement is 0.6m over the maximum permissible dimension limit under the length requirement.

- (3) In this section:

length requirement means a dimension requirement imposed by reference to the overall length of a heavy vehicle, or heavy combination, together with its load if the load is a factor in working out the overall length.

Note 1 In some circumstances a minor risk breach is taken to be a substantial risk breach and a substantial risk breach is taken to be a severe risk breach (see s 118 and s 119).

Note 2 A regulation may prescribe a lower limit that is higher (see s 120).

Subdivision 2.2.2.3 Some breaches taken to be higher category breaches

117 Lower limits—some width breaches higher category breaches

- (1) This section applies to a breach of a dimension requirement to which section 113 or section 114 applies, if—
 - (a) the breach is committed—
 - (i) at night; or
 - (ii) in hazardous weather conditions that cause reduced visibility; or
 - (iii) on a declared route or in a declared zone; and
 - (b) the breach would be a minor risk breach or substantial risk breach because of lower limits applicable under section 113 or section 114.
- (2) A breach that would, apart from this section, be a minor risk breach is taken to be a substantial risk breach.
- (3) A breach that would, apart from this section, be a substantial risk breach is taken to be a severe risk breach.
- (4) In this section:

declared route means a road or road related area, or part of a road or road related area, declared under section 215 to be a declared route.

declared zone means an area declared under section 215 to be a declared zone.

118 Lower limits—some length breaches higher category breaches

- (1) This section applies to a breach, by a heavy vehicle or heavy combination, of a dimension requirement to which section 116 (Lower limits—breach of dimension requirements—length) applies, if—
 - (a) the rear of the load in the vehicle or combination fails to carry a warning signal required under the dimension requirement; and
 - (b) the breach would be a minor risk breach or substantial risk breach because of lower limits applicable under section 116.
- (2) A breach that would, apart from this section, be a minor risk breach is taken to be a substantial risk breach.
- (3) A breach that would, apart from this section, be a substantial risk breach is taken to be a severe risk breach.

119 Lower limits—some dimension breaches higher category breaches

- (1) This section applies to a breach, by a heavy vehicle or heavy combination, of a dimension requirement to which section 113, section 114, section 115 or section 116 applies, if—
 - (a) the load in the vehicle or combination projects from the vehicle or combination in a way that is dangerous to people or property; and
 - (b) the breach would be a minor risk breach or substantial risk breach because of lower limits applicable under section 113, section 114, section 115 or section 116.
- (2) A breach that would, apart from this section, be a minor risk breach is taken to be a substantial risk breach.

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

Subdivision 2.2.2.4 Miscellaneous

120 Regulation may increase lower limits

- (1) A regulation may prescribe a different lower limit, or a different method of calculating a lower limit, for a substantial risk breach, or severe risk breach, of a mass, dimension or loading requirement to which a provision of subdivision 2.2.2.2 (Lower limits for breaches) applies.
- (2) However, the regulation must not prescribe a limit that is lower than the limit provided by the relevant provision of subdivision 2.2.2.2.

Note A power to make a statutory instrument includes power to make different provision in relation to different matters or different classes of matters (see Legislation Act, s 48.)

121 Requirement breaches relating to dangerous projections—categorisation

- (1) This section applies to a breach of a requirement of an Australian heavy vehicle road law—
- (a) to the effect that a load in a heavy vehicle or heavy combination must not project in a way that is dangerous to a person or property, even if all dimension, warning and other requirements are met; and
- (b) that is not, apart from this section, a mass, dimension or loading requirement.
- (2) For 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 the requirement, unless subsection (3) applies.

- (3) For this Act, a breach to which this section applies is taken to be a substantial risk breach if the breach is committed—
- (a) at night; or
 - (b) in hazardous weather conditions that cause reduced visibility.

Division 2.2.3 Enforcement powers

Note 1 Further enforcement powers are in ch 3.

Note 2 The enforcement powers under this division vary according to the risk category involved. The main features are as follows:

(a) **Minor risk breaches**

A police officer or authorised person may authorise the driver to continue the journey (conditionally or unconditionally), but in particular circumstances the officer or person may direct the driver to rectify the breach before proceeding or to move the heavy vehicle or heavy combination to a suitable location (within a limited distance) and not proceed until the breach is rectified.

(b) **Substantial risk breaches**

A police officer or authorised person must direct the driver not to proceed until the breach is rectified, but in particular circumstances (or acting under particular RTA instructions) the officer or person may direct the driver to move the heavy vehicle or heavy combination to the nearest suitable location and not proceed until the breach is rectified.

(c) **Severe risk breaches**

A police officer or authorised person must direct the driver not to proceed until the breach is rectified, but in particular circumstances (or acting under particular RTA instructions) the officer or person may direct the driver to move the heavy vehicle or heavy combination to the nearest safe location and not proceed until the breach is rectified.

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

Subdivision 2.2.3.1 Application and definitions

122 Application—div 2.2.3

This division applies to a heavy vehicle or heavy combination whether or not the vehicle or combination is, has been, or becomes, the subject of a direction under part 3.1 (Investigation powers).

123 Definitions—div 2.2.3

In this division:

particular RTA instructions, authorising or requiring the moving of a heavy vehicle or heavy combination, means specific instructions or standing instructions given by the road transport authority (orally, in writing, or in any other way) authorising or requiring the moving of the heavy vehicle or heavy combination in the stated circumstances.

Note Instructions may be given in electronic form (see *Electronic Transactions Act 2001*).

suitable location, for a police officer or authorised person giving a direction, means a location that the officer or person believes on reasonable grounds is suitable for complying with the direction, having regard to any matter the officer or person considers relevant in the circumstances.

Subdivision 2.2.3.2 Minor risk breaches

124 Minor risk breaches—authorisation and directions

- (1) This section applies if a police officer or authorised person believes on reasonable grounds that a heavy vehicle or heavy combination—
 - (a) is the subject of a minor risk breach of a mass, dimension or loading requirement; and
 - (b) is not the subject of a substantial risk breach, or severe risk breach, of the requirements.

- (2) The police officer or authorised person must give a driver or operator of the heavy vehicle or heavy combination either—
 - (a) an authorisation to proceed under section 125; or
 - (b) if the officer or person has the belief mentioned in subsection (3)—a direction to stop and rectify the breach under section 126; or
 - (c) if the officer or person has the belief mentioned in subsection (4)—a direction to move and rectify the breach under section 127.
- (3) The police officer or authorised person may give a direction under section 125 if the officer or person believes on reasonable grounds that circumstances exist that justify the giving of a direction under the section.
- (4) The police officer or authorised person may give a direction under section 126 if the officer or person believes on reasonable grounds that—
 - (a) circumstances exist that justify the giving of a direction under the section; and
 - (b) the heavy vehicle or heavy combination should be moved to another location.
- (5) Without limiting subsection (3) or (4), circumstances that justify the giving of a direction exist if—
 - (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.

125 Minor risk breaches—authorisation to proceed

- (1) This section applies if, under section 124, a police officer or authorised person may give an authorisation under this section.

- (2) The police officer or authorised person may give the driver of the heavy vehicle or heavy combination an authorisation to continue the journey under section 137 (Authorisation to continue journey if minor risk breach).

Note Section 136 allows the police officer or authorised person to allow the heavy vehicle or heavy 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.

126 Minor risk breaches—directions to stop and rectify

- (1) This section applies if, under section 124, a police officer or authorised person may give a direction under this section.
- (2) The police officer or authorised person may direct the driver or operator of the heavy vehicle or heavy combination not to proceed until stated breaches of mass, dimension or loading requirements are rectified.
- (3) A direction may be conditional.

127 Minor risk breaches—directions to move and rectify

- (1) This section applies if, under section 124, a police officer or authorised person may give a direction under this section.
- (2) The police officer or authorised person may direct the driver or operator of the heavy vehicle or heavy combination to move the vehicle or combination, or cause the vehicle or combination to be moved, to a stated suitable location that is within the maximum distance, and not to proceed from there until stated breaches of mass, dimension or loading requirements are rectified.

Note **Suitable location**, for a police officer or authorised person giving a direction—see s 123.

- (3) A direction may be conditional.

(4) In this section:

maximum distance means a distance (in any direction) within a radius of 30km 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 during the journey of the vehicle or combination.

128 Offence—minor risk breaches—fail to comply with directions

- (1) A person commits an offence if the person—
 - (a) is subject to a direction under section 126 or section 127; and
 - (b) fails to comply with the direction (including a condition of the direction).

Maximum penalty: 50 penalty units.

Note The registered operator may be taken to have committed this offence if the registered operator does not give the road transport authority the name of the operator of the vehicle or combination (see s 403).

- (2) An offence against this section is a strict liability offence.

Subdivision 2.2.3.3 Substantial risk breaches

129 Substantial risk breaches—directions

- (1) This section applies if a police officer or authorised person believes on reasonable grounds that a heavy vehicle or heavy combination—
 - (a) is the subject of a substantial risk breach of a mass, dimension or loading requirement; and
 - (b) is not the subject of a severe risk breach of a mass, dimension or loading requirement.

- (2) The police officer or authorised person must give the driver or operator of the heavy vehicle or heavy combination either—
 - (a) a direction to stop and rectify the breach under section 130; or
 - (b) if the officer or person has the belief mentioned in subsection (3)—a direction to move and rectify the breach under section 130 (3).
- (3) The police officer or authorised person must give a direction under section 130 (3) if the officer or person believes on reasonable grounds that—
 - (a) circumstances exist that justify the moving of the heavy vehicle or heavy combination to another location; or
 - (b) particular RTA instructions have been given authorising or requiring the moving of the heavy vehicle or heavy combination to another location.

Note **Particular RTA instructions**, authorising or requiring the moving of a heavy vehicle or heavy combination—see s 123.
- (4) Without limiting subsection (3), circumstances that justify the moving of a heavy vehicle or heavy combination exist if moving the heavy vehicle or heavy combination is necessary in the public interest to avoid potential risk of harm to public safety, the environment, road infrastructure or public amenity.

130 Substantial risk breaches—directions to stop and rectify

- (1) This section applies if, under section 129, a police officer or authorised person must give a direction under this section.
- (2) The police officer or authorised person must direct the driver or operator of the heavy vehicle or heavy combination not to proceed until stated breaches of mass, dimension or loading requirements are rectified.
- (3) A direction may be conditional.

131 Substantial risk breaches—directions to move and rectify

- (1) This section applies if, under section 129, a police officer or authorised person must give a direction under this section.
- (2) The police officer or authorised person must direct the driver or operator of the heavy vehicle or heavy combination to move the vehicle or combination, or cause the vehicle or combination to be moved, to the stated nearest suitable location, and not to proceed from there until stated breaches of mass, dimension or loading requirements are rectified.

Note **Suitable location**, for a police officer or authorised person giving a direction—see s 123.

- (3) To avoid any doubt, nothing in this section prevents the following places from being the nearest suitable location for this section:
 - (a) the intended destination of the journey;
 - (b) the depot of the heavy vehicle or of a heavy vehicle in the heavy combination.
- (4) A direction may be conditional.

132 Offence—substantial risk breaches—fail to comply with directions

- (1) A person commits an offence if the person—
 - (a) is subject to a direction under section 130 or section 131; and
 - (b) fails to comply with the direction (including a condition of the direction).

Maximum penalty: 50 penalty units.

Note The registered operator may be taken to have committed this offence if the registered operator does not give the road transport authority the name of the operator of the vehicle or combination (see s 403).

- (2) An offence against this section is a strict liability offence.

Subdivision 2.2.3.4 Severe risk breaches

133 Severe risk breaches—directions

- (1) This section applies if a police officer or authorised person believes on reasonable grounds that a heavy vehicle or heavy combination is the subject of a severe risk breach of a mass, dimension or loading requirement.
- (2) The police officer or authorised person must give the driver or operator of the heavy vehicle or heavy combination either—
 - (a) a direction to stop and rectify the breach under section 134; or
 - (b) if the officer or person has the belief mentioned in subsection (3)—a direction to move and rectify the breach under section 135.
- (3) The police officer or authorised person must give a direction under section 134 if the officer or person believes on reasonable grounds that—
 - (a) circumstances exist that justify the moving of the heavy vehicle or heavy combination to another location; or
 - (b) particular RTA instructions have been given authorising or requiring the moving of the heavy vehicle or heavy combination to another location.

Note **Particular RTA instructions**, authorising or requiring the moving of a heavy vehicle or heavy combination—see s 123.
- (4) However, circumstances that justify the moving of a heavy vehicle or heavy combination exist only if there is—
 - (a) an appreciable risk of harm to public safety, the environment, road infrastructure or public amenity; or
 - (b) a risk to the welfare of people or live animals in the vehicle or combination.

- (5) For this section, *risk of harm to public safety* does not (subject to subsection (6)) include risk of harm to the safety of the heavy vehicle or heavy combination or any load in the vehicle or combination, but does include risk of harm to the safety of people or live animals in the vehicle or combination.
- (6) However, subsection (5) does not prevent the police officer or authorised person from taking into account the safety of the vehicle or combination, or any load in the vehicle or combination, if the officer or person 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.

134 Severe risk breaches—directions to stop and rectify

- (1) This section applies if, under section 133, a police officer or authorised person must give a direction under this section.
- (2) The police officer or authorised person must direct the driver or operator of the heavy vehicle or heavy combination not to proceed until stated breaches of mass, dimension or loading requirements are rectified.
- (3) A direction may be conditional.

135 Severe risk breaches—directions to move and rectify

- (1) This section applies if, under section 133, a police officer or authorised person must give a direction under this section.
- (2) The police officer or authorised person must direct the driver or operator of the heavy vehicle or heavy combination to move the vehicle or combination, or cause the vehicle or combination to be moved, to the stated nearest safe location, and not to proceed from there until stated breaches of mass, dimension or loading requirements are rectified.
- (3) A direction may be conditional.

- (4) In this section:

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

136 Offence—severe risk breaches—fail to comply with directions

- (1) A person commits an offence if the person—
- (a) is subject to a direction under section 134 or section 135; and
 - (b) fails to comply with the direction (including a condition of the direction).

Maximum penalty: 50 penalty units.

Note The registered operator may be taken to have committed this offence if the registered operator does not give the road transport authority the name of the operator of the vehicle or combination (see s 403).

- (2) An offence against this section is a strict liability offence.

Subdivision 2.2.3.5 Miscellaneous

137 Authorisation to continue journey if minor risk breach

- (1) This section applies to a heavy vehicle or heavy combination if a police officer or authorised person believes on reasonable grounds that—
- (a) the heavy vehicle or heavy combination—
 - (i) is the subject of a minor risk breach of a mass, dimension or loading requirement; and
 - (ii) is not, or is no longer, the subject of a substantial risk breach, or a severe risk breach, of a mass, dimension or loading requirement; and

- (b) the driver is not, or is no longer, the subject of a direction for the rectification of a minor risk breach.
- (2) The police officer or authorised person may give the driver of the heavy vehicle or heavy combination an authorisation to continue the journey.
- (3) An authorisation may be conditional if the police officer or authorised person believes on reasonable grounds that particular conditions are necessary to minimise risk of harm to public safety, the environment, road infrastructure or public amenity.

138 Offence—fail to comply with authorisation to continue journey

- (1) A person commits an offence if—
 - (a) the person is given an authorisation under section 137; and
 - (b) the authorisation is subject to a condition; and
 - (c) the person fails to comply with the condition.

Maximum penalty: 50 penalty units.

Note The registered operator may be taken to have committed this offence if the registered operator does not give the road transport authority the name of the operator of the vehicle or combination (see s 403).

- (2) An offence against this section is a strict liability offence.

139 Operation of directions for combinations

- (1) This section applies if a direction is given under this division in relation to a heavy combination.
- (2) Subject to subsection (3), nothing in this division prevents a component heavy vehicle of the heavy combination from being separately driven or moved if—
 - (a) the component heavy vehicle is not itself the subject of a breach of a mass, dimension or loading requirement; and

- (b) it is not otherwise unlawful for the component heavy vehicle to be driven or moved.
- (3) Subsection (2) does not apply if a condition of the direction prevents the component heavy vehicle from being separately driven or moved.
- (4) In this section:

component heavy vehicle, of a heavy combination, means a towing heavy vehicle or trailer of the heavy combination.

140 Directions and authorisations to be in writing

A direction or authorisation under this division must be in writing unless—

- (a) for a direction to move a heavy vehicle or heavy combination—the moving is carried out in the presence of, or under the supervision of, a police officer or authorised person; or
- (b) a regulation prescribes otherwise.

Division 2.2.4 Liability for breaches of mass, dimensions and loading requirements

Subdivision 2.2.4.1 Liability of consignors

Note *Consignor*, of goods—see s 13.

141 Offence—liability of consignors—minor and substantial mass breaches

- (1) A person commits an offence if—
 - (a) the person is the consignor of any goods that are in a heavy vehicle or heavy combination; and

- (b) a minor risk breach of a mass requirement for the vehicle or combination happens.

Maximum penalty: 20 penalty units.

- (2) A person commits an offence if—
 - (a) the person is the consignor of any goods that are in a heavy vehicle or heavy combination; and
 - (b) a substantial risk breach of a mass requirement for the vehicle or combination happens.

Maximum penalty: 40 penalty units.

- (3) An offence against this section is a strict liability offence.
- (4) A defendant has the benefit of the reasonable steps exception for an offence against this section.

Note For the reasonable steps exception, see s 185.

142 Offence—liability of consignors—severe mass breaches

- (1) A person commits an offence if—
 - (a) the person is the consignor of any goods that are in a heavy vehicle or heavy combination; and
 - (b) a severe risk breach of a mass requirement for the vehicle or combination happens; and
 - (c) the person intends the breach.

Maximum penalty: 200 penalty units, imprisonment for 6 months or both.

- (2) A person commits an offence if—
 - (a) the person is the consignor of any goods that are in a heavy vehicle or heavy combination; and

- (b) a severe risk breach of a mass requirement for the vehicle or combination happens; and
- (c) the person is reckless about the breach.

Maximum penalty: 150 penalty units, imprisonment for 6 months or both.

- (3) A person commits an offence if—
 - (a) the person is the consignor of any goods that are in a heavy vehicle or heavy combination; and
 - (b) a severe risk breach of a mass requirement for the vehicle or combination happens; and
 - (c) the person is negligent about the breach.

Maximum penalty: 100 penalty units.

143 Offence—liability of consignors—weight exceeds marked weight

- (1) A person commits offence if—
 - (a) the person is the consignor of any of the goods contained in a freight container containing goods consigned for road transport; and
 - (b) the freight container is placed on a vehicle; and
 - (c) the weight of the freight container is more than the maximum gross weight as marked on the container or the container's safety approval plate.

Maximum penalty: 50 penalty units.

- (2) An offence against this section is a strict liability offence.
- (3) A defendant has the benefit of the reasonable steps exception for an offence against this section.

Note For the reasonable steps exception, see s 185.

144 Offence—liability of consignors—minor and substantial dimension and loading breaches

- (1) A person commits an offence if—
- (a) the person is the consignor of any goods that are in a heavy vehicle or heavy combination; and
 - (b) a minor risk breach of a dimension or loading requirement for the vehicle or combination happens.

Maximum penalty: 15 penalty units.

- (2) A person commits an offence if—
- (a) the person is the consignor of any goods that are in a heavy vehicle or heavy combination; and
 - (b) a substantial risk breach of a dimension or loading requirement for the vehicle or combination happens.

Maximum penalty: 30 penalty units.

- (3) An offence against this section is a strict liability offence.
- (4) A defendant has the benefit of the reasonable steps exception for an offence against this section.

Note For the reasonable steps exception, see s 185.

145 Offence—liability of consignors—severe dimension and loading breaches

- (1) A person commits an offence if—
- (a) the person is the consignor of any goods that are in a heavy vehicle or heavy combination; and
 - (b) a severe risk breach of a dimension or loading requirement for the vehicle or combination happens; and

(c) the person intends the breach.

Maximum penalty: 200 penalty units, imprisonment for 6 months or both.

(2) A person commits an offence if—

- (a) the person is the consignor of any goods that are in a heavy vehicle or heavy combination; and
- (b) a severe risk breach of a dimension or loading requirement for the vehicle or combination happens; and
- (c) the person is reckless about the breach.

Maximum penalty: 150 penalty units, imprisonment for 6 months or both.

(3) A person commits an offence if—

- (a) the person is the consignor of any goods that are in a heavy vehicle or heavy combination; and
- (b) a severe risk breach of a dimension or loading requirement for the vehicle or combination happens; and
- (c) the person is negligent about the breach.

Maximum penalty: 100 penalty units.

Subdivision 2.2.4.2 Liability of packers

Note *Packer*, of goods for transport by road—see s 16.

146 Offence—liability of packers—minor and substantial mass breaches

(1) A person commits an offence if—

- (a) the person is a packer of goods that are in a heavy vehicle or heavy combination; and

(b) a minor risk breach of a mass requirement for the vehicle or combination happens.

Maximum penalty: 20 penalty units.

- (2) A person commits an offence if—
- (a) the person is a packer of goods that are in a heavy vehicle or heavy combination; and
 - (b) a substantial risk breach of a mass requirement for the vehicle or combination happens.

Maximum penalty: 40 penalty units.

- (3) An offence against this section is a strict liability offence.
- (4) A defendant has the benefit of the reasonable steps exception for an offence against this section.

Note For the reasonable steps exception, see s 185.

147 Offence—liability of packers—severe mass breaches

- (1) A person commits an offence if—
- (a) the person is a packer of goods that are in a heavy vehicle or heavy combination; and
 - (b) a severe risk breach of a mass requirement for the vehicle or combination happens; and
 - (c) the person intends the breach.

Maximum penalty: 200 penalty units, imprisonment for 6 months or both.

- (2) A person commits an offence if—
- (a) the person is a packer of goods that are in a heavy vehicle or heavy combination; and

- (b) a severe risk breach of a mass requirement for the vehicle or combination happens; and
- (c) the person is reckless about the breach.

Maximum penalty: 150 penalty units, imprisonment for 6 months or both.

- (3) A person commits an offence if—
 - (a) the person is a packer of goods that are in a heavy vehicle or heavy combination; and
 - (b) a severe risk breach of a mass requirement for the vehicle or combination happens; and
 - (c) the person is negligent about the breach.

Maximum penalty: 100 penalty units.

148 Offence—liability of packers—weight exceeds marked weight

- (1) A person commits an offence if—
 - (a) the person is the packer of any of the goods contained in a freight container containing goods consigned for road transport; and
 - (b) the freight container is placed on a vehicle; and
 - (c) the weight of the freight container is more than the maximum gross weight as marked on the container or the container's safety approval plate.

Maximum penalty: 50 penalty units.

- (2) An offence against this section is a strict liability offence.
- (3) A defendant has the benefit of the reasonable steps exception for an offence against this section.

Note For the reasonable steps exception, see s 185.

149 Offence—liability of packers—minor and substantial dimensions and loading breaches

- (1) A person commits an offence if—
- (a) the person is a packer of goods that are in a heavy vehicle or heavy combination; and
 - (b) a minor risk breach of a dimension or loading requirement for the vehicle or combination happens.

Maximum penalty: 15 penalty units.

- (2) A person commits an offence if—
- (a) the person is a packer of goods that are in a heavy vehicle or heavy combination; and
 - (b) a substantial risk breach of a dimension or loading requirement for the vehicle or combination happens.

Maximum penalty: 30 penalty units.

- (3) An offence against this section is a strict liability offence.
- (4) A defendant has the benefit of the reasonable steps exception for an offence against this section.

Note For the reasonable steps exception, see s 185.

150 Offence—liability of packers—severe dimensions and loading breaches

- (1) A person commits an offence if—
- (a) the person is a packer of goods that are in a heavy vehicle or heavy combination; and
 - (b) a severe risk breach of a dimension or loading requirement for the vehicle or combination happens; and

(c) the person intends the breach.

Maximum penalty: 200 penalty units, imprisonment for 6 months or both.

(2) A person commits an offence if—

(a) the person is a packer of goods that are in a heavy vehicle or heavy combination; and

(b) a severe risk breach of a dimension or loading requirement for the vehicle or combination happens; and

(c) the person is reckless about the breach.

Maximum penalty: 150 penalty units, imprisonment for 6 months or both.

(3) A person commits an offence if—

(a) the person is a packer of goods that are in a heavy vehicle or heavy combination; and

(b) a severe risk breach of a dimension or loading requirement for the vehicle or combination happens; and

(c) the person is negligent about the breach.

Maximum penalty: 100 penalty units.

Subdivision 2.2.4.3 Liability of loaders

Note **Loader**, of goods—see s 17.

151 Offence—liability of loaders—minor and substantial mass breaches

(1) A person commits an offence if—

(a) the person is a loader of any goods that are in a heavy vehicle or heavy combination; and

(b) a minor risk breach of a mass requirement for the vehicle or combination happens.

