

2013

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

HEAVY VEHICLE NATIONAL LAW (ACT) BILL 2013

REVISED EXPLANATORY STATEMENT

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HEAVY VEHICLE NATIONAL LAW (ACT) BILL 2013

Introduction

This explanatory statement relates to the Heavy Vehicle National Law (ACT) Bill 2013 ('the Bill') as presented to the Legislative Assembly. It has been prepared to assist the reader of the Bill and to help inform debate on it. The statement does not form part of the Bill and has not been endorsed by the Assembly.

The statement must to be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision. This is a task for the courts.

Overview of the Bill

The Heavy Vehicle National Law (the 'National Law') forms part of the national heavy vehicle transport industry reform program of the Council of Australian Governments (COAG). As part of the 2008 *National Partnership Agreement to Deliver a Seamless National Economy*, COAG agreed to deliver reforms to improve the efficiency of transport regulation. In this context, the *Intergovernmental Agreement on Heavy Vehicle Regulatory Reform* (the 'Intergovernmental Agreement') was signed by first ministers on 19 August 2011.¹ The Intergovernmental Agreement provides for the establishment of a national regulatory regime for heavy vehicles administered by a single national regulator.

The National Law is a schedule to the *Heavy Vehicle National Law Act 2012* of Queensland.² The National Law applies to vehicles (including buses) with a gross vehicle mass (GVM) over 4.5 tonnes. It consolidates model laws for heavy vehicles developed by the National Transport Commission (NTC) and its predecessor, the National Road Transport Commission, and establishes the National Heavy Vehicle Regulator ('the Regulator'). These model laws have been progressively legislated in the states and territories since 1993. Application of the National Law in participating jurisdictions is the next step in achieving a consistent approach to regulation of the industry.

The purpose of the Heavy Vehicle National Law (ACT) Bill 2013 is to apply the National Law set out in the schedule to the Queensland Act as a law of the Territory. The Heavy Vehicle National Law (Consequential Amendments) Bill 2013 is cognate with this Bill. It will repeal the *Road Transport (Mass, Dimensions and Loading) Act 2009* as well as making necessary amendments to other laws, in particular those collectively described as 'road transport legislation'. The provisions of the Road Transport (Mass, Dimensions and Loading) Act implemented heavy vehicle model laws which are replaced by comparable provisions in the National Law, particularly those in chapter 4 (Vehicle operations – mass, dimension and loading), chapter 9 (Enforcement) and chapter 10 (Sanctions and provisions about liability for offences).

¹ The Agreement is available at <http://www.coag.gov.au/node/54>.

² The Queensland Act is available on the Queensland legislation website at <https://www.legislation.qld.gov.au>.

The Heavy Vehicle National Law

The purpose of the National Law is to create a uniform regulatory framework for heavy vehicle road transport and to establish the National Heavy Vehicle Regulator to administer the Law. The National Law:

- provides for the national registration of heavy vehicles;
- prescribes standards for heavy vehicles on the road;
- establishes requirements for heavy vehicle operation such as mass limits, size restrictions, and secure loading, and road access (including measures to allow improved access under certain circumstances);
- prescribes measures to control speeding;
- prescribes measures to prevent driving while fatigued; and
- imposes duties and obligations on operators, drivers and other persons in the chain of responsibility whose activities may influence vehicle or driver compliance with requirements under the Law.

The National Law does not cover the transport of dangerous goods, traffic laws, public transport regulation, heavy vehicle driver licensing, or drink and drug driving.³ These will continue to be regulated through the body of laws described as ‘road transport legislation’ and through the *Dangerous Goods (Road Transport) Act 2009*.

While the Regulator will have overall responsibility for administration of the National Law, in practice, the Regulator will administer significant elements of it through service agreements with state and territory road transport authorities. In addition, the police services of participating jurisdictions will enforce the National Law, and road managers will continue to have a role as asset managers and owners of state or territory-controlled roads. The Intergovernmental Agreement specifically provides that access to the road network will remain subject to the decisions of state and territory asset owners. The Territory as the asset owner will continue to be responsible for the management of the ACT road network and for deciding limits on road networks.

Legal and court processes will largely remain as they are. Infringement notice offences and penalties will be prescribed and administered through the current Territory laws. More generally, legal proceedings for offences against the National Law will be summary proceedings before a court of summary jurisdiction (the Magistrates Court in the ACT), while decision review and appeal will be brought to the ACT’s Administrative and Civil Tribunal (ACAT).

In-principle funding arrangements for the Regulator are set out in the Intergovernmental Agreement. The ongoing costs of the Regulator are to be subject to full cost recovery from registered operators through vehicle registration charges collected by the states and territories, and from fees for services directly provided by the Regulator. In future, national registration charges for heavy vehicles will have two components — a charge for base regulatory services (including enforcement), and a charge for recovery of road costs. The Regulator will receive the regulatory component; the states and territories will receive the

³ Personalised numberplates will remain a function of states and territories once responsibility for heavy vehicle registration is assumed by the Regulator.

roads use component based on home garaging address. The Regulator will fund its ongoing costs from the regulatory component (along with fees for direct service delivery) and will make payments to the states and territories for delivery of a range of services under service agreements.

A chapter summary of the National Law is set out below. The Queensland *Heavy Vehicle National Law Act 2012*, to which it is a schedule, was enacted in August 2012 and amended in February 2013. Explanatory notes for the Heavy Vehicle National Law Bill 2012, and for the Heavy Vehicle National Law Amendment Bill 2012 are also available on the Queensland legislation website.⁴

Chapter 1 (Preliminary) identifies the object of the National Law as establishing a national scheme for facilitating and regulating the use of heavy vehicles on roads in a way that

- promotes public safety;
- manages the impact of heavy vehicles on the environment, road infrastructure and public amenity;
- promotes industry productivity and efficiency in the road transport of goods and passengers by heavy vehicles; and
- encourages and promotes productive, efficient, innovative and safe business practices.

The chapter sets out the elements of the regulatory framework to achieve the object of the National Law as the:

- establishment of the National Heavy Vehicle Regulator (the Regulator);
- provision for the national registration of heavy vehicles;
- prescribed requirements for the standards, driving and use of heavy vehicles;
- imposition of duties and obligations on persons whose activities may influence compliance with such requirements; and
- inclusion of measures for improved access to the road network in certain circumstances.

Part 1.2 (Interpretation) contains definitions for technical and other terms used throughout the National Law, including certain key concepts such as ‘heavy vehicle’ and ‘fatigue-regulated heavy vehicle’. Part 1.3 provides for the application and operation of the National Law in relation to extraterritorial operation, binding of the State, and the relationship of the Law to the primary work, health and safety laws of participating jurisdictions. Part 1.4 (Performance based standards) makes provisions to enable Performance Based Standards (PBS) vehicles that meet a particular performance level to operate on roads authorised to be used by PBS vehicles that meet or exceed that performance level.⁵

⁴ In addition, an integrated set of explanatory notes tailored to Victoria for the Heavy Vehicle National Law as amended were prepared as an annexure to the Victorian Heavy Vehicle National Law Application Bill 2013. The Bill with annexed explanatory notes is available on the Victorian legislation website at <http://www.legislation.vic.gov.au>.

⁵ The PBS Scheme offers the heavy vehicle industry the potential to achieve higher productivity with the least possible effects on roads and bridges through innovative and optimised vehicle design. The scheme focuses on a vehicle’s behaviour on the road, rather than how big and heavy (length and mass) it is, and imposes safety and

Chapter 2 (Registration) establishes a scheme for the national registration of heavy vehicles of specified standards. It includes a general regulation-making power. Regulations may prescribe procedures for the registration of heavy vehicles. Heavy vehicles must be registered. The maximum penalty which may be imposed for a failure to comply is \$10,000. The Regulator may by Commonwealth Gazette notice exempt a category of heavy vehicles from the requirement to be registered for a period of not more than a year. National regulations may provide for the exemption of heavy vehicles from the requirement to be registered and the imposition of any conditions to which a registration exemption is subject. The chapter also provides for the keeping of a heavy vehicle register and a written-off and wrecked heavy vehicles register by the Regulator.

The purpose of **Chapter 3 (Vehicle operations – standards and safety)** is to ensure heavy vehicles used on roads are of a standard and in a condition that prevents or minimises safety risks. National regulations may be made to prescribe vehicle standards with which heavy vehicles must comply to use roads. The chapter makes provision for the Regulator to exempt a category of heavy vehicles from compliance with a heavy vehicle standard (notice), or may exempt a particular heavy vehicle from compliance with a heavy vehicle standard (permit) if satisfied of various matters. The chapter establishes various offences and penalties in relation to operating under a vehicle standards exemption, modifying heavy vehicles, and in relation to a range of other matters including using a heavy vehicle which is unsafe on a road.

The purpose of **Chapter 4 (Vehicle operations – mass, dimension and loading)** is to improve public safety by decreasing risks caused by excessively loaded or excessively large heavy vehicles, and to minimise any adverse impact of excessively loaded or excessively large heavy vehicles on road infrastructure or public amenity. This is done by imposing mass limits on heavy vehicles, restrictions about the size of heavy vehicles, requirements about securing loads on heavy vehicles, and by restricting access to roads by heavy vehicles of a particular size and/or mass.

Chapter 4 establishes three categories of risk breaches for mass, dimension and loading requirements: minor, substantial, and severe, and states how these are to be determined in relation to each class of requirements. For example, mass and dimension breaches are determined by the application of definitions of ‘lower limits’ for substantial and severe risk breaches. Dimension breaches are also subject to specified escalating factors such as the load projecting in a way that is dangerous. Loading breaches, on the other hand are categorised by factors such as whether an actual loss or shifting of the load occurred, and on the actual or potential impact on safety, road infrastructure, or public amenity.

The chapter makes provision for the Regulator to exempt a category of heavy vehicles from compliance with a heavy vehicle mass or dimension requirement by notice, or may exempt a particular heavy vehicle from compliance with a heavy vehicle mass or dimension requirement by permit. The Regulator may also authorise use of particular roads/routes for a category of heavy vehicles by notice or a particular vehicle by permit. Authorisations are subject to conditions. Authorisations are also subject to the consent of the road manager in a participating jurisdiction.

infrastructure protection standards. Regulatory responsibility for the PBS is transferred to the Regulator through the National Law (see <https://www.nhvr.gov.au/road-access/performance-based-standards/the-performance-based-standards-scheme>).

Chapter 4 establishes a chain of responsibility through provisions for extended liability of a number of prescribed parties – employer, prime contractor, operator, consignor, packer, loading manager, and loader – for contraventions of mass, dimension and loading requirements. The maximum penalty for offences varies dependent on the degree of risk entailed in the breach. A person charged has the benefit of the reasonable steps defence.

The purpose of **Chapter 5 (Vehicle operations – speeding)** is to improve public safety and compliance with Australian road laws by imposing responsibility for speeding by heavy vehicles on persons whose business activities influence the conduct of the drivers of heavy vehicles. It requires persons who are most directly responsible for the use of a heavy vehicle to take reasonable steps to ensure their activities do not cause the vehicle's driver to exceed speed limits. It requires anyone who schedules the activities of a heavy vehicle, or its driver, to take reasonable steps to ensure the schedule for the vehicle's driver does not cause the driver to exceed speed limits. It also requires loading managers to take reasonable steps to ensure that arrangements for loading goods onto and unloading goods from a heavy vehicle do not cause the vehicle's driver to exceed speed limits.

The chapter implements extended liability provisions for speeding offences on employers of the driver, a prime contractor of the driver and an operator of the vehicle if the driver is making a journey for the operator. The maximum penalty is \$10,000. A person charged has the benefit of the reasonable steps defence.

The purpose of **Chapter 6 (Vehicle operations – driver fatigue)** is to provide for the safe management of driver fatigue by:

- imposing duties on drivers of fatigue-regulated heavy vehicles and particular persons whose activities influence the conduct of drivers of fatigue-regulated heavy vehicles in a way that affects the drivers' fatigue when driving on a road;
- imposing general duties directed at preventing persons driving fatigue-regulated heavy vehicles on a road while impaired by fatigue;
- imposing additional duties on particular parties in the chain of responsibility which are directed at helping drivers of fatigue-regulated heavy vehicles to comply;
- providing for the maximum work requirements and minimum rest requirements applying to drivers of fatigue-regulated heavy vehicles; and
- providing for recording the work times and rest times of drivers.

The Chapter provides for the use of electronic work diaries, and imposes record keeping requirements on the record keeper of the driver of a fatigue-regulated heavy vehicle.

Applications for electronic recording systems must be made to the Regulator. The Regulator has the power to exempt record keepers from fatigue record keeping requirements by way of permit if satisfied of various conditions.

Chapter 6 establishes four categories of fatigue-related risk breaches: minor, substantial, severe and critical. These are further specified in relation to maximum work or minimum rest requirements set out in the *Heavy Vehicle (Fatigue Management) National Regulation*. These requirements include prescribed 'standard hours', basic fatigue management or 'BFM

hours', and advanced fatigue management or 'AFM hours' for solo and two-up drivers of 'fatigue-related' heavy vehicles and buses.⁶

The purpose of **Chapter 7 (Intelligent Access Program)**⁷ is to ensure the integrity of systems used for compliance with intelligent access conditions and to provide for appropriate collection, keeping and handling of intelligent access information. 'Intelligent access' refers to electronic or technological means for monitoring compliance with conditions applying to the use of roads by 'intelligent access vehicles'. An 'approved intelligent transport system' is defined to mean a system approved by Transport Certification Australia Limited (TCA) for the purposes of the Intelligent Access Program, for use by an intelligent access service provider to monitor the relevant monitoring matters for an intelligent access vehicle.

Chapter 8 (Accreditation) sets out matters relating to accreditation of operators of heavy vehicles.⁸ The purpose of accreditation is to enable the implementation of alternative management and compliance systems to meet the objectives of the National Law. Application may be made to the Regulator for heavy vehicle accreditation in relation to matters such as:

- exempting the vehicle from the requirement to be inspected before the vehicle is registered;
- allowing operation under concessional mass limits or higher mass limits;
- allowing drivers to operate under BFM hours; and
- allowing drivers to operate under AFM hours.