Maximum penalty: 20 penalty units.

- (2) A person commits an offence if—
- (a) the person is a loader of any goods that are in a heavy vehicle or heavy combination; and
 - (b) a substantial risk breach of a mass requirement for the vehicle or combination happens.

Maximum penalty: 40 penalty units.

- (3) An offence against this section is a strict liability offence.
- (4) A defendant has the benefit of the reasonable steps exception for an offence against this section.

Note For the reasonable steps exception, see s 185.

152 Offence—liability of loaders—severe mass breaches

- (1) A person commits an offence if—
- (a) the person is a loader of any goods that are in a heavy vehicle or heavy combination; and
 - (b) a severe risk breach of a mass requirement for the vehicle or combination happens; and
 - (c) the person intends the breach.

Maximum penalty: 200 penalty units, imprisonment for 6 months or both.

- (2) A person commits an offence if—
- (a) the person is a loader of any goods that are in a heavy vehicle or heavy combination; and

- (b) a severe risk breach of a mass requirement for the vehicle or combination happens; and
- (c) the person is reckless about the breach.

Maximum penalty: 150 penalty units, imprisonment for 6 months or both.

- (3) A person commits an offence if—
 - (a) the person is a loader of any goods that are in a heavy vehicle or heavy combination; and
 - (b) a severe risk breach of a mass requirement for the vehicle or combination happens; and
 - (c) the person is negligent about the breach.

Maximum penalty: 100 penalty units.

153 Offence—liability of loaders—minor and substantial dimension and loading breaches

- (1) A person commits an offence if—
 - (a) the person is a loader of any goods that are in a heavy vehicle or heavy combination; and
 - (b) a minor risk breach of a dimension or loading requirement for the vehicle or combination happens.

Maximum penalty: 15 penalty units.

- (2) A person commits an offence if—
 - (a) the person is a loader of any goods that are in a heavy vehicle or heavy combination; and

- (b) a substantial risk breach of a dimension or loading requirement for the vehicle or combination happens.

Maximum penalty: 30 penalty units.

- (3) An offence against this section is a strict liability offence.
(4) A defendant has the benefit of the reasonable steps exception for an offence against this section.

Note For the reasonable steps exception, see s 185.

154 Offence—liability of loaders—severe dimension and loading breaches

- (1) A person commits an offence if—
(a) the person is a loader of any goods that are in a heavy vehicle or heavy combination; and
(b) a severe risk breach of a dimension or loading requirement for the vehicle or combination happens; and
(c) the person intends the breach.

Maximum penalty: 200 penalty units, imprisonment for 6 months or both.

- (2) A person commits an offence if—
(a) the person is a loader of any goods that are in a heavy vehicle or heavy combination; and
(b) a severe risk breach of a dimension or loading requirement for the vehicle or combination happens; and
(c) the person is reckless about the breach.

Maximum penalty: 150 penalty units, imprisonment for 6 months or both.

- (3) A person commits an offence if—
- (a) the person is a loader of any goods that are in a heavy vehicle or heavy combination; and
 - (b) a severe risk breach of a dimension or loading requirement for the vehicle or combination happens; and
 - (c) the person is negligent about the breach.

Maximum penalty: 100 penalty units.

Subdivision 2.2.4.4 Liability of operators

Note *Operator*, of a vehicle or combination—see s 11.

155 Offence—liability of operators—minor and substantial mass breaches

- (1) A person commits an offence if—
- (a) the person is the operator of a heavy vehicle or heavy combination; and
 - (b) a minor risk breach of a mass requirement for the vehicle or combination happens.

Maximum penalty: 20 penalty units.

Note The registered operator may be taken to have committed this offence if the registered operator does not give the road transport authority the name of the operator of the vehicle or combination (see s 403).

- (2) A person commits an offence if—
- (a) the person is the operator of a heavy vehicle or heavy combination; and

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- (b) a substantial risk breach of a mass requirement for the vehicle or combination happens.

Maximum penalty: 40 penalty units.

Note The registered operator may be taken to have committed this offence if the registered operator does not give the road transport authority the name of the operator of the vehicle or combination (see s 403).

- (3) An offence against this section is a strict liability offence.
- (4) A defendant has the benefit of the reasonable steps exception for an offence against subsection (1).

Note For the reasonable steps exception, see s 185.

- (5) A defendant has the benefit of the reasonable steps exception for an offence against subsection (2), but only as far as it relates to reliance on the weight stated in a container weight declaration.

Note 1 **Container weight declaration**, for a freight container—see s 168.

Note 2 Section 186 makes provision for reliance on a container weight declaration if 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 exception.

156 Offence—liability of operators—severe mass breaches

- (1) A person commits an offence if—
- (a) the person is the operator of a heavy vehicle or heavy combination; and
- (b) a severe risk breach of a mass requirement for the vehicle or combination happens; and

(c) the person intends the breach.

Maximum penalty: 200 penalty units, imprisonment for 6 months or both.

Note The registered operator may be taken to have committed this offence if the registered operator does not give the road transport authority the name of the operator of the vehicle or combination (see s 403).

(2) A person commits an offence if—

(a) the person is the operator of a heavy vehicle or heavy combination; and

(b) a severe risk breach of a mass requirement for the vehicle or combination happens; and

(c) the person is reckless about the breach.

Maximum penalty: 150 penalty units, imprisonment for 6 months or both.

Note The registered operator may be taken to have committed this offence if the registered operator does not give the road transport authority the name of the operator of the vehicle or combination (see s 403).

(3) A person commits an offence if—

(a) the person is the operator of a heavy vehicle or heavy combination; and

(b) a severe risk breach of a mass requirement for the vehicle or combination happens; and

(c) the person is negligent about the breach.

Maximum penalty: 100 penalty units.

Note The registered operator may be taken to have committed this offence if the registered operator does not give the road transport authority the name of the operator of the vehicle or combination (see s 403).

- (4) A defendant has the benefit of the reasonable steps exception for an offence against this section, but only as far as it relates to reliance on the weight stated in a container weight declaration.

Note 1 **Container weight declaration**, for a freight container—see s 168.

Note 2 Section 186 makes provision for reliance on a container weight declaration if 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 exception.

157 Offence—liability of operators—minor and substantial dimension and loading breaches

- (1) A person commits an offence if—
- (a) the person is the operator of a heavy vehicle or heavy combination; and
 - (b) a minor risk breach of a dimension or loading requirement for the vehicle or combination happens.

Maximum penalty: 15 penalty units.

Note The registered operator may be taken to have committed this offence if the registered operator does not give the road transport authority the name of the operator of the vehicle or combination (see s 403).

- (2) A person commits an offence if—
- (a) the person is the operator of a heavy vehicle or heavy combination; and
 - (b) a substantial risk breach of a dimension or loading requirement for the vehicle or combination happens.

Maximum penalty: 30 penalty units.

Note The registered operator may be taken to have committed this offence if the registered operator does not give the road transport authority the name of the operator of the vehicle or combination (see s 403).

- (3) An offence against this section is a strict liability offence.

- (4) A defendant has the benefit of the reasonable steps exception for an offence against subsection (1).

Note For the reasonable steps exception, see s 185.

158 Offence—liability of operators—severe dimension and loading breaches

- (1) A person commits an offence if—
- (a) the person is the operator of a heavy vehicle or heavy combination; and
 - (b) a severe risk breach of a dimension or loading requirement for the vehicle or combination happens; and
 - (c) the person intends the breach.

Maximum penalty: 200 penalty units, imprisonment for 6 months or both.

Note The registered operator may be taken to have committed this offence if the registered operator does not give the road transport authority the name of the operator of the vehicle or combination (see s 403).

- (2) A person commits an offence if—
- (a) the person is the operator of a heavy vehicle or heavy combination; and
 - (b) a severe risk breach of a dimension or loading requirement for the vehicle or combination happens; and
 - (c) the person is reckless about the breach.

Maximum penalty: 150 penalty units, imprisonment for 6 months or both.

Note The registered operator may be taken to have committed this offence if the registered operator does not give the road transport authority the name of the operator of the vehicle or combination (see s 403).

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- (3) A person commits an offence if—
- (a) the person is the operator of a heavy vehicle or heavy combination; and
 - (b) a severe risk breach of a dimension or loading requirement for the vehicle or combination happens; and
 - (c) the person is negligent about the breach.

Maximum penalty: 100 penalty units.

Note The registered operator may be taken to have committed this offence if the registered operator does not give the road transport authority the name of the operator of the vehicle or combination (see s 403).

Subdivision 2.2.4.5 Liability of drivers

Note *Driver*, of a vehicle or combination—see s 9.

159 Offence—liability of drivers—minor and substantial mass breaches

- (1) A person commits an offence if—
- (a) the person is the driver of a heavy vehicle or heavy combination; and
 - (b) a minor risk breach of a mass requirement for the vehicle or combination happens.

Maximum penalty: 20 penalty units.

- (2) A person commits an offence if—
- (a) the person is the driver of a heavy vehicle or heavy combination; and

- (b) a substantial risk breach of a mass requirement for the vehicle or combination happens.

Maximum penalty: 40 penalty units.

- (3) An offence against this section is a strict liability offence.
- (4) A defendant has the benefit of the reasonable steps exception for an offence against subsection (1).

Note For the reasonable steps exception, see s 185.

- (5) A defendant has the benefit of the reasonable steps exception for an offence against subsection (2), but only as far as it relates to reliance on the weight stated in a container weight declaration.

Note 1 **Container weight declaration**, for a freight container—see s 168.

Note 2 Section 186 makes provision for reliance on a container weight declaration if 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 exception.

160 Offence—liability of drivers—severe mass breaches

- (1) A person commits an offence if—
- (a) the person is the driver of a heavy vehicle or heavy combination; and
- (b) a severe risk breach of a mass requirement for the vehicle or combination happens; and
- (c) the person intends the breach.

Maximum penalty: 200 penalty units, imprisonment for 6 months or both.

- (2) A person commits an offence if—
- (a) the person is the driver of a heavy vehicle or heavy combination; and

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(b) a severe risk breach of a mass requirement for the vehicle or combination happens; and

(c) the person is reckless about the breach.

Maximum penalty: 150 penalty units, imprisonment for 6 months or both.

(3) A person commits an offence if—

(a) the person is the driver of a heavy vehicle or heavy combination; and

(b) a severe risk breach of a mass requirement for the vehicle or combination happens; and

(c) the person is negligent about the breach.

Maximum penalty: 100 penalty units.

(4) A defendant has the benefit of the reasonable steps exception for an offence against this section, but only as far as it relates to reliance on the weight stated in a container weight declaration.

Note 1 **Container weight declaration**, for a freight container—see s 168.

Note 2 Section 186 makes provision for reliance on a container weight declaration if 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 exception.

161 Offence—liability of drivers—minor and substantial dimensions and loading breaches

(1) A person commits an offence if—

(a) the person is the driver of a heavy vehicle or heavy combination; and

- (b) a minor risk breach of a dimension or loading requirement for the vehicle or combination happens.

Maximum penalty: 15 penalty units.

- (2) A person commits an offence if—
 - (a) the person is the driver of a heavy vehicle or heavy combination; and
 - (b) a substantial risk breach of a dimension or loading requirement for the vehicle or combination happens.

Maximum penalty: 30 penalty units.

- (3) An offence against this section is a strict liability offence.
- (4) A defendant has the benefit of the reasonable steps exception for an offence against subsection (1).

Note For the reasonable steps exception, see s 185.

162 Offence—liability of drivers—severe dimensions and loading breaches

- (1) A person commits an offence if—
 - (a) the person is the driver of a heavy vehicle or heavy combination; and
 - (b) a severe risk breach of a dimension or loading requirement for the vehicle or combination happens; and
 - (c) the person intends the breach.

Maximum penalty: 200 penalty units, imprisonment for 6 months or both.

- (2) A person commits an offence if—
 - (a) the person is the driver of a heavy vehicle or heavy combination; and

- (b) a severe risk breach of a dimension or loading requirement for the vehicle or combination happens; and
- (c) the person is reckless about the breach.

Maximum penalty: 150 penalty units, imprisonment for 6 months or both.

- (3) A person commits an offence if—
 - (a) the person is the driver of a heavy vehicle or heavy combination; and
 - (b) a severe risk breach of a dimension or loading requirement for the vehicle or combination happens; and
 - (c) the person is negligent about the breach.

Maximum penalty: 100 penalty units.

Subdivision 2.2.4.6 Liability of consignees

Note *Consignee*, of goods—see s 14.

163 Offence—liability of consignees

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

Maximum penalty: 200 penalty units, imprisonment for 6 months or both.

- (2) A person commits an offence if—
- (a) the person is a consignee of goods consigned for road transport; and
 - (b) the person engages in conduct that results, or is likely to result, in inducing or rewarding a breach of a mass, dimension or loading requirement; and
 - (c) the person is reckless about the result.

Maximum penalty: 150 penalty units, imprisonment for 6 months or both.

- (3) A person commits an offence if—
- (a) the person is a consignee of goods consigned for road transport; and
 - (b) the person engages in conduct that results, or is likely to result, in inducing or rewarding a breach of a mass, dimension or loading requirement; and
 - (c) the person is negligent about the result.

Maximum penalty: 100 penalty units.

Division 2.2.5 Sanctions

164 Matters to be taken into consideration by courts

- (1) The purpose of this section is to bring to the attention of courts the general implications and consequences of breaches of mass, dimension or loading requirements when deciding the kinds and levels of sanctions to be imposed.

- (2) In deciding the sanctions (including the level of fine) that are to be imposed for breaches of mass, dimension or loading requirements, a court is to take into consideration the categorisation of the breach under this part and, having regard to the categorisation, 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 1 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 1 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.
- Note* Deciding whether a breach of a mass, dimension or loading requirement involves an appreciable risk of harm is dealt with in s 106.
- (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 presented in relation to the matters that are to be taken into consideration by a court under this section.

165 Default categorisation

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

Division 2.2.6 Container weight declarations

166 Application—div 2.2.6

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.

167 Meaning of *responsible entity* for freight container

In this Act:

responsible entity, for a freight container, means—

- (a) if the consignor of the freight container is in Australia at the time of the consignment—the consignor; or

- (b) if the consignor of the freight container is not in Australia at the time of the consignment but the consignor's agent is in Australia at the time of consignment—the consignor's agent; or
- (c) if neither the consignor of the freight container nor the consignor's agent is in Australia at the time of the consignment—the person in Australia who physically offered the container for transport by road in the ACT.

168 **Meaning of *container weight declaration***

- (1) In this Act:

container weight declaration, for a freight container means a declaration that states, or purports to state, the weight of the freight container and its contents.

Note A container weight declaration may be recorded, produced, given, etc in electronic form (see *Electronic Transactions Act 2001*).

- (2) Subject to the regulations, a container weight declaration—
- (a) may be comprised in 1 or more documents or other formats; and
 - (b) without limiting paragraph (a), may be comprised wholly or partly in a placard attached to the freight container.

169 **Meaning of *complying container weight declaration*—
div 2.2.6**

In this division—

complying container weight declaration—

- (a) means a container weight declaration, for a freight container, that contains the following additional information:
 - (i) the number and other particulars of the freight container necessary to identify the container;

- (ii) the name, and home or business address in Australia, of the responsible entity for the freight container;
 - (iii) the date of the declaration;
 - (iv) any other information prescribed by regulation; and
- (b) does not include a container weight declaration if—
- (i) the contents of the declaration are not readily available to a police officer, or authorised person, who seeks to find out the declaration's contents immediately in the presence of the freight container (whether by examining documents located in the heavy vehicle or heavy combination in which the container is loaded or by obtaining the information by radio, mobile telephone or another way); or
 - (ii) the declaration is not in a form that satisfies the requirements (if any) prescribed by regulation.

170 Offence—duty of responsible entities for freight containers

- (1) A person commits an offence if the person—
- (a) is a responsible entity for a freight container; and
 - (b) offers the freight container to an operator of a heavy vehicle or heavy combination for transport in the ACT by the vehicle or combination; and
 - (c) does not ensure that the operator or driver of the vehicle or combination is given a complying container weight declaration for the freight container before the start of the transport of the freight container in the ACT.

Maximum penalty: 50 penalty units.

- (2) An offence against this section is a strict liability offence.

- (3) A defendant has the benefit of the reasonable steps exception for an offence against this section.

Note For the reasonable steps exception, see s 185.

171 Offence—duty of operators of vehicles and combinations

- (1) A person commits an offence if the person—
- (a) is an operator of a heavy vehicle or heavy combination; and
 - (b) arranges for a freight container to be transported in the ACT by the vehicle or combination; and
 - (c) does not ensure that the driver of the vehicle or combination is given a complying container weight declaration for the freight container before the start of the driver’s journey in the course of the transport of the freight container in the ACT.

Maximum penalty: 50 penalty units.

Note The registered operator may be taken to have committed this offence if the registered operator does not give the road transport authority the name of the operator of the vehicle or combination (see s 403).

- (2) An operator is taken to have failed to comply with subsection (1) if the driver does not have—
- (a) a complying container weight declaration for the freight container; or
 - (b) the details required to be included in a complying container weight declaration for the freight container.
- (3) Subsection (1) does not apply to a defendant if—
- (a) the prosecution relies on subsection (2); and
 - (b) the driver was given the declaration or details.

Note The defendant has an evidential burden in relation to the matters mentioned in s (3) (see Criminal Code, s 58).

- (4) A person commits an offence if—
- (a) the person is an operator of a heavy vehicle or heavy combination; and
 - (b) the person arranges for a freight container to be transported in the ACT by the vehicle or combination; and
 - (c) the freight container is to be transported by another road or rail carrier; and
 - (d) the person does not ensure that, before the other carrier receives the freight container, the other carrier is given—
 - (i) a complying container weight declaration for the freight container; or
 - (ii) the details required to be included in a complying container weight declaration for the freight container.

Maximum penalty: 50 penalty units.

Note The registered operator may be taken to have committed this offence if the registered operator does not give the road transport authority the name of the operator of the vehicle or combination (see s 403).

- (5) An offence against this section is a strict liability offence.
- (6) A defendant has the benefit of the reasonable steps exception for an offence against this section.
- Note* For the reasonable steps exception, see s 185.
- (7) A regulation may prescribe when subsection (1), (2) or (3) does not apply.

172 Offence—duty of drivers of vehicles and combinations

- (1) A person commits an offence if—
- (a) the person drives a heavy vehicle, or heavy combination, on a road or road related area in the ACT; and

- (b) the vehicle or combination is loaded with a freight container; and
- (c) the person has not been given a container weight declaration for the container.

Maximum penalty: 50 penalty units.

- (2) A person commits an offence if—
 - (a) the person drives a heavy vehicle, or heavy combination, on a road or road related area in the ACT; and
 - (b) the vehicle or combination is loaded with a freight container; and
 - (c) the person has been given a container weight declaration for the container; and
 - (d) the person does not, during the course of a journey in the ACT, keep the declaration—
 - (i) in or about the vehicle or combination; or
 - (ii) in a way that allows the declaration to be readily accessed from the vehicle or combination.

Maximum penalty: 50 penalty units.

- (3) An offence against this section is a strict liability offence.
- (4) A defendant has the benefit of the reasonable steps exception for an offence against this section.

Note For the reasonable steps exception, see s 185.

173 Offence—liability of consignees

A person commits an offence if—

- (a) the person is a consignee of goods consigned for road transport; and

Note **Consignee**, of goods—see s 14.

- (b) the person engages in conduct that results, or is likely to result, in inducing or rewarding a breach of a mass, dimension or loading requirement; and
- (c) the conduct relates to a freight container; and
- (d) 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 the container's contents that was false or misleading in a material particular.

Note 1 **Container weight declaration**, for a freight container—see s 168.

Note 2 Giving false or misleading information and producing false or misleading documents is also dealt with in the Criminal Code, s 338 and s 339.

Maximum penalty: 100 penalty units.

Division 2.2.7 Recovery of losses—container weight declarations not given or inaccurate

174 Recovery of losses—container weight declaration not given

- (1) This section applies if—
 - (a) a container weight declaration has not been given as required by this Act; and
 - (b) a person suffered loss because the declaration was not given.

Note Complying container weight declarations must be given under s 170, s 171 and s 172.

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- (2) The person (the *plaintiff*) has a right under this Act to recover, from the responsible entity for the freight container, the amount of the loss suffered by the plaintiff because the container weight declaration is not given.
- (3) Losses that may be recovered include the following:
 - (a) loss suffered because of delay in the delivery of the freight container, any goods contained in the freight container, or other goods;
 - (b) loss suffered because of spoilage of, or damage to, the goods;
 - (c) loss suffered because of the need to provide another heavy vehicle or heavy combination, and loss suffered because of any delay in the provision of another heavy vehicle or heavy combination;
 - (d) cost or expense incurred in weighing the freight container, the container's contents or both.
- (4) The plaintiff may enforce the right by bringing a proceeding in a court of competent jurisdiction for an order for payment of the amount of the loss.

Note The court may assess the amount of loss in the way the court considers appropriate (see s 177).

175 Recovery of losses—container weight declaration inaccurate

- (1) This section applies if—
 - (a) a container weight declaration has been given as required by this Act; and

- (b) the declaration contains information about a freight container that is false or misleading in a material particular by understating the weight of the container; and

Note Giving false or misleading information and producing false or misleading documents is also dealt with in the Criminal Code, s 338 and s 339.

- (c) a breach of a mass requirement happened because of the reliance by an operator or driver of a heavy vehicle or heavy 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) believed on reasonable grounds, at the time of the breach, that the vehicle or combination was not in breach of a mass requirement; and

(ii) did not know, and could not reasonably have been expected to know, at the time of the breach that the minimum weight stated in the declaration was lower than the actual weight of the container; and

- (e) a person suffered loss because of the provision of the declaration.

Note Complying container weight declarations must be given under s 170, s 171 and s 172.

- (2) The person (the *plaintiff*) has a right under this Act to recover, from the responsible entity for the freight container, the amount of the loss suffered by the plaintiff because of the provision of the container weight declaration.

Note The responsible entity for the freight container may be able to recover from the person who provided the false or misleading information (see s 176).

- (3) Losses that may be recovered include the following:
- (a) a fine, infringement notice penalty or other penalty imposed on the plaintiff under an Australian heavy vehicle road law because of the container weight declaration;
 - (b) a fine, infringement notice penalty or other penalty imposed on an agent or employee of the plaintiff under an Australian heavy vehicle road law because of the container weight declaration, that is reimbursed by the plaintiff;
 - (c) loss suffered because of delay in the delivery of the freight container, any goods contained in the freight container or other goods;
 - (d) loss suffered because of spoliation of, or damage to, the goods;
 - (e) loss suffered because of the need to provide another heavy vehicle or heavy combination, and loss suffered because of any delay in the provision of another heavy vehicle or heavy combination;
 - (f) cost or expense incurred in weighing the freight container or any of the container's contents.
- (4) The plaintiff may enforce the right by bringing a proceeding in a court of competent jurisdiction for an order for payment of the amount of the loss.

Note The court may assess the amount of loss in the way the court considers appropriate (see s 177).

176 Recovery of losses by responsible entity for freight container

- (1) This section applies if an order under section 175 has been made or is being sought against a responsible entity for a freight container for payment of the amount (the *full amount*) of any loss suffered by a person.

- (2) The responsible entity for the freight container has a right under this Act to recover, from a person (the *information provider*) who provided the responsible entity with any of the information that was false or misleading, the part (the *attributable amount*) of the full amount paid or payable by the responsible entity under the order that is attributable to the information provided by the information provider.

Note Giving false or misleading information and producing false or misleading documents is also dealt with in the Criminal Code, s 338 and s 339.

- (3) The responsible entity for the freight container may enforce the right to recover by—
- (a) joining, or seeking the joinder of, the information provider in the proceeding for the order under section 175 and applying to the court for an order for payment of the attributable amount to be made when the order is made under section 175; or
 - (b) bringing a separate proceeding in a court of competent jurisdiction for an order for payment of the attributable amount.

Note The court may assess the attributable amount in the way the court considers appropriate (see s 177).

177 Assessment of amount or attributable amount

- (1) In making an order under this division, a court may assess, in the way the court considers appropriate—
- (a) the amount of any loss mentioned in—
 - (i) section 174 (Recovery of losses—container weight declaration not given); or
 - (ii) section 175 (Recovery of losses—container weight declaration inaccurate); or
 - (b) the attributable amount mentioned in section 176.

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- (2) In making an assessment, the court may take into account any matters the court considers relevant, including any evidence presented in relation to any prosecution brought for a breach mentioned in section 175.

178 Costs—div 2.2.7

- (1) A court may award costs in relation to a proceeding for an order under this division.
- (2) The court may order payment of any cost or expense incurred in weighing a freight container, any of the container's contents or both, if—
- (a) the minimum weight stated in the container weight declaration for the container was lower than the actual weight; or
 - (b) a container weight declaration was not provided as required by this Act.
- (3) An order under subsection (2) may be made in favour of any of the following:
- (a) a party to the proceeding;
 - (b) the road transport authority;
 - (c) a corresponding road transport authority;
 - (d) a public authority of this, or any other, jurisdiction.

Division 2.2.8 False and misleading transport and journey documentation

179 Offence—provide false or misleading transport and journey documentation

- (1) This section applies if—
- (a) goods are consigned for transport by road, or for transport partly by road and partly by some other means; and

(b) all or part of the transport by road happens, or is to happen, in the ACT.

(2) A person commits an offence if—

(a) the person gives another person transport documentation, or journey documentation, for the goods that is false or misleading about a matter; and

(b) the matter is relevant to know to ensure that a breach of a mass, dimension or loading requirement does not happen during the transport of the goods by road.

Maximum penalty: 50 penalty units.

Note Giving false or misleading information and producing false or misleading documents is also dealt with in the Criminal Code, s 338 and s 339.

(3) Information about a matter is not false or misleading for this section only because it overstates or understates an amount if the overstatement or understatement would not, at the time it is made, be likely to result in a breach of a mass, dimension or loading requirement.

(4) An offence against this section is a strict liability offence.

(5) A defendant has the benefit of the reasonable steps exception for an offence against this section.

Note For the reasonable steps exception, see s 185.

Division 2.2.9 Concessions

180 Operation—div 2.2.9

This division has effect in relation to a mass, dimension or loading concession subject to—

(a) the provisions of the law under which the concession was granted or issued; and

(b) the terms of the concession itself.

181 **Meaning of *mass, dimension or loading concession*—div 2.2.9**

In this division:

mass, dimension or loading concession means a permit, authorisation, approval, exemption, notice or anything else that—

- (a) is granted or issued in writing under a heavy vehicle road law; and
- (b) exempts a person from a provision of a heavy vehicle road law in relation to a mass, dimension or loading requirement.

182 **Meaning of *condition*—div 2.2.9**

In this division:

condition, of a mass, dimension or loading concession, means a term or condition stated in, or otherwise applicable to, the concession, that is—

- (a) a term or condition that imposes a different requirement in place of a requirement contained in the provision of a heavy vehicle 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.

183 **Offence—fail to comply with concession conditions**

A person commits an offence if the person—

- (a) holds a mass, dimension or loading concession; and

(b) fails to comply with a condition of the concession.

Maximum penalty: 50 penalty units.

**184 Effect of fail to comply with concession conditions—
prosecutions etc**

- (1) If a person fails to comply with a condition of a mass, dimension or loading concession—
 - (a) the concession does not operate while the failure to comply continues; and
 - (b) accordingly, the concession must be disregarded in deciding—
 - (i) whether there has been a breach of a mass, dimension or loading requirement; and
 - (ii) if there has been a breach—the risk category to which the breach belongs.
- (2) If, because of subsection (1), a person commits an offence against the provision of a heavy vehicle road law from which the person was exempted by the concession, the person may be prosecuted either for the offence or for the offence against section 183.

Part 2.3 **General exceptions to offences**

Division 2.3.1 **Reasonable steps exception**

185 **Reasonable steps exception**

- (1) This section applies if a defendant for a heavy vehicle road law offence has the benefit of the reasonable steps exception for the offence.
 - (2) The offence does not apply to the defendant if—
 - (a) the defendant did not know, and could not reasonably be expected to have known, about the failure to comply with the heavy vehicle road law; and
 - (b) either—
 - (i) the defendant had taken reasonable steps to comply; or
 - (ii) there were no steps that the defendant could reasonably be expected to have taken to comply.
- Note* The defendant has an evidential burden in relation to the matters mentioned in s (2) (see Criminal Code, s 58).
- (3) Without limiting subsection (2), in deciding whether something done, or omitted to be done, by the defendant constitutes reasonable steps, a court may have regard to—
 - (a) the circumstances of the alleged offence, including (if relevant) the risk category to which the breach belongs; and
 - (b) without limiting paragraph (a), the measures available and measures taken for any 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 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 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 of the following:
- (i) to include compliance assurance conditions in relevant commercial arrangements with other responsible people for the vehicle or combination;
 - (ii) to provide information, instruction, training and supervision to employees to make compliance with relevant laws possible;
 - (iii) to maintain equipment and work systems to make compliance with relevant laws possible;
 - (iv) to address and remedy any similar compliance problems that may have happened 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 its load, or 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.

186 Reasonable steps exception—reliance on container weight declaration

- (1) This section applies if the operator or driver of a vehicle or combination—
 - (a) is charged with an offence involving a breach of a mass requirement; and
 - (b) seeks to rely on the reasonable steps exception in relation to the offence.

Note The defendant has an evidential burden in relation to the matters mentioned in s 185 (2) for the reasonable steps exception (see Criminal Code, s 58).

- (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 proved that the defendant knew, or ought reasonably to have known, that—
 - (a) the stated weight was lower than the actual weight; or
 - (b) a breach of a mass requirement would be caused by 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.

Note **Container weight declaration**, for a freight container—see s 168.

Division 2.3.2 Other exceptions to offences

187 Meaning of *deficiency in a vehicle or combination*— div 2.3.2

In this division:

deficiency in a vehicle or combination means—

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

188 Exception for owners and operators

- (1) This section applies to a defendant for a heavy vehicle road law offence if the defendant is being prosecuted as an owner or operator of a vehicle or combination.
- (2) The defendant does not commit an offence if, at the time of the conduct that would, apart from this section, make up the offence, the vehicle was being used by—
 - (a) someone else not entitled (whether by express or implied authority or otherwise) to use the vehicle or combination, other than an employee or agent of the defendant; or
 - (b) an employee of the defendant who was acting at the relevant time outside the scope of the employment; or
 - (c) an agent (in any capacity) of the defendant who was acting at the relevant time outside the scope of the agency.

Note The defendant has an evidential burden in relation to the matters mentioned in s (2) (see Criminal Code, s 58).

- (3) However, if the offence relates to a breach of a heavy vehicle road law for an alleged deficiency in the vehicle or combination, the exception in subsection (2) is only available to the defendant if—
- (a) the vehicle or combination was not, before it stopped being under the defendant’s control, driven on a road or road related area in Australia in breach of an Australian heavy vehicle road law that relates to any of the alleged deficiencies; and
 - (b) 1 or more material changes, resulting in the alleged breach, were made after the vehicle or combination stopped being under the defendant’s control.

Note The defendant has an evidential burden in relation to the matters mentioned in s (3) (see Criminal Code, s 58).

189 Exception for drivers

- (1) This section applies to a defendant for a heavy vehicle road law offence if the offence involves a deficiency in a vehicle or combination.
- (2) The offence does not apply to the defendant if the defendant—
 - (a) is being prosecuted as a driver of the vehicle or combination; and
 - (b) did not cause or contribute to the deficiency in the vehicle or combination; and
 - (c) did not have any responsibility for, or control over, the maintenance of the vehicle or combination or its equipment at any relevant time; and
 - (d) did not know, and could not reasonably be expected to have known, of the deficiency; and

- (e) could not reasonably be expected to have found out whether there was, or was likely to be, a deficiency in the vehicle or combination.

Note The defendant has an evidential burden in relation to the matters mentioned in s (2) (see Criminal Code, s 58).

190 Exception if complying with direction

An offence against a provision of the road transport legislation does not apply to a person if the conduct making up the offence was done in compliance with a direction (whether or not a lawful direction) given by—

- (a) a police officer or authorised person; or
(b) the road transport authority or a corresponding road transport authority.

Note The defendant has an evidential burden in relation to the matters mentioned in this section (see Criminal Code, s 58).

Part 2.4 Additional sanctions for heavy vehicle offences

Division 2.4.1 Preliminary

191 Meaning of *associate*—pt 2.4

- (1) For this part, a person is an *associate* of another person if—
- (a) 1 of them is a spouse, parent, brother, sister or child of the other; or
 - (b) both are members of the same household; or
 - (c) they are partners; or
 - (d) both are trustees or beneficiaries of the same trust, or 1 is a trustee and the other is a beneficiary of the same trust; or
 - (e) 1 person is a corporation and the other person is a director or member of the governing body of the corporation; or
 - (f) 1 person is a corporation (other than a public company whose shares are listed on a stock exchange) and the other person is a shareholder in the corporation; or
 - (g) they are related bodies corporate; or
 - (h) a chain of relationships can be traced between them under 1 or more of paragraphs (a) to (g).
- (2) In this section:
- beneficiary*, of a trust, includes an object of a discretionary trust.
- related body corporate*—see the Corporations Act, section 9 (Definitions).

192 Penalties imposed by courts

- (1) A court that convicts or finds a person guilty of a heavy vehicle road law offence may impose 1 or more of the penalties that may be imposed by a court under this Act.
- (2) Without affecting a court's discretion, the court must take into consideration, when imposing more than 1 of the penalties provided for by this Act, the combined effect of the penalties imposed.
- (3) Nothing in this part affects a discretion or power that a court or other person or body has apart from this Act.
- (4) If 1 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 for the same person, the supervisory intervention order has no effect while the prohibition order has effect.

Note Supervisory intervention orders are dealt with in s 206.
Prohibition orders are dealt with in s 210.

Division 2.4.2 Improvement notices

193 Definitions—div 2.4.2

In this division:

authorised police officer means a police officer authorised in writing by the chief police officer for this division.

due date, for an improvement notice—see section 194.

improvement notice—see section 194.

194 Improvement notices

- (1) An authorised person or authorised police officer may give a person (the *offender*) a written notice (an *improvement notice*) if the person or officer believes on reasonable grounds that the offender—
 - (a) has failed to comply with a provision of an Australian heavy vehicle road law; or
 - (b) is failing to comply with a provision of an Australian heavy vehicle road law; or
 - (c) is likely to fail to comply with a provision of an Australian heavy vehicle road law.
- (2) An improvement notice may require the offender to remedy—
 - (a) the failure to comply or likely failure to comply; or
 - (b) the matters or activities causing the failure to comply or likely failure to comply.
- (3) Also, an improvement notice may state the method to be used to achieve the remedy.
- (4) An improvement notice must state the following:
 - (a) that the notice is issued under this section;
 - (b) that the authorised person or authorised police officer believes on reasonable grounds that the offender has failed to comply, is failing to comply or is likely to fail to comply, with a provision of an Australian heavy vehicle road law;
 - (c) the reasons for the belief;
 - (d) the provision of the Australian heavy vehicle road law in relation to which the belief is held;

- (e) that the offender must comply with the notice not later than the date (the *due date*) stated in the notice.

Note The notice must also comply with the requirements for reviewable decision notices which are prescribed under the *ACT Civil and Administrative Tribunal Act 2008*.

- (5) The due date must be at least 7 days after the day the notice is given to the person.
- (6) However, the person or officer may state an earlier due date if satisfied that it is reasonably practicable for the offender to comply with the improvement notice by the earlier due date.

195 Extensions of time to comply with improvement notices

- (1) This section applies if—
- (a) an offender has been given an improvement notice; and
 - (b) the due date for the improvement notice has not passed.
- (2) An authorised person or authorised police officer may, by written notice given to the offender, extend the due date for the improvement notice—
- (a) on the person's or officer's own initiative; or
 - (b) if asked by the offender.

- (3) In this section:

due date means the due date stated in the improvement notice and includes the due date as extended under this section.

196 Offence—fail to comply with improvement notice

- (1) A person commits an offence if—
- (a) the person is given an improvement notice; and

- (b) the person fails to comply with a requirement of the improvement notice.

Maximum penalty: 50 penalty units.

- (2) An offence against this section is a strict liability offence.
- (3) This section does not apply to a person if the person has a reasonable excuse for failing to comply with the requirement.

Note The defendant has an evidential burden in relation to the matters mentioned in s (3) (see Criminal Code, s 58).

- (4) It is a defence to a prosecution for an offence against this section if the defendant proves that—

- (a) either—

- (i) the alleged failure to comply, or likely failure to comply, to which the improvement notice relates was remedied; or
- (ii) the matters or activities causing the alleged failure to comply, or likely failure to comply to which the improvement notice relates were remedied; and

- (b) the remedy was achieved not later than the due date; and

- (c) the method used for achieving the remedy was different from the method stated in the improvement notice.

Note The defendant has a legal burden in relation to the matters mentioned in s (4) (see Criminal Code, s 59).

197 Amendment of improvement notices

- (1) An improvement notice given by an authorised police officer may only be amended by an authorised police officer.
- (2) An improvement notice given by an authorised person may only be amended by an authorised person.

- (3) An authorised person or authorised police officer may amend an improvement notice given to a person by giving the person a written notice (an *improvement amendment notice*) stating the terms of the amendment.
- (4) An amendment of an improvement notice is ineffective if it purports to deal with a failure to comply with a provision of an Australian heavy vehicle road law different from the provision dealt with in the improvement notice it purports to amend.
- (5) An improvement amendment notice must—
 - (a) state the reasons for the amendment; and
 - (b) state that the notice is issued under this section.

Note The notice must also comply with the requirements for reviewable decision notices which are prescribed under the *ACT Civil and Administrative Tribunal Act 2008*.

198 Cancellation of improvement notices

- (1) An improvement notice given by an authorised police officer may only be cancelled by—
 - (a) the chief police officer; or
 - (b) an authorised police officer who is senior in rank to the officer who gave the notice.
- (2) An improvement notice given by an authorised person may only be cancelled by—
 - (a) the road transport authority; or
 - (b) an authorised person who is of a higher classification than the person who gave the notice.
- (3) Written notice of the cancellation of an improvement notice must be given to the person to whom the improvement notice was given.

- (4) A regulation may make provision for identifying or working out the seniority in rank or classification of authorised people or authorised police officers.

199 Clearance certificates

- (1) An authorised person or authorised police officer may issue a certificate (a *clearance certificate*) to the effect that a stated requirement, or all requirements, of an improvement notice have been complied with.
- (2) A stated requirement of an improvement notice ceases to be operative when the person to whom the notice was given receives a clearance certificate to the effect that—
- (a) the requirement has been complied with; or
 - (b) all requirements of the notice have been complied with.

Division 2.4.3 Formal warnings

200 Formal warnings

- (1) This section applies if a police officer or authorised person may take action against a person (the *offender*) for failure to comply with a heavy vehicle road law.
- (2) However, this section does not apply if the failure to comply involves a substantial risk breach, or severe risk breach, of a mass, dimension or loading requirement.
- (3) The officer or person may, instead of taking action against the offender, formally warn (a *formal warning*) the offender if the officer or person believes on reasonable grounds that—
- (a) the offender—
 - (i) took reasonable steps to prevent the failure to comply; and

- (ii) was unaware of the failure to comply; and
 - (b) it is appropriate to deal with the failure to comply with by way of a formal warning under this section.
- (4) A formal warning must be in writing.
- (5) In this section:
action includes the issue of an infringement notice.

201 Withdrawal of formal warnings

- (1) A formal warning for a failure to comply with a heavy vehicle road law may be withdrawn by a person prescribed by regulation by giving the offender a written notice of withdrawal not later than 21 days after the day the formal warning is given.
- (2) After the formal warning has been withdrawn, action may be taken against the person for the failure to comply.
- (3) In this section:
action includes the issue of an infringement notice.

Division 2.4.4 Commercial benefits penalty orders

202 Commercial benefits penalty orders

- (1) A court that convicts or finds a person guilty of a heavy vehicle road law offence may, on the application of the prosecutor or the road transport authority, make an order (a *commercial benefits penalty 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 more than 3 times the amount estimated by the court to be the gross commercial benefit that—
- (a) was received or receivable, by the person or an associate of the person, from the commission of the offence; or

- (b) for a journey that was interrupted or not begun because of action taken by a police officer or authorised person in relation to the commission of the offence—would have been received or receivable, by the person or an associate of the person, from the commission of the offence had the journey been completed.

Note The court's estimate of gross commercial benefit is dealt with in s 203.

- (3) However, the court must not make a commercial benefits penalty order for an amount that is more than 50 penalty units.
- (4) 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.

203 Commercial benefits penalty orders—estimating gross commercial benefit

- (1) 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 matter that the court considers relevant.

Examples—par (b)

- 1 the value of any goods involved in the offence
- 2 the distance over which the goods were, or were to be, carried

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) However, in estimating the gross commercial benefit that was, or would have been, received or receivable from the commission of the offence, the court must disregard any cost, expense or liability incurred by the person or an associate of the person.

Division 2.4.5 Licensing and registration sanctions

204 Sanctions involving driver licences

- (1) This section—
 - (a) applies to a heavy vehicle road law offence committed in relation to a heavy vehicle or heavy combination by the driver of the vehicle or combination; but
 - (b) does not apply to a heavy vehicle road law offence if it involves only a minor risk breach, or substantial risk breach, of a mass, dimension or loading requirement.
- (2) If the driver of the heavy vehicle in relation to which the offence was committed is convicted, or found guilty, of the offence, the court may make an order for either or both of the following:
 - (a) that a stated Australian driver licence issued to the driver under an Australian heavy vehicle road law is—
 - (i) cancelled; or
 - (ii) varied or suspended for a stated period;
 - (b) that the driver is disqualified from obtaining or holding an Australian driver licence (either generally or of a stated kind) for a stated period.
- (3) An order under this section operates automatically and takes effect immediately or, if a later day is stated in the order, on the stated day.
- (4) To remove any doubt, this section is additional to, and does not limit, the court's powers under—
 - (a) the *Road Transport (Driver Licensing) Regulation 2000*, division 5.2 (Variation, suspension or cancellation of driver licences); or
 - (b) the *Road Transport (General) Act 1999*, division 4.2 (Licence disqualification and related matters).

205 Sanctions involving heavy vehicle registration

- (1) This section—
 - (a) applies to a heavy vehicle road law offence committed in relation to a heavy vehicle or heavy combination; but
 - (b) does not apply to a heavy vehicle road law offence if it involves only a minor risk breach, or substantial risk breach, of a mass, dimension or loading requirement.
 - (2) If the registered operator of the heavy vehicle in relation to which the offence was committed is convicted, or found guilty, of the offence, the court may make an order that the registration of the heavy vehicle is—
 - (a) cancelled; or
 - (b) suspended for a stated period.
 - (3) If the court makes an order under subsection (2), the court may also make 1 or more of the following orders:
 - (a) that the registered operator is disqualified from registering the heavy vehicle for a stated period;
 - (b) if an associate of the registered operator is involved in the commission of the offence—that the associate is disqualified from registering the heavy vehicle for a stated period.
- Note Associate—see s 191.*
- (4) If the court considers that someone else who is not present in court may be substantially affected if an order is made under this section, the court may issue a summons to the person to give reasons why the order should not be made.
 - (5) An order under this section operates automatically and takes effect immediately or, if a later day is stated in the order, on the stated day.

Division 2.4.6 Supervisory intervention orders

206 Supervisory intervention orders

- (1) This section applies if—
- (a) a court convicts or finds a person guilty of a heavy vehicle road law offence; and
 - (b) the prosecutor or road transport authority applies for an order under this section; and
 - (c) the court considers the person to be a systematic or persistent offender against the Australian heavy vehicle road laws.
- (2) The court may make an order (a *supervisory intervention order*) requiring the person to do 1 or more of the following, at the person's own expense and for a stated period not longer than 1 year:
- (a) to do stated things that the court considers will improve the person's compliance with heavy vehicle road laws or stated aspects of heavy vehicle road laws;

Examples

- 1 appointing or removing staff to or from particular activities or positions
- 2 training and supervising staff
- 3 obtaining expert advice in relation to maintaining appropriate compliance
- 4 installing monitoring, compliance, managerial or operational equipment such as intelligent transport system equipment
- 5 implementing monitoring, compliance, managerial or operational practices, systems or procedures

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (b) to conduct stated monitoring, compliance, managerial or operational practices, systems or procedures subject to the direction of the road transport authority or a person nominated by the authority;
 - (c) to appoint someone else to have responsibilities—
 - (i) to assist the person in improving compliance with heavy vehicle road laws or stated aspects of heavy vehicle road laws; and
 - (ii) to monitor the person's performance in complying with heavy vehicle road laws or stated aspects of heavy vehicle road laws and in complying with the requirements of the order.
- (3) However, the court may make a supervisory intervention order only if satisfied that the order can improve the person's ability or willingness to comply with the heavy vehicle road laws, having regard to—
- (a) the Australian heavy vehicle road law offences of which the person has been previously convicted or found guilty; and
 - (b) the Australian heavy vehicle road law offences for which the person has been proceeded against by way of infringement notices that have not been withdrawn; and
 - (c) any other offences or matters that the court considers to be relevant to the conduct of the person in relation to road transport.

- (4) The order may direct that any other penalty or sanction imposed for the offence by the court be suspended until the court decides that there has been a substantial failure to comply with the order.

Note 1 If a court makes a supervisory intervention order, the court may also require compliance reports to be provided—see s 207.

Note 2 If both a supervisory intervention order and a prohibition order are in force at the same time for the same person, the supervisory intervention order has no effect while the prohibition order has effect (see s 192).

207 Supervisory intervention orders—compliance reports

- (1) If a court makes a supervisory intervention order, the court may also require, in the order, that the person (at the person's own expense and for a stated period not longer than 1 year)—
- (a) give compliance reports to the authority, the court or both as stated in the order; or
 - (b) appoint someone else to have responsibility to give compliance reports to the road transport authority, the court or both as stated in the order.
- (2) The court may state the matters that are to be dealt with in a compliance report and how and when a compliance report is to be prepared and provided.
- (3) The court may require that a compliance report, or aspects of a compliance report, be made public, and may state how and when a compliance report is to be made public.
- (4) In this section:

compliance report, in relation to a person about whom a supervisory intervention order is made, means a report relating to—

- (a) the performance of the person in complying with—
 - (i) the heavy vehicle road laws or aspects of the heavy vehicle road laws stated in the order; and

- (ii) the requirements of the order; and
- (b) without limiting paragraph (a)—
 - (i) things done by the person to ensure that any failure by the person to comply with the heavy vehicle road laws or the stated aspects of the heavy vehicle road laws does not continue; and
 - (ii) the results of the things having been done.

208 Supervisory intervention orders—amendment and revocation

A court with power to make a supervisory intervention order may amend or revoke a supervisory intervention order if—

- (a) an application for amendment or revocation is made by—
 - (i) the road transport authority; or
 - (ii) the person in relation to whom the order was made; and
- (b) the court is satisfied that there has been a change of circumstances that justifies the amendment or revocation.

209 Offence—fail to comply with supervisory intervention order

A person commits an offence if—

- (a) a supervisory intervention order is in force in relation to the person; and
- (b) the person fails to comply with the order.

Maximum penalty: 100 penalty units.

Division 2.4.7 Prohibition orders

210 Prohibition orders

- (1) This section applies if—
 - (a) a court convicts or finds a person guilty of a heavy vehicle road law offence; and
 - (b) the prosecutor or road transport authority applies for an order under this section; and
 - (c) the court considers the person to be a systematic or persistent offender against the Australian heavy vehicle road laws.
- (2) To restrict opportunities for the person to commit, or be involved in the commission of, further Australian heavy vehicle road law offences, the court may make an order (a *prohibition order*) prohibiting the person, for a stated period, from having a stated role or responsibilities associated with road transport.
- (3) However, the court may make an order under this section only if 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 heavy vehicle road law offences of which the person has been previously convicted or found guilty; and
 - (b) the Australian heavy vehicle road law offences for which the person has been proceeded against by way of infringement 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 relation to road transport.

Note 1 Supervisory intervention orders are dealt with in s 206.

Note 2 If both a supervisory intervention order and a prohibition order are in force at the same time for the same person, the supervisory intervention order has no effect while the prohibition order has effect (see s 192).

- (4) Also, the court may not make a prohibition order that prohibits the person from driving or registering a vehicle.

211 Prohibition orders—amendment and revocation

A court with power to make a prohibition order may amend or revoke a prohibition order if—

- (a) an application for amendment or revocation is made by—
- (i) the road transport authority; or
 - (ii) the person in relation to whom the order was made; and
- (b) the court is satisfied that there has been a change of circumstances that justifies the amendment or revocation.

212 Offence—fail to comply with prohibition order

A person commits an offence if—

- (a) a prohibition order is in force in relation to the person; and
- (b) the person fails to comply with the order.

Maximum penalty: 100 penalty units.

Part 2.5 **Other provisions about mass, dimensions and loading requirements**

Division 2.5.1 **Mutual recognition**

213 **Effect of prescribed administrative actions of authorities of other jurisdictions**

- (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 road transport authority; or
- (b) a person holding an office under the law of another jurisdiction and prescribed by regulation; or
- (c) a body constituted under the law of another jurisdiction and prescribed by regulation.

prescribed administrative action means an administrative action prescribed by regulation.