The Regulator may grant accreditation to an operator of a heavy vehicle for a period of not more than three years. Accreditation may be subject to conditions. The Regulator may make enquiries of the police commissioner for a prescribed criminal history within five years immediately before the application. The chapter includes provisions for operating under an accreditation, including a requirement that the driver of a heavy vehicle keep a copy of the accreditation certificate in his or her possession, and establishes a range of offences for non-compliance. Application may be made to the Regulator for amendment of or cancellation of heavy vehicle accreditation. The chapter also establishes offences relating to approved auditors.

⁶ Prescribed maximum work times and minimum rest times applying to the driver of a fatigue-regulated heavy vehicle for a period if the driver is operating under a BFM or AFM accreditation.

⁷ Intelligent access conditions require monitoring of such matters as the areas or roads on which a vehicle travels, the mass of the vehicle when so travelling, the time of travel or the speed at which the vehicle is travelling. The monitoring is undertaken by an intelligent access service provider by means of an intelligent transport system.

⁸ The National Heavy Vehicle Accreditation Scheme (NHVAS) started in 1999 as an alternative compliance scheme. It evolved as a formal process for recognising operators who have robust safety and other management systems in place. It is also increasingly being used to show compliance with general duty requirements under road transport law. Regulatory responsibility for accreditation is transferred to the Regulator through the National Law (see <https://www.nhvr.gov.au/safety-accreditation-compliance/nat-heavy-vehicle-accreditation-scheme/about-the-nhvas>).

Chapter 9 (Enforcement) sets out the functions and powers of authorised officers to monitor, investigate and enforce compliance with the law. The chapter provides for the appointment of authorised officers by the Regulator, and specifies the classes of persons who may be appointed. All police officers in the Territory will be declared to be authorised officers for the National Law through the local application provisions of the Bill.

The chapter sets out the powers of entry and search by authorised officers. The powers for authorised officers to enter and inspect heavy vehicles for monitoring or investigation purposes, and the procedures for entry by consent and under warrant, are set out. The circumstances when an authorised officer who is a police officer may enter a ‘relevant place’ without consent or a warrant are specified. A relevant place does not include a place used predominantly for residential purposes. Chapter 9 also establishes powers in relation to heavy vehicles. These include:

- directions about stopping, not moving, or not interfering with a heavy vehicle;
- moving a heavy vehicle;
- inspecting and searching a heavy vehicle;
- issuing vehicle defect notices; and
- directing a driver believed to be fatigued to rest.

Chapter 9 establishes powers regarding seizure and embargo, and provides for circumstances in which a seized thing or sample will be returned. The local application provisions of the Bill provide that excluded things (including heavy vehicles) under the National Law may be impounded or seized – see the National Law, section 552 (Restriction on power to seize certain things). Provisions for forfeiture and transfer of seized property include safeguards of notice and forfeiture decision review. Additional provisions in relation to applications to a relevant court or tribunal for the return of seized things or samples are set out in the *Heavy Vehicle (General) National Regulation*.

In addition to the power to seize certain things, the National Law makes provision for a number of other participating jurisdiction authorisations. These authorisations are included in the local application provisions of the Bill in relation to the use of force against people by a police officer (the National Law, section 491), the use of force against property by an authorised officer (the National Law, section 492), and the amendment or withdrawal of a defect notice by a police officer of another jurisdictions (the National Law, section 531).

Other matters dealt with in chapter 9 include information gathering powers of authorised officers, the issuing of improvement notices by authorised officers, and responsibilities of authorised officers exercising enforcement powers to take all reasonable steps to cause as little inconvenience and damage as possible. Chapter 9 also provides that it is an offence for a person without reasonable excuse to obstruct an authorised officer. The maximum penalty is \$10,000.

Chapter 10 (Sanctions and provisions about liability for offences) sets out general provisions relating to sanctions and the liability for offences. It establishes a general power for an authorised officer to issue infringement notices for prescribed offences under procedures prescribed the Infringement Notice Offences Law of the participating jurisdiction. The local application provisions of the Bill declare that the Infringement Notice Offences Law is the *Road Transport (General) Act 1999* for the Heavy Vehicle National Law (ACT).

The chapter establishes a framework for court sanctions where a person is found guilty of an offence. It sets out the matters a court must consider when imposing sanctions for non-compliance with mass dimension or loading requirements including considerations of what might constitute a minor, substantial or severe risk breach.

The chapter sets out the court's power to cancel or suspend vehicle registration, and provides for a range of orders (commercial benefits penalty, supervisory intervention, prohibition, and compensation orders). It sets out matters relating to the use of the 'reasonable steps' defence. National regulations may be made with respect to speeding or fatigue management offences and when particular persons are to be regarded as having taken all reasonable steps. The chapter also details a range of other defences, and includes other provisions about liability including for the liability of executive officers of a corporation, partners in unincorporated partnerships, and management members of other unincorporated bodies.

Chapter 11 (Reviews and appeals) establishes a framework for decision review and appeals. It provides definitions for terms including 'public safety ground', 'relevant appeal body', 'relevant jurisdiction', and 'reviewable decision'. It outlines processes relating to a dissatisfied person's application for internal review. Reviews of decisions of the Regulator or an authorised officer may be made to the relevant appeal body. The chapter outlines the powers of the appeal body including that the appeal may be by way of rehearing. The local application provisions of the Bill declare that the ACAT is the relevant tribunal or court for the ACT for certain provisions of the Heavy Vehicle National Law (ACT). In the context of chapter 11, the ACAT is the 'relevant appeal body'.

Chapter 12 (Administration) provides a framework for the administration of the National Law. It sets out the role of 'responsible Ministers' in giving policy directions to the National Heavy Vehicle Regulator and for the approval of specified guidelines, and provides for the exercise of functions generally. The chapter provides for the establishment of the Regulator. It sets out the general powers of the Regulator including the power to enter into agreements with a state or territory for the provision of services, and specifies the Regulator's main functions. It establishes the governing Board for the Regulator and its functions. The appointment of the board members is by the Queensland Minister on the unanimous recommendation of responsible Ministers. It sets out standard procedural provisions for the conduct of meetings, etc. The chapter also establishes the National Heavy Vehicle Regulator Fund to be administered by the Regulator. The chapter provides that the 'road use component' of heavy vehicle registration charges is not payable into the Fund.

The chapter includes provisions for other planning and accountability matters. Annual reports must be prepared and given to the responsible Ministers, and tabled in the parliaments of each participating jurisdiction and the Commonwealth. A number of Queensland 'oversight laws' are applied to the Regulator and the Board. The Queensland laws do not, however, apply to a state or territory entity exercising functions under the National Law either in their own right or through agreements or delegation. The local application provisions of the Bill exclude a number of Territory laws in the application to the Regulator and Board.

Chapter 13 (General) contains miscellaneous general provisions necessary for the operation of the Bill. These include general offences in relation to discrimination or victimisation, and to false or misleading information. The chapter provides for the registration of, and the making of guidelines for, industry codes of practice by the Regulator. Part 13.3 contains

provisions for proceedings, and general evidentiary provisions. Proceedings for offences against the National Law are summary proceedings before a court of summary jurisdiction. Part 13.4 establishes a framework for 'protected information'. Part 13.5 makes general provision for the making of national regulations for the National Law by the Queensland Governor acting with the advice of the Executive Council of Queensland and on the unanimous recommendation of the responsible Ministers. The maximum penalty which may be imposed under regulations is \$4,000 for an individual and \$20,000 for a corporation. Other matters dealt with in the chapter include the approval of forms, the indexing of maximum penalty amounts, and the service of documents.

Chapter 14 (Savings and transitional provisions) contains savings and transitional provisions.

Schedules to the National Law:

- contain miscellaneous interpretation provisions with the purpose of providing consistency in interpretation across jurisdictions;
- set out the types of conditions the Regulator may consider appropriate to impose under a mass or dimension exemption (notice) or a mass or dimension (permit) or a class 2 heavy vehicle authorisation (permit);
- set out the decisions of the Regulator, authorised officers, and the relevant road manager that are reviewable for the purposes of Chapter 11; and
- outline the provisions specified for the liability of executive officers for offences by corporations (s 636).

Offences in the Heavy Vehicle National Law

There are a total of 330 offences in the National Law.⁹ Maximum penalties range from \$1,500 to \$20,000 (with the exception of a severe risk breach of mass requirements in section 96 (1) which provides for an additional maximum \$500 for every additional 1% over a 120% overload up to \$20,000 equating to a total maximum penalty of \$30,000). Section 730 of the National Law limits penalties in the regulations to a maximum \$4,000. Section 596 (Body corporate fines under penalty provision) provides that where no maximum penalty is expressly prescribed for a body corporate found guilty of an offence, the maximum fine is five times that for an individual. All penalties are monetary. By national agreement, penalties are not expressed in penalty units to ensure consistency across jurisdictions. There are no penalties of imprisonment.

The National Law establishes categories of risk breaches for contraventions of mass, dimension and loading requirements (chapter 4), and for contraventions of fatigue-related requirements (chapter 6).¹⁰ Chapter 4 establishes three categories of risk breaches for mass, dimension and loading requirements: minor, substantial, and severe, states how these are to be determined in relation to each class of requirements. For example, mass and dimension breaches are determined by the application of definitions of 'lower limits' for substantial and

⁹ A full list of the offences and the associated maximum penalty for each is set out in the explanatory notes to the Heavy Vehicle National Law Amendment Bill 2012 (Appendix 1). In addition, there are six offences created in the Heavy Vehicle (Mass, Dimension and Loading) National Regulation.

¹⁰ See NHVR information on risk categories at <https://www.nhvr.gov.au/safety-accreditation-compliance/chain-of-responsibility/risk-based-categorisation-of-offences> (accessed on 5 March 2012).

severe risk breaches. Dimension breaches are also subject to specified escalating factors such as the load projecting in a way that is dangerous. Loading breaches, on the other hand are categorised by factors such as whether an actual loss or shifting of the load occurred, and on the actual or potential impact on safety, road infrastructure, or public amenity. Chapter 6 establishes four categories of fatigue-related risk breaches: minor, substantial, severe and critical. These are further specified in relation to maximum work or minimum rest requirements set out in the *Heavy Vehicle (Fatigue Management) National Regulation*.

The National Law makes provision for the service of infringement notices as an alternative to court prosecutions (see Part 10.2 Infringement notices). Offences in the National Law suitable for infringement notices have been agreed nationally. Most offences are prescribed in the primary legislation with a small number in the *Heavy Vehicle (Mass, Dimension and Loading) National Regulation*. For offences with prescribed levels of breach, only the minor and substantial categories are deemed suitable for prescription as infringement notice offences.

The National Law provides that procedures for infringement notices will follow those applied in the participating jurisdiction. Infringement notice offences¹¹ and penalties agreed nationally will be prescribed in a participating jurisdiction's laws. In the ACT, these procedures are currently established under the *Road Transport (General) Act 1999* and through the *Road Transport (Offences) Regulation 2005* which also prescribes infringement notice offences and penalties for the Australian Road Rules and the various ACT road transport laws. Section 730 of the National Law limits penalties in the regulations to a maximum \$4,000. By national agreement, a small number of National Law offences will attract demerit points which attach to a driver's licence. These offences are equivalent to offences in the national schedule of demerit points.¹²

Penalty units

Because of variations in the value of penalty units across jurisdictions, it was agreed that their use would be confusing. Consistent with a key principle underpinning the National Law that industry will be subject to "the same outcome in the same circumstances" in all participating jurisdictions, maximum penalties for offences in the National Law are specified as monetary fines. To ensure a standard approach to penalties and to their indexation, section 737 (Increase of penalty amounts) of the National Law provides for the annual increase of monetary penalties from 1 July 2014 in accordance with the method prescribed by the national regulations. The method is set out in section 70 of the *Heavy Vehicle (General) National Regulation* which provides that penalties will be indexed on 1 July each year using a CPI indexation factor.¹³ Indexed penalties will be published each year on the Regulator's website. By national agreement, penalties for infringement notice offences will be set at 10 per cent of the maximum court imposable penalty amount and indexed annually.

¹¹ Of the offences in the National Law, 144 have been agreed nationally as suitable infringement notice offences.

¹² By national agreement, certain offences in the National Law are equivalent to demerit point offences in schedule 2, clause 21 of the National Transport Commission (Road Transport Legislation—Driver Licensing) Regulations 2006 (Cwlth), schedule 2, clause 21 (Demerit points) as amended in 2009 by the National Transport Commission (Model Amendments to the National Driver Licensing Scheme (Supporting Principles)—Package No. 1) Regulations 2009.

¹³ See also the explanatory notes accompanying the Heavy Vehicle National Law Amendment Bill 2012 (p.5) for further discussion of issues of indexation.

Heavy Vehicle National Regulations

Part 13.5 of National Law provides for the making of national regulations by the designated authority, the Queensland Governor, acting with the advice of the Executive Council of Queensland and on the unanimous recommendation of responsible Ministers. On commencement of the *Heavy Vehicle National Law (ACT) Act 2013*, the National Law will be supported by a body of national regulations made on 31 May 2013. These are the:

- *Heavy Vehicle (General) National Regulation;*
- *Heavy Vehicle (Vehicle Standards) National Regulation;*
- *Heavy Vehicle (Mass, Dimension and Loading) National Regulation; and*
- *Heavy Vehicle (Fatigue Management) National Regulation.*

The national regulations are published on the NSW legislation website¹⁴ in accordance with section 733 of the National Law.

Delayed application of certain chapters

Chapter 2 (Registration) of the Heavy Vehicle National Law will be subject to delayed application as a law of the Territory. By national agreement, the provisions will not commence until a national heavy vehicle registration system is developed by the Regulator and is operational. Proclamation of chapter 2 by Queensland will be delayed until at least mid-2015. As a result, the Territory's registration of heavy vehicles under the *Road Transport (Vehicle Registration) Act 1999* will continue to operate. The local application provisions of the Bill include interim modifications to references to registration in the National Law during the period of continued operation of the Territory's registration laws. These will expire following proclamation of chapter 2 by Queensland and its commencement in the Territory on a day fixed by the Minister by written notice.