- (2) A prescribed administrative action of an administrative authority under, or in relation to, a corresponding heavy vehicle road law has the same effect in the ACT as it has in the other jurisdiction.
- (3) Nothing in this section gives a prescribed administrative action effect in the ACT or in a particular place in the ACT—
- (a) as far as the action is incapable of having effect in, or in relation to, the ACT or the place; or

- (b) if any terms of the action expressly provide that the action does not extend or apply to, or in relation to, the ACT or the place; or
- (c) if any terms of the action expressly provide that the action has effect only in the other jurisdiction or a stated place in the other jurisdiction.

Note A statutory instrument may make different provisions about different matters and apply the provisions differently by reference to stated exceptions or factors (see Legislation Act, s 48).

214 Effect of court orders of other jurisdictions

- (1) In this section:

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

prescribed order means an order prescribed by regulation.

- (2) A prescribed order of a court or tribunal of another jurisdiction under, or in relation to, a corresponding heavy vehicle road law has the same effect in the ACT as it has in the other jurisdiction.
- (3) Nothing in this section gives a prescribed order effect in the ACT or in a particular place in the ACT—
- (a) as far as the order is incapable of having effect in or in relation to the ACT or the place; or
 - (b) if any terms of the order expressly provide that the order does not extend or apply to or in relation to the ACT or the place; or
 - (c) if any terms of the order expressly provide that the order has effect only in the other jurisdiction or a stated place in the other jurisdiction.

Note A statutory instrument may make different provisions about different matters and apply the provisions differently by reference to stated exceptions or factors (see Legislation Act, s 48).

Division 2.5.2 Declared zones and declared routes

215 Minister may declare zones and routes

- (1) The Minister may declare—
 - (a) a stated area to be a declared zone for this Act; or
 - (b) a stated road or road related area, or a stated part of a stated road or road related area, to be a declared route for this Act.
- (2) A declaration is a notifiable instrument.

Note 1 A notifiable instrument must be notified under the Legislation Act.

Note 2 Declared zones and declared routes are mentioned in s 117.

Division 2.5.3 Victimisation of people for reporting breaches and assisting with investigations

216 Definitions—div 2.5.3

In this division:

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

employee includes contractor.

Note Employee—see the dictionary.

public agency means—

- (a) the road transport authority or a corresponding road transport authority; or
- (b) an authorised person or an authorised person (however described) appointed under a corresponding law; or
- (c) a police officer or a member (however described) of the police force or police service of another jurisdiction; or

(d) any other public authority of any jurisdiction.

217 Offence—victimisation of employees for reporting breaches or assisting with investigations

A person commits an offence if—

- (a) the person is an employer of another person (the *employee*);
and
- (b) the person—
 - (i) dismisses the employee; or
 - (ii) injures the employee in his or her employment; or
 - (iii) alters an employee's position to the employee's detriment; and
- (c) the person acts under paragraph (b) only because the employee—
 - (i) complained about a breach, or alleged breach, of an Australian heavy vehicle road law to—
 - (A) the employer; or
 - (B) another employee; or
 - (C) a trade union; or
 - (D) a public agency; or
 - (ii) assisted or gave information to a public agency in relation to a breach, or alleged breach, of an Australian heavy vehicle road law.

Maximum penalty: 100 penalty units.

218 Offence—victimisation of prospective employees for reporting breaches or assisting with investigations

A person commits an offence if—

- (a) the person is an employer, or prospective employer, of another person (the *prospective employee*); and
- (b) the person—
 - (i) refuses or deliberately omits to offer employment to the prospective employee; or
 - (ii) treats the prospective employee less favourably than another prospective employee would be treated in relation to the terms on which employment is offered; and
- (c) the person acts under paragraph (b) only because the prospective employee—
 - (i) complained about a breach, or alleged breach, of an Australian heavy vehicle road law to—
 - (A) a former employer; or
 - (B) another employee of a former employer; or
 - (C) a trade union; or
 - (D) a public agency; or
 - (ii) assisted or gave information to a public agency in relation to a breach, or alleged breach, of an Australian heavy vehicle road law.

Maximum penalty: 100 penalty units.

219 Victimisation offences—order for compensation

- (1) If a person is convicted or found guilty of an offence against section 217 or section 218, the court may, in addition to imposing a penalty on the person, make an order that the person pay, within a stated period to the employee, or prospective employee, the damages that the court considers appropriate for compensation.
- (2) The maximum amount of damages must not be more than the amount of the court's jurisdictional limit in a civil proceeding.
- (3) An order for payment of damages is enforceable as if the order were a judgment of the court in a civil proceeding.

220 Victimisation offences—order for re-employment etc

If a person is convicted or found guilty of an offence against section 217 or section 218, the court may, in addition to imposing a penalty on the person, make an order (an *employment order*) that—

- (a) the employee be reinstated or re-employed in the employee's former position or, if the position is not available, in a similar position; or
- (b) the prospective employee be employed in the position for which the prospective employee had applied or, if the position is not available, in a similar position.

221 Offence—fail to comply with employment order

- (1) A person commits an offence if—
 - (a) an employment order is made against the person; and
 - (b) the person fails to comply with the order.

Maximum penalty: 50 penalty units.

- (2) An offence against this section is a strict liability offence.

(3) In this section:

employment order—see section 220.

Chapter 3 Investigation and enforcement

Note Other enforcement powers are in div 2.2.3.

Part 3.1 Investigation powers

Division 3.1.1 Preliminary

300 Definitions—pt 3.1

In this part:

authorised—

- (a) to drive a vehicle or combination—see section 303 (1); and
- (b) to run the engine of a vehicle or combination—see section 303 (2).

broken-down, for a motor vehicle, trailer or combination—see section 306.

compliance purposes, in relation to a power to give a direction to a person—see section 307.

driver, of a disconnected trailer—see section 305.

fit, to drive a vehicle or combination, or run its engine—see section 302.

qualified, to drive a vehicle or combination or run its engine—see section 301.

unattended, for a vehicle or combination—see section 304.

301 Meaning of *qualified* to drive or run engine—pt 3.1

For this part, a person is *qualified* to drive a vehicle or combination, or run its engine, if the person—

- (a) holds a driver licence of the appropriate class to drive the vehicle or combination and the driver licence is not suspended; and
- (b) is not prevented under a law from driving the vehicle or combination.

Example—law preventing person from driving

condition of the person's licence that the person not drive the vehicle or combination

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

302 Meaning of *fit* to drive or run engine—pt 3.1

For this part, a person is *fit* to drive a vehicle or combination, or run its engine, if the person—

- (a) is physically and mentally fit to drive the vehicle or combination; and
- (b) without limiting paragraph (a), is not affected by alcohol or a drug that affects the person's fitness to drive; and
- (c) is not, at the relevant time, found to have a concentration of alcohol in the person's blood that exceeds the amount permitted by an Australian heavy vehicle road law.

303 Meaning of *authorised* to drive or run engine—pt 3.1

- (1) For this part, a person is *authorised* to drive a vehicle or combination if the person—
 - (a) is the operator of the vehicle or combination; or

- (b) has the authority of the operator of the vehicle or combination to drive the vehicle or combination.
- (2) For this part, a person is *authorised* to run the engine of a vehicle or combination if the person—
 - (a) is the operator of the vehicle or combination; or
 - (b) has the authority of the operator of the vehicle or combination to drive the vehicle or combination or run its engine.
- (3) To avoid any doubt, a person may be authorised to drive a vehicle or combination or run its engine, whether or not the person is qualified to drive the vehicle or combination or run its engine.

304 Meaning of *unattended* vehicle or combination—pt 3.1

For this part, a vehicle or a combination is *unattended* if—

- (a) if a police officer or authorised person is near the vehicle or combination—there is, after inspection and enquiry by the officer or person that is reasonable in the circumstances, apparently no one in or near the vehicle or combination who appears to be a driver of the vehicle or combination; or
- (b) if a police officer or authorised person is not near the vehicle or combination but is able to inspect the area near the vehicle or combination by way of a camera or other remote surveillance system—there is, after inspection by the officer or person that is reasonable in the circumstances, apparently no one in or near the vehicle or combination who appears to be a driver of the vehicle or combination; or
- (c) if there appears to be a person (the *assumed driver*) who is the driver of the vehicle or combination in or near the vehicle or combination—the police officer or authorised person believes on reasonable grounds that—
 - (i) the assumed driver is not qualified, not fit or not authorised to drive the vehicle or a combination; or

- (ii) the assumed driver is or appears to be unwilling to drive the vehicle or a combination; or
- (iii) the assumed driver is subject to a direction under section 315 (Directions to leave vehicles and combinations) for the vehicle or combination.

Note **Qualified** to drive a vehicle or combination—see s 301.
Fit to drive a vehicle or combination—see s 302.
Authorised to drive a vehicle or combination—see s 303.

305 Meaning of *driver of disconnected trailer*—pt 3.1

- (1) In this part:

driver, of a disconnected trailer, means the driver of the towing vehicle to which the trailer was, or apparently was, last connected.

- (2) In this section:

disconnected trailer means a trailer that is not connected (either directly or by 1 or more other trailers) to a towing vehicle.

306 Meaning of *broken-down motor vehicle, trailer or combination*—pt 3.1

In this part:

broken-down means—

- (a) for a motor vehicle—a motor vehicle that is impossible to drive because the vehicle is disabled through damage, mechanical failure, lack of fuel or a similar reason; and
- (b) for a trailer—a trailer that is not connected (either directly or by 1 or more other trailers) to a towing vehicle, whether or not the trailer is also disabled through damage, mechanical failure or a similar reason; and

- (c) for a combination—a combination that is impossible to drive because the combination, or a vehicle that is part of the combination, is disabled through damage, mechanical failure, lack of fuel or a similar reason.

307 Exercise of power for *compliance purposes*—pt 3.1

For this part, a power to give a direction to a person is exercised for *compliance purposes* if the power is exercised—

- (a) to find out whether an Australian heavy vehicle road law or an approved road transport compliance scheme is being complied with by the person or someone else; or
- (b) to investigate a breach or suspected breach of an Australian heavy vehicle road law or an approved road transport compliance scheme by the person or someone else.

Note General provisions about directions are in div 3.1.5.

Division 3.1.2 Directions to stop, move and leave heavy vehicles and heavy combinations

308 Application—div 3.1.2

- (1) This division applies to a vehicle or combination located—
 - (a) on a road or road related area; or
 - (b) in or on a public place; or
 - (c) at premises occupied or owned by the Territory; or
 - (d) at premises where a police officer or authorised person is lawfully present after entry under section 333 (Power to enter premises, vehicles and combinations).

- (2) This division applies to the driver of a vehicle or combination who is apparently in or near the vehicle or combination.

Note 1 How a direction may be given is dealt with in s 327.

Note 2 General provisions about directions are in div 3.1.5.

309 Directions to stop vehicles and combinations

- (1) A police officer or authorised person may, to exercise a function under an Australian heavy vehicle road law, direct—
- (a) a driver of a heavy vehicle or heavy combination to stop the vehicle or combination; or
 - (b) a driver of a heavy vehicle or heavy combination, or anyone else, not to do 1 or more of the following:
 - (i) move the vehicle or combination;
 - (ii) interfere with the vehicle or combination or any equipment in the vehicle or combination;
 - (iii) interfere with the load in the vehicle or combination.
- (2) A direction to stop a heavy vehicle or heavy combination may require that the vehicle or combination be stopped—
- (a) without delay; or
 - (b) at the nearest place that the vehicle or combination can be safely stopped as indicated by the police officer or authorised person.
- (3) A direction to a driver or other person, does not prevent a police officer or authorised person from giving the driver or other person a later inconsistent direction under another provision of an Australian heavy vehicle road law.
- (4) A direction to a driver or other person ceases to be operative to the extent that a police officer or authorised person—
- (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 police officer or authorised person may direct a vehicle to be stopped only for the amount of time necessary for the police officer or authorised person to exercise the function.
- (6) In this section:

stop a heavy vehicle or heavy combination means stop the vehicle or combination and keep the vehicle or combination stationary.

Note 1 This section only applies to vehicles and combinations in some locations (see s 308).

Note 2 If the driver fails to comply with the direction, the driver may be directed to leave the vehicle or combination (see s 315).

Note 3 How a direction may be given is dealt with in s 327.

Note 4 General provisions about directions are in div 3.1.5.

310 Offence—fail to comply with direction to stop vehicle or combination

- (1) A person commits an offence if—
- (a) the person is subject to a direction under section 309; and
 - (b) the direction has not ceased to be operative under section 309 (4); and
 - (c) the person fails to comply with the direction.

Maximum penalty: 50 penalty units.

- (2) An offence against this section is a strict liability offence.

311 Directions to move vehicles and combinations—exercise of other power

- (1) A police officer or authorised person may, to exercise another power under an Australian heavy vehicle road law, direct the driver or operator of a heavy vehicle or heavy combination to move the vehicle or combination, or cause the vehicle or combination to be moved, to the nearest suitable location, within the maximum distance, that is stated by the officer or person.

- (2) In this section:

maximum distance means a distance (in any direction) within a radius of 30km 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 during a journey of the vehicle or combination.

suitable location, for a police officer or authorised officer giving a direction, means a location that the police officer or authorised person believes on reasonable grounds to be suitable for complying with the direction, having regard to any matters the officer or person considers relevant in the circumstances.

Note 1 This section only applies to vehicles and combinations in some locations (see s 308).

Note 2 If the driver fails to comply with the direction, the driver may be directed to leave the vehicle or combination (see s 315).

Note 3 How a direction may be given is dealt with in s 327.

Note 4 General provisions about directions are in div 3.1.5.

312 Offence—fail to comply with direction to move vehicle or combination—exercise of other power

- (1) A person commits an offence if the person—
- (a) is subject to a direction under section 311; and
 - (b) fails to comply with the direction.

Maximum penalty: 50 penalty units.

Note The registered operator may be taken to have committed this offence if the registered operator does not give the road transport authority the name of the operator of the vehicle or combination (see s 403).

- (2) An offence against this section is a strict liability offence.
- (3) This section does not apply to a defendant if—
- (a) it was not practicable for the defendant to move the vehicle or combination because the vehicle or combination was broken-down; and
 - (b) the breakdown happened for a physical reason beyond the defendant's control; and
 - (c) the breakdown could not be readily rectified in a way that would allow the direction to be complied with within a reasonable time.

Note The defendant has an evidential burden in relation to the matters mentioned in s (3) (see Criminal Code, s 58).

313 Directions to move vehicles and combinations—harm or obstruction

- (1) This section applies if a police officer or authorised person 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 police officer or authorised person may direct the driver or operator of the vehicle or combination to do either or both of the following:
 - (a) to move the vehicle or combination, or cause the vehicle or combination to be moved, to the extent necessary to avoid the harm or obstruction;
 - (b) to do anything else reasonably required by the officer or person, or to cause anything else reasonably required by the officer or person to be done, to avoid the harm or obstruction.

Note 1 This section only applies to vehicles and combinations in some locations (see s 308).

Note 2 If the driver fails to comply with the direction, the driver may be directed to leave the vehicle or combination (see s 315).

Note 3 How a direction may be given is dealt with in s 327.

Note 4 General provisions about directions are in div 3.1.5.

314 Offence—fail to comply with direction to move vehicle or combination—harm or obstruction

- (1) A person commits an offence if the person—
 - (a) is subject to a direction under section 313; and
 - (b) fails to comply with the direction.

Maximum penalty: 50 penalty units.

Note The registered operator may be taken to have committed this offence if the registered operator does not give the road transport authority the name of the operator of the vehicle or combination (see s 403).

- (2) An offence against this section is a strict liability offence.

- (3) This section does not apply to a defendant who is given a direction under section 313 (2) (a) if—
- (a) it was not practicable for the defendant to move the vehicle or combination because the vehicle or combination was broken-down; and
 - (b) the breakdown happened for a physical reason beyond the defendant's control; and
 - (c) the breakdown could not be readily rectified in a way that would allow the direction to be complied with within a reasonable time.

Note The defendant has an evidential burden in relation to the matters mentioned in s (3) (see Criminal Code, s 58).

315 Directions to leave vehicles and combinations

- (1) This section applies if—
- (a) the driver of a heavy vehicle or heavy combination fails to comply with a direction given by a police officer or authorised person under—
 - (i) section 309 (Directions to stop vehicles and combinations); or
 - (ii) section 311 (Directions to move vehicles and combinations—exercise of other power); or
 - (iii) section 313 (Directions to move vehicles and combinations—harm or obstruction); or
 - (b) a police officer or authorised person 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 the direction.

Note **Qualified** to drive a vehicle or combination—see s 301.
Fit to drive a vehicle or combination—see s 302.
Authorised to drive a vehicle or combination—see s 303.

- (2) The police officer or authorised person may direct the driver to do 1 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 allowed to do so by a police officer or authorised person;
 - (d) not to enter the vehicle or combination until allowed to do so by a police officer or authorised person.
- (3) The police officer or authorised person may direct anyone else to do either or both of the following:
 - (a) to leave the vehicle or combination;
 - (b) not to enter the vehicle or combination until allowed to do so by a police officer or authorised person.

Note 1 This section only applies to vehicles and combinations in some locations (see s 308).

Note 2 How a direction may be given is dealt with in s 327.

Note 3 General provisions about directions are in div 3.1.5.

316 Offence—fail to comply with direction to leave vehicle or combination

- (1) A person commits an offence if the person—
 - (a) is subject to a direction under section 315; and
 - (b) fails to comply with the direction.

Maximum penalty: 50 penalty units.

- (2) An offence against this section is a strict liability offence.

Division 3.1.3 Power to move unattended and broken-down vehicles and combinations

317 Moving unattended vehicles and combinations—exercise other functions

- (1) This section applies if a police officer or authorised person—
 - (a) believes on reasonable grounds that a vehicle or combination is unattended on a road or road related area; and
 - (b) is seeking to exercise a function under an Australian heavy vehicle road law; and
 - (c) believes on reasonable grounds that the vehicle or combination should be moved to allow or facilitate the exercise of the function.
- (2) The police officer or authorised person may move the vehicle or combination (by driving or towing the vehicle or combination or otherwise) to the extent reasonably necessary to allow or facilitate the exercise of the function.
- (3) Also, the police officer or authorised person may authorise someone else (an *authorised assistant*) to move the vehicle or combination (by driving or towing the vehicle or combination or otherwise) to the extent reasonably necessary to allow or facilitate the exercise of the function.
- (4) The police officer, authorised person or authorised assistant may enter the vehicle or combination to move the vehicle or combination.
- (5) The police officer, authorised person or authorised assistant may use reasonable force to do 1 or more 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 allow the vehicle or combination to be moved;

(c) to allow the vehicle or combination to be towed.

Note Only a police officer may use force against a person (see s 364).

(6) The police officer, authorised person or authorised assistant may drive the vehicle or combination only if qualified and fit to drive the vehicle or combination.

Note **Qualified** to drive a vehicle or combination—see s 301.

Fit to drive a vehicle or combination—see s 302.

318 Moving unattended and broken-down vehicles and combinations—harm or obstruction

(1) This section applies if a police officer or authorised person believes on reasonable grounds that—

(a) a vehicle or combination on a road or road related area is unattended or broken-down; and

(b) the vehicle or combination is—

(i) causing serious harm, or creating an imminent risk of serious harm, to public safety, the environment or road infrastructure; or

(ii) causing or likely to cause an obstruction to traffic.

(2) The police officer or authorised person may move the vehicle or combination, or any vehicle forming part of the combination, (by driving or towing the vehicle or combination or otherwise) to the extent reasonably necessary to avoid the danger or obstruction.

(3) Also, the police officer or authorised person may authorise someone else (an **authorised assistant**) to move the vehicle or combination (by driving or towing the vehicle or combination or otherwise) to the extent reasonably necessary to avoid the danger or obstruction.

- (4) The police officer, authorised person or authorised assistant may—
- (a) enter the vehicle or combination to move the vehicle or combination; or
 - (b) separate 1 or more of the vehicles forming part of the combination to move 1 or more of the vehicles.
- (5) The police officer, authorised person or authorised assistant may use reasonable force to the extent reasonably necessary to avoid the harm or obstruction.

Note Only a police officer may use force against a person (see s 364).

- (6) If a police officer, authorised person or authorised assistant moves a vehicle or combination under this section, the officer, person or assistant must tell the registered operator of the vehicle or combination where the vehicle or combination has been moved to.

319 Moving unattended and broken-down vehicles and combinations—harm or obstruction—driver need not be qualified or licensed

- (1) This section applies if a police officer, authorised person or authorised assistant may move a vehicle or combination under section 318.
- (2) The police officer or authorised person may drive the vehicle or combination even though the officer or person is not qualified to drive the vehicle or combination, if the officer or person believes on reasonable grounds that there is no one else in or near the vehicle or combination who is more capable of driving it than the officer or person and who is fit and willing to drive it.

Note **Qualified** to drive a vehicle or combination—see s 301.
Fit to drive a vehicle or combination—see s 302.

- (3) The authorised assistant may drive the vehicle or combination even though the person is not qualified to drive the vehicle or combination, if the police officer or authorised person believes on reasonable grounds that there is no one else in or near the vehicle or combination who is more capable of driving it than the person and who is fit and willing to drive it.
- (4) If a police officer, authorised person or authorised assistant is driving a vehicle or combination under this section, other provisions of the road transport legislation do not apply to the officer, person or assistant to the extent that the other provisions require the officer, person or assistant to be licensed or otherwise authorised to drive the vehicle or combination.

Note 1 **Authorised** to drive a vehicle or combination—see s 303.

Note 2 The defendant has an evidential burden in relation to the matters mentioned in s (4) (see Criminal Code, s 58).

Note 3 Licensing of drivers is dealt with in the *Road Transport (Driver Licensing) Act 1999* (see especially s 31).

320 Driving vehicles and combinations—div 3.1.3—driver need not be authorised

It is immaterial that a police officer, authorised person or authorised assistant driving a vehicle or combination under this division is not authorised to drive the vehicle or combination.

Note **Authorised** to drive a vehicle or combination—see s 303.

Division 3.1.4 Directions to provide records, information, etc

Note The *Road Transport (General) Act 1999*, s 58 also contains directions about a police officer or authorised person requiring the driver of a vehicle to state the driver's name and address and produce the driver's driver licence.

321 Directions to produce records, devices, etc

- (1) A police officer or authorised person may, for compliance purposes, direct a responsible person for a heavy vehicle or heavy combination to produce—
- (a) a record required to be kept under an Australian heavy vehicle road law; or
 - (b) a record comprising transport documentation or journey documentation in the person's possession or under the person's control; or
 - (c) a record, device or other thing that contains or may contain a record, 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) a load or equipment carried, or intended to be carried, by a vehicle or combination (including insurance of the load or equipment); or

- (d) a record, devices or other thing that contains or may contain a record, 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.

Note Section 307 defines when a power to give a direction to a person is exercised for *compliance purposes*.

- (2) The direction must state—
- (a) the record, device or other thing that is to be produced; and
 - (b) where and to whom the record, device or other thing is to be produced.

Note Section 328 deals with the time for compliance.

- (3) The police officer or authorised person may do 1 or more 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 or person believes on reasonable grounds may on further inspection provide evidence of an Australian heavy vehicle road law offence.

Note 1 For s (3) (c), a record, device or other thing seized under this chapter, or information obtained under this chapter, may, for law enforcement purposes, be given to a public authority of another jurisdiction (see s 504).

Note 2 General provisions about directions are in div 3.1.5.

322 Offence—fail to comply with direction to produce records, devices, etc

- (1) A person commits an offence if the person—
- (a) is subject to a direction under section 321; and

(b) fails to comply with the direction.

Maximum penalty: 50 penalty units.

- (2) An offence against this section is a strict liability offence.
- (3) This section does not apply to a person if the person has a reasonable excuse for failing to comply with the direction.

Note The defendant has an evidential burden in relation to the matters mentioned in s (3) (see Criminal Code, s 58).

323 Direction to give name etc

- (1) This section applies if a police officer or authorised person suspects on reasonable grounds that a person whose personal details are unknown to the police officer or authorised person—
- (a) is or may be a responsible person for a heavy vehicle or heavy combination; or
 - (b) has committed, is committing or is about to commit an Australian heavy vehicle road law offence; or
 - (c) may be able to assist in the investigation of an Australian heavy vehicle road law offence or a suspected Australian heavy vehicle 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.
- (2) The police officer or authorised person may direct the person to give the police officer or authorised person, immediately, any of the person's personal details.