Consequential amendments attendant to the commencement of chapter 2 are not included in the Heavy Vehicle National Law (Consequential Amendments) Bill 2013. This is to avoid the situation where delayed consequential amendments are enacted but remain uncommenced for a considerable period. Proposed legislation for amendments to the Territory's heavy vehicle registration laws will be brought forward closer to the nationally agreed proclamation date.

The Territory has not previously legislated to give effect to the full suite of model laws which are now consolidated into the National Law. The reasons for non-adoption ranged from lack of applicability (for example, driver fatigue management requirements which are focussed on driving in an area with a radius of more than 100 kilometres from the driver's base) to resource requirements not justifiable in the ACT context (for example, high technology speed and monitoring measures). The model laws that have not been adopted by the ACT relate to heavy vehicle speeding, driver fatigue, the Intelligent Access Program, and the National Heavy Vehicle Accreditation Scheme.

Consistent with the Territory's commitments under the Intergovernmental Agreement, the proposed *Heavy Vehicle National Law (ACT) Act 2013* will legislate chapter 5 (Vehicle

¹⁴ <http://www.legislation.nsw.gov.au/maintop/epub>. The national regulations and explanatory notes for each are also available on the Queensland legislation website (subordinate legislation) at https://www.legislation.qld.gov.au/SL_AsMade/SL_AsMade_NUM_2013.htm.

operations – speeding), chapter 6 (Vehicle operations – driver fatigue), chapter 7 (Intelligent Access Program), and chapter 8 (Accreditation) of the National Law; however, their application as laws of the Territory will be subject to delayed commencement until the Regulator is able to administer the provisions directly.

Local application provisions

The ‘local application provisions’ of the proposed *Heavy Vehicle National Law (ACT) Act 2013* include a number which tailor the Heavy Vehicle National Law to the Territory’s legislative environment. These include definition and declaration provisions, ACT-specific authorisations for certain provisions of the National Law, and modifications such as those necessary to enable the Territory’s vehicle registration scheme to continue to operate for heavy vehicles until chapter 2 (Registration) commences and is applied in the Territory. A small number of modifications and other provisions, such as those dealing with evidentiary certificates, are included to ensure there is a comfortable fit between the Territory’s ‘road transport legislation’ and the National Law.

By national agreement, the National Law provides for the application of Queensland ‘oversight’ laws in relation to the activities of the Regulator. This includes, for example, the *Right to Information Act 2009* (Qld) and the *Information Privacy Act 2009* (Qld). The National Law also includes provisions for the interpretation of legislation, financial matters, auditing and employment of public servants. Reflecting this, the *Legislation Act 2001* (with the exception of certain provisions) is excluded from application to the Heavy Vehicle National Law (ACT). A number of Territory enactments are also excluded from application to the Regulator. These include the *Annual Reports (Government Agencies) Act 2004*, the *Financial Management Act 1996*, and the *Government Procurement Act 2001*. As well, the Regulator is not a prescribed authority for the purposes of the *Freedom of Information Act 1989* by virtue of a proposed amendment to the *Freedom of Information Regulation 1991* in the Heavy Vehicle National Law (Consequential Amendments) Bill 2013. This will effectively exclude the Regulator from the operation of both the Freedom of Information Act and the *Privacy Act 1988* (Cwlth).

As the proposed Act is part of a national scheme, commitments made by states and territories through the Intergovernmental Agreement are for essentially uniform application of the Heavy Vehicle National Law as legislated by Queensland (see clause 17 of the Agreement). The local application provisions of the Bill are consistent with this commitment of the Territory.

Regulatory impact assessment

The development of a national framework for the regulation of road transport heavy vehicles has been subject to a progression of regulatory impact assessments. These have been overseen by the Australian Transport Council (ATC) and its successor body, the Standing Council on Transport and Infrastructure (SCOTI).

In December 2008, the [then] Commonwealth Department of Infrastructure, Transport, Regional Development and Local Government published a draft consultation Regulatory Impact Statement (RIS) on a national framework for regulation, registration and licensing of heavy vehicles. The RIS was supported by a cost-benefit analysis prepared by Ernst & Young.¹⁵

¹⁵ These documents are available at: https://www.infrastructure.gov.au/roads/vehicle_regulation/ris/index.aspx.

As noted, the Heavy Vehicle National Law is a consolidation of existing heavy vehicle model laws and standards. In February 2011, the draft Heavy Vehicle National Law, an accompanying RIS prepared by the NTC, and a cost-benefit analysis prepared by the Centre for International Economics were released for public consultation.¹⁶ The regulatory impact analysis focussed on variations in the proposed National Law from model laws assessed through earlier RIS processes. Among other matters, the analysis found that significant productivity gains would be possible through new decision-making frameworks, particularly in relation to road network access decisions.¹⁷

The national regulations made under the Heavy Vehicle National Law also consolidate and harmonise previously agreed national model laws. The model laws and standards which have been drawn into the Heavy Vehicle National Law and national regulations have been previously subject to national RIS analyses and Office of Best Practice Regulation assessments.

The need to consolidate and unify national heavy vehicle laws “to address a long standing problem of contradictory and inconsistent state laws that stifle productivity and hamper the promotion of safety”¹⁸ has been a key theme in regulatory impact analyses of options for the reform of the heavy vehicle transport industry. As noted in the explanatory notes which accompanied the Heavy Vehicle National Law Bill 2012 (Qld):

Differences in legal and law enforcement systems, drafting preferences, local requirements and operational realities have meant that sometimes laws have been partially implemented, or not implemented at all. ... Consequently, despite significant progress towards national consistency, important variations remain. ...

Variations in law create particular problems for interstate operators. Even relatively small distinctions in regulation have compliance and enforcement consequences for cross-border operators. The more diversions within law, the more resources interstate operators must expend on understanding and maintaining compliance.¹⁹

The compelling need to overcome inconsistencies in heavy vehicle laws through the creation of a national scheme motivates the commitments made by states and territories for essentially uniform application of the Heavy Vehicle National Law.

Human rights implications

The application of the National Law as a law of the Territory may be seen as engaging a number of rights in the *Human Rights Act 2004*. These are:

- privacy and reputation, s 12;
- freedom of movement, s 13;
- rights in criminal proceedings (presumption of innocence until proven guilty), s 22 (1);

¹⁶ These documents are available at: <http://www.ntc.gov.au/DocList.aspx?SectionId=155>, and <http://www.ntc.gov.au/viewpage.aspx?documentid=2097> (the decision RIS). The Decision RIS for the National Law dated September 2011 was assessed by the Office of Best Practice Regulation (OBPR) as ‘adequate’.

¹⁷ NTC, *Heavy vehicle national law regulation impact statement*, September 2011: pp51-61.

¹⁸ Heavy Vehicle National Law Bill 2012 (Qld), Explanatory notes, p4.

¹⁹ Heavy Vehicle National Law Bill 2012 (Qld), Explanatory notes, pp4-5.

- rights in criminal proceedings (right to be tried without unreasonable delay), s 22(2) (c);
- rights in criminal proceedings (privilege against self-incrimination), s 22 (2) (i); and
- the right not to be tried or punished more than once, s 24.

Each of these is discussed below in relation to whether any limits on rights which they may create can be considered reasonable consistent with section 28 (Human rights may be limited). The section provides that human rights may be subject only to reasonable limits set by laws that can be demonstrably justified in a free and democratic society, and sets out relevant factors which must be considered in deciding whether a limit is reasonable.

The discussion of rights engaged follows similar discussion in the Statement of Compatibility tabled in the Victorian Parliament on 18 April 2013 by the Victorian Minister for Roads in accordance with the Victorian *Charter of Human Rights and Responsibilities Act 2006*.²⁰ The explanatory notes for the Heavy Vehicle National Law Bill 2012, and for the Heavy Vehicle National Law Amendment Bill 2012 noted above also include discussions of consistency of the Queensland Bills with the fundamental legislative principles, and of issues arising in relation to the individual's rights and liberties. The Queensland Bills have also been examined by the Queensland parliamentary Transport, Housing and Local Government Committee and the Committee's reports include extensive discussion of these matters.²¹

As discussed above, the *Road Transport (Mass, Dimensions and Loading) Act 2009* (ACT) implemented heavy vehicle model laws in relation to mass, dimension and loading, and to enforcement and compliance. It is noted that a number of departures from the model laws to ensure consistency with the Territory's criminal law and human rights were made at the time. Some of the matters dealt with through these earlier departures (such as the tiered penalty structure in the model laws for first and second/subsequent offences) are not part of the National Law and, hence, raise no continuing issues. Where this is not the case (as with the absolute liability offences and the reasonable steps defence – both discussed below), the earlier departures have not been carried into the application provisions of the Bill. To do so would be inconsistent with the Territory's commitments as a signatory to the Intergovernmental Agreement.

Privacy and reputation

Section 12 (Privacy and reputation) of the Human Rights Act provides that everyone has the right not to have his or her privacy, family, or home or correspondence interfered with unlawfully or arbitrarily, and not to have his or her reputation unlawfully attacked.

- *Intelligent Access Program*

Chapter 7 of the National Law establishes a program for the electronic or technological monitoring of vehicles or drivers' compliance with conditions affecting their use of roads – the Intelligent Access Program (IAP). Intelligent access conditions require monitoring of

²⁰ The Victorian Statement of Compatibility (2013) is available at <http://www.parliament.vic.gov.au/hansard>.

²¹ Queensland Parliament - Transport, Housing and Local Government Committee, *Heavy Vehicle National Law Bill 2012*, Report No. 4, August 2012, and *Heavy Vehicle National Law Amendment Bill 2012*, Report No. 16, February 2013.

such matters as the areas or roads on which a vehicle travels, the mass of the vehicle when so travelling, the time of travel or the speed at which the vehicle is travelling. The monitoring is undertaken by an intelligent access service provider by means of an intelligent transport system.

As noted in the Victorian Statement of Compatibility, heavy vehicle operators who are participants in the IAP:

... agree to remote tracking of the movement and location of their vehicles to ensure they are complying with agreed operating conditions, in return for access or less restrictive access to the road network. IAP offers advantages to both participating road users and enforcement personnel because of the streamlined alternative it presents to conventional enforcement. ... The continual monitoring that takes place with IAP arguably engages the right to privacy and reputation.²²

A comprehensive set of provisions are set out in part 7.4 (Powers, duties and obligations of intelligent access service providers), the purpose of which is to build in protections for participating operators in relation to the collection of information through a program of regulatory telematics. These provisions create a number of offences for matters such as inappropriate collection of information (including personal information), and protection from unauthorised access, unauthorised use, misuse, loss, modification or unauthorised disclosure. Section 414 imposes obligations on an intelligent access provider who holds personal information about an individual to give access to that information to the person on request, as soon as practicable and without cost, while section 415 deals with the making of changes to personal information about an individual at the request of the person.

While it can be argued that some aspects of the IAP may limit privacy rights in relation to individuals who may be parties to the program, the voluntary nature of participation in the program by operators and the protections offered to individuals (and operators) through the provisions of the National Law is considered a reasonable balance to rights which may otherwise be limited.

- *Requirements about the provision of information*

The National Law includes a number of requirements for the provision of information, including personal information and details. These requirements may be viewed as engaging the right to privacy. Principal among the provisions which establish these requirements are those in Part 9.4, division 4 (Information-gathering powers). Section 570 (Power to require information about heavy vehicles), for instance, provides that an authorised officer can require a person to disclose personal details known about another person responsible for a heavy vehicle – thus engaging the other person’s right to privacy.

In the explanatory notes to the Heavy Vehicle National Law Bill 2012, the view was put that:

Personal information is necessary to ensure the effectiveness of the heavy vehicle enforcement. The power granted under this provision [section 570] is cast in narrow terms and extends only to information that is relevant to the Regulator’s functions. ... This provision is essential in enabling authorised officer [*sic*] to easily identify registered operators for enforcement purposes.

²² Statement of Compatibility tabled in the Victorian Parliament on 18 April 2013 by the Victorian Minister for Roads in accordance with Victorian *Charter of Human Rights and Responsibilities Act 2006*, (Legislative Assembly Daily Hansard, p18.

Part 13.4 (Protected information) contains more general protections in relation to the confidentiality of information. These include definitions of what is ‘protected information’, and of ‘authorised use’, which covers who can use information and in what circumstances. Section 728 (Duty of confidentiality) places a duty of confidentiality on a person exercising functions under the National Law not to disclose protected information except as provided for; while section 729 (Protected information only to be used for authorised use) requires that protected information may only be used for certain purposes. Unauthorised disclosure or use of protected information attracts a maximum penalty of \$20,000. These are the highest maximum penalties for any offence in the National Law and indicate the seriousness with which their contravention is viewed.

Clause 29 (Provision of information and assistance to Regulator by road transport authority) of the local application provisions of the Bill is intended to facilitate the provision of necessary information in the possession of the Territory’s road transport authority in relation to the transfer of regulatory responsibilities to the Regulator, and to continued cooperation which enables the Regulator to exercise its functions. The clause is complementary to section 660 (Cooperation with participating jurisdictions and Commonwealth) and expressly brings the information shared with the Regulator into the framework of protected information under part 13.4.

In light of the need for personal information as part of the effective enforcement of heavy vehicle laws, and the protections afforded in relation to the use or disclosure of information held, the limits on the rights to privacy in the Human Rights Act are considered to be reasonable.

- *Powers of entry*

Chapter 9 (Enforcement) sets out the functions and powers of authorised officers to monitor, investigate and enforce compliance with the law. These include powers of entry to ‘relevant places’. A relevant place is defined as a place of business, the garage address of a heavy vehicle, the base of a driver, or a place where records are located or required to be located. A relevant place does *not* include a place used predominantly for residential purposes.