- (3) If the police officer or authorised person suspects on reasonable grounds that a personal detail given by a person in response to a direction under subsection (2) is false or misleading, the police officer or authorised person may direct the person to produce evidence immediately of the correctness of the detail.
- (4) If an authorised officer gives a direction under this section to a person, the officer must tell the person that it is an offence if the person fails to comply with the direction.
- (5) This section does not affect any other provision of this Act or any other territory law that requires a person to state or provide any personal details.

Note General provisions about directions are in div 3.1.5.

- (6) In this section:

personal details, for a person, means—

- (a) the person's full name and date of birth; 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.

324 Offence—fail to comply with direction to give name etc

- (1) A person commits an offence if the person—
 - (a) is subject to a direction under section 323 (2) or (3); and
 - (b) fails to comply with the direction.

Maximum penalty: 50 penalty units.

Note It is an offence to make a false or misleading statement or give false or misleading information (see Criminal Code, pt 3.4).

- (2) An offence against this section is a strict liability offence.

- (3) This section does not apply to a person if the police officer or authorised person did not, before giving the direction, warn the defendant that failure to comply with the direction is an offence.

Note The defendant has an evidential burden in relation to the matters mentioned in s (3) (see Criminal Code, s 58).

- (4) This section does not apply to a person who fails to comply with a direction to give the person's business address if—

- (a) the person did not have a business address at the time the direction was given; or
- (b) the person's business address was not connected (directly or indirectly) with road transport involving vehicles or combinations.

Note The defendant has an evidential burden in relation to the matters mentioned in s (4) (see Criminal Code, s 58).

325 Directions to provide information

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

Note 1 Section 307 defines when a power to give a direction to a person is exercised for *compliance purposes*.

Note 2 It is an offence to make a false or misleading statement or give false or misleading information (see Criminal Code, pt 3.4).

- (2) Without limiting subsection (1), a direction may require a responsible person for a heavy vehicle or heavy combination to do any of the following:

- (a) to state the name, home address and business address of—
- (i) other responsible people for the vehicle or combination; and

- (ii) for 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.

Note General provisions about directions are in div 3.1.5.

326 Offence—fail to comply with direction to provide information

- (1) A person commits an offence if the person—
 - (a) is subject to a direction under section 325; and
 - (b) fails to comply with the direction.

Maximum penalty: 50 penalty units.

Note It is an offence to make a false or misleading statement or give false or misleading information (see Criminal Code, pt 3.4).

- (2) An offence against this section is a strict liability offence.
- (3) This section does not apply to a person if the person did not know, and could not be reasonably expected to know or find out, the information required under the direction.

Note The defendant has an evidential burden in relation to the matters mentioned in s (3) (see Criminal Code, s 58).

- (4) This section does not apply to a person who fails to comply with a direction to give someone else's business address if—
 - (a) the other person did not have a business address at the time the direction was given; or

- (b) the other person's business address was not connected (directly or indirectly) with road transport involving vehicles or combinations.

Note The defendant has an evidential burden in relation to the matters mentioned in s (4) (see Criminal Code, s 58).

Division 3.1.5 Provisions about directions

327 How directions may be given

- (1) A direction under division 3.1.2 may be given to a driver or other person—
 - (a) orally; or
 - (b) by means of a sign or signal (electronic or otherwise); or
 - (c) in any other way.
- (2) A direction under division 3.1.2 may be given to an operator—
 - (a) orally; or
 - (b) by telephone, facsimile, email or radio; or
 - (c) in any other way.
- (3) A direction under section 323 (Direction to give name etc) may be given—
 - (a) orally; or
 - (b) in writing.
- (4) A direction under any other provision of this chapter may be given—
 - (a) orally; or
 - (b) in writing; or
 - (c) by post, telephone, facsimile, email, radio; or

(d) in any other way.

328 Directions to state time for compliance

- (1) If given orally, a direction under this chapter must state whether the direction is to be complied with immediately or within a stated period.
- (2) If given in writing, a direction under this chapter must state the period within which the direction is to be complied with.
- (3) This section does not apply to a direction under section 323 (Directions to give name etc).

329 Amendment and revocation of directions and conditions

- (1) An authorised person may amend or revoke a direction given, or conditions imposed, by an authorised person under this Act.
- (2) A police officer may amend or revoke a direction given, or conditions imposed, by a police officer under this Act.
- (3) To remove any doubt, this section does not apply in relation to—
 - (a) amendment of an improvement notice under section 197 (Amendment of improvement notices); or
 - (b) cancellation of an improvement notice under section 198 (Cancellation of improvement notices); or
 - (c) withdrawal of a formal warning under section 201 (Withdrawal of formal warnings).

330 Directions may be given under more than 1 provision

- (1) A police officer or authorised person may, on the same occasion, give directions under 1 or more provisions of this chapter.

- (2) Without limiting subsection (1), a police officer or authorised person may, in the course of exercising powers under a provision of this chapter, give—
- (a) further directions under the provision; and
 - (b) directions under 1 or more other provisions of this chapter.

331 Protection from incrimination

- (1) A person is not excused from a requirement to comply with a direction under this chapter on the ground that complying with the requirement might incriminate the person or make the person liable to a penalty.
- (2) However, the following is not admissible in evidence against the person in a criminal proceeding (except a proceeding for an offence against this chapter):
- (a) a statement made or any information or answer given or provided by an individual in compliance with a direction under this chapter;
 - (b) information directly or indirectly derived from a statement, information or answer mentioned in paragraph (a).
- (3) Any document produced by a person in compliance with a direction under this chapter is not inadmissible in evidence against the person in a criminal proceeding on the ground that the document might incriminate the person.

Note The Legislation Act, s 170 deals with the application of the privilege against selfincrimination.

Part 3.2 Enforcement powers

Note 1 This part authorises—

- (a) premises of operators and a range of other premises to be inspected and searched; and
- (b) vehicles or combinations to be inspected in the premises and on roads, road related areas, public places and some official premises.

Note 2 Other enforcement powers are in div 2.2.3.

Note 3 Div 3.1.2 (Directions to stop, move and leave heavy vehicles and heavy combinations) applies to a vehicle or combination located at premises if a police officer or authorised person is lawfully present after entry under this division.

Division 3.2.1 Preliminary

332 Definitions—pt 3.2

In this part:

connected—a thing is ***connected*** with an offence if—

- (a) the offence has been committed in relation to it; or
- (b) it will provide evidence of the commission of the offence; or
- (c) it was used, is being used, or is intended to be used, to commit the offence.

occupier, of premises, a vehicle or combination, includes—

- (a) a person believed on reasonable grounds to be an occupier of the premises, vehicle or combination; and
- (b) a person apparently in charge of the premises, vehicle or combination.

offence includes an offence that there are reasonable grounds for believing has been, is being, or will be, committed.

warrant means a warrant issued under division 3.2.4 (Search warrants).

Division 3.2.2 Powers of authorised people

333 Power to enter premises, vehicles and combinations

- (1) For this Act, a police officer or authorised person may—
- (a) at any reasonable time, enter premises, a vehicle or combination, that the public is entitled to use or that are open to the public (whether or not on payment of money); or
 - (b) at any reasonable time, enter premises—
 - (i) where a responsible person for a heavy vehicle or heavy combination carries on business; or
 - (ii) that are occupied by a responsible person for a heavy vehicle or heavy combination for the business; or
 - (iii) that are a registered office of a responsible person for a heavy vehicle or heavy combination; or

Note **Responsible person**, for a heavy vehicle or heavy combination—see s 12.

- (c) at any reasonable time, enter premises at the garage address of a vehicle or combination; or
- (d) at any reasonable time, enter premises at the base of the driver or drivers of a vehicle or combination; or

Note **Base**, of a driver of a vehicle or combination—see s 10.

- (e) at any reasonable time, enter premises where—
 - (i) records required to be kept under an Australian heavy vehicle road law or approved road transport compliance scheme are located; or
 - (ii) the records are required to be located.

- (f) at any reasonable time, enter premises where the police officer or authorised person believes on reasonable grounds that—
 - (i) a vehicle or combination is or has been located; or
 - (ii) transport documentation or journey documentation is located.
- (g) at any reasonable time, enter premises where the police officer or authorised person believes on reasonable grounds that there may be records, devices or other things that may provide evidence of—
 - (i) an Australian heavy vehicle road law offence; or
 - (ii) the commission of a breach of an approved road transport compliance scheme; or
- (h) at any time, enter premises where the police officer or authorised person believes on reasonable grounds 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, or any part of its equipment or load, is connected (directly or indirectly) with the premises.
- (i) at any time, enter premises, a vehicle or combination, with the occupier's consent; or
- (j) enter premises, a vehicle or combination in accordance with a search warrant.

Note Authorised people are appointed under the *Road Transport (General) Act 1999*, s 19.

- (2) However, subsection (1) authorises entry into a vehicle or combination (whether or not the vehicle or combination is unattended) only if the vehicle or combination is—
 - (a) on a road or road related area; or
 - (b) in or on a public place; or
 - (c) in or on any premises occupied or owned by the territory.
- (3) Also, subsection (1) (a) to (h) does not authorise entry into a part of premises that is being used for residential purposes.
- (4) A police officer or authorised person may, without the consent of the occupier of premises, a vehicle or combination, enter land around the premises, vehicle or combination to ask for consent to enter the premises, vehicle or combination.
- (5) To remove any doubt, a police officer or authorised person may enter premises, a vehicle or combination under subsection (1) without payment of an entry fee or other charge.
- (6) In this section:

at any reasonable time includes at any time when the public is entitled to use the premises, vehicle or combination, or when the premises, vehicle or combination are open to or used by the public (whether or not on payment).

334 Production of identity card

A police officer or authorised person must not remain at premises or in a vehicle or combination entered under this part if the police officer or authorised person does not produce his or her identity card when asked by the occupier.

Note Identity cards for authorised people are provided for in the *Road Transport (General) Act 1999*, s 20.

335 Consent to entry

- (1) When seeking the consent of an occupier of premises, a vehicle or combination to enter the premises, a vehicle or combination under section 333 (1) (i), a police officer or authorised person must—
 - (a) produce his or her identity card; and
 - (b) tell the occupier—
 - (i) the purpose of the entry; and
 - (ii) that anything found and seized under this part may be used in evidence in court; and
 - (iii) that consent may be refused.
- (2) If the occupier consents, the police officer or authorised person must ask the occupier to sign a written acknowledgment (an *acknowledgement of consent*)—
 - (a) that the occupier was told—
 - (i) the purpose of the entry; and
 - (ii) that anything found and seized under this part may be used in evidence in court; and
 - (iii) that consent may be refused; and
 - (b) that the occupier consented to the entry; and
 - (c) stating the time and date when consent was given.
- (3) If the occupier signs an acknowledgment of consent, the police officer or authorised person must immediately give a copy to the occupier.

- (4) A court must find that the occupier did not consent to entry to the premises, a vehicle or combination by the police officer or authorised person under this part if—
- (a) the question arises in a proceeding in the court whether the occupier consented to the entry; and
 - (b) an acknowledgment of consent is not produced in evidence; and
 - (c) it is not proved that the occupier consented to the entry.

336 General powers on entry to premises, vehicles and combinations

- (1) A police officer or authorised person who enters premises, a vehicle or combination under this part may, for this Act, do 1 or more of the following in relation to the premises, vehicle or combination or anything in the premises, vehicle or combination:
- (a) inspect or examine;
 - (b) take measurements or conduct tests;
 - (c) take samples;
 - (d) take photographs, films, or audio, video or other recordings.
- Note* The Legislation Act, s 170 and s 171 deal with the application of the privilege against self incrimination and client legal privilege.
- (2) Without limiting subsection (1), the power to inspect premises under this section includes the following:
- (a) the power to inspect and take copies of or extracts from a record located at the premises and required to be kept under a heavy vehicle road law or approved road transport compliance scheme;

- (b) the power to check the existence of, and inspect, a device (including weighing, measuring, recording or monitoring device) required to be installed, used or maintained under a heavy vehicle road law or approved road transport compliance scheme, and to inspect and take copies of, or extracts from, a readout or other data obtained from the device;
 - (c) the power to exercise, for a vehicle or combination located at the premises, any power that may be exercised during an inspection of a vehicle or combination under subsection (3);
 - (d) the power to use photocopying equipment on the premises to copy a record or other material.
- (3) Without limiting subsection (1), the power to inspect a vehicle or combination under this section includes 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 under a heavy vehicle road law or approved road transport compliance scheme to be displayed in 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 record that is located in the vehicle or combination and that is required to be carried in the vehicle or combination under a heavy vehicle road law or approved road transport compliance scheme;

- (d) the power to access or download information that is required to be kept under a heavy vehicle road law or approved road transport compliance scheme and that is—
 - (i) stored electronically in equipment located in the vehicle; or
 - (ii) accessible electronically from equipment located in the vehicle.
- (4) This section does not authorise the use of force, but the police officer or authorised person may, under this section, do 1 or more 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 3.1.3 (Power to move unattended and broken-down vehicles and combinations);
 - (c) move but not take away anything that is not locked up or sealed.

337 Directions to give assistance

- (1) A police officer or authorised person may direct a responsible person for a heavy vehicle or heavy combination to give assistance to the officer or person to allow the officer or person effectively to exercise a power under this part.

- (2) Without limiting subsection (1), the assistance may include helping the police officer or authorised person to do 1 or more of the following:
- (a) to find and gain access to a record or information relating to a vehicle or combination, including but not limited to—
 - (i) a record or information required to be kept in a vehicle or combination (including a record or information indicating its performance, specifications, capabilities or legal entitlements); or
 - (ii) a record or information (including a record or information relating to its performance, specifications, capabilities or legal entitlements) in a useable form to find out its compliance with requirements imposed under an Australian heavy vehicle 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 give access free of charge to photocopying equipment to copy 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) A direction—
- (a) can only be given in relation to a power under this part (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 General provisions about directions are in div 3.1.5.

338 Offence—fail to comply with direction to give assistance

- (1) A person commits an offence if the person—
- (a) is subject to a direction under section 337; and
 - (b) fails to comply with the direction.
- Maximum penalty: 50 penalty units.
- (2) An offence against this section is a strict liability offence.
- (3) This section does not apply to a person if—
- (a) the direction is unreasonable; or
 - (b) without limiting paragraph (a), the direction or its subject matter is outside the scope of the business or other activities of the person.

Note The defendant has an evidential burden in relation to the matters mentioned in s (3) (see Criminal Code, s 58).

339 Assistance with running engine

- (1) This section applies if—
- (a) a police officer or authorised person gives a responsible person for a heavy vehicle or heavy combination a direction under section 337 to run the engine of the vehicle or combination but the responsible person fails to comply with the direction; or

- (b) a police officer or authorised person would give a responsible person for a heavy vehicle or heavy combination a direction under section 337 to run the engine of the vehicle or combination but there is no responsible person who is available or willing to run the engine of the vehicle or combination.
- (2) The police officer or authorised person may—
 - (a) enter the vehicle or combination and run its engine; or
 - (b) authorise someone else to enter the vehicle or combination and run its engine.

340 Protection for people assisting with running engine

- (1) This section applies to a person (an *approved person*) who is—
 - (a) a responsible person for a heavy vehicle or heavy combination who is given a direction under section 337 to run the engine of a vehicle or combination; or
 - (b) a police officer, authorised person, or someone authorised by a police officer or authorised person, who may, under section 339, run the engine of a vehicle or combination.
- (2) An approved person may run the engine even though the person is not qualified to drive the vehicle or combination, if the police officer or authorised person believes on reasonable grounds that there is no other person in or near the vehicle or combination who is—
 - (a) more capable of running the engine than the approved person; and
 - (b) fit and willing to run the engine.

Note **Qualified** to drive a vehicle or combination—see s 301.
Fit to drive a vehicle or combination—see s 302.

- (3) An approved person may use reasonable force to run the engine.

Note Only a police officer may use force against a person (see s 364).

- (4) It is immaterial that the approved person is not authorised to run the engine.

Note **Authorised** to drive a vehicle or combination—see s 303.

- (5) If an approved person is running the engine of a vehicle or combination under section 339, other provisions of the road transport legislation do not apply to the approved person to the extent that the other provisions require the approved person to be licensed or otherwise authorised to run the engine.

Note 1 The defendant has an evidential burden in relation to the matters mentioned in s (4) (see Criminal Code, s 58).

Note 2 Licensing of drivers is dealt with in the *Road Transport (Driver Licensing) Act 1999* (see especially s 31).

341 Use of assistants and equipment

- (1) A police officer or authorised person may exercise powers under this part with the aid of the assistants and equipment that the officer or person considers reasonably necessary in the circumstances.
- (2) Powers that may be exercised by a police officer or authorised person under this part may be exercised by an assistant authorised and supervised by the officer or person, but only if the police officer or authorised person considers that it is reasonably necessary in the circumstances that the powers be exercised by an assistant.

342 Use of equipment to examine and process things

- (1) Without limiting section 341, an authorised person or police officer exercising a power under this part may bring to, or onto, premises, a vehicle or combination any equipment reasonably necessary to examine or process a thing found at the premises, or in the vehicle or combination, to decide whether it is a thing that may be seized.

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

343 Use and seizure of electronic equipment

- (1) This section applies if—
- (a) a police officer or authorised person enters premises, a vehicle or combination under section 333 (Power to enter premises, vehicles and combinations); and
 - (b) a thing found at premises, or in a vehicle or combination, is, or includes, a disk, tape or other device for the storage of information; and
 - (c) equipment at the premises, or in the vehicle or combination, may be used with the disk, tape or other storage device; and
 - (d) the police officer or authorised person believes on reasonable grounds that the information stored on the disk, tape or other storage device is relevant to decide whether a person has failed to comply with an Australian heavy vehicle road law or approved road transport compliance scheme.
- (2) The police officer or authorised person, or a person assisting the police officer or authorised person, may operate the equipment to access the information.

- (3) If the police officer or authorised person, or a person assisting the officer or person, finds that a disk, tape or other storage device at the premises, or in the vehicle or combination, contains information of a kind mentioned in subsection (1) (d), the police officer or authorised person, or a person assisting the officer or person, may—
- (a) put the information in documentary form and seize the documents produced; or
 - (b) copy the information to another disk, tape or other storage device and remove the other storage device from the premises, vehicle or combination; 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 allows the information to be accessed.

Note A record, device or other thing seized under this part, or information obtained under this part, may, for law enforcement purposes, be given to a public authority of another jurisdiction (see s 504).

- (4) A police officer or authorised person, or a person assisting a police officer or authorised person, must not operate or seize equipment under this section unless the police officer or authorised person, or person assisting, believes on reasonable grounds that the operation or seizure of the equipment can be carried out without damage to the equipment.

344 Power to seize things

- (1) A police officer or authorised person who enters premises, a vehicle or combination under this part with the occupier's consent may seize anything at the premises, or in the vehicle or combination, if—
- (a) the police officer or authorised person is satisfied on reasonable grounds that the thing is connected with an offence against this Act; and

- (b) seizure of the thing is consistent with the purpose of the entry told to the occupier when seeking the occupier's consent.
- (2) A police officer or authorised person who enters premises, a vehicle or combination under a warrant under this part may seize anything at the premises, or in the vehicle or combination, that the police officer or authorised person is authorised to seize under the warrant.
- (3) A police officer or authorised person who enters premises, a vehicle or combination under this part (whether with the occupier's consent, under a warrant or otherwise) may seize anything at the premises, or in the vehicle or combination, if satisfied on reasonable grounds that—
- (a) the thing is connected with an offence against this Act; and
- (b) the seizure is necessary to prevent the thing from being—
- (i) concealed, lost or destroyed; or
- (ii) used to commit, continue or repeat the offence.
- (4) The powers of a police officer or authorised person under subsection (3) are additional to the powers of the police officer or authorised person under subsections (1) and (2) and any other territory law.
- (5) Having seized a thing, a police officer or authorised person may remove the thing from the premises, vehicle or combination where it was seized (the *place of seizure*) to another place.

Note A record, device or other thing seized under this part, or information obtained under this part, may, for law enforcement purposes, be given to a public authority of another jurisdiction (see s 504).

- (6) A police officer or authorised person may use reasonable force in the exercise of functions under this section.

Note Only a police officer may use force against a person (see s 364).

Division 3.2.3 Embargo notices

345 Embargo notices

- (1) This section applies if—
 - (a) a police officer or authorised person is authorised to seize something under this part; and
 - (b) the thing cannot, or cannot readily, be physically seized and removed.
- (2) The police officer or authorised person may issue a notice (an *embargo notice*) forbidding the movement, sale, leasing, transfer, deletion of information from or other dealing with the thing, or part of the thing, without the written consent of the police officer or authorised person, the road transport authority or the chief police officer.
- (3) The embargo notice must—
 - (a) contain the particulars (if any) prescribed by regulation; and
 - (b) list the activities that the notice forbids; and
 - (c) set out a copy of section 347 (Offence—fail to prevent someone else doing something forbidden by embargo notice).

Note If a form is approved under the *Road Transport (General) Act 1999*, s 225 for this provision, the form must be used.
- (4) The police officer or authorised person issues the notice—
 - (a) by giving a copy of the notice to the occupier of the premises vehicle or combination where the embargoed thing is; or
 - (b) if the occupier cannot be located after reasonable steps have been taken to locate the occupier—by attaching a copy of the notice to the embargoed thing in a prominent position.

- (5) Despite anything in any other Act, a sale, lease or transfer or other dealing with an embargoed thing, or part of an embargoed thing, in contravention of this section is void.

346 Offence—fail to comply with embargo notice

- (1) A person commits an offence if—
- (a) the person knows that an embargo notice is in force for a thing; and
 - (b) the person—
 - (i) does something that is forbidden by the embargo notice; or
 - (ii) instructs someone else to do something that is forbidden by the embargo notice.

Maximum penalty: 50 penalty units.

- (2) This section does not apply to a person if—
- (a) the offence is made up of moving the thing, or part of the thing; and
 - (b) the person—
 - (i) moved the thing, or part of the thing, to protect or preserve the thing; or
 - (ii) instructed someone else to move the thing, or part of the thing, to protect or preserve the thing; and
 - (c) the person told the police officer or authorised person who issued the embargo notice about the move, and of the new location of the thing or part of the thing, within 48 hours after the move.

Note The defendant has an evidential burden in relation to the matters mentioned in s (2) (see Criminal Code, s 58).

347 Offence—fail to prevent someone else doing something forbidden by embargo notice

- (1) A person commits an offence if—
 - (a) an embargo notice has been given to the person; and
 - (b) the person fails to take reasonable steps to prevent someone else from doing something forbidden by the notice.

Maximum penalty: 50 penalty units.

- (2) An offence against this section is a strict liability offence.

348 Revocation of embargo notice

An embargo notice in force for a thing must be revoked if, had the thing been seized under this part, it would have to be returned to its owner, or reasonable compensation paid by the Territory to the owner for its loss, under section 357 (Return of things seized).

Division 3.2.4 Search warrants

349 Warrants generally

- (1) A police officer or authorised person may apply to a magistrate for a warrant to enter premises, a vehicle or combination.
- (2) The application must be sworn and state the grounds on which the warrant is sought.

Note Swear an oath includes make an affirmation (see Legislation Act, dict, pt 1, def *swear*).

- (3) The magistrate may refuse to consider the application until the police officer or authorised person gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

- (4) The magistrate may issue a warrant only if satisfied there are reasonable grounds for suspecting—
- (a) there is a particular thing or activity connected with an offence against an Australian heavy vehicle road law; and
 - (b) the thing or activity—
 - (i) is, or is being engaged in, at the premises or in the vehicle or combination; or
 - (ii) may be, or may be engaged in, at the premises or in the vehicle or combination within the next 3 days; and
 - (c) 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 the premises; or
 - (ii) the premises are, or may be, connected (directly or indirectly) with the vehicle or combination or any part of the vehicle's, or combination's, equipment or load.
- (5) The warrant must state—
- (a) that a police officer or authorised person may, with any necessary assistance and force, enter the premises, vehicle or combination and exercise the police officer's or authorised person's powers under this part; and
- Note* Only a police officer may use force against a person (see s 364).
- (b) the offence or incident for which the warrant is issued; and
 - (c) the things that may be seized under the warrant; and
 - (d) the hours when the premises, vehicle or combination may be entered; and

- (e) the date, within 3 days after the day of the warrant's issue, the warrant ends.
- (6) Without limiting a police officer's or authorised person's powers under this part, the power to search premises under this section includes the following:
 - (a) the power to search for evidence of a heavy vehicle road law offence or a breach of an approved road transport compliance scheme;
 - (b) the power to search for and inspect any record, device or other thing that relates to a vehicle or combination or any part of its equipment or load and that is located at the premises;
 - (c) the power to take copies of, or extracts from, the following:
 - (i) a record that is located at the premises and is required to be kept under a heavy vehicle road law or approved road transport compliance scheme;
 - (ii) transport documentation or journey documentation located at the premises;
 - (iii) any other record, or readout or other data obtained from a device or thing, located at the premises that the officer or person believes on reasonable grounds provides, or may on further inspection provide, evidence of a heavy vehicle road law offence or a breach of an approved road transport compliance scheme;
 - (d) the power to use photocopying equipment on the premises to copy a record or other material;
 - (e) the power to exercise, for a vehicle or combination located at the premises, any power that may be exercised during a search of a vehicle or combination under subsection (7);
 - (f) a power that may be exercised during an inspection of premises under section 336 (2).

- (7) Without limiting a police officer's or authorised person's powers under this part, the power to search a vehicle or combination under this section includes the following:
- (a) the power to search for evidence of a heavy vehicle road law offence or a breach of an approved road transport compliance scheme;
 - (b) the power to search for and inspect any record, device or other thing that relates to the vehicle or combination or any part of its equipment or load and that is located in the vehicle or combination;
 - (c) the power to take copies of, or extracts from, the following:
 - (i) a record that is located in the vehicle or combination and that is required to be carried in the vehicle or combination under a heavy vehicle road law or an approved road transport compliance scheme;
 - (ii) transport documentation or journey documentation located in the vehicle or combination;
 - (iii) any other record, or a readout or other data obtained from a device or thing, located in the vehicle or combination that the officer or person believes on reasonable grounds provides, or may on further inspection provide, evidence of a heavy vehicle road law offence or a breach of an approved road transport compliance scheme;
 - (d) a power that may be exercised during an inspection of a vehicle or combination under section 336 (3).
- (8) In this section:
- connected***—an activity is ***connected*** with an offence if—
- (a) the offence has been committed by engaging or not engaging in it; or
 - (b) it will provide evidence of the commission of the offence.

350 Warrants—application made other than in person

- (1) A police officer or authorised person may apply for a warrant by phone, fax, email, radio or other form of communication if the police officer or authorised person considers it necessary because of—
 - (a) urgent circumstances; or
 - (b) other special circumstances.
- (2) Before applying for the warrant, the police officer or authorised person must prepare an application stating the grounds on which the warrant is sought.
- (3) The police officer or authorised person may apply for the warrant before the application is sworn.
- (4) After issuing the warrant, the magistrate must immediately fax a copy to the police officer or authorised person if it is practicable to do so.
- (5) If it is not practicable to fax a copy to the police officer or authorised person—
 - (a) the magistrate must tell the police officer or authorised person—
 - (i) the terms of the warrant; and
 - (ii) the date and time the warrant was issued; and
 - (b) the police officer or authorised person must complete a form of warrant (the *warrant form*) and write on it—
 - (i) the magistrate’s name; and
 - (ii) the date and time the magistrate issued the warrant; and
 - (iii) the warrant’s terms.

- (6) The faxed copy of the warrant, or the warrant form properly completed by the police officer or authorised person, authorises the entry and the exercise of the police officer's or authorised person's powers under this part.
- (7) The police officer or authorised person must, at the first reasonable opportunity, send to the magistrate—
 - (a) the sworn application; and
 - (b) if the police officer or authorised person completed a warrant form—the completed warrant form.
- (8) On receiving the documents, the magistrate must attach them to the warrant.
- (9) A court must find that a power exercised by the police officer or authorised person was not authorised by a warrant under this section if—
 - (a) the question arises in a proceeding in the court whether the exercise of power was authorised by a warrant; and
 - (b) the warrant is not produced in evidence; and
 - (c) it is not proved that the exercise of power was authorised by a warrant under this section.

351 Search warrants—announcement before entry

- (1) A police officer or authorised person must, before anyone enters premises, a vehicle or combination under a search warrant—
 - (a) announce that the officer or person is authorised to enter the premises, vehicle or combination; and
 - (b) give anyone at the premises, or in the vehicle or combination, an opportunity to allow entry to the premises, vehicle or combination; and

- (c) if the occupier of the premises, vehicle or combination, or someone else who apparently represents the occupier, is present at the premises, or in the vehicle or combination—identify himself or herself to the person.
- (2) The police officer or authorised person is not required to comply with subsection (1) if the officer or person believes on reasonable grounds that immediate entry to the premises, vehicle or combination is required to ensure—
 - (a) the safety of anyone (including the officer or person or any person assisting); or
 - (b) that the effective execution of the warrant is not frustrated.

352 Details of search warrant to be given to occupier etc

If the occupier of premises, a vehicle or combination, or someone else who apparently represents the occupier, is present at the premises, or in the vehicle or combination, while a search warrant is being executed, the police officer or authorised person or a person assisting must make available to the person—

- (a) a copy of the warrant; and
- (b) a document setting out the rights and obligations of the person.

353 Occupier entitled to be present during search etc

- (1) If the occupier of premises, a vehicle or combination, or someone else who apparently represents the occupier, is present at the premises, or in the vehicle or combination while a search warrant is being executed, the person is entitled to observe the search being conducted.
- (2) However, the person is not entitled to observe the search if—
 - (a) to do so would impede the search; or

- (b) the person is under arrest, and allowing the person to observe the search being conducted would interfere with the objectives of the search.
- (3) This section does not prevent 2 or more areas of the premises, vehicle or combination being searched at the same time.

Division 3.2.5 Return and forfeiture of things seized

354 Receipt for things seized

- (1) As soon as practicable after a police officer or authorised person seizes a thing under this part, the police officer or authorised person must give a receipt for it to the person from whom it was seized.
- (2) If, for any reason, it is not practicable to comply with subsection (1), the police officer or authorised person must leave the receipt, secured conspicuously, at the place of seizure under section 344 (Power to seize things).
- (3) A receipt under this section must include the following:
 - (a) a description of the thing seized;
 - (b) an explanation of why the thing was seized;
 - (c) the police officer's or authorised person's name, and how to contact the police officer or authorised person;
 - (d) if the thing is moved from the premises, vehicle or combination where it is seized—where the thing is to be taken.

355 Moving things to another place for examination or processing under search warrant

- (1) A thing found at premises, or in a vehicle or combination, entered under a search warrant may be moved to another place for examination or processing to decide whether it may be seized under the warrant if—
 - (a) both of the following apply:
 - (i) there are reasonable grounds for believing that the thing is or contains something to which the warrant relates;
 - (ii) it is significantly more practicable to do so having regard to the timeliness and cost of examining or processing the thing at another place and the availability of expert assistance; or
 - (b) the occupier of the premises, vehicle or combination agrees in writing.
- (2) The thing may be moved to another place for examination or processing for not longer than 72 hours.
- (3) A police officer or authorised person may apply to a magistrate for an extension of time if the police officer or authorised person believes on reasonable grounds that the thing cannot be examined or processed within 72 hours.
- (4) The police officer or authorised person must give notice of the application to the occupier of the premises, vehicle or combination, and the occupier is entitled to be heard on the application.
- (5) If a thing is moved to another place under this section, the police officer or authorised person must, if practicable—
 - (a) tell the occupier of the premises, vehicle or combination the address of the place where, and time when, the examination or processing will be carried out; and

- (b) allow the occupier or the occupier's representative to be present during the examination or processing.
- (6) The provisions of this part relating to the issue of search warrants apply, with any necessary changes, to the giving of an extension under this section.

356 Access to things seized

A person who would, apart from the seizure, be entitled to inspect a thing seized under this part may—

- (a) inspect it; and
- (b) if it is a document—take extracts from it or make copies of it.

357 Return of things seized

- (1) A thing seized under this part must be returned to its owner, or reasonable compensation must be paid to the owner by the Territory for the loss of the thing, unless—
 - (a) a prosecution for an offence against a territory law in connection with the thing is begun within 1 year after the day the seizure is made and the thing is required to be produced in evidence in the prosecution; or
 - (b) an application for the forfeiture of the seized thing is made to a court under the *Confiscation of Criminal Assets Act 2003* or another territory law within 1 year after the day the seizure is made; or
 - (c) all proceedings in relation to the offence with which the seizure was connected have ended and the court has not made an order about the thing.

- (2) However, this section does not apply to a thing—
- (a) if the chief executive believes on reasonable grounds that the only practical use of the thing in relation to the premises where it was seized would be an offence against this Act; or
 - (b) if possession of it by its owner would be an offence.

358 Forfeiture of seized things

- (1) This section applies if—
- (a) anything seized under this part has not been returned under section 357; and
 - (b) an application for disallowance of the seizure under section 359—
 - (i) has not been made within 10 days after the day of the seizure; or
 - (ii) has been made within the 10-day period, but the application has been refused or withdrawn before a decision in relation to the application had been made.
- (2) If this section applies to the seized thing—
- (a) it is forfeited to the Territory; and
 - (b) it may be sold, destroyed or otherwise disposed of as the chief executive directs.

359 Application for order disallowing seizure

- (1) A person claiming to be entitled to anything seized under this part may apply to the Magistrates Court within 10 days after the day of the seizure for an order disallowing the seizure.
- (2) The application may be heard only if the applicant has served a copy of the application on the chief executive.

- (3) The chief executive is entitled to appear as respondent at the hearing of the application.

360 Order for return of seized thing

- (1) This section applies if a person claiming to be entitled to anything seized under this part applies to the Magistrates Court under section 359 for an order disallowing the seizure.
- (2) The Magistrates Court must make an order disallowing the seizure if satisfied that—
- (a) the applicant would, apart from the seizure, be entitled to the return of the seized thing; and
 - (b) the thing is not connected with an offence against this Act; and
 - (c) possession of the thing by the person would not be an offence.
- (3) The Magistrates Court may also make an order disallowing the seizure if satisfied there are exceptional circumstances that justify the making of the order.
- (4) If the Magistrates Court makes an order disallowing the seizure, the court may make 1 or more of the following ancillary orders:
- (a) an order directing the chief executive to return the thing to the applicant or to someone else who appears to be entitled to it;
 - (b) if the thing cannot be returned or has depreciated in value because of the seizure—an order directing the Territory to pay reasonable compensation;
 - (c) an order about the payment of costs in relation to the application.

Part 3.3 **Miscellaneous**

361 **Damage etc to be minimised**

- (1) In the exercise, or purported exercise, of a function under this chapter, a police officer or authorised person must take reasonable steps to ensure that the police officer or authorised person, and anyone assisting the police officer or authorised person, causes as little inconvenience, detriment and damage as practicable.
- (2) If a police officer or authorised person, or anyone assisting a police officer or authorised person, damages anything in the exercise or purported exercise of a function under this chapter, the police officer or authorised person must give written notice of the particulars of the damage to the person the police officer or authorised person believes on reasonable grounds is the owner of the thing.
- (3) If the damage happens at premises, or in a vehicle or combination, entered under this chapter in the absence of the occupier, the notice may be given by leaving it, secured conspicuously, at the premises, or in the vehicle or combination.

362 **Restoring vehicle, premises etc to original condition after action taken**

- (1) This section applies if—
 - (a) a police officer or authorised person, or a person authorised by the police officer or authorised person, takes action in the exercise or purported exercise of a power under this chapter in relation to premises or a vehicle or combination or a vehicle's, or combination's, equipment or load; and
 - (b) damage is caused by the unreasonable exercise of the power or by the use of force that is not authorised under this chapter.

- (2) The police officer or authorised person, or person authorised by the police officer or authorised person, must take reasonable steps to return the premises, vehicle, combination, equipment or load to the condition it was in immediately before the action was taken.

363 Compensation for exercise of enforcement powers

- (1) A person may claim compensation from the Territory if the person suffers loss or expense because of the exercise, or purported exercise, of a function under this chapter by a police officer or authorised person or anyone assisting a police officer or authorised person.
- (2) Compensation may be claimed and ordered in a proceeding for—
- (a) compensation; or
 - (b) an Australian heavy vehicle road law offence brought against the person making the claim for compensation.
- (3) A court may order the payment of reasonable compensation for the loss or expense only if satisfied that it is just to make the order in the circumstances of the particular case.
- (4) A regulation may prescribe matters that may, must or must not be taken into account by the court in considering whether it is just to make the order.

364 Only police officers to use force against people

A provision of this chapter 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.

Chapter 4 Court proceedings

Part 4.1 Liability for offences

Note Acts and omissions of representatives are dealt with in the *Road Transport (General) Act 1999*, s 73.

400 Criminal liability of executive officers of corporations

- (1) An executive officer of a corporation commits an offence if—
- (a) the corporation commits an offence (a *relevant offence*) by contravening a provision of this Act; and
- Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).
- (b) the officer was reckless about whether the contravention would happen; and
 - (c) the officer was in a position to influence the conduct of the corporation in relation to the contravention; and
 - (d) the officer failed to take reasonable steps to prevent the contravention.

Maximum penalty: The maximum penalty that may be imposed on an individual for the relevant offence.

- (2) In deciding whether the executive officer took (or failed to take) reasonable steps to prevent the contravention, a court must have regard to the following:
- (a) any action the officer took directed towards ensuring the following (to the extent that the action is relevant to the contravention):
 - (i) that the corporation arranged regular professional assessments of the corporation's compliance with the contravened provision;
 - (ii) that the corporation implemented any appropriate recommendation arising from an assessment under subparagraph (i);
 - (iii) that the corporation's employees, agents and contractors had a reasonable knowledge and understanding of the requirement to comply with the contravened provision;
 - (b) any action the officer took when the officer became aware that the contravention was, or could be, about to happen.
- (3) Subsection (2) does not limit the matters to which the court may have regard.
- (4) This section applies whether or not the corporation is prosecuted for, or convicted of, the relevant offence.
- (5) This section does not apply if the corporation would have a defence to a prosecution for the relevant offence.
- (6) In this section:
- executive officer*, of a corporation, means a person, however described and whether or not the person is a director of the corporation, who is concerned with, or takes part in, the corporation's management.

401 Offence—partners etc taken to have committed offences of other partners

- (1) If a person (the *offender*) who is a partner in a partnership commits an offence against a heavy vehicle road law in the course of the activities of the partnership, each other partner in the partnership, and each other person who is involved with, or takes part in, the management of the partnership, is taken to have committed the offence and is punishable accordingly.
- (2) Subsection (1) does not apply to a person if—
 - (a) the person was not in a position to influence the conduct of the offender; or
 - (b) the person, being in the position, took reasonable precautions and exercised due diligence to prevent the commission of the actual offence.

Note The defendant has an evidential burden in relation to the matters mentioned in s (2) (see Criminal Code, s 58).

- (3) This section does not affect the liability of the offender.
- (4) A person may be prosecuted and convicted or found guilty of an offence arising under this section whether or not the offender has been prosecuted or convicted or found guilty of the offence.

402 Offence—managers etc of unincorporated associations taken to have committed offences of other managers etc

- (1) If a person (the *offender*) who is involved in the management of an unincorporated association commits an offence against the road transport legislation in the course of the activities of the unincorporated association, each other person who is involved with, or takes part in, the management of the unincorporated association is taken to have committed the offence and is punishable accordingly.

- (2) Subsection (1) does not apply to a person if—
- (a) the person was not in a position to influence the conduct of the offender; or
 - (b) the person, being in the position, took reasonable precautions and exercised due diligence to prevent the commission of the actual offence.

Note The defendant has an evidential burden in relation to the matters mentioned in s (2) (see Criminal Code, s 58).

- (3) This section does not affect the liability of the offender.
- (4) A person may be prosecuted and convicted or found guilty of an offence arising under this section whether or not the offender has been prosecuted or convicted or found guilty of the offence.

403 Offence—registered operators taken to have committed offences of operators

- (1) This section applies to an offence against a heavy vehicle road law if the offence is expressed to be committed by an operator of a vehicle or combination (whether or not anyone else can also commit the offence).
- (2) If the offence is committed—
- (a) in relation to a vehicle that is not part of a combination at the time of the offence—the registered operator of the vehicle is taken to have committed the offence and is punishable accordingly; or
 - (b) in relation to a whole combination or in relation to the towing vehicle of a combination—the registered operator of the towing vehicle of the combination is taken to have committed the offence and is punishable accordingly; or

- (c) in relation to a trailer forming part of a combination at the time of the offence—the registered operator of the towing vehicle and the registered operator (if any) of the trailer are each taken to have committed the offence and are punishable accordingly.
- (3) The registered operator has the benefit of any exception or defence available to the operator.
- (4) Subsection (2) does not apply to a registered operator if the registered operator gives the road transport authority a statutory declaration containing the information prescribed by regulation (including the name and address of the operator of the vehicle or combination at the time of the offence)—
 - (a) not later than the day prescribed by regulation; and
 - (b) in the way prescribed by regulation.
- (5) This section does not affect the liability of the operator who committed the offence.

Part 4.2 **Roads compensation orders for damage to road infrastructure**

404 **Roads compensation orders—making**

- (1) This section applies if a court convicts a person (the *offender*), or finds a person guilty, of a heavy vehicle road law offence.
- (2) The court may make an order (a *roads compensation order*) requiring the offender to pay to the territory the amount of compensation that the court considers appropriate for damage to road infrastructure that the territory has suffered, or is likely to suffer, because of the offence.
- (3) A roads compensation order may only be made in favour of the territory.
- (4) The court may make a roads compensation order if satisfied on the balance of probabilities that the commission of the offence caused or contributed to the damage.

405 **Roads compensation orders—application**

- (1) A roads compensation order for an offender in relation to an offence may be made on the application of—
 - (a) the prosecutor prosecuting the offence; or
 - (b) the road transport authority.
- (2) The application may only be made—
 - (a) when the court convicts the offender, or finds the offender guilty, of the offence; or
 - (b) before the end of the period within which a prosecution for the offence could have been started.

406 Roads compensation orders—assessment

- (1) In making a roads compensation order, the court may assess the amount of compensation in the way the court considers appropriate.

Example

the estimated cost of remedying the damage

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) In assessing the amount of compensation, the court may take into account the matters the court considers relevant, including—
- (a) evidence presented in relation to the prosecution of the offence; and
 - (b) evidence not presented in relation to the prosecution of the offence but presented in relation to the making of the proposed order; and
 - (c) a certificate of the road transport authority.

Examples—par (c)

- 1 a certificate estimating the cost of remedying the damage
- 2 a certificate estimating the extent of the offender's contribution to the damage

407 Roads compensation orders—certificates

- (1) If the road transport authority proposes to use a certificate mentioned in section 406 in a proceeding, the authority must give a copy of the certificate to the defendant at least 28 working days before the day on which the matter is set down for hearing.
- (2) The certificate cannot be used in the proceeding unless a copy of the certificate has been given in accordance with this section.

- (3) A defendant who wishes to challenge a statement in the certificate must give a notice in writing to the road transport authority at least 14 working days before the day on which the matter is set down for hearing.
- (4) The notice must state the matters in the certificate that the defendant intends to challenge.
- (5) If the defendant is intending to challenge the accuracy of a measurement, analysis or reading in the certificate, the defendant must state—
 - (a) the reason why the defendant alleges the measurement, analysis or reading is inaccurate; and
 - (b) the measurement, analysis or reading that the defendant considers to be correct.
- (6) The defendant cannot challenge a 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.

408 Roads compensation orders—limits on amount

- (1) If, in making a roads compensation order, the court is satisfied that the commission of the offence 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 the court assesses as being the offender's contribution to the damage.
- (2) The maximum amount of compensation must not be more than the amount of the court's jurisdictional limit in a civil proceeding.
- (3) The court must not include in the roads compensation order any amount for—
 - (a) personal injury or death; or

- (b) loss of income (whether suffered by the road transport authority or any other person or organisation); or
- (c) damage to any property (including a vehicle) that is not part of the road infrastructure.

409 Roads compensation orders—costs

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

410 Roads compensation orders—enforcement

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

411 Roads compensation orders—other orders and awards

- (1) A roads compensation order must not be made if another court or tribunal has awarded compensatory damages or compensation in a civil proceeding for the damage based on the same or similar facts.
- (2) If a court purports to make a roads compensation order in the circumstances mentioned in subsection (1)—
 - (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 territory.

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

Part 4.3 Evidence

412 Proof of appointments unnecessary

(1) For this Act, it is not necessary to prove the appointment of an office-holder.

(2) In this section:

office-holder means—

- (a) the chief executive; or
- (b) the chief executive (however described) of a corresponding road transport authority; or
- (c) the chief police officer or the head (however described) of the police force or police service of another jurisdiction; or
- (d) an authorised person or an authorised person (however described) appointed under a corresponding law; or
- (e) a police officer or a member (however described) of the police force or police service of another jurisdiction.

413 Averments

In a proceeding for an offence, any of the following statements or allegations in a complaint or charge made by the prosecutor is evidence of the matter:

- (a) at a stated time or during a stated period a stated vehicle or combination was a heavy vehicle or heavy combination;
- (b) at a stated time or during a stated period a stated vehicle or combination was of a particular class of a heavy vehicle or heavy combination;
- (c) at a stated time or during a stated period a stated person was the registered operator of a heavy vehicle;

- (d) at a stated time or during a stated period a stated person was a member of, or participant in, an approved road transport compliance scheme;
- (e) at a stated time or during a stated period a stated location was, or was part of, a road or road related area;
- (f) at a stated time or during a stated period a stated area was, or was not, the subject of a declaration under the *Road Transport (General) Act 1999*, section 12 (Power to include or exclude areas in road transport legislation);
- (g) at a stated time or during a stated period a stated location was subject to a stated prohibition, restriction or other requirement regarding the operation or use of vehicles.

Example—par (g)

a temporary restriction on load limits during wet weather

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

414 Evidence—measuring and weighing

- (1) This section applies to a statement in a certificate issued under the *Trade Measurement Act 1991*.
- (2) A statement that, on a stated date, a stated measuring instrument was tested and was found to measure accurately (or accurately within stated tolerances) is—
 - (a) admissible in a legal proceeding, and
 - (b) evidence of the fact that the instrument measured accurately (or accurately within the tolerances) at all times within the period of 12 months after the date.

- (3) In this section:

measuring instrument—see the *Trade Measurement Act 1991*, dictionary.

415 Evidence—mass of vehicle or combination

- (1) This section applies to 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.
- (2) Evidence of a record made by a person mentioned in subsection (1) of the mass of a vehicle or combination (or component of a vehicle or combination) weighed at the weighbridge or weighing facility is admissible in a proceeding and is evidence of the mass of the vehicle or combination (or component) at the time it was weighed.

416 Evidence—manufacturer's ratings

- (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 proceeding and is 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 proceeding and is evidence—
- (a) of the strength or performance rating; and
 - (b) that the equipment was designed for use as load restraint equipment on a vehicle or combination; 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.

417 Evidence—vehicle or combination not heavy vehicle or heavy combination

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

418 Evidence—transport documentation and journey documentation

- (1) Transport documentation or journey documentation is admissible in a proceeding under a heavy vehicle road law and is evidence of—
- (a) the identity and status of the parties to the transaction to which the documentation relates; and
 - (b) the destination or intended destination of the load to which the documentation relates.

(2) In this section:

status, of a party to a transaction, includes the party's status as a responsible person for a vehicle or combination in relation to the transaction.

Chapter 5 Miscellaneous

Part 5.1 Secrecy and information sharing

500 Definitions—pt 5.1

In this part:

divulge includes communicate.

protected information means information about a person that is disclosed to, or obtained by, a person to whom this section applies because of the exercise of a function under this Act by the person or someone else.

501 Secrecy

(1) In this section:

court includes a tribunal, authority or person having power to require the production of documents or the answering of questions.

person to whom this section applies means a person who—

(a) is or has been—

- (i) a delegate of the road transport authority; or
- (ii) a person employed by, or engaged to provide services to or on behalf of, the road transport authority; or
- (iii) a person employed by, or engaged to provide services to, a person or body engaged to provide services to the road transport authority; or

(b) exercises, or has exercised, a function under this Act.

produce includes allow access to.

- (2) A person to whom this section applies commits an offence if—
- (a) the person—
 - (i) makes a record of protected information about someone else; and
 - (ii) is reckless about whether the information is protected information about someone else; or
 - (b) the person—
 - (i) does something that divulges protected information about someone else; and
 - (ii) is reckless about whether—
 - (A) the information is protected information about someone else; and
 - (B) doing the thing would result in the information being divulged to someone else.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (3) Subsection (2) does not apply to the divulging of protected information about someone with the person's consent.
- (4) Subsection (2) does not apply if the record is made, or the information is divulged—
- (a) under this Act or another territory law; or
 - (b) in relation to the exercise of a function, as a person to whom this section applies, under this Act or another territory law; or
 - (c) in relation to the administration of heavy vehicle road laws; or
 - (d) to the road transport authority or a corresponding road transport authority; or

- (e) to an authorised person or an authorised person (however described) appointed under a corresponding law; or
 - (f) to a police officer or a member (however described) of the police force or police service of another jurisdiction; or
 - (g) to a public authority of any jurisdiction prescribed by regulation; or
 - (h) to a public authority of any jurisdiction for law enforcement purposes; or
 - (i) in accordance with the information sharing guidelines.
- (5) A person to whom this section applies need not divulge protected information to a court, or produce a document containing protected information to a court, unless it is necessary to do so for this Act or another territory law.
- (6) Nothing in this section prevents information from being used—
- (a) to assist a person in deciding whether to withdraw a formal warning for any offence; or
 - (b) to allow the road transport authority to accumulate aggregated data and to allow the road transport authority to authorise use of the aggregated data for research or education.
- (7) In this section:
information sharing guidelines—see section 502.