The provision of powers of entry engage a person’s right under the Human Rights Act not to have his or her privacy, family, or home or correspondence interfered with unlawfully or arbitrarily. The safeguards in the development of the powers in the National Law for entry ensure the exercise of these powers does not unreasonably limit or restrict the right to privacy. As noted, a relevant place does not include private residences. With limited exceptions, where entry powers are exercised, it must be with the consent of the occupier or under warrant.

Chapter 9 also specifies limited circumstances in which entry may be without consent or under warrant. Section 498 empowers an authorised officer to enter a place without a warrant or prior consent if the authorised officer reasonably believes that evidence of an offence may be concealed or destroyed unless the place is immediately entered and searched. However, the power cannot be exercised if the place is unattended or if it is a place or part of a place which is used predominantly for residential purposes. As well, the place must be open for carrying on a business, or otherwise open for entry, or required to be open for inspection under the National Law. While this section clearly engages the right to privacy, the gathering of evidence of offences that may otherwise be concealed or destroyed and limiting the power

of entry to particular types of properties restricts the right but only to an extent that is reasonable and justifiable. Use of force in this section is limited to that which is reasonably necessary for gaining entry to a place that is required by the National Law to be open for inspection.

Section 499 sets out the additional circumstances which allow authorised officers who are police officers to enter particular places without a warrant or the occupier's consent if the authorised officer reasonably believes that an incident involving the death of or injury to a person or damage to property has occurred. Limitations on the exercise of the power are set out in the section. Again, the power cannot be exercised if the place is unattended or if it is a place or part of a place which is used predominantly for residential purposes. This section does not authorise the use of force. There will be circumstances where authorised officers will need to enter places to investigate a death, injury or damage to property where there is a risk, that unless the authorised officers are able to get quick access to the property, evidence of an offence may be concealed or destroyed. The power of entry in this section engages but does not unreasonably limit the right to privacy.

Comparable entry provisions to those in Chapter 9 are included in section 333 of the *Road Transport (Mass, Dimensions and Loading) Act 2009* (ACT).

Section 500 of the National Law sets out the general powers which may be exercised by authorised officers after entering a place for the purpose of investigation. These do not include the power to search a person.

The powers set out in section 500 include taking 'a thing, or a sample of or from a thing, at the place for examination'. In such a case, the authorised officer must give a receipt to the person in possession of the thing or sample, or the person in charge of the place. The thing or sample taken must be returned at the end of 6 months. If an authorised officer takes a document or a thing containing an electronic document for the purpose of making a copy, the document or thing must be returned as soon as practicable. These provisions are necessary to support the conduct of effective investigations while safeguarding the person's rights. The limitations on these rights are therefore reasonable.

- *Seizure powers*

Part 9.4 (section 545) further provides for powers of seizure including their exercise where a place has been entered without the consent of the occupier and without a warrant. This power can only be exercised if the officer reasonably believes the thing is evidence of an offence against the National Law. The power to seize a thing (which might include a document, sample, numberplate or heavy vehicle) without the consent of the occupier and without a warrant, can only be exercised where the authorised officer 'reasonably believes' that the thing is evidence of an offence, and the seizure is necessary to prevent the thing being hidden, lost or destroyed; or, used to continue or repeat the offence. As with entry powers, comparable seizure provisions to those in Chapter 9 are included in section 344 of the *Road Transport (Mass, Dimensions and Loading) Act 2009* (ACT).

Part 9.4 also provides a number of safeguards in relation to seized things or samples. These include procedures for the giving of receipts for, allowing access to, and returning seized things or samples. Provisions for application to a relevant court or tribunal for their return are also included. Additional safeguards in relation to seizure powers are included in relation to forfeiture and transfer. This includes decision review and appeal rights.

While the powers for seizure in the National Law can be viewed as placing limits on the rights of persons in relation to their property, these limits are constrained and reasonable. They are necessary for the effective investigation and enforcement of the National Law while ensuring that affected parties have access to processes which safeguard their rights.

Freedom of movement

Section 13 (Freedom of movement) of the Human Rights Act provides that everyone has the right to move freely within the ACT and to enter and leave it, and the freedom to choose his or her residence in the ACT.

As noted above, the purpose of chapter 4 (Vehicle operations – mass, dimension and loading) of the National Law is to improve public safety by decreasing risks caused by excessively loaded or excessively large heavy vehicles, and to minimise any adverse impact of excessively loaded or excessively large heavy vehicles on road infrastructure or public amenity. One of the ways in which these purposes are achieved is through controlled access to roads by heavy vehicles of particular mass, size or configuration. It can be argued that restrictions on access to roads engage the right to freedom of movement. It is noted, however, that the rationale for restrictions applied to classes of heavy vehicles is based on well-articulated need for protections in relation to public safety, public amenity and the road network asset. The movement of individuals *per se* is not constrained by the National Law.

Chapter 6 (Vehicle operations – driver fatigue) of the National Law establishes a framework for the safe management of driver fatigue in relation to certain types of heavy vehicles. These ‘fatigue-related’ vehicles are defined as buses carrying 12 or more adults (including the driver), or a vehicle or combination of 12 tonnes or more GVM. Safe management is achieved through the imposition of duties on persons in the chain responsibility whose actions influence compliance with the National Law, and through provisions for maximum work requirements and minimum rest requirements applying to drivers of fatigue-regulated heavy vehicles among other things.

It can be argued that provisions for maximum work requirements and minimum rest requirements engage the right to freedom of movement in as far as the movement of individual drivers is regulated in the interests of public safety. This reflects the well-established correlation between driver fatigue and road safety, the high level of on-road risk associated with fatigued drivers, and the potentially catastrophic nature of road accidents involving heavy vehicles. The fatigue-related provisions in chapter 6 are intended to improve road safety generally and decrease road fatalities through the better regulation of heavy vehicle driver fatigue. Constraints on the movement of drivers designed to minimise the risks of driving while fatigued are demonstrably justifiable and within reasonable limits on the right to freedom of movement.

Right to be presumed innocent until proven guilty

Section 22 (Rights in criminal proceedings), section 22 (1) of the Human Rights Act provides that everyone charged with a criminal offence has the right to be presumed innocent until proved guilty according to law.

- *Mistake of fact defence unavailable*

There are a number of absolute liability offences created under the National Law. The mistake of fact defence does not apply to these offences, and a person cannot rely on honest and reasonable mistakes of fact to escape liability for his or her behaviour. However, they are subject to the reasonable steps defence created by section 618 of the National Law. Provisions detailing the reasonable steps defence are set out in Part 10.4, Division 2 (Matters relating to reasonable steps) of the National Law.

Section 14 (References to mistake of fact defence) of the National Law provides that if a provision expressly states that a person charged with an offence does not have the benefit of the mistake of fact defence, the effect of the provision, for a participating jurisdiction, is the effect that is declared by a law of the jurisdiction to be the effect of the provision. Clause 21 (Offences for which person charged does not have benefit of mistake of fact defence—the Law, section 14) of the Bill makes a declaration about the effect of a provision of the Heavy Vehicle National Law (ACT). This states that a person charged with an offence does not have the benefit of the mistake of fact defence, and that the defence mentioned in the Criminal Code, section 35 (Mistake or ignorance of fact—fault elements other than negligence) or section 36 (Mistake of fact—strict liability) does not apply to the person in relation to the defence.

The fact that the mistake of fact defence is not available for a number of offences reflects the approach of previous model national laws largely implemented in Australian jurisdictions. These model laws are consolidated in the National Law. The removal of this defence and replacement with another engages section 22 (1) of the Human Rights Act — which refers to the right to the presumption of innocence — as the reasonable steps defence is only available if the person can prove that he or she did not know and could not reasonably be expected to have known of a contravention.

It is acknowledged that absolute liability offences should only be created in exceptional circumstances. In this context, it is relevant that the offences in the National Law are essentially regulatory measures the purpose of which is to prevent harm “through the enforcement of minimum standards of conduct and care”.²³ In reviewing this issue, the Legislation Review Committee of the NSW Parliament has noted that “[t]ypically, strict and absolute liability are applied to offences of a regulatory nature and where it is particularly important to maximise compliance (eg, public safety or protection of the environment)”.²⁴ The Committee considered that there must be highly compelling public interest grounds for doing so, and that it is necessary to “balance the community impact of the offence with the impact of strict or absolute liability on an accused person, including the penalty to which they would be exposed and the availability of any defences of safeguards.”²⁵

²³ *Road Transport (Mass, Dimensions and Loading) Regulation 2010*, Explanatory statement, p5 discusses offences which are essentially the same as those in the model laws and the Heavy Vehicle National Law. Note also the discussion of the employment of strict and absolute offences where it is necessary to ensure the integrity of a regulatory scheme in the ACT Department of Justice and Community Safety, *Guide for framing offence* (v2), April 2010: pp27-28.

²⁴ NSW Parliament – Legislation Review Committee, *Strict and absolute liability: discussion paper*, No.2, June 2006: p6.

²⁵ NSW Parliament – Legislation Review Committee, *Strict and absolute liability: discussion paper*, No.2, June 2006: p10.

The Committee also noted that its:

... consideration of absolute liability has been infrequent, although the Committee has considered two examples of road transport legislation that appeared to create absolute liability offences by expressly excluding the defence of mistake of fact. In these cases, the Committee considered that the trespass on personal rights was not undue, having regard to the importance of heavy vehicle road safety and the limited maximum penalties for the offence.²⁶

It is noted that the only penalties available for offences (including all absolute liability offences) in the Heavy Vehicle National Law are monetary. There are no penalties of imprisonment. Further, the absolute liability offences in the National Law are subject to the reasonable steps defence. The defence is available where the person can prove he or she did not know and could not reasonably be expected to have known of a contravention, and either took all steps to prevent the contravention, or there were no steps that reasonably could have been taken.

The reasonable steps defence is created by section 618 of the National Law, and further detailed in part 10.4, division 2 (Matters relating to reasonable steps). In addition, Division 2 provides detailed guidance on matters the court may consider in deciding whether a person took all reasonable steps in relation to offences about:

- mass, dimension or loading;
- container weight declarations; and
- speeding or fatigue management.

The reasonable steps defence places a legal burden on a defendant.²⁷ It is available if the defendant can prove that he or she did not know, and could not reasonably be expected to have known, of a contravention. The defence is available to all parties in the chain of responsibility. In his statement on the Victorian *Charter of Human Rights and Responsibilities Act 2006*, the Victorian Minister argued that this availability was considered a reasonable benefit to justify the exclusion of no-fault criminal excuses:

This is because the defence encourages parties to consider steps that must be taken to prevent on-road breaches. Where reasonable steps have not been taken, it is considered inappropriate for a defendant to rely on a no fault criminal excuse if they are not actively taking steps to ensure that their actions do not cause or contribute to on-road breaches.²⁸

The Victorian Minister goes on to state that the approach taken is considered to be in the public benefit as the requirements to which the offences in the National Law relate are mainly prescriptive in nature and align with broad purposes of assuring public safety. “The parties in the chain of responsibility should be able to identify the actual on-road breaches that may

²⁶ NSW Parliament – Legislation Review Committee, *Strict and absolute liability: discussion paper*, No.2, June 2006: pp10-11.

²⁷ Section 59 (Legal burden of proof—defence) of the *Criminal Code 2002* makes provision for a legal burden of proof that a law expressly imposes on the defendant.

²⁸ Statement of Compatibility tabled in the Victorian Parliament on 18 April 2013 by the Victorian Minister for Roads in accordance with Victorian *Charter of Human Rights and Responsibilities Act 2006*, (Legislative Assembly Daily Hansard, p17).

result from their activities and then apply appropriate measures to manage the risk of an on-road breach.”²⁹

- *Reversal of onus of proof*

There are a number of additional provisions in the National Law which variously reverse the onus of proof and place a legal burden on a person. These are:

- section 115 (Proof of contravention of loading requirement);
- section 191 (Duty of operator), subsection (2);
- section 636 (Liability of executive officers of corporation);
- section 637 (Treatment of unincorporated partnerships);
- section 638 (Treatment of other unincorporated bodies); and
- section 699 (Discrimination against or victimisation of employees).

These provisions engage the Human Rights Act right to the presumption of innocence.

Section 115 deals with requirements in a document known as the ‘Load Restraint Guide’ and the presumption that a document purporting to be the Load Restraint Guide as in force at the time of the offence is the Load Restraint Guide as in force at the time until the contrary is proved.

Subsection 191 (2) provides that when a driver of a heavy vehicle does not have a complying container weight declaration when transporting the freight container by road, the vehicle’s operator is taken to have contravened the requirement to provide a driver with a complying container weight declaration before the driver started transporting the freight container. The explanatory notes to the Heavy Vehicle National Law Bill 2012 discuss this matter as follows:

It is noted that the matter is specifically within the operator’s knowledge and it would be difficult for the prosecution to do more than prove that the driver does not have the complying container weight declaration for the freight container. The reversal is consistent with the provision as the operator has the onus of showing that he or she took reasonable action to comply with the obligation. It should not be too onerous for an operator to keep records of complying container weight declarations and there [sic] being provided to drivers of specific heavy vehicles.³⁰

Sections 636, 637 and 638 refer to offences prescribed in Schedule 4 (column 3) of the National Law and provide that persons (executive officers, partners, and management members of an unincorporated body) who knew or ought reasonably to have known of conduct constituting an offence, or that there was substantial risk that the offence would be committed are taken to have committed the offence. In these cases, however, a defence is available for the person to prove that he or she exercised reasonable diligence to ensure the

²⁹ Statement of Compatibility tabled in the Victorian Parliament on 18 April 2013 by the Victorian Minister for Roads in accordance with Victorian *Charter of Human Rights and Responsibilities Act 2006*, (Legislative Assembly Daily Hansard, p17.

³⁰ Heavy Vehicle National Law Bill 2012 (Qld), Explanatory notes, p.14. The explanatory notes refer to clause 162. The *Heavy Vehicle National Law Act 2012* was subsequently amended and the National Law was renumbered. Section 162 is equivalent to section 191 in the amended legislation.

corporation/partnership/body complied with the provision, or that he or she was not in a position to influence the conduct of the corporation/partnership/body.