502 Information sharing guidelines

- (1) The Minister may make guidelines (*information sharing guidelines*) about—
- (a) making records of protected information; and
 - (b) divulging protected information.

- (2) A guideline is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

503 Offence—information not to be used for other purposes

- (1) A person commits an offence if—
- (a) the person—
 - (i) makes a record of protected information about someone else; or
 - (ii) divulges protected information about someone else; and
 - (b) the record is made, or information divulged, in accordance with an exception under section 501 (Secrecy); and
 - (c) the record is made, or information divulged, for a particular purpose; and
 - (d) the person uses the record or information for another purpose.

Maximum penalty: 50 penalty units.

- (2) An offence against this section is a strict liability offence.

504 Road transport authority may give seized records etc to other authorities

A record, device or other thing seized under chapter 3 (Investigation and enforcement), or information obtained under chapter 3, may, for law enforcement purposes, be given to a public authority of any jurisdiction (including a corresponding road transport authority) considered appropriate by the road transport authority or the chief police officer, but only after consultation with the public authority.

505 Road transport authority may give information to other authorities

The road transport authority may give information to a corresponding road transport authority about—

- (a) any action taken by the road transport authority under a heavy vehicle road law; or
- (b) any information obtained under a heavy vehicle road law, including any information contained in a record, device or other thing inspected or seized under a heavy vehicle road law.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

Part 5.2 Other miscellaneous provisions

506 Contracting out prohibited

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

Note A reference to an Act includes a reference to a provision of the Act (see Legislation Act, s 7 (3)).

507 Regulation-making power

- (1) The Executive may make regulations for this Act.

Note A regulation must be notified, and presented to the Legislative Assembly, under the Legislation Act.

- (2) A regulation may create offences and fix maximum penalties of not more than 20 penalty units for the offences.

508 Regulations—exemptions

- (1) A regulation may exempt a person or vehicle, or provide for the granting of exemptions of people or vehicles, from the regulations.
- (2) An exemption may be conditional.

509 Regulations—mass, dimension and loading restrictions on use of vehicles

A regulation may impose mass, dimension or loading restrictions on the use of vehicles on roads or road related areas.

510 Offence—drive light vehicle in breach of mass, dimension or loading restriction in regulation

- (1) A person commits an offence if—
- (a) the person drives a light vehicle or light combination on a road or road related area; and
 - (b) the vehicle or combination is driven in contravention of a mass, dimension or loading restriction in a regulation made under section 509.

Maximum penalty: 20 penalty units.

- (2) An offence against this section is a strict liability offence.

- (3) In this section:

light combination means a combination that is not a heavy combination.

Note **Heavy combination**—see s 8.

light vehicle means a motor vehicle or trailer that is not a heavy vehicle.

Note **Heavy vehicle**—see s 7.

511 Regulations—may apply certain documents etc

- (1) A regulation may apply—
- (a) a publication of the National Transport Commission approved, or of matters approved, by the Australian Transport Council as in force from time to time; or
 - (b) any other instrument as in force from time to time.

Note 1 The text of an applied, adopted or incorporated law or instrument, whether applied as in force from time to time or at a particular time, is taken to be a notifiable instrument if the operation of the Legislation Act, s 47 (5) or (6) is not disapplied (see s 47 (7)).

Note 2 A notifiable instrument must be notified under the Legislation Act.

- (2) For a regulation, a regulation may define a term defined by this Act (or apply the definition of a term in an instrument mentioned in subsection (1))—
- (a) in the same (or in substantially the same) way as it is defined by this Act; or
 - (b) by reference to a matter included in the term as defined by this Act; or
 - (c) by reference to a combination of matters included in the term as defined by this Act and in any other term defined by this Act; or
 - (d) for applying a publication of the National Transport Commission approved, or of matters approved, by the Australian Transport Council—in the same way as it is defined in the publication despite anything in this Act or other road transport legislation.
- (3) In this section:

Australian Transport Council—see the *National Transport Commission Act 2003* (Cwlth), section 4.

National Transport Commission means the National Transport Commission established by the *National Transport Commission Act 2003* (Cwlth).

publication of the National Transport Commission includes—

- (a) a document published by or for the National Transport Commission under the *National Transport Commission Act 2003* (Cwlth); and
- (b) a document published for the National Transport Commission.

512 Legislation amended—sch 1

This Act amends the legislation mentioned in schedule 1.

513 Legislation repealed

- (1) The following legislation is repealed:
 - *Road Transport (Dimensions and Mass) Act 1990* (A1990-13)
 - *Road Transport (Dimensions and Mass) Regulation 2000* (SL2000-7).
- (2) All other legislative instruments under the *Road Transport (Dimensions and Mass) Act 1990* (A1990-13) are repealed.

Chapter 6 Transitional

600 Definitions—ch 6

In this chapter:

commencement day means the day this Act, section 6 (Objects of Act) commences.

repealed Act means the *Road Transport (Dimensions and Mass) Act 1990*.

601 Transitional—unattended vehicle notices

- (1) This section applies if a notice under the repealed Act, section 43 (Unattended vehicles) is in force for a person immediately before the commencement day.
- (2) The notice is, on the commencement day, taken to be a notice under this Act, section 311 (Directions to move vehicles and combinations—exercise of other power).

602 Transitional—load directions

- (1) This section applies if a direction under the repealed Act, section 45 (Directions related to loads) is in force for a person immediately before the commencement day.
- (2) The direction is, on the commencement day, taken to be a direction under whichever one of the following sections in this Act the direction could be given if it were given after the commencement day:
 - (a) section 126 (Minor risk breaches—directions to stop and rectify);
 - (b) section 127 (Minor risk breaches—directions to move and rectify);

- (c) section 130 (Substantial risk breaches—directions to stop and rectify);
- (d) section 131 (Substantial risk breaches—directions to move and rectify);
- (e) section 134 (Severe risk breaches—directions to stop and rectify);
- (f) section 135 (Severe risk breaches—directions to move and rectify).

603 Transitional regulations

- (1) A regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of this Act.
- (2) A regulation may modify this chapter (including in relation to another territory law) to make provision in relation to anything that, in the Executive's opinion, is not, or is not adequately or appropriately, dealt with in this chapter.
- (3) A regulation under subsection (2) has effect despite anything elsewhere in this Act.

604 Expiry—ch 6

This chapter expires 2 years after the day it commences.

Schedule 1 Consequential amendments

(see s 512)

Part 1.1 Magistrates Court Act 1930

[1.1] Section 116AA (2)

substitute

(2) In this section:

road transport legislation means the following:

- (a) the *Road Transport (Driver Licensing) Act 1999*;
- (b) the *Road Transport (General) Act 1999*;
- (c) the *Road Transport (Mass, Dimensions and Loading) Act 2009*;
- (d) the *Road Transport (Public Passenger Services) Act 2001*;
- (e) the *Road Transport (Safety and Traffic Management) Act 1999*;
- (f) the *Road Transport (Vehicle Registration) Act 1999*;
- (g) any other Act or any regulation prescribed by regulation.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

Part 1.2 **Road Transport (Alcohol and Drugs) Act 1977**

[1.2] Section 1, note 2

substitute

Note 2 Other road transport legislation includes the following:

- *Road Transport (Driver Licensing) Act 1999*
- *Road Transport (General) Act 1999*
- *Road Transport (Mass, Dimensions and Loading) Act 2009*
- *Road Transport (Public Passenger Services) Act 2001*
- *Road Transport (Safety and Traffic Management) Act 1999*
- *Road Transport (Third-Party Insurance) Act 2008*
- *Road Transport (Vehicle Registration) Act 1999.*

Part 1.3 **Road Transport (Driver Licensing) Act 1999**

[1.3] Section 1, note 2

substitute

Note 2 Other road transport legislation includes the following:

- *Road Transport (Alcohol and Drugs) Act 1977*
- *Road Transport (General) Act 1999*
- *Road Transport (Mass, Dimensions and Loading) Act 2009*
- *Road Transport (Public Passenger Services) Act 2001*
- *Road Transport (Safety and Traffic Management) Act 1999*
- *Road Transport (Third-Party Insurance) Act 2008*
- *Road Transport (Vehicle Registration) Act 1999.*

[1.4] Section 31, new notes

insert

Note 1 The offences in this section do not apply to a police officer, authorised person or authorised assistant who is driving a heavy vehicle or heavy combination under the *Road Transport (Mass, Dimensions and Loading) Act 2009*, s 318. Under that section, a heavy vehicle or heavy combination may be moved if it is on a road or road related area, is unattended or broken-down and is causing (or is likely to cause) either serious harm to public safety, the environment or road infrastructure or an obstruction to traffic.

Note 2 The offences in this section do not apply to a person who is running the engine of a heavy vehicle or heavy combination under the *Road Transport (Mass, Dimensions and Loading) Act 2009*, s 339. Under that section, a person may run the engine of a heavy vehicle or heavy combination to assist with powers of enforcement.

**Part 1.4 Road Transport (Driver
Licensing) Regulation 2000**

[1.5] Section 9 (3) (b)

substitute

(b) to drive a motor vehicle in contravention of the *Road Transport (Mass, Dimensions and Loading) Act 2009*; or

[1.6] Section 23, new notes

insert

Note 3 However, the offences in relation to pars (a) to (d) do not apply to a police officer, authorised person or authorised assistant who is driving a heavy vehicle or heavy combination under the *Road Transport (Mass, Dimensions and Loading) Act 2009*, s 319. Under that section, a heavy vehicle or heavy combination may be moved if it is on a road or road related area, is unattended or broken-down and is causing (or is likely to cause) either serious harm to public safety, the environment or road infrastructure or an obstruction to traffic.

Note 4 Also, the offences in relation to pars (a) to (d) do not apply to a person who is running the engine of a heavy vehicle or heavy combination under the *Road Transport (Mass, Dimensions and Loading) Act 2009*, s 340. Under that section, a person may run the engine of a heavy vehicle or heavy combination to assist with powers of enforcement.

[1.7] Section 87, new note

insert

Note 2 A court may also order licence variation, suspension and cancellation under the *Road Transport (Mass, Dimensions and Loading) Act 2009*, s 204.

Part 1.5 Road Transport (General) Act 1999

[1.8] Section 1, note 2

substitute

Note 2 Other road transport legislation includes the following:

- *Road Transport (Alcohol and Drugs) Act 1977*
- *Road Transport (Driver Licensing) Act 1999*
- *Road Transport (Mass, Dimensions and Loading) Act 2009*
- *Road Transport (Public Passenger Services) Act 2001*
- *Road Transport (Safety and Traffic Management) Act 1999*
- *Road Transport (Third-Party Insurance) Act 2008*

- *Road Transport (Vehicle Registration) Act 1999.*

[1.9] Section 6

substitute

6 What is the *road transport legislation*?

In this Act, the *road transport legislation* means the following:

- (a) this Act;
- (b) the *Road Transport (Alcohol and Drugs) Act 1977*;
- (c) the *Road Transport (Driver Licensing) Act 1999*;
- (d) the *Road Transport (Mass, Dimensions and Loading) Act 2009*;
- (e) the *Road Transport (Public Passenger Services) Act 2001*;
- (f) the *Road Transport (Safety and Traffic Management) Act 1999*;
- (g) the *Road Transport (Third-Party Insurance) Act 2008*;
- (h) the *Road Transport (Vehicle Registration) Act 1999*;
- (i) any other Act or any regulation prescribed by regulation.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

[1.10] Section 10, new note

insert

Note 2 A wider definition of responsible person for a heavy vehicle or heavy combination applies under the *Road Transport (Mass, Dimensions and Loading) Act 2009*, s 12.

[1.11] Section 20 (1)

substitute

- (1) The road transport authority must issue an authorised person with an identity card that states the person is an authorised person for the road transport legislation, or stated provisions of the road transport legislation, and shows—
 - (a) a recent photograph of the person; and
 - (b) the name of the person or the particulars that are identifying particulars for the person (or both); and
 - (c) the date of issue of the card; and
 - (d) a date of expiry for the card; and
 - (e) the name and signature of the person who issued the card; and
 - (f) anything else prescribed by regulation.

Note Under the *Road Transport (Mass, Dimensions and Loading) Act 2009*, s 22, the road transport authority may designate a card issued to a person under a corresponding heavy vehicle road law as an identity card for the Act.

[1.12] New section 20 (3)

insert

- (3) In this section:
identifying particulars, for a person, means:
 - (a) for a person authorised by the administering authority for an infringement notice offence to serve infringement or reminder notices—the unique number given to the person by the administering authority under the *Road Transport (Offences) Regulation 2005*, section 11; and
 - (b) for any other authorised person—the unique number given to the person by the road transport authority; and

(c) any other particulars prescribed by regulation.

[1.13] Section 21, new note

insert

Note Under the *Road Transport (Mass, Dimensions and Loading) Act 2009*, s 22, the road transport authority may designate a card issued to a person under a corresponding heavy vehicle road law as an identity card for the Act.

[1.14] Section 58 (3)

substitute

- (3) It is a defence to a prosecution for an offence against subsection (2) (a) if the defendant—
- (a) is not the driver of a heavy vehicle, or heavy combination, when required to produce the licence; and
 - (b) has a reasonable excuse for failing to produce the licence when required to do so; and
 - (c) within 3 days after being required to produce the licence, produces the licence at a place prescribed by regulation or as directed by the police officer or authorised person.

[1.15] New section 58A

insert

58A Police officer or authorised person may require heavy vehicle or combination instructor's driver licence

- (1) This section applies if—
- (a) a police officer or authorised person requires a driver to produce his or her driver licence under section 58 (1) (a); and
 - (b) the driver is the driver of a heavy vehicle or heavy combination; and

- (c) the driver is the holder of a learner licence; and
 - (d) there is a person (an *instructor*) occupying a seat next to the driver.
- (2) A police officer or authorised person may require the instructor to produce his or her Australian driver licence or external driver licence.
- (3) The instructor must not fail to produce his or her Australian driver licence or external driver licence when required to do so under subsection (2).

Maximum penalty: 20 penalty units.

Note It is an offence to produce false or misleading documents (see Criminal Code, s 339).

- (4) In this section:

learner licence—see the *Road Transport (Driver Licensing) Act 1999*, dictionary.

[1.16] Section 64, new note

insert

Note A court may also order that a driver is disqualified from obtaining or holding an Australian driver licence under the *Road Transport (Mass, Dimensions and Loading) Act 2009*, s 204.

Part 1.6 Road Transport (General) Regulation 2000

[1.17] Sections 8A and 9

omit

[1.18] Schedule 1, part 1.2

omit

[1.19] Schedule 1, new part 1.6A

insert

**Part 1.6A Road Transport (Mass,
Dimensions and Loading) Act
2009**

column 1 item	column 2 provision	column 3 decision
1	194 (1)	authorised person or police officer—issue improvement notice
2	194 (3)	authorised person or police officer—method to achieve remedy under improvement notice
3	195 (2)	authorised person or police officer—refuse to extend due date for improvement notice
4	197 (3)	authorised person or police officer—amend improvement notice
5	199 (1)	authorised person or police officer—refuse to issue clearance certificate

**Part 1.7 Road Transport (Offences)
Regulation 2005**

[1.20] Section 8 (1) (b)

substitute

(b) part 1.8A (Road Transport (Mass, Dimensions and Loading) Act 2009);

[1.21] Schedule 1, part 1.4

omit

[1.22] Schedule 1, new part 1.8A

insert

**Part 1.8A Road Transport (Mass, Dimensions and Loading) Act
2009**

column 1 item	column 2 offence provision and, if relevant, case	column 3 short description	column 4 offence penalty (pu)	column 5 infringement penalty (\$)	column 6 demerit points
1	127				
1.1	<ul style="list-style-type: none">direction under s 126	fail to comply with direction to stop and rectify—minor risk breach of mass/dimension/loading requirement	50	\$1 000	

Schedule 1 Consequential amendments
Part 1.7 Road Transport (Offences) Regulation 2005

Amendment [1.22]

column 1 item	column 2 offence provision and, if relevant, case	column 3 short description	column 4 offence penalty (pu)	column 5 infringement penalty (\$)	column 6 demerit points
1.2	<ul style="list-style-type: none"> direction under s 127 	fail to comply with direction to move and rectify—minor risk breach of mass/dimension/loading requirement	50	\$1 000	
2	131				
2.1	<ul style="list-style-type: none"> direction under s 130 	fail to comply with direction to stop and rectify—substantial risk breach of mass/dimension/loading requirement	50	\$1 000	
2.2	<ul style="list-style-type: none"> direction under s 131 	fail to comply with direction to move and rectify—substantial risk breach of mass/dimension/loading requirement	50	\$1 000	
3	135				
3.1	<ul style="list-style-type: none"> direction under s 134 	fail to comply with direction to stop and rectify—severe risk breach of mass/dimension/loading requirement	50	\$1 000	

column 1 item	column 2 offence provision and, if relevant, case	column 3 short description	column 4 offence penalty (pu)	column 5 infringement penalty (\$)	column 6 demerit points
3.2	<ul style="list-style-type: none"> direction under s 135 	fail to comply with direction to move and rectify—severe risk breach of mass/dimension/loading requirement	50	\$1 000	
4	138	fail to comply with condition of authorisation	50	\$1 000	
5	141 (1)	consignor—minor risk breach of mass requirement	20	\$400	
6	141 (2)	consignor—substantial risk breach of mass requirement	40	\$800	
7	142 (1)	consignor—severe risk breach of mass requirement—intention	200pu/ 6 months prison/both		

Schedule 1 Consequential amendments
Part 1.7 Road Transport (Offences) Regulation 2005

Amendment [1.22]

column 1 item	column 2 offence provision and, if relevant, case	column 3 short description	column 4 offence penalty (pu)	column 5 infringement penalty (\$)	column 6 demerit points
8	142 (2)	consignor—severe risk breach of mass requirement—recklessness	150pu/ 6 months prison/both		
9	142 (3)	consignor—severe risk breach of mass requirement—negligence	100		
10	143	consignor—container weight exceeds maximum gross weight marked on container/plate	50		
11	144 (1)	consignor—minor risk breach of dimension/loading requirement	15	\$300	
12	144 (2)	consignor—substantial risk breach of dimension/loading requirement	30	\$600	

column 1 item	column 2 offence provision and, if relevant, case	column 3 short description	column 4 offence penalty (pu)	column 5 infringement penalty (\$)	column 6 demerit points
13	145 (1)	consignor—severe risk breach of dimension/loading requirement—intention	200pu/ 6 months prison/both		
14	145 (2)	consignor—severe risk breach of dimension/loading requirement—recklessness	150pu/ 6 months prison/both		
15	145 (3)	consignor—severe risk breach of dimension/loading requirement—negligence	100		
16	146 (1)	packer—minor risk breach of mass requirement	20	\$400	
17	146 (2)	packer—substantial risk breach of mass requirement	40	\$800	

Schedule 1 Consequential amendments
Part 1.7 Road Transport (Offences) Regulation 2005

Amendment [1.22]

column 1 item	column 2 offence provision and, if relevant, case	column 3 short description	column 4 offence penalty (pu)	column 5 infringement penalty (\$)	column 6 demerit points
18	147 (1)	packer—severe risk breach of mass requirement—intention	200pu/ 6 months prison/both		
19	147 (2)	packer—severe risk breach of mass requirement—recklessness	150pu/ 6 months prison/both		
20	147 (3)	packer—severe risk breach of mass requirement—negligence	100		
21	148	packer—container weight exceeds maximum gross weight marked on container/plate	50		
22	149 (1)	packer—minor risk breach of dimension/loading requirement	15	\$300	

column 1 item	column 2 offence provision and, if relevant, case	column 3 short description	column 4 offence penalty (pu)	column 5 infringement penalty (\$)	column 6 demerit points
23	149 (2)	packer—substantial risk breach of dimension/loading requirement	30	\$600	
24	150 (1)	packer—severe risk breach of dimension/loading requirement—intention	200pu/ 6 months prison/both		
25	150 (2)	packer—severe risk breach of dimension/loading requirement—recklessness	150pu/ 6 months prison/both		
26	150 (3)	packer—severe risk breach of dimension/loading requirement—negligence	100		
27	151 (1)	loader—minor risk breach of mass requirement	20	\$400	

Schedule 1 Consequential amendments
Part 1.7 Road Transport (Offences) Regulation 2005

Amendment [1.22]

column 1 item	column 2 offence provision and, if relevant, case	column 3 short description	column 4 offence penalty (pu)	column 5 infringement penalty (\$)	column 6 demerit points
28	151 (2)	loader—substantial risk breach of mass requirement	40	\$800	
29	152 (1)	loader—severe risk breach of mass requirement—intention	200pu/ 6 months prison/both		
30	152 (2)	loader—severe risk breach of mass requirement—recklessness	150pu/ 6 months prison/both		
31	152 (3)	loader—severe risk breach of mass requirement—negligence	100		
32	153 (1)	loader—minor risk breach of dimension/loading requirement	15	\$300	
33	153 (2)	loader—substantial risk breach of dimension/loading requirement	30	\$600	

column 1 item	column 2 offence provision and, if relevant, case	column 3 short description	column 4 offence penalty (pu)	column 5 infringement penalty (\$)	column 6 demerit points
34	154 (1)	loader—severe risk breach of dimension/loading requirement—intention	200pu/ 6 months prison/both		
35	154 (2)	loader—severe risk breach of dimension/loading requirement—recklessness	150pu/ 6 months prison/both		
36	154 (3)	loader—severe risk breach of dimension/loading requirement—negligence	100		
37	155 (1)	operator—minor risk breach of mass requirement	20	\$400	
38	155 (2)	operator—substantial risk breach of mass requirement	40	\$800	

Schedule 1 Consequential amendments
Part 1.7 Road Transport (Offences) Regulation 2005

Amendment [1.22]

column 1 item	column 2 offence provision and, if relevant, case	column 3 short description	column 4 offence penalty (pu)	column 5 infringement penalty (\$)	column 6 demerit points
39	156 (1)	operator—severe risk breach of mass requirement—intention	200pu/ 6 months prison/both		
40	156 (2)	operator—severe risk breach of mass requirement—recklessness	150pu/ 6 months prison/both		
41	156 (3)	operator—severe risk breach of mass requirement—negligence	100		
42	157 (1)	operator—minor risk breach of dimension/loading requirement	15	\$300	
43	157 (2)	operator—substantial risk breach of dimension/loading requirement	30	\$600	

column 1 item	column 2 offence provision and, if relevant, case	column 3 short description	column 4 offence penalty (pu)	column 5 infringement penalty (\$)	column 6 demerit points
44	158 (1)	operator—severe risk breach of dimension/loading requirement—intention	200pu/ 6 months prison/both		
45	158 (2)	operator—severe risk breach of dimension/loading requirement—recklessness	150pu/ 6 months prison/both		
46	158 (3)	operator—severe risk breach of dimension/loading requirement—negligence	100		
47	159 (1)	driver—minor risk breach of mass requirement	20	\$400	
48	159 (2)	driver—substantial risk breach of mass requirement	40	\$800	

Schedule 1 Consequential amendments
Part 1.7 Road Transport (Offences) Regulation 2005

Amendment [1.22]

column 1 item	column 2 offence provision and, if relevant, case	column 3 short description	column 4 offence penalty (pu)	column 5 infringement penalty (\$)	column 6 demerit points
49	160 (1)	driver—severe risk breach of mass requirement—intention	200pu/ 6 months prison/both		
50	160 (2)	driver—severe risk breach of mass requirement—recklessness	150pu/ 6 months prison/both		
51	160 (3)	driver—severe risk breach of mass requirement—negligence	100		
52	161 (1)	driver—minor risk breach of dimension/loading requirement	15	\$300	
53	161 (2)	driver—substantial risk breach of dimension/loading requirement	30	\$600	

column 1 item	column 2 offence provision and, if relevant, case	column 3 short description	column 4 offence penalty (pu)	column 5 infringement penalty (\$)	column 6 demerit points
54	162 (1)	driver—severe risk breach of dimension/loading requirement—intention	200pu/ 6 months prison/both		
55	162 (2)	driver—severe risk breach of dimension/loading requirement— recklessness	150pu/ 6 months prison/both		
56	162 (3)	driver—severe risk breach of dimension/loading requirement— negligence	100		
57	163 (1)	consignee engage in conduct resulting/likely to result in inducing/rewarding breach of mass/dimension/loading requirement— intention	200pu/ 6 months prison/both		