Section 699 provides protection to employees from discrimination if they have complained about a contravention or alleged contravention of the National Law or if they have helped or given assistance to a public authority or law enforcement agency. The provision creates an offence for specified actions which discriminate against or victimise the employee. There are precedents for the reversal of the onus of proof for this type of offence in other legislation (e.g. work safety and industrial relations laws). For example, a similar provision was included in the *Work Safety Act 2008* (ACT). The explanatory statement for the Act stated:

Consistent with the presumption of innocence, the onus of proof should only be placed on the defendant in exceptional circumstances, such as where a particular element of an offence is within the peculiar knowledge of the defendant, and it would be significantly more difficult and costly for the prosecution to disprove the element than for the defendant to establish it (see: *R v Johnstone* [2003] 1 W.L.R 1736; *R v Downey* [1992] 2 S.C.R. 965).

The explanatory notes to the Heavy Vehicle National Law Bill 2012 discuss this matter as follows:

Clause 639 provides for the reversal of the onus of proof in respect of the reason for the defendant's conduct when it is alleged that they have dismissed or otherwise prejudiced the employees' employment. The prosecution only has to show an employee or prospective employee was dismissed after they helped or gave information to an agency or made a complaint about a contravention or alleged contravention. The defendant has to prove that the dismissal was not for the reason that the employee or prospective employee helped a public agency. The reversal of the onus of proof potentially infringes the rights and liberties of individuals. However, the reversal is justified on the basis that the employer is best placed to explain the reason for taking the adverse action against the employee or prospective employee. This is considered necessary to deter employers from taking adverse action, and to encourage employees and prospective employees to help enforce this law without fear of adverse action being taken against them.³¹

- *Deeming provisions*

Chapter 4 (Vehicle operations – mass, dimension and loading) of the National Law includes a number of 'deemed convictions' or 'deemed evidence of conviction'. These can be found in sections 130 (Contravening condition of mass or dimension exemption relating to pilot or escort vehicle), 132 (Keeping relevant document while driving under mass or dimension exemption (notice)), 133 (Keeping copy of permit while driving under mass or dimension exemption (permit)), 151 (Keeping relevant document while driving under class 2 heavy vehicle authorisation (notice)), 152 (Keeping copy of permit while driving under class 2 heavy vehicle authorisation (permit)), 153 (Keeping copy of PBS vehicle approval while driving under class 2 heavy vehicle authorisation), and 183 (Liability of employer etc. for contravention of mass, dimension or loading requirement).

Deeming the existence of evidence in relation to the commission of an offence means another person has also committed an offence. This engages the right to the presumption of innocence. In his statement on the Victorian *Charter of Human Rights and Responsibilities*

³¹ Heavy Vehicle National Law Bill 2012 (Qld), Explanatory notes, p15. The explanatory notes refer to clause 639. The *Heavy Vehicle National Law Act 2012* was subsequently amended and the National Law was renumbered. Clause 639 is equivalent to section 699 in the amended legislation.

Act 2006, the Victorian Minister considered the engagement of these deeming provisions with this right.³² He said:

The reason for this use of deemed evidence of conviction is to assist with proving extended liability offences. The extension of liability is consistent with the approach taken across the Heavy Vehicle National Law to hold accountable those persons who are in a position to influence the actions of the heavy vehicle driver. The use of deemed evidence of conviction in chapter 4 of the Heavy Vehicle National Law is justified, despite it engaging the presumption of innocence, because persons other than the driver and operator of heavy vehicles are often responsible for a breach of the relevant requirements. The extension of liability provisions ensure that all parties responsible for conduct which affects compliance are made accountable for failure to discharge that responsibility.

As discussed below, the underpinning principle of accountability for the acts and omissions of all those responsible for compliance is considered to be sufficient justification for extending liability to each of the parties included in the chain of responsibility.

- *Extension of liability – chain of responsibility*

Liability for contraventions of many provisions of the National Law is extended to other parties in the supply chain reflecting the principle that all persons responsible for compliance with relevant requirements be made accountable for failures to discharge their responsibilities. In particular, this includes persons in addition to drivers and operators. Chain of responsibility provisions which extend liability are found in the ‘vehicle operations’ chapters of the National Law and deal with matters of:

- standards and safety;
- mass, dimension and loading;
- speeding; and
- driver fatigue.

Persons subject to extended liability in relation to these matters are:

- the owners of heavy vehicles;
- employers of drivers;
- prime contractors of self-employed drivers;
- schedulers;
- consignors of goods;
- consignees of goods;
- packers of goods;
- loading managers of goods;
- loaders of goods; and
- unloaders of goods.

³² Statement of Compatibility tabled in the Victorian Parliament on 18 April 2013 by the Victorian Minister for Roads in accordance with Victorian *Charter of Human Rights and Responsibilities Act 2006*, (Legislative Assembly Daily Hansard, p17-18.

Current ACT legislation contains extended liability provisions which follow model national compliance and enforcement laws³³ and which are similar to those in the National Law.

In discussing the extension of liability along the chain of responsibility, the Victorian Minister noted that:

The extension of liability works together with the reasonable steps defence to ensure that persons involved with heavy vehicles who are capable of influencing or causing a breach to occur are held accountable for their actions and are required to take reasonable steps to ensure that breaches do not occur. The right to the presumption of innocence is engaged because this right provides that the burden is on the prosecution to prove, beyond reasonable doubt, that the defendant committed the relevant elements of the offence.

The extension of liability holds those persons responsible for offences that, but for the extended liability or ‘chain of responsibility’ provisions, would not usually be held responsible for such offences. Further, the reasonable steps defence requires such persons to prove that they had taken reasonable steps to avoid the breach, imposing a legal burden on these persons.³⁴

Extension of liability along the chain of responsibility is also considered at length in the explanatory notes for the Heavy Vehicle National Law Bill 2012 in the context of the rights and liberties of individuals.³⁵ These notes state that the intention is “to provide for increased fairness by providing for penalties to be imposed on all persons responsible for breaches of the relevant requirements” with the expectation “that extended liability will create greater incentives for compliance with the relevant requirements”. The underpinning principle of accountability for the acts and omissions of all those responsible for compliance is considered to be sufficient justification for extending liability to each of the parties included in the chain of responsibility.

- *Extension of liability – executive officers*

As noted in the discussion of the reversal of the onus of proof above, section 636 of the National Law refers to offences prescribed in Schedule 4 of the National Law and provides that persons (executive officers) who knew or ought reasonably to have known of conduct constituting an offence, or that there was substantial risk that the offence would be committed are taken to have committed the offence. Note that the National Law applies to unincorporated partnerships (section 637(1)) and unincorporated bodies (section 638(1)) as if they were corporations subject to certain specific provisions.

The executive officer provision was amended in the Heavy Vehicle National Law Amendment Bill 2012 following comments by the Queensland Transport, Housing and Local Government Committee’s report on the original Bill regarding “reach and potential to result in unfairness to individuals made culpable under its provisions”.³⁶ As explained in the

³³ The *Road Transport (Mass, Dimensions and Loading) Act 2009* includes provisions modelled on the Road Transport Reform (Compliance and Enforcement) Bill which was developed by the National Road Transport Commission. The Act establishes a ‘chain of responsibility’ for breaches of mass, dimensions or loading requirements.

³⁴ Statement of Compatibility tabled in the Victorian Parliament on 18 April 2013 by the Victorian Minister for Roads in accordance with Victorian *Charter of Human Rights and Responsibilities Act 2006*, (Legislative Assembly Daily Hansard, p17).

³⁵ Heavy Vehicle National Law Bill 2012 (Qld), Explanatory notes, pp18-22.

³⁶ Queensland Parliament - Transport, Housing and Local Government Committee, *Heavy Vehicle National Law Bill 2012*, Report No. 4, August 2012, p26.

explanatory notes, the amendments have the effect of requiring “an executive officer to actively authorise or permit the offence. This departs from the position that applied under the [unamended] Act, whereby executive officers are deemed liable for all offences committed by the relevant corporation, unless they can establish they exercised due diligence to ensure compliance, or were not in a position to influence the relevant conduct of the corporation.”³⁷ A list of all relevant offences prescribed for the purposes of clause 636 (Executive officer liability) is included in a table in Appendix 2 of the explanatory notes to the Heavy Vehicle National Law Amendment Bill 2012. The basis for not exempting liability in relation to subsections 636 (1) and 636 (2) is set out.

This approach is considered reasonable as derivative liability is limited to offences for which objective justification is provided. Its intention is to ensure the “executive officers are accountable for the consequences of corporate behaviours where this is demonstrably appropriate”.³⁸

Privilege against self-incrimination

Section 22 (Rights in criminal proceedings), ss 22 (2) (i) of the Human Rights Act provides that anyone charged with a criminal offence is entitled to the minimum guarantee, equal with everyone else, not to be compelled to testify against himself or herself or to confess guilt.

As noted above, part 9.4, division 4 (Information-gathering powers) has a number of requirements in relation to the provision of information; in particular, three provisions (sections 569, 570 and 577) empower an authorised officer to demand information, documents or assistance from a person. The person must comply with the requirements unless there is a reasonable excuse. The claim of privilege against self-incrimination is not a reasonable excuse. These provisions clearly engage a person’s right to be free from the compulsion to provide information that may incriminate him or herself.

The National Law includes protections for a person compelled through the exercise of these powers through section 588 (Evidential immunity for individuals complying with particular requirements)³⁹ which provides evidential immunity for individuals in relation to information required to be produced or provided. Evidence of, or derived from, information which may incriminate the individual or expose him or her to a penalty is not admissible in court proceedings unless the proceedings relate to the false or misleading nature of the information. The section also provides that any document produced is not inadmissible in evidence on the ground that the document might incriminate the individual.

The explanatory notes accompanying the Heavy Vehicle National Law Amendment Bill 2012 address the issue of the abrogation of the privilege against self-incrimination as necessary:⁴⁰

... for compliance and enforcement purposes. In the absence of a provision compelling the production of specified documents by an individual, and further providing for the use of those documents as evidence, prosecuting breaches of the National Law would require far greater investigative resources. This applies particularly to offences detected during the course of on-road enforcement activities. Public safety is liable to

³⁷ Heavy Vehicle National Law Amendment Bill 2012 (Qld), Explanatory notes, p4.

³⁸ Heavy Vehicle National Law Amendment Bill 2012 (Qld), Explanatory notes, p.4.

³⁹ Section 588 of the National Law was expressly modelled on section 331 (Protection from incrimination) in the *Road Transport (Mass, Dimensions and Loading) Act 2009* (ACT).

⁴⁰ Heavy Vehicle National Law Amendment Bill 2012 (Qld), Explanatory notes, pp6-7.

be compromised if prosecution of heavy vehicle offences is more difficult under the National Law than existing jurisdictional laws.

The Scrutiny of Legislation Committee has previously conceded that voluntary participation in a regulatory scheme may imply a waiver of the benefit of the self-incrimination privilege. The Queensland Law Reform Commission's 2004 Report Number 59 referred to in the FLP Notebook (*The Abrogation of the Privilege against Self Incrimination*) discusses this further at paragraph 6.54:

The basis of the argument is that participation in the scheme is a matter of choice and, if undertaken, necessarily involves acceptance of submission to the requirements of the scheme, including compulsion to provide information. In other words, in some situations, participation in a regulated activity may be considered to amount to a waiver of privilege. This may be particularly so in the context of records that are required to be kept as part of a mechanism for ensuring compliance within a regulatory framework.

Relevantly, the Queensland Law Reform Commission found at paragraph 6.73 that the prior existence of a document at the time it was required to be produced weighs in favour of abrogating privilege.

... [S]ince the document already exists, the individual is not compelled to communicate the information for the purpose of the investigation or inquiry. Although the individual may be forced to produce the document, there may be less cause in such a situation for the application of the rationales for either of the privileges. ... This may be particularly so if the document is one that is required to be kept in compliance with a legislative regulatory scheme.⁴¹

The protections at section 588, the compelling public safety rationale for a robust compliance, enforcement and prosecution framework in relation to heavy vehicle offences, and the considerations raised in relation to voluntary participation in a regulatory scheme such as that created through the National Law are sufficient argument that the limit on the privilege against self-incrimination is reasonable.

Right not to be tried or punished more than once

Section 13 (Right not to be tried or punished more than once) of the Human Rights Act provides that no-one may be tried or punished again for an offence for which he or she has already been finally convicted or acquitted in accordance with law.

Section 634 (Multiple offences) of the National Law protects a person from being punished more than once for the same contravention of the Law or for the same offence. The National Law, however, does not include a protection against punishment more than once for an offence against two or more ACT laws, or for an offence against both an ACT law and a law of another jurisdiction.

Clause 8 (Exclusion of Legislation Act) of the Bill operates to exclude application of the Legislation Act to the Heavy Vehicle National Law (ACT); however, section 191 (Offences against 2 or more laws) of the Legislation Act is not excluded (clause 8 (3)). Section 191 provides:

- (1) If an act or omission by a person is an offence against 2 or more ACT laws, the person may be prosecuted for and convicted of any of the offences, but is not liable to be punished more than once for the act or omission.

⁴¹ Queensland Law Reform Commission, *The abrogation of the privilege against self-incrimination*, Report No.59, December 2004.

- (2) If—
- (a) an act or omission by a person is an offence against both an ACT law and a law of another jurisdiction; and
 - (b) the person has been punished for the offence against the law of the other jurisdiction;
the person is not liable to be punished for the offence against the ACT law.

Clause 8 (3) of the Bill is a ‘no double jeopardy’ provision which engages and is a safeguard of the right not to be punished more than once.

Right to be tried without unreasonable delay

The application provisions of the Heavy Vehicle National Law (ACT) Bill exclude the application of the Legislation Act with certain limited exceptions. Section 192 (When must prosecutions begin?) is excluded. Section 192 provides that:

- (1) A prosecution for the following offences against an ACT law may be begun at any time:
 - (a) an offence by an individual punishable by imprisonment for longer than 6 months;
 - (b) an offence by a corporation punishable by a prescribed fine;
 - (c) an aiding and abetting offence by an individual in relation to an offence by a corporation punishable by a prescribed fine.
- (2) A prosecution for any other offence against an ACT law must be begun not later than—
 - (a) 1 year after the day of commission of the offence; or
 - (b) if an ACT law provides for another period—that period.

The National Law makes provision at section 707 for proceedings for offences against the Law which extend the time to institute proceedings from the usual period of one or two years. It is noted that this may be seen to engage subsection 22(2)(c) of the Human Rights Act with regard to the right to be tried without unreasonable delay. This matter is discussed by the Queensland Transport, Housing and Local Government Committee in its report of August 2012 on the Heavy Vehicle National Law Bill 2012 (Queensland). The Committee noted that this extension “may infringe the fundamental legislative principle that legislation should have sufficient regard to the rights and liberties of individuals”.⁴²

The Queensland Committee took the view that strong road safety enforcement grounds exist to justify the extension of time. This recognised that in some cases, due to the nature of the chain of responsibility offences, it might take longer to identify other parties in the chain and that to enable enforcement action to be taken against other parties in the chain it is necessary to extend the time to commence proceedings. It was further suggested that a shorter limitation could “discourage enforcement of the chain of responsibility provisions and result in the traditional practice of only enforcing against the driver and perhaps the operator to continue”.⁴³ The Queensland Committee stated that it was satisfied that the extension of time to institute proceedings appears justified given the advice about the length of time it can take to determine the parties in the chain of responsibility.

⁴² Queensland Parliament - Transport, Housing and Local Government Committee, *Heavy Vehicle National Law Bill 2012*, Report No. 4, August 2012, p.26

⁴³ Heavy Vehicle National Law Bill 2012 (Queensland), *Explanatory notes*, p.18.

Certificate evidence

Division 2 (Evidence), sections 708 to 726 of the National Law provides for a range of evidentiary matters. In addition, clauses 1.4 to 1.10 of the local application provisions of the Bill make modifications to some of the evidentiary provisions of Division 2 in the *Heavy Vehicle National Law (ACT)* in relation to matters such as certificate evidence of speed, distance, driver licence status, and infringement notices issued by the road transport authority on behalf of the National Regulator.

In his statement on the Victorian *Charter of Human Rights and Responsibilities Act 2006*, the Victorian Minister considered the engagement generally of provisions for certificate evidence with the right to the presumption of innocence. The Victorian Minister noted that:

Certificate evidence greatly assists the efficiency of the criminal justice system by allowing what are usually non-controversial evidentiary matters to be presented in court without the need to personally call the expert who prepared the certificate to be present in court to give the evidence.

Certificate evidence is accepted in court in the absence of evidence to the contrary. This means that to challenge certificate evidence a defendant is obliged to call evidence. Requiring a defendant to provide evidence runs contrary to the defendant's right to silence. These provisions place an evidential burden on the defendant. ... The defendant has the right to the presumption of innocence and is not required, in the usual course of the criminal justice process, to give evidence. The onus rests entirely upon the prosecution to prove the matter. As such, certificate evidence engages the right to the presumption of innocence.

Evidence produced by certificate, in accordance with the relevant section, is presumed proof to be evidence of a matter unless evidence to the contrary is raised. Providing evidence by way of certificate is important for the criminal justice system and can be justified because:

- The evidentiary certificates relate to matters that are generally non-contentious;
- If the matter is contentious in the context of a particular proceeding, the evidence is not conclusive and the defence can lead evidence that is contrary to the certificate;
- The evidence is often extracted from records maintained by the regulator or road authority;
- Use of evidentiary certificates streamline the administration of justice and provide cost savings through not having to call a witness for issues that are not in dispute.

In light of these general considerations, the Victorian Minister concluded that the availability of certificate evidence engages but does not limit the right to the presumption of innocence.⁴⁴

⁴⁴ Statement of Compatibility tabled in the Victorian Parliament on 18 April 2013 by the Victorian Minister for Roads in accordance with Victorian *Charter of Human Rights and Responsibilities Act 2006*, (Legislative Assembly Daily Hansard, p16.

Notes on Clauses

Part 1 Preliminary

This part contains clauses 1 to 5 of the Bill dealing with the formal matters of the name of the proposed Act, its commencement, the role of the dictionary, the meaning of terms used in the local application provisions of the proposed Act, and the role of notes.

Clause 1 Name of Act

This clause is a formal provision that sets out the name of the proposed Act.

Clause 2 Commencement

This is a formal provision that provides that the Act commences on a day fixed by the Minister by written notice. Subclause 2 (2) also disapplies section 79 (Automatic commencement of postponed law) of the *Legislation Act 2001* which provides that a law or provision of a law that is to commence by written notice and that has not commenced within 6 months beginning on the Act's notification day, commences on the first day after that period.

It is necessary to disapply section 79 because of the requirement to delay application of chapters 2, 5, 6, 7 and 8, and part 9.3, division 8 of the National Law. Another default commencement date has not been provided as the commencement date for chapter 2 is to be coordinated nationally, and the commencement of the remaining chapters and part 9.3, division 8 is subject to the readiness of the Regulator to administer them.

Clause 3 Dictionary

This clause provides that the dictionary at the end of the proposed Act is a part of the substantive provisions of the proposed Act and that the definitions in the dictionary apply to the local application provisions of the proposed Act.

Clause 4 Terms used in Heavy Vehicle National Law (ACT)

This clause provides that the meaning of terms used in the local application provisions of the Act and in the *Heavy Vehicle National Law (ACT)* are to have the same meaning as in the *Heavy Vehicle National Law (ACT)*.

Clause 5 Notes

This clause provides that notes included in the proposed Act are explanatory only and do not form part of the substantive local application provisions of the proposed Act. In contrast, where the local application provisions of the proposed Act include an example, the example is part of the substantive local application provisions of the proposed Act having regard to section 126 and section 132 of the *Legislation Act 2001*.

Clause 6 Offences against Heavy Vehicle National Law (ACT)—application of Criminal Code

This clause clarifies that Chapter 2 of the Criminal Code applies to all offences against the *Heavy Vehicle National Law (ACT)* subject to clause 21 (Offences for which person charged does not have benefit of mistake of fact defence—the Law, s 14). Clause 21 makes a declaration about the effect of a provision of the *Heavy Vehicle National Law (ACT)* which states that a person charged with an offence does not have the benefit of the mistake of fact

defence. The defence mentioned in the Criminal Code, section 35 (Mistake or ignorance of fact—fault elements other than negligence) or section 36 (Mistake of fact—strict liability) does not apply to the person in relation to the defence.

Part 2 Application of Heavy Vehicle National Law

This part provides for the adoption of the Heavy Vehicle National Law as a Territory law, and variously provides for the non-application of certain Territory laws to the Heavy Vehicle National Law (ACT), or to the Regulator and to the governing board of the Regulator (the National Heavy Vehicle Regulator Board). The purpose is to ensure that the national scheme can operate in a consistent manner across participating jurisdictions. The part also includes definitions of certain generic terms used in the *Heavy Vehicle National Law (ACT)*, and makes declarations contemplated in the *Heavy Vehicle National Law (ACT)* about entities, matters and Territory laws for the purposes of the *Heavy Vehicle National Law (ACT)*.

Division 2.1 General

Clause 7 Application of Heavy Vehicle National Law

This clause formally applies the Heavy Vehicle National Law, which is a schedule to the *Heavy Vehicle National Law Act 2012* (Queensland), as a law of the Territory. The schedule to the Queensland Act is modified by schedule 1 (Modification – Heavy Vehicle National Law (ACT)) of the Bill. The modified law is referred to as the Heavy Vehicle National Law (ACT).

Subclause 7 (2) also provides that part 1.2 (Modifications-chapter 2) will expire with the expiry of division 5.1 (clause 32). Division 5.1 delays the application of chapter 2. On expiry, chapter 2 (Registration) of the Heavy Vehicle National Law (ACT) will apply in the ACT and the modifications will no longer be required. Part 1.2 makes modifications to the Heavy Vehicle National Law (ACT) which have the effect of preserving existing registration laws for heavy vehicles pending the commencement of application of chapter 2.

Clause 8 Exclusion of Legislation Act

Clause 8 excludes application of the Legislation Act to the Heavy Vehicle National Law (ACT). Provisions found in schedule 1 (Miscellaneous provisions relating to interpretation) to the Heavy Vehicle National Law (ACT) are intended to provide the basis for its consistent interpretation across participating jurisdictions.

However, chapter 7 of the Legislation Act is not excluded from application to national regulations, thus subjecting them to the scrutiny and potential disallowance of the Legislative Assembly. In addition, subclause 8 (5) provides that if a national regulation is published before the section commences, the regulation is taken to have been published on the day of commencement. The effect is to subject national regulations already made to the provisions of chapter 7 regardless of the fact that they have been made before commencement of the Heavy Vehicle National Law (ACT). These national regulations will thus be subject to the normal presentation, amendment and disallowance processes of the Assembly.

As well, section 191 (Offences against 2 or more laws) of the Legislation Act is not excluded. Clause 8 (3) of the Bill is a ‘no double jeopardy’ provision which safeguards a person’s right not to be punished more than once. It includes a protection against punishment more than

once for an offence against two or more ACT laws, or for an offence against both an ACT law and a law of another jurisdiction.

Clause 9 Exclusion of other territory laws

Clause 9 excludes application of a number of Territory laws to the Regulator and to the National Heavy Vehicle Regulator Board. The purpose is to ensure the Heavy Vehicle National Law scheme can operate consistently across participating jurisdictions. Section 696 (Application of particular Queensland Act to this Law) specifically applies the *Information Privacy Act 2009* (Qld), the *Public Records Act 2002* (Qld), and the *Right to Information Act 2009* (Qld) to the Regulator and Board. The *Heavy Vehicle National Law (ACT)* and national regulations also include specific provisions for matters relating to financial management, annual reporting and staffing. Administrative and ‘oversight’ laws of the Territory excluded from application to the Regulator and Board will, however, continue to apply to Territory entities exercising functions under the Heavy Vehicle National Law (ACT) or under agreements with the Regulator or by delegation.

Clause 5 of the Heavy Vehicle National Law (Consequential Amendments) Bill inserts a new section in the *Freedom of Information Regulation 1991* to the effect that the Regulator and the Board are not ‘prescribed authorities’ for the purposes of the *Freedom of Information Act 1989* (ACT). As a consequence, the Freedom of Information Act and the *Privacy Act 1988* (Cwlth) – by virtue of the definition of ‘agency’ in the Privacy Act – will not apply to the Regulator and the Board. The two Acts will continue to apply Territory entities.

The effect of subclause 9 (3) is that the *Auditor-General Act 1996* (ACT) will not apply to the Heavy Vehicle National Law (ACT) except in the circumstance where, by arrangement with the responsible Ministers, the Territory’s auditor-general audits the financial statements or oversees their audit. Section 40 (Application of Auditor-General Act) of the *Heavy Vehicle (General) National Regulation* provides for the application of a participating jurisdiction’s ‘Auditor-General Act’ to the audit and to the Regulator as a statutory body.

By national agreement, the ombudsman legislation of each participating jurisdiction is to apply to the activities of the Regulator and Board. The *Ombudsman Act 1989* (ACT) is not excluded.

Division 2.2 Definitions and declarations for Heavy Vehicle National Law (ACT)

Division 2.2 contains definitions of terms used in the Heavy Vehicle National Law and makes declarations of local entities and matters for the purposes of the National Law as contemplated by the National Law.

Clause 10 Definitions of generic terms

Clause 10 contains definitions of terms used in the Heavy Vehicle National Law (ACT). Throughout, the term ‘this jurisdiction’ refers to the ACT. References to the ‘police commissioner’ mean the ‘chief police officer’ as defined in the Legislation Act, i.e. “the police officer responsible to the commissioner of police for the day-to-day administration and control of police services in the ACT”. References to ‘police officer’ means a ‘police officer’ as defined in the Legislation Act as “a member or special member of the Australian Federal Police”.

Clause 11 Authorised officer—the Law, s 5

Clause 11 declares that a ‘police officer’ is an ‘authorised officer’ for the purposes of the *Heavy Vehicle National Law (ACT)*. A ‘police officer’ as defined in the Legislation Act as “a member or special member of the Australian Federal Police”.

Clause 12 Authorised warrant official—the Law, s 5

Clause 12 declares that for the purposes of the *Heavy Vehicle National Law (ACT)*, the term ‘authorised warrant official’ means a ‘magistrate’. ‘Magistrate’ is defined in the Legislation Act as a “Magistrate under the under the *Magistrates Court Act 1930*”.

Clause 13 Infringement notice offences law—the Law, s 5

Clause 13 declares that the ‘Infringement Notice Offences Law’ for the *Heavy Vehicle National Law (ACT)* is the *Road Transport (General) Act 1999*. Section 5 of the National Law defines Infringement Notice Offences Law, for a participating jurisdiction to mean “the law that is declared by a law of that jurisdiction to be the Infringement Notice Offences Law for the purposes of this Law”. Section 591 of the National Law gives authorised officers the power to serve persons with infringement notices—the procedures for which are prescribed under the Infringement Notice Offences Law. Part 3 (Infringement notices for certain offences) of the *Road Transport (General) Act* creates a system of infringement notices for certain offences against the road transport legislation and other legislation.

Clause 14 Relevant tribunal or court—the Law, s 5

Section 5 of the *Heavy Vehicle National Law* defines ‘relevant tribunal or court’ as “for a participating jurisdiction, means a tribunal or court that is declared by a law of that jurisdiction to be the relevant tribunal or court for that jurisdiction for the purposes of this Law”.

References in the National Law to ‘relevant tribunal or court’ are made in section 556 (Return of seized things or samples), section 560 (Withdrawal of embargo notice) and section 565 (Third party protection). Subclause 14 (1) declares that the Magistrates Court is the ‘relevant tribunal or court’ for these provisions.