Schedule 1 Consequential amendments
Part 1.7 Road Transport (Offences) Regulation 2005

Amendment [1.22]

column 1 item	column 2 offence provision and, if relevant, case	column 3 short description	column 4 offence penalty (pu)	column 5 infringement penalty (\$)	column 6 demerit points
58	163 (2)	consignee engage in conduct resulting/likely to result in inducing/rewarding breach of mass/dimension/loading requirement—recklessness	150pu/ 6 months prison/both		
59	163 (3)	consignee engage in conduct resulting/likely to result in inducing/rewarding breach of mass/dimension/loading requirement—negligence	100		
60	170 (1)	responsible entity for freight container fail to give driver/operator complying container weight declaration	50	\$1 000	
61	171 (1)	operator fail to ensure driver given complying container weight declaration	50	\$1 000	

column 1 item	column 2 offence provision and, if relevant, case	column 3 short description	column 4 offence penalty (pu)	column 5 infringement penalty (\$)	column 6 demerit points
62	171 (4)	operator fail to ensure other carrier given complying container weight declaration/particulars	50	\$1 000	
63	172 (1)	drive vehicle/combination with freight container without container weight declaration	50	\$1 000	
64	172 (2)	drive vehicle/combination with freight container without keeping container weight declaration in vehicle/combination or accessible	50	\$1 000	

Schedule 1 Consequential amendments
Part 1.7 Road Transport (Offences) Regulation 2005

Amendment [1.22]

column 1 item	column 2 offence provision and, if relevant, case	column 3 short description	column 4 offence penalty (pu)	column 5 infringement penalty (\$)	column 6 demerit points
65	173	consignee engage in conduct resulting/ likely to result in inducing/rewarding breach of mass/dimension/loading requirement and knew/ought to have known container weight declaration not provided/false or misleading	100		
66	179 (2)	give transport/journey documentation that is false/misleading about relevant matter	50		
67	183	fail to comply with condition of mass, dimension or loading concession	50		
68	196 (1)	fail to comply with requirement of improvement notice	50		
69	209	fail to comply with requirement of supervisory intervention order	100		

column 1 item	column 2 offence provision and, if relevant, case	column 3 short description	column 4 offence penalty (pu)	column 5 infringement penalty (\$)	column 6 demerit points
70	212	fail to comply with prohibition in prohibition order	100		
71	217	employer dismisses/victimises employee because employee complained/assisted/gave information	100		
72	218	employer/prospective employer not offer employment to/treat unfavourably prospective employee because prospective employee complained/assisted/gave information	100		
73	221 (1)	fail to comply with employment order	50		

Schedule 1 Consequential amendments
Part 1.7 Road Transport (Offences) Regulation 2005

Amendment [1.22]

column 1 item	column 2 offence provision and, if relevant, case	column 3 short description	column 4 offence penalty (pu)	column 5 infringement penalty (\$)	column 6 demerit points
74	310 (1)	fail to comply with direction under s 309 to stop/not move vehicle/combination or not interfere with vehicle/combination/equipment/load	50	\$1000	
75	312	fail to comply with direction under s 311 to move vehicle/combination	50	\$1000	
76	314	fail to comply with direction under s 313 to move vehicle/combination	50	\$1000	
77	316	fail to comply with direction under s 315 to vacate driver's seat or leave/not enter vehicle/combination	50	\$1000	
78	322	fail to comply with direction under s 321 to produce a record/device/thing	50	\$1000	
79	324				

column 1 item	column 2 offence provision and, if relevant, case	column 3 short description	column 4 offence penalty (pu)	column 5 infringement penalty (\$)	column 6 demerit points
79.1	<ul style="list-style-type: none"> direction under s 323 (2) 	fail to comply with direction to give personal details	50	\$1000	
79.2	<ul style="list-style-type: none"> direction under s 323 (3) 	fail to comply with direction to produce evidence of correctness of personal details	50	\$1000	
80	326	fail to comply with direction under s 325 to provide information about vehicle/ combination/load/equipment	50	\$1000	
81	338	fail to comply with direction under s 337 to give assistance	50	\$1000	
82	346	do something/instruct someone else to do something forbidden by embargo notice	50		
83	347	fail to prevent someone doing something forbidden by embargo notice	50		

Schedule 1 Consequential amendments
Part 1.7 Road Transport (Offences) Regulation 2005

Amendment [1.22]

column 1 item	column 2 offence provision and, if relevant, case	column 3 short description	column 4 offence penalty (pu)	column 5 infringement penalty (\$)	column 6 demerit points
84	501 (2) (a)	make record of protected information about someone else	50pu/ 6 months prison/both		
85	501 (2) (b)	divulge protected information about someone else	50pu/ 6 months prison/both		
86	503 (1)	use record/information for other purpose	50		
87	510 (1)	drive light vehicle/light combination in contravention of mass/dimension/loading restriction in regulation	20	\$400	

Part 1.8 Road Transport (Public Passenger Services) Act 2001

[1.23] Section 1, note 2

substitute

Note 2 Other road transport legislation includes the following:

- *Road Transport (Alcohol and Drugs) Act 1977*
- *Road Transport (Driver Licensing) Act 1999*
- *Road Transport (General) Act 1999*
- *Road Transport (Mass, Dimensions and Loading) Act 2009*
- *Road Transport (Safety and Traffic Management) Act 1999*
- *Road Transport (Third-Party Insurance) Act 2008*
- *Road Transport (Vehicle Registration) Act 1999.*

Part 1.9 Road Transport (Safety and Traffic Management) Act 1999

[1.24] Section 1, note 2

substitute

Note 2 Other road transport legislation includes the following:

- *Road Transport (Alcohol and Drugs) Act 1977*
- *Road Transport (Driver Licensing) Act 1999*
- *Road Transport (General) Act 1999*
- *Road Transport (Mass, Dimensions and Loading) Act 2009*
- *Road Transport (Public Passenger Services) Act 2001*
- *Road Transport (Third-Party Insurance) Act 2008*
- *Road Transport (Vehicle Registration) Act 1999.*

Part 1.10 Road Transport (Safety and Traffic Management) Regulation 2000

[1.25] Division 2.2.1 heading, note 3, item 7

substitute

7 311 (1) (c) *Road Transport (Mass, Dimensions and Loading) Act 2009*

[1.26] Section 33 (1), definition of *oversize vehicle*

substitute

oversize vehicle means a vehicle with a dimension that, including the dimension of any load, exceeds a relevant dimension limit under—

- (a) the *Road Transport (Mass, Dimensions and Loading) Act 2009*; or
- (b) the *Road Transport (Vehicle Registration) Regulation 2000*.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

Part 1.11 Road Transport (Third-party Insurance) Act 2008

[1.27] Section 1, note 2

substitute

Note 2 Other road transport legislation includes the following:

- *Road Transport (Alcohol and Drugs) Act 1977*
- *Road Transport (Driver Licensing) Act 1999*
- *Road Transport (General) Act 1999*
- *Road Transport (Mass, Dimensions and Loading) Act 2009*

- *Road Transport (Public Passenger Services) Act 2001*
- *Road Transport (Safety and Traffic Management) Act 1999*
- *Road Transport (Vehicle Registration) Act 1999.*

Part 1.12 **Road Transport (Vehicle Registration) Act 1999**

[1.28] Section 1, note 2

substitute

Note 2 Other road transport legislation includes the following:

- *Road Transport (Alcohol and Drugs) Act 1977*
- *Road Transport (Driver Licensing) Act 1999*
- *Road Transport (General) Act 1999*
- *Road Transport (Mass, Dimensions and Loading) Act 2009*
- *Road Transport (Public Passenger Services) Act 2001*
- *Road Transport (Safety and Traffic Management) Act 1999*
- *Road Transport (Third-Party Insurance) Act 2008*

Part 1.13 Road Transport (Vehicle Registration) Regulation 2000

[1.29] Section 163

substitute

163 Application of the Road Transport (Mass, Dimensions and Loading) Act

- (1) A person or vehicle is exempted from a dimension limit or any other requirement of this regulation if the person or vehicle is exempted from the limit or requirement under the *Road Transport (Mass, Dimensions and Loading) Act 2009*.

Note 1 A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

Note 2 The *Road Transport (Mass, Dimensions and Loading) Regulation 2009* exempts vehicles from requirements in this regulation.

- (2) A breach of this regulation is to be disregarded in a prosecution if it is to be disregarded under the *Road Transport (Mass, Dimensions and Loading) Act 2009*.
- (3) In this section:

dimension limit means a provision of this regulation that limits or otherwise regulates the dimensions of a registrable vehicle (or a load or projection of the vehicle).

[1.30] Schedule 1, section 1.65 (4)

substitute

- (4) Subsections (1), (2) and (3) do not apply to the extent of any inconsistency with a notice or permit under the *Road Transport (Mass, Dimensions and Loading) Act 2009* that applies to the combination.

Note 1 A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

Note 2 The *Road Transport (Mass, Dimensions and Loading) Regulation 2009* provides for notices and permits.

[1.31] Schedule 1, part 1.7, note

omit

Road Transport (Dimensions and Mass) Act 1990

substitute

Road Transport (Mass, Dimensions and Loading) Act 2009

Dictionary

(see s 3)

Note 1 The Legislation Act contains definitions and other provisions relevant to this Act.

Note 2 For example, the Legislation Act, dict, pt 1, defines the following terms:

- chief police officer
- contravene
- corporation
- Corporations Act
- document
- entity
- exercise
- fail
- function
- infringement notice
- night
- police officer
- road transport authority
- territory law
- the Territory
- under
- working day.

another jurisdiction means a jurisdiction other than the ACT.

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

- (a) is prescribed by regulation; and

- (b) makes provision for compliance with, and enforcement of, an Australian heavy vehicle road law.

Example

a scheme, agreement or arrangement that provides for—

- a system of accreditation-based compliance; or
- an intelligent transport system; or
- a system applying alternative legal entitlements to the entitlements otherwise applicable, such as one based on performance based standards.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

associate, of another person, for part 2.4 (Additional sanctions for heavy vehicle offences)—see section 191.

at premises includes in or on the premises.

Australian driver licence—see the *Road Transport (Driver Licensing) Act 1999*, dictionary.

Australian heavy vehicle road law means—

- (a) a heavy vehicle road law; or
- (b) a corresponding heavy vehicle road law.

Australian heavy vehicle road law offence means an offence against an Australian heavy vehicle road law.

Australian police officer means—

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

authorised—

- (a) to drive a vehicle or combination, for part 3.1 (Investigation powers)—see section 303 (1); and

- (b) to run the engine of a vehicle or combination for part 3.1 (Investigation powers)—see section 303 (2).

authorised person, for a provision of this Act, means—

- (a) a person who is appointed as an authorised person under the *Road Transport (General) Act 1999*, section 19 for the provision; or
- (b) a person who is prescribed by regulation as an authorised person for the provision.

Note A references to an **authorised person** includes a reference to the road transport authority (see s 23).

authorised police officer, for division 2.4.2 (Improvement notices)—see section 193.

authority—see *road transport authority*.

base, of a driver of a vehicle or combination—see section 10.

broken-down, for a motor vehicle, trailer or combination, for part 3.1 (Investigation powers)—see section 306.

capabilities, of a vehicle—

- (a) means the functional capabilities of the vehicle or any of the vehicle's components, as decided by—
- (i) the vehicle's manufacturer; or
 - (ii) the road transport authority; or
 - (iii) a corresponding road transport authority; and
- (b) includes the vehicle's—
- (i) GCM and GVM; and
 - (ii) speed capabilities.

combination means a group consisting of a motor vehicle connected to 1 or more other vehicles.

commercial benefits penalty order—see section 202.

compliance purposes, in relation to a power to give a direction to a person, for part 3.1 (Investigation powers)—see section 307.

complying container weight declaration, for division 2.2.6 (Container weight declarations)—see section 169.

condition—

- (a) includes a restriction; and
- (b) of a mass, dimension or load restraint concession, for division 2.2.9 (Concessions)—see section 182.

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

connected, with an offence, for part 3.2 (Enforcement powers)—see section 332.

consignee, of goods—see section 14.

consignor, of goods—see section 13.

container weight declaration, for a freight container—see section 168.

contractor, for division 2.5.3 (Victimisation of people for reporting breaches and assisting with investigations)—see section 216.

corresponding heavy vehicle road law means a law of another jurisdiction that is—

- (a) corresponding, or substantially corresponding, to a heavy vehicle road law; or
- (b) declared by regulation to be a corresponding heavy vehicle road law.

corresponding law means—

- (a) a law of another jurisdiction corresponding, or substantially corresponding, to this Act; or

- (b) a law of another jurisdiction that is prescribed by regulation to be a corresponding law, whether or not the law corresponds, or substantially corresponds, to this Act.

corresponding road transport authority means—

- (a) if a person is prescribed by regulation as the corresponding road transport authority for another jurisdiction for this Act—the person prescribed; or
- (b) the road transport authority as defined in a corresponding heavy vehicle road law.

deficiency in a vehicle or combination, for division 2.3.2 (Other exceptions to offences)—see section 187.

depot includes a base of operations.

dimension requirement, for chapter 2 (Mass, dimensions and loading requirements for vehicles)—see section 102.

divulge, for part 5.1 (Secrecy and information sharing)—see section 500.

drive, for a vehicle or combination, includes be in control of the vehicle or combination.

driver—

- (a) of a vehicle or combination—see section 9; and
- (b) of a disconnected trailer, for part 3.1 (Investigation powers)—see section 305.

driver licence—see the *Road Transport (Driver Licensing) Act 1999*, dictionary.

due date, for an improvement notice, for division 2.4.2 (Improvement notices)—see section 194.

employee—

- (a) means an individual who works under a contract of employment, apprenticeship or training; and
- (b) for division 2.5.3 (Victimisation of people for reporting breaches and assisting with investigations)—see section 216.

employer means a person who employs people under—

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

engage in conduct means—

- (a) do an act; or
- (b) fail to do an act.

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

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

fit, to drive a vehicle or combination, or run its engine, for part 3.1 (Investigation powers)—see section 302.

formal warning, for chapter 2 (Mass, dimensions and loading requirements for vehicles)—see section 200.

freight container—see section 15.

garage address, of a vehicle, means—

- (a) if the vehicle is normally kept at a depot when not in use—the main depot of the vehicle; or
- (b) if the vehicle is not normally kept at a depot when not in use—
 - (i) if the vehicle has only 1 registered operator—the home address of the registered operator; or

- (ii) if the vehicle has more than 1 registered operator—each of the home addresses of the registered operators.

GCM (or **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) specified by the manufacturer on an identification plate on the motor vehicle; or
- (b) as specified by the road transport authority if—
 - (i) there is no specification by the manufacturer on an identification plate on the motor vehicle; or
 - (ii) the specification is not appropriate because the motor vehicle has been modified.

goods—

- (a) includes—
 - (i) animals (whether alive or dead); and
 - (ii) a container (whether empty or not); but
- (b) does not include—
 - (i) people; or
 - (ii) for a vehicle or combination—fuel, water, lubricants and equipment required for the normal operation of the vehicle or combination.

GVM (or **gross vehicle mass**), of a vehicle, means the maximum loaded mass of the vehicle—

- (a) specified by the manufacturer on an identification plate on the vehicle; or
- (b) if there is no specification by the manufacturer on an identification plate on the vehicle—certified by the road transport authority; or

- (c) if the manufacturer's specification is not appropriate because the motor vehicle has been modified—certified by the road transport authority.

heavy combination—see section 8.

heavy vehicle—see section 7.

heavy vehicle road law means the following—

- (a) this Act;
- (b) any other provision of the road transport legislation prescribed by regulation.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

heavy vehicle road law offence means an offence against a heavy vehicle road law.

home address, of a person, means—

- (a) for an individual—the address of the place where the person usually lives; or
- (b) for a corporation 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.

imminent, loss or shifting of a load, for part 2.2 (Mass, dimension and loading requirements for heavy vehicles and heavy combinations)—see section 105.

improvement notice, for division 2.4.2 (Improvement notices)—see section 194.

in, a vehicle or combination, includes on the vehicle or combination.

intelligent transport system means a system involving the use of electronic or other technology (whether located in 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) the following:
 - (i) a vehicle or combination or its equipment or load;
 - (ii) the driver of a vehicle or combination;
 - (iii) the operator of a fleet of vehicles or combinations;
 - (iv) someone else involved in road transport; and
- (b) without limiting paragraph (a), the operation of a vehicle or combination in relation to its legal entitlements.

journey documentation—see section 19.

jurisdiction means a State, the Commonwealth or an internal Territory, including the ACT.

learner licence—see the *Road Transport (Driver Licensing) Act 1999*, dictionary.

legal entitlements, of a vehicle or combination (or component of a vehicle or combination)—

- (a) means the particulars of the entitlements under an Australian heavy vehicle road law that authorise the vehicle or combination (or component) to be operated on a road or road related area; and
- (b) includes entitlements arising under or as affected by—
 - (i) a permit, authorisation, approval, exemption, notice or anything else given or issued in writing under the law; and

- (ii) restrictions, or the application of restrictions, under an Australian heavy vehicle road law or other laws; and

Example

- 1 sign-posted mass limits for bridges
- 2 hazardous weather condition permits
- 3 special road protection limits

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (iii) an approved road transport compliance scheme.

load, of a vehicle or combination, or in a vehicle or combination—

- (a) means—

- (i) all the goods, passengers and drivers in the vehicle or combination; and
- (ii) all fuel, water, lubricants and readily removable equipment carried in the vehicle or combination and required for the vehicle's or combination's normal operation; and
- (iii) personal items used by a driver of the vehicle or combination; and
- (iv) anything that is normally removed from the vehicle or combination when not in use; and

- (b) includes a part of a load.

loader, of goods—see section 17.

loading requirement, for chapter 2 (Mass, dimensions and loading requirements for vehicles)—see section 103.

lower limit, for a breach of a mass, dimension or loading requirement, for chapter 2 (Mass, dimensions and loading requirements for vehicles)—see section 100.

mass, dimension or loading concession, for division 2.2.9 (Concessions)—see section 181.

mass, dimension or loading requirement means any of the following:

- (a) a mass requirement;
- (b) a dimension requirement;
- (c) a loading requirement.

Note A regulation may impose mass, dimension or loading requirements about the use of roads or road related areas by vehicles (see s 509).

mass requirement, for chapter 2 (Mass, dimensions and loading requirements for vehicles)—see section 101.

minor risk breach, of a mass, dimension or loading requirement, for chapter 2 (Mass, dimensions and loading requirements for vehicles)—see section 109.

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

occupier, of premises, a vehicle or combination, for part 3.2 (Enforcement powers)—see section 332.

offence, for part 3.2 (Enforcement powers)—see section 332.

operator, of a vehicle or combination—see section 11.

owner—

- (a) for 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, other than an agreement requiring the vehicle to be registered in the name of someone else; or
 - (b) for 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, other than an agreement requiring the vehicle to be registered in the name of someone else.

package, of goods—see section 16.

packer, of goods for transport by road—see section 16.

particular RTA instructions, for division 2.2.3 (Enforcement powers)—see section 123.

passenger, for a vehicle or combination, does not include a driver of the vehicle or combination or anyone necessary for the normal operation of the vehicle or combination.

police officer—see section 23.

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

prohibition order, for chapter 2 (Mass, dimensions and loading requirements for vehicles)—see section 210.

protected information, for part 5.1 (Secrecy and information sharing)—see section 500.

public agency, for division 2.5.3 (Victimisation of people for reporting breaches and assisting with investigations)—see section 216.

public authority means—

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

public place means a place which is open to members of the public (with or without payment) but does not include—

- (a) a track that, at the relevant time, is being used as a course for racing or testing motor vehicles and from which other traffic is excluded during the use; or
- (b) a road or road related area; or
- (c) a place exempted by regulation.

public safety means the safety of people or property, including the safety of—

- (a) the drivers of and passengers in vehicles and combinations; and
- (b) people in or near (or likely to be in or near) roads, road related areas, road infrastructure and public places; and
- (c) vehicles and combinations and any loads in them.

qualified, to drive a vehicle or combination or run its engine, for part 3.1 (Investigation powers)—see section 301.

reasonable steps exception means—

- (a) for an offence—the exception mentioned in section 185; and
- (b) for the operator or driver of a heavy vehicle or heavy combination for an offence involving a breach of a mass requirement—the exception mentioned in section 186.

reciprocal powers agreement—see section 20.

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

registered operator means—

- (a) for a vehicle (including a vehicle in a combination)—
 - (i) for a vehicle registered under the *Road Transport (Vehicle Registration) Act 1999*—a person recorded in the registrable vehicles register kept under that act as a registered operator of the vehicle; or
 - (ii) for a vehicle registered under the law of another jurisdiction—a person recorded in the register of the other jurisdiction corresponding to the registrable vehicles register as a registered operator (however described) of the vehicle; or
- (b) for a combination—
 - (i) if the towing vehicle is registered under the *Road Transport (Vehicle Registration) Act 1999*—a person recorded in the registrable vehicles register kept under that act as a registered operator of the towing vehicle; or
 - (ii) if the towing vehicle is registered under the law of another jurisdiction—a person recorded in the register of the other jurisdiction corresponding to the registrable vehicles register as a registered operator (however described) of the towing vehicle.

registration, of a heavy vehicle, means registration of the vehicle under an Australian heavy vehicle road law.

responsible entity, for a freight container—see section 167.

responsible person, for a heavy vehicle or heavy combination—see section 12.

road—

- (a) means an area that is open to or used by the public and is developed for, or has as 1 of its main uses, the driving or riding of motor vehicles; but
- (b) does not include an area that would otherwise be a road as far as a declaration under the *Road Transport (General) Act 1999*, section 12 (Power to include or exclude areas in road transport legislation) declares that this Act does not apply to the area.

road infrastructure—

- (a) includes—
 - (i) a road, or road related area, including its surface or pavement; and
 - (ii) anything under or supporting a road, or road related area, or its surface or pavement and maintained by the territory; and
 - (iii) any bridge, tunnel, causeway, road-ferry, ford or other work or structure forming part of a road system, or road related area system, or supporting a road or road related area; and
 - (iv) any bridge or other work or structure located above, in or on a road or road related area and maintained by the territory; and
 - (v) 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 mentioned in subparagraphs (i) to (iv); and

-
- (vi) anything else prescribed by regulation as road infrastructure; but
 - (b) does not include anything prescribed by regulation as not road infrastructure.

road related area—

- (a) means—
 - (i) an area that divides a road; or
 - (ii) a footpath or nature strip adjacent to a road; or
 - (iii) an area that is open to the public and is designated for use by cyclists or animals; or
 - (iv) an area that is not a road and that is open to or used by the public for driving, riding or parking vehicles; or
 - (v) a shoulder of a road; and
- (b) includes any other area that is open to or used by the public as far as a declaration under the *Road Transport (General) Act 1999*, section 12 (Power to include or exclude areas in road transport legislation) declares that this Act applies to the area; and
- (c) does not include an area that would otherwise be a road related area as far as a declaration under the *Road Transport (General) Act 1999*, section 12, declares that this Act does not apply to the area.

roads compensation order—see section 404.

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

road transport legislation—see the *Road Transport (General) Act 1999*, section 6.

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

severe risk breach, of a mass, dimension or loading requirement, for chapter 2 (Mass, dimensions and loading requirements for vehicles)—see section 111.

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 loading requirement, for chapter 2 (Mass, dimensions and loading requirements for vehicles)—see section 110.

suitable location, for a police officer or authorised person giving a direction, for division 2.2.3 (Enforcement powers)—see section 123.

supervisory intervention order, for chapter 2 (Mass, dimensions and loading requirements for vehicles)—see section 206.

traffic includes vehicle traffic, pedestrian traffic, and all other forms of road traffic.

trailer—

- (a) means a vehicle that, whether or not its movement is aided by another power source—
 - (i) is built to be towed, or is towed, by another vehicle; and
 - (ii) is not capable of being propelled in the course of normal use on a road without being towed by another vehicle; but
- (b) does not include—
 - (i) a motor vehicle being towed; or
 - (ii) anything excluded by regulation.

transport by road—see **road transport**.

transport documentation—see section 18.

unattended, for a vehicle or combination, for part 3.1 (Investigation powers)—see section 304.

use, a vehicle, includes drive, park or stop the vehicle on a road or road related area.

vehicle means—

- (a) a vehicle on wheels, other than a vehicle used on railways or tramways; or
- (b) any other vehicle prescribed by regulation; or
- (c) anything else that, under a regulation, is to be taken to be a vehicle.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 7 May 2009.

2 Notification

Notified under the Legislation Act on 3 September 2009.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Road Transport (Mass, Dimensions and Loading) Bill 2009, which was passed by the Legislative Assembly on 20 August 2009.

Clerk of the Legislative Assembly

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