A reference to ‘relevant tribunal or court’ is also made in section 727 (Definitions for Pt 13.4) in the National Law. Part 13.4 deals with ‘protected information’ which is defined as “information obtained in the course of administering this Law or because of an opportunity provided by involvement in administering this Law” but does not include “information relating to proceedings before a relevant tribunal or court that are or were open to the public”. Subclause 14 (2) declares that any “court or tribunal is a relevant tribunal or court” in relation to this definition of protected information.

Subclause 14 (3) declares that the “ACAT is declared to be the relevant tribunal or court for the ACT for the remaining provisions of the *Heavy Vehicle National Law (ACT)*”. Chapter 11 (Reviews and appeals) defines ‘relevant appeal body’ to mean “the relevant tribunal or court for the relevant jurisdiction”. The declaration means the ACAT is the relevant appeal body in relation to review of decisions.

Clause 15 Review of decision by ACAT

Clause 15 clarifies that a reference in the Heavy Vehicle National Law (ACT) to an appeal against a decision is, for an appeal to the ACAT as the relevant tribunal or court, a reference to a review of the decision under the *ACT Civil and Administrative Tribunal Act 2008*.

Section 27 (Procedures in authorising laws) of the ACT Civil and Administrative Tribunal Act provides that “[a]n authorising law may set out procedures for dealing with an application made under the authorising law” and that “[a]ny procedure under an authorising law for dealing with an application prevails over the procedures set out in this Act or the rules for dealing with the application, to the extent of any inconsistency”. This means that the procedures in the Heavy Vehicle National Law for making an application to the ACAT will apply instead of the procedures set out in the ACT Civil and Administrative Tribunal Act.

Clause 16 Responsible Minister—the Law, s 5

Section 5 (Definitions) of the National Law provides a definition for ‘responsible Minister’ as ‘for a participating jurisdiction, means the Minister of that jurisdiction nominated by it as its responsible Minister for the purposes of this Law’. Part 12.1 (Responsible Ministers) provides for the specific functions of responsible Ministers.

Clause 16 nominates the Minister administering the *Heavy Vehicle National Law (ACT) Act 2013* as the ‘responsible Minister’ for the Heavy Vehicle National Law (ACT). This is formally provided for through the Administrative Arrangements (made under the *Australian Capital Territory (Self-Government) Act 1988* (Cwlth) and the *Public Sector Management Act 1994*).

Clause 17 Road authority—the Law, s 5

Clause 17 declares the ‘road transport authority’ to be the ‘road authority’ for the ACT for the Heavy Vehicle National Law (ACT). Section 5 of the Heavy Vehicle National Law defines ‘road authority’ as “for a participating jurisdiction, means an entity that is declared by a law of that jurisdiction to be the road authority for that jurisdiction for the purposes of this Law”.

Section 16 (Road transport authority) of the *Road Transport (General) Act 1999* (ACT) establishes the Road Transport Authority as follows:

16 Road transport authority

- (1) There is to be an Australian Capital Territory Road Transport Authority (the *road transport authority*).
- (2) The director-general is the road transport authority.
- (3) For this section, in relation to the exercise of a function under a provision of the road transport legislation, the *director-general* is the director-general of the administrative unit responsible for the provision.
- (4) Anything done in the name of, or for, the road transport authority by the director-general in exercising the functions of the authority is taken to have been done for, and binds, the Territory.

The Legislation Act also provides a definition of ‘road transport authority’ as the Australian Capital Territory Road Transport Authority and notes that “[i]n relation to the exercise of a function by the road transport authority under a provision of the road transport legislation, the director-general of the administrative unit responsible for the provision is the road transport authority.” The director-general exercising particular functions and powers of the ACT’s

Road Transport Authority is determined through the administrative arrangements instrument. Section 6 of the *Road Transport (General) Act 1999* provides a definition of ‘the road transport legislation’.

Clause 18 Road manager—the Law, s 5

Clause 18 declares the road transport authority to be the ‘road manager’ for a road for the Heavy Vehicle National Law (ACT). Section 5 of the Heavy Vehicle National Law defines ‘road manager’ as “for a road in a participating jurisdiction, means an entity that is declared by a law of that jurisdiction to be the road manager for the road for the purposes of this Law”. Section 5 also defines ‘relevant road manager’ for a mass or dimension authority as “a road manager for a road in the area, or on the route, to which the authority applies”. The ACT does not provide separately for the concept of ‘road manager’ in ‘the road transport legislation’. The functions of the ‘road manager’ in the National Law are undertaken by the road transport authority in the ACT.

Clause 19 Road Rules—the Law, s 5

Clause 19 declares that the Australian Road Rules are the ‘Road Rules’ for the Heavy Vehicle National Law (ACT). Section 5 of the Heavy Vehicle National Law defines ‘Road Rules’ as “for a participating jurisdiction, means the law that is declared by a law of that jurisdiction to be the Road Rules for the purposes of this Law”. In the ACT, the Australian Road Rules are applied in the *Road Transport (Safety and Traffic Management) Regulation 2000*.

Clause 20 Meaning of road and road-related area—the Law, s 8 (3)

Clause 20 clarifies that the Heavy Vehicle National Law (ACT) applies to a road or road-related area to which the road transport legislation applies. Section 8 (3) of the Heavy Vehicle National Law provides that “an area is a **road** or **road-related area** for the purposes of this Law or a particular provision of this Law as applied in a participating jurisdiction, if the area is declared by a law of that jurisdiction to be a road or road-related area for the purposes of this Law or the particular provision”.

The *Road Transport (Safety and Traffic Management) Act 1999* (ACT) provides definitions of ‘road’ and ‘road related area’. The *Road Transport (General) Act 1999* (ACT), section 12 (Power to include or exclude areas in road transport legislation) provides that the Minister may declare that the road transport legislation, or a provision of the road transport legislation applies to an area that is open to or used by the public, or does not apply to a road or road-related area.

Clause 21 Offences for which person charged does not have benefit of mistake of fact defence—the Law, s 14

Section 14 (References to mistake of fact defence) of the National Law provides that if a provision expressly states that a person charged with an offence does not have the benefit of the mistake of fact defence, the effect of the provision, for a participating jurisdiction, is the effect that is declared by a law of the jurisdiction to be the effect of the provision. Clause 21 makes a declaration about the effect of a provision of the Heavy Vehicle National Law (ACT) which states that a person charged with an offence does not have the benefit of the mistake of fact defence. The clause clarifies that the defence mentioned in the Criminal Code, section 35 (Mistake or ignorance of fact—fault elements other than negligence) or

section 36 (Mistake of fact—strict liability) does not apply to the person in relation to the defence.

Clause 22 Primary WHS law—the Law, s 18 (4)

Clause 22 declares that the primary ‘WHS Law’ for the Heavy Vehicle National Law (ACT) is the *Work Health and Safety Act 2011*. Subsection 18 (4) of the Heavy Vehicle National Law provides that the “**primary WHS Law**, for a participating jurisdiction, means the law that is declared by a law of that jurisdiction to be the primary WHS Law for the purposes of this Law”. Section 18 (Relationship with primary work health and safety laws) makes provision for the relationship of the Heavy Vehicle National Law and the primary WHS Law. Subsection 18 (1) provides that “[t]his Law does not limit the application of the primary WHS Law or any regulations made under that Law”.

Clause 23 Meaning of *police agency*—the Law, s 727 (1)

Clause 23 clarifies that Australian Federal Police exercising functions under the *Australian Federal Police Act 1979* (Cwlth), section 8 (1) (a) is an entity for the Heavy Vehicle National Law (ACT), section 727 (1), definition of ‘police agency’. Part 13.4 of the National Law sets out provisions for ‘protected information’.

Subsection 727 (1) makes provision for ‘authorised use’ of protected information, and states that “**police agency** means a police force or police service (however called) of a participating jurisdiction, and includes an entity prescribed by the Application Act of this jurisdiction as an entity included in this definition”. Subsection 727 (2) provides that “[i]t is also an authorised use of protected information disclosed to or otherwise held by a police agency for any purpose or for a particular purpose to disclose the information to another police agency authorised to hold protected information (whether or not for the same purpose)”.

Clause 24 Meaning of *relevant law*—the Law, s 727 (1)

Clause 24 specifies Territory laws for the Heavy Vehicle National Law (ACT), section 727 (1), definition of ‘relevant law’. Part 13.4 of the National Law sets out provisions for ‘protected information’. Subsection 727 (1) (k) provides that for part 13.4, authorised use, for protected information, means ‘a use required or authorised under a relevant law of a participating jurisdiction’. Subsection 727 (1) states that a “**relevant law**, of a participating jurisdiction, means a law specified for this definition in a law of the jurisdiction”. The relevant Territory laws for this authorised use in relation to ‘protected information’ are those that make up the body of ‘the road transport legislation’ or any other Territory law prescribed by regulation.

Part 3 ACT-specific provisions

Clause 25 Use of force against people—the Law, s 491

Clause 25 authorises the use of reasonable force against a person in the exercise or purported exercise of a function under chapter 9 (Enforcement) the Heavy Vehicle National Law (ACT) by a police officer. Section 491 (Use of force against persons) of the National Law does not authorise the use of force against any person by an authorised officer, or a person assisting or acting under the direction of an authorised officer, in the exercise or purported exercise of a function under the National Law. This restriction extends to warrants issued under the National Law. An exception is allowed where the application Act for a jurisdiction authorises the use of force against a person by a police officer.

There is a similar provision in the *Road Transport (Mass, Dimensions and Loading) Act 2009* which is to be repealed. Section 364 (Only police officers to use force against people) of that Act states that “[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.

Clause 26 Use of force against property—the Law, s 492

Clause 26 authorises the use of reasonable force against property in the exercise or purported exercise of a function under chapter 9 (Enforcement) the Heavy Vehicle National Law (ACT) by an authorised officer. Section 492 (Use of force against property) of the National Law does not authorise the use of force against property unless the authorised officer is a police officer, or “exercise of the power to use force is authorised under the Application Act of this jurisdiction”. The use of force is authorised under various provisions of the National Law. For example, subsection 498 (6) provides that an authorised officer may use force that is reasonably necessary for gaining entry to places “required to be open for inspection under this Law” and where the authorised officer reasonably believes there may be evidence of an offence against the National Law that may be concealed or destroyed unless the place is immediately entered and searched.

Clause 27 Amendment or withdrawal of vehicle defect notices—the Law, s 531

Clause 27 provides that an authorised officer who is a police officer of another jurisdiction may amend or withdraw a vehicle defect notice issued in the ACT by a police officer. Subsection 531 (1) (b) of the National Law provides that a “vehicle defect notice issued in this jurisdiction by an authorised officer who is a police officer may be amended or withdrawn by any authorised officer who ... is a police officer of another jurisdiction if the Application Act of this jurisdiction permits this to be done”. The declaration establishes a parallel arrangement in relation to police officers of another jurisdiction to the arrangement in subsection 531 (2) for authorised officers who are not police officers. That subsection provides that a “vehicle defect notice issued by an authorised officer who is not a police officer may be amended or withdrawn by any authorised officer who is of a class of authorised officers for the time being approved by the Regulator for the purpose of this subsection”.

Clause 28 Power to seize certain things—the Law, s 552

Part 9.4, Division 2 (Seizure and embargo notice) of the National Law provides for powers of seizure in relation to, e.g., evidence, information stored electronically, things or samples for examination, property, and number plates. Section 552 (Restriction on power to seize certain things) limits these powers by providing that authorised officers are not authorised to seize heavy vehicles, or things or a thing of a class prescribed the national regulations. However, subsection 552 (2) provides that the limitation does not apply “if the Application Act of the participating jurisdiction in which the vehicle or thing is located provides that the heavy vehicle or thing can be impounded or seized under a law of that jurisdiction.”

Clause 28 provides that an authorised officer may impound or seize an ‘excluded thing’ under chapter 9 (Enforcement) the Heavy Vehicle National Law (ACT). Subclause 28 (2) defines an ‘excluded thing’ to mean a heavy vehicle or a thing or class of thing prescribed by the national regulations. A note to the clause provides the additional information that a similar power under the *Crimes Act 1900*, part 10 (Criminal investigation) may be used instead.

Part 4 Miscellaneous

Clause 29 Provision of information and assistance to Regulator by road transport authority

Clause 29 makes provision for the road transport authority to share information with the Regulator, and to provide other assistance reasonably required by the Regulator in the exercise of a function under the local application provisions of the Act or the Heavy Vehicle National Law (ACT). Subclause 29 (2) removes any doubt that information shared is deemed to be information obtained in the course of administering the Heavy Vehicle National Law (ACT) and is therefore ‘protected information’ as defined in section 727 of the National Law and subject to the safeguards of the National Law.

Subclause 29 (4) makes specific provision for the disclosure to the Regulator of information mentioned section 29A (Disclosure of images by road transport authority) of the *Road Transport (Safety and Traffic Management Act) 1999*. Section 29A states that the road transport authority must ensure that an image taken by a traffic offence detection device is not disclosed by the authority to another person except ... if the disclosure of the information is required or authorised by a law of the Territory. Law of the Territory is specifically defined to mean “for a law made after the commencement of this section, a law that expressly requires or authorises the disclosure of the information”.

Subclause 29 (1) commences with the phrase “Despite any other territory law”. The proposed section does not express or intend to limit future enactments of the Legislative Assembly; nor, does it restrain the power of the Assembly to make laws. It is understood that this provision could itself in future be amended or repealed by the Assembly at any time like other pieces of legislation and that the Assembly could make another law that overrides this law if necessary.

Clause 30 Regulation-making power

Clause 30 provides a general regulation-making power for the Act. Subclause 30 (2) also provides that a regulation can modify a national regulation.

Part 5 Delayed application of certain provisions of Heavy Vehicle National Law (ACT)

This part contains provision which delay the application of certain chapters of the Heavy Vehicle National Law (ACT).

Division 5.1 Heavy vehicles—registration

Clause 31 Registration provisions of Heavy Vehicle National Law (ACT)

Clause 31 provides that chapter 2 (Registration) of the Heavy Vehicle National Law (ACT) does not apply. By national agreement, chapter 2 will not commence until a national heavy vehicle registration system is developed by the Regulator and is operational. Proclamation of chapter 2 by Queensland will be delayed until at least mid-2015. As a result, the Territory’s registration of heavy vehicles under the *Road Transport (Vehicle Registration) Act 1999* will continue to operate until this division expires.

Clause 32 Expiry—div 5.1

This clause makes provision for the expiry of the division on commencement of the section.

Division 5.2 Heavy vehicles operations—speeding

Clause 33 Vehicle operations speeding provisions of Heavy Vehicle National Law (ACT)

Clause 33 provides that chapter 5 (Vehicle operations—speeding) of the Heavy Vehicle National Law (ACT) does not apply. The Territory has not previously legislated to give effect to heavy vehicle speeding provisions in the model laws which are now consolidated into the National Law. Chapter 5 will be applied when the Regulator is able to administer the provisions directly.

Clause 34 Expiry—div 5.2

This clause makes provision for the expiry of the division on commencement of the section.

Division 5.3 Heavy vehicles operations—driver fatigue

Clause 35 Vehicle operations driver fatigue provisions of Heavy Vehicle National Law (ACT)

Clause 35 provides that chapter 6 (Vehicle operations—driver fatigue) and part 9.3, division 8 (Further powers in relation to fatigue-regulated heavy vehicles) of the Heavy Vehicle National Law (ACT) do not apply. The Territory has not previously legislated to give effect to heavy vehicle driver fatigue provisions in the model laws which are now consolidated into the National Law. Chapter 6 and part 9.3, division 8 will be applied when the Regulator is able to administer the provisions directly.

Clause 36 Expiry—div 5.3

This clause makes provision for the expiry of the division on commencement of the section.

Division 5.4 Heavy vehicles—intelligent access program

Clause 37 Intelligent access program provisions of Heavy Vehicle National Law (ACT)

Clause 37 provides that chapter 7 (Intelligent Access Program) of the Heavy Vehicle National Law (ACT) does not apply. The Territory has not previously legislated to give effect to intelligent access provisions in the model laws which are now consolidated into the National Law. Chapter 7 will be applied when the Regulator is able to administer the provisions directly.

Clause 38 Expiry—div 5.4

This clause makes provision for the expiry of the division on commencement of the section.

Division 5.5 Heavy vehicles—accreditation

Clause 39 Accreditation provisions of Heavy Vehicle National Law (ACT)

Clause 39 provides that chapter 8 (Accreditation) of the Heavy Vehicle National Law (ACT) does not apply. The Territory has not previously legislated to give effect to heavy vehicle accreditation provisions in the model laws which are now consolidated into the National Law. Chapter 8 will be applied when the Regulator is able to administer the provisions directly.

Clause 40 Expiry—div 5.5

This clause makes provision for the expiry of the division on commencement of the section.

Part 6 Transitional

Part 6 makes provision for certain saving and transitional matters, noting that comprehensive saving and transitional provisions are located in chapter 14 and schedule 1, part 6 (Effect of repeal, amendment or expiration) of the Heavy Vehicle National Law (ACT). Additional savings and transitional provisions are found in part 7 of the *Heavy Vehicle (General) National Regulation*. As well, section 84 (Saving of operation of repealed and amended laws) of the *Legislation Act 2001* will continue to apply to matters such as proceedings commenced under repealed or amended ‘road transport legislation’. Subsection 748 (4) and (7) of the Heavy Vehicle National Law (ACT) reinforces this provision.

Clause 41 Saved mass limit exemptions—accreditation under Heavy Vehicle National Law (ACT)

This clause relates to two instruments made under the *Road Transport (Mass, Dimensions and Loading) Act 2009* which are saved under section 748 (General savings and transitional provision) of the Heavy Vehicle National Law (ACT). The saved instruments enable certain heavy vehicles or combinations to operate on specified roads subject to the operator being accredited under a Mass Management Accreditation Scheme approved by a corresponding road transport authority. Under the Heavy Vehicle National Law scheme, accreditation will become a responsibility of the Regulator. The instruments are modified to enable certain heavy vehicles or combinations to operate on specified roads subject to the operator being accredited under a Mass Management Accreditation Scheme accredited under a law corresponding to the Heavy Vehicle National Law (ACT) in a participating jurisdiction. The proposed section will expire on application of chapter 8 (Accreditation) of the Heavy Vehicle National Law (ACT).

Clause 42 Transitional regulations

Clause 42 enables the Executive to make regulations dealing with transitional matters. The section contains two different regulation-making powers. Clause 42 (1) enables the making of a regulation to deal with any transitional matter that arises as a result of the enactment of this Bill or the Heavy Vehicle National Law (Consequential Amendments) Bill 2013. However, the scope of the regulation must be confined to the same sphere of operation as the amended Act, be strictly ancillary to the operation of the Act and not widen the Act’s purpose.

Clause 42 (2) enables the making of a regulation that modifies the Act. A regulation under this subclause may only modify part 6 of the Act, and only if the Executive is of the opinion that the part does not adequately or appropriately deal with a transitional issue. A provision of this kind is an important mechanism for achieving the proper objectives, managing the effective operation, and eliminating transitional flaws in the application of the Act in unforeseen circumstances by allowing for flexible and responsive (but limited) modification by regulation.

Clause 42 (3) gives a regulation under subclause 42 (2) full effect according to its terms. A provision of part 6 of the Act modified by regulation will operate in the same way (in relation to another provision of the Act or any other territory law) as if it were amended by an Act, and in accordance with established principles of statutory interpretation. The section is not expressed, and does not intend, to authorise the making of a regulation limiting *future* enactments of the

Legislative Assembly. Also, any modification by regulation of part 6 of the Act has no ongoing effect after the expiry of that part.

Clause 43 Expiry—part 6

Clause 43 provides for the expiry of part 6. Expiry of part 6 is tied to the non-application of chapters 2, 5, 6, 7 and 8. Part 6 will expire 12 months after the day the expiry of last of the non-application provisions for the chapters commences.

Schedule 1 Modification—Heavy Vehicle National Law (ACT)

Schedule 1 makes modifications to the Heavy Vehicle National Law (ACT) which address the way the National Law will apply in the ACT. The modifications in part 1.1 are largely intended to align the Heavy Vehicle National Law (ACT) with the ACT's existing road transport legislation and to ensure certain existing offences, enforcement, sanctions and evidentiary provisions contained in the road transport legislation continue to apply to heavy vehicles in the ACT. Part 1.2 modifications will expire on commencement of the application of chapter 2 (Registration) to coincide with the commencement of a national registration system.

Part 1.1 Modifications—general

Clause 1.1 Section 5, definition of *previous corresponding law*, new paragraph 4

Clause 1.1 inserts an additional paragraph into the definition of 'previous corresponding law' in section 5 of the Heavy Vehicle National Law (ACT). Paragraph 1 of section 5 states that "a previous corresponding law is a law of a participating jurisdiction that, before the participation day for the jurisdiction, provided for the same, or substantially the same, matters as the provision of this Law". The 'participation day' is the day before the jurisdiction became a participating jurisdiction. The definition does not allow for the delayed commencement of chapters of the National Law and the laws that will operate until their commencement in the participating jurisdiction. In the ACT, the matter most directly concerns the delayed application of chapter 2 (Registration). New paragraph 4 provides that if a provision of the National Law is subject to delayed application, the participation day for the jurisdiction in relation to the provision is taken to be the day the provision applied.

Clause 1.2 New sections 567A and 567B

This clause deals with matters to do with the production of licences and identification of people. New section 567A (Power to require production of driver licence) allows an authorised officer, for compliance purposes, to require the driver of a heavy vehicle to produce his or her driver licence for inspection. The requirement for a driver of a heavy vehicle to produce a licence is essential for effective enforcement of the Heavy Vehicle National Law (ACT). As a driver licence is not a document issued under the National Law, it was agreed nationally that participating jurisdictions would make provision for this requirement through jurisdictional laws.

New section 567A is modelled on section 58 of *Road Transport (General) Act 1999*. New 567B (Power to require people to disclose identity of driver) is also essential for the effective enforcement of the Heavy Vehicle National Law (ACT). It is modelled on section 60 of the *Road Transport (General) Act 1999*. For consistency, the offences in new sections 567A and 567B parallel the offences in the Road Transport (General) Act. The penalties are prescribed in penalty units.

Clause 1.3 Part 10.3, new division 4A

Clause 1.3 inserts a new division 4A (Cancelling, varying or suspending driver licences or disqualifying drivers) into part 10.3 (Court sanctions) of the Heavy Vehicle National Law (ACT). New section 598A (Sanctions involving driver licences) provides that if a court convicts the driver of a heavy vehicle of an offence against the Law in relation to certain mass, dimension or loading requirements, the court can cancel, vary or suspend the driver's Australian driver licence, and/or disqualify the driver from obtaining or holding a licence. The provision is modelled on section 204 (Sanctions involving driver licences) of the *Road Transport (Mass, Dimensions and Loading) Act 2009* which is to be repealed. Like new section 567A, the provision deals with driver licences which are not documents issued under the National Law; hence, provision for this requirement is made through a law of the ACT.

The Road Transport (Mass, Dimensions and Loading) Act also contains a related provision regarding sanctions involving heavy vehicle registration (section 205) for contraventions of certain mass, dimension or loading requirements. A parallel provision is contained in the Heavy Vehicle National Law (ACT) in section 598 (Cancelling or suspending registration).

Clause 1.4 New section 709A

Clause 1.4 inserts new section 709A into Part 13.3 (Legal proceedings), division 2 (Evidence) of the Heavy Vehicle National Law (ACT). The new section provides that, if relevant to a proceeding, evidence of the speed of a heavy vehicle obtained under the *Road Transport (Safety and Traffic Management) Act 1999* may be given in the proceeding. A certificate under the Road Transport (Safety and Traffic Management) Act is admissible and evidence of the matter. Offences related to the speed of a heavy vehicle are provided for in chapter 5 of the Heavy Vehicle National Law (ACT).

Clause 1.5 New section 710 (1A) and (1B)

Clause 1.5 inserts new subsections 710 (1A) and (1B) into section 710 (Averments) of Part 13.3 (Legal proceedings), division 2 (Evidence) of the Heavy Vehicle National Law (ACT). The new provisions insert additional matters which can be stated in a complaint for an offence in relation to the particulars of a person's driver licence, or in relation to distances mentioned in the complaint. Subsection 710 (1B) also provides that section 715 (Challenging evidence by certificate) applies to matters about distances.

Clause 1.6 New section 711 (1) (r) to (zc)

Clause 1.6 inserts new subsections 711 (1) (r) to (zc) into section 711 (Evidence by certificate by Regulator generally) of Part 13.3 (Legal proceedings), division 2 (Evidence) of the Heavy Vehicle National Law (ACT). Section 711 sets out matters which can be included in a certificate issued by the Regulator. New subsections 711 (1) (r) to (zc) provides for certain additional matters which can be included in a certificate.

Clause 1.7 New section 711 (3)

Clause 1.7 inserts new subsection 711 (3) into section 711 (Evidence by certificate by Regulator generally) of Part 13.3 (Legal proceedings), division 2 (Evidence) of the Heavy Vehicle National Law (ACT). The new subsection provides that a certificate issued by or on behalf of the Regulator under section 56 (Evidentiary certificates) of the *Road Transport (General) Act 1999* is evidence of a matter.

Section 56 of the Road Transport (General) Act applies to a proceeding for an infringement notice and makes provision for certificates issued by an administering authority. Clause 51 in the Heavy Vehicle National Law (Consequential Amendments) Bill 2013 provides that the Regulator is the administering authority for heavy vehicle infringement notice offences. Clause 52 in the Heavy Vehicle National Law (Consequential Amendments) Bill 2013 provides that the Regulator is taken to have delegated its function in relation to the administration of infringement notice management plans to the road transport authority.

Clause 1.8 Section 712

Clause 1.8 is a technical amendment to subclause numbering following the insertion of new subsection 712 (2) provided for in clause 1.9.

Clause 1.9 Section 712 (2)

Clause 1.9 inserts new subsection 712 (2) into section 712 (Evidence by certificate by road authority) of Part 13.3 (Legal proceedings), division 2 (Evidence) of the Heavy Vehicle National Law (ACT). The new subsection provides that a certificate mentioned in section 72 (Certificate evidence and other evidentiary provisions) of the *Road Transport (General) Act 1999* is evidence of a matter.

Clause 1.10 New section 715A

Clause 1.19 inserts new section 715A (Evidence of contents of document examined by authorised officer) into Part 13.3 (Legal proceedings), division 2 (Evidence) of the Heavy Vehicle National Law (ACT). The provision enables an authorised officer to give evidence about a document required to be kept in another person's possession which was examined. The officer may give evidence about the document without producing it. The accompanying example refers to a work diary as a type of document which must continue to be in the possession of a driver to enable the driver to continue driving.

Clause 1.11 Section 737 (1)

Maximum penalties for offences in the National Law are specified as monetary fines with the exception of new sections 567A and 567B for which penalties are expressed in penalty units the value of which is provided for in section 133 (Penalty units) of the *Legislation Act 2001*.

Section 737 deals with the annual increase in penalty amounts for offences against the Heavy Vehicle National Law (ACT). Clause 1.11 inserts a phrase to make clear that the section does not apply to new sections 567A and 567B.

Part 1.2 Modifications—ch 2

Clauses 1.12 to 1.31

Chapter 2 (Registration) of the Heavy Vehicle National Law will be subject to delayed application as a law of the Territory. By national agreement, the provisions will not commence until a national heavy vehicle registration system is developed by the Regulator and operational. Part 1.2, clauses 1.12 to 1.31 make modifications to the Heavy Vehicle National Law (ACT) which have the effect of preserving existing registration laws for heavy vehicles pending the commencement of application of chapter 2.

Dictionary

The dictionary defines various words and phrases used in the local application provisions of the proposed Act